



### **Consultant to Study Battery Energy Storage Systems—Status Update**

#### **Background**

At its December 12, 2019 meeting, the board directed staff to retain an outside consultant to study the appropriate contractor classifications to install solar-paired battery energy storage systems. On March 4, 2020, CSLB published a request for proposal (RFP) to contract with a consultant for this study, with a submission deadline of May 6, 2020.

On April 30, 2020, the California Department of Finance issued budget letter 20-11 that, among other things, precludes departments from entering into new service contracts, unless an agency secretary or cabinet-level director grants an exemption.

In response to that budget letter, on May 11, 2020, the Department of Consumer Affairs requested an explanation from CSLB about the critical nature of this contract. That same day, CSLB submitted a formal request that this consultant contract be exempt from the budget letter prohibitions. On June 4, 2020, the Business, Consumer Services, and Housing Agency (BCSH) approved the exemption request.

The process of selecting the consultant followed requirements set forth by state contracting rules and was conducted by the Department of Consumer Affairs, with a CSLB evaluation team comprised of Registrar David Fogt, Chief Deputy Registrar Tonya Corcoran, and Administration Chief Mike Melliza.

Between August and September of 2020, CSLB and DCA engaged in a comprehensive three-phase evaluation process. The first two phases involved reviewing the written and oral presentations of prospective bidders. DCA independently performed the final cost component evaluation.

DCA awarded the contract to the bidder who accumulated the highest final score (factoring in technical, oral presentation, cost components). On September 11, 2020, DCA issued a “Notice of Intent to Award” to the winning bidder, the Institute for Research on Labor and Employment (IRLE) at University of California (UC), Berkeley. As required, this notice was physically posted at DCA and CSLB headquarters and online at FI\$CAL.ca.gov. CSLB took the additional measure of posting the notice on the Energy Storage System page on CSLB’s website: [www.cslb.ca.gov](http://www.cslb.ca.gov). DCA has confirmed no protests were filed within the five- business day protest period.

UC Berkeley has performed a preliminary review of available public data regarding this matter, which includes the testimony of more than 300 people and hundreds of documents submitted by interested parties and prepared by CSLB, and has advised



staff it may take up to six months to complete their report to the board. CSLB anticipates the contract to be executed by January 1, 2021.

Noted below is the proposed timeline of the anticipated three-phase next steps in the process.

## **Proposed Timeline to Hire Consultants to Research and Draft Report on Battery Energy Storage Systems**

### **PHASE 1**

Hire consultants to research and draft report.

DCA will draft and execute the contract with the UC Berkeley. The tentative contract term dates are January 1, 2021 through June 30, 2021.

**January 1, 2020 through June 30, 2021:** The consultant researches and prepares a report that will assist CSLB in determining if there is a need to modify its existing regulations regarding the appropriate classification to contract and install battery energy storage systems (BESS).

The report will include an analysis of BESS issues that the CSLB Legislative Committee identified for study at its November 2019 meeting, and that CSLB staff included in the RFP.

The BESS issues identified for study are identified on page 3 of the March 4, 2020 Request for Proposal, and are listed here as follows:

1. Considering BESS risk, hazard, size and complexity considerations, is there an existing or prospective harm to public safety, and if so what is the likelihood of the existing or prospective harm occurring and/or will that harm be fixed by enacting a regulation?
2. Whether the solar contractor classification should be authorized in regulation to install a BESS and if so to what extent/in what way?
3. Applicability of state and national standards and codes to these inquiries.
4. Economic impact analysis of a restriction on the CSLB Solar Contractor regulation (California Code of Regulations (CCR), Title 16, Division 8, Article 3, Section 832.46, hereafter the "C-46" license).
5. An analysis of applicable knowledge, skills and training as it relates to the installation of BESS.

### **PHASE 2**

CSLB determines what, if any, regulatory changes are necessary, in consideration of the consultant's report.



**June/July 2021:** CSLB will publish the consultant report and post it to its website.

**June/July 2021:** At a regularly scheduled quarterly public meeting, board members will review and discuss the report and take comment from members of the public and stakeholders.

The board could:

- Vote to adopt the report's recommendations in their entirety and without further changes
- Make their own recommendations, which may include accepting parts of the report and rejecting other aspects of the report's recommendations
- Take no action

If the board votes to change the existing regulatory language or create a new regulation CSLB staff would begin drafting regulations as described below in Phase 3.

### **PHASE 3**

If regulations are required, CSLB drafts regulations and proceeds with the regulatory rulemaking process.

**July 2021:** CSLB staff draft proposed regulatory language.

**August 2021:** Legislative Committee reviews proposed regulatory language at a regularly scheduled public meeting of the committee, takes public comment from members of the public and stakeholders. Legislative Committee could vote to approve recommending draft rulemaking to full board or could direct staff to make additional changes to rulemaking text.

If Legislative Committee approves first draft of proposed regulatory language:

**September 2021:** CSLB full board meets to review draft regulatory language and may authorize staff to initiate rulemaking. CSLB board could approve filing rulemaking with the Office of Administrative Law (OAL).

**September 2021 to May 2022:** CSLB staff work with DCA and BCSH attorneys to finalize regulatory package. CSLB staff work with DCA attorneys to draft Initial Statement of Reason, Notice of Proposed Regulatory Action, Fiscal Impact Analysis, and other documents required for OAL. DCA Director and BCSH Secretary review and approve package.

**May 2022:** CSLB files Initial Statement of Reasons and Notice with OAL. CSLB submits Initial Statement of Reasons, Notice, text, and other required documents



to OAL for publication in the Notice Register. Mandatory 45-day public comment period begins.

**June/July 2022** (depending on whether OAL publication is in early or late May): Rulemaking 45-day public comment period ends. The public comment period may conclude with a prescheduled regulatory hearing or may be done without a hearing. If the latter, stakeholders could request a public hearing specifically to present oral testimony on the proposed regulations. Regardless, public comment can be submitted to CSLB via email, letter, or fax.

**September 2022:** CSLB full board presented an opportunity to review staff draft responses to the public comments and give final approval to proceed with the rulemaking at a regularly scheduled quarterly public meeting of the board. If the board votes to revise the originally proposed language based on public comment, or for other reasons, it would need to release a 15-day notice of modified text, during which the public could comment on the newly proposed revisions. Additional 15-day notices of modified text can be released if the board votes for further revisions in response to the subsequent public comments.

**September 2022 to April 2023:** CSLB releases any needed 15-day notices of modified text and finalizes Final Statement of Reasons and rulemaking package with DCA and BCSH. DCA Director and BCSH Secretary review and approve package.

**May 2023:** CSLB files final package with OAL (must be submitted to OAL within one year from the date of publication of the Notice [projected as May 2022 above]). OAL has 30 working days to review and approve (or disapprove).

**July or October 2023:** CSLB regulations become effective pursuant to OAL's quarterly calendar with Secretary of State (January, April, July, or October), depending on when package is approved by OAL. CSLB could incorporate a delayed implementation date into the regulations, if so desired.