



Stakeholder Feedback Request – Eligibility Criteria for Equity Eligible Contractors and the Equity Eligible Contractor Category

April 11, 2023

The Illinois Power Agency seeks stakeholder feedback on potential strategies to strengthen the criteria for qualifying as an Equity Eligible Contractor and for receiving incentives under the Equity Eligible Contractor block of capacity within the Adjustable Block Program. This feedback will inform new requirements as part of the IPA's upcoming Long-Term Renewable Resources Procurement Plan.

Stakeholders may comment on as many or as few of the items outlined within this document as they would like. Stakeholders should not feel limited by the questions offered below and may provide comments on these proposals beyond the scope of these specific questions as it relates to the criteria for certifying Equity Eligible Contractors.

Please provide comments via email attachment to IPA.EnergyEquity@illinois.gov with the subject “[Responder’s Name] – Stakeholder Feedback on EEC Criteria” by May 5, 2023.

Responses will be published on both the IPA and Adjustable Block Program websites. Should a commenter seek to designate any portion of its response as confidential and proprietary, that commenter should provide both public and redacted versions of its comments. Independent of that designation, if the Agency or the Program Administrator determines that a response contains confidential information that should not be disclosed, the IPA reserves the right to provide its own redactions.

Background

By law, the statutory objective of the designation of certain Approved Vendors as Equity Eligible Contractors is “advancing priority access to the clean energy economy for businesses and workers from communities that have been excluded from economic opportunities in the energy sector, have been subject to disproportionate levels of pollution, and have disproportionately experienced negative public health outcomes.” (20 ILCS 3855/1-75(c-10)). Furthermore, the statutory definition of “equity eligible contractor” is “a business [or organization] that is majority-owned [or majority-governed] by eligible persons,” where eligible persons are “persons who would most benefit from equitable investments by the State designed to combat discrimination.” (20 ILCS 3855/1-10).

The IPA is concerned that firms may be attempting to circumvent the spirit of CEJA’s equity requirements through novel ownership structures in an effort to secure additional capacity within the EEC Category. Relatedly, the IPA is concerned that the current definition is overly broad, especially given the ease with which Equity Eligible Persons serving as majority owners may qualify on the basis of residency. While the definition of “equity eligible persons” includes a list of specific qualifying characteristics (which serve as the basis for the Agency’s process to certify a person as such), the clause about benefitting from investments designed to combat discrimination is at the core of the definition, with the listed characteristics serving as circumstances that would qualify a person as equity eligible *within the primary definition of persons that face discrimination*.

The Agency believes that a feedback process is necessary to address potential disconnects between qualification criteria and equity objectives. For example, several Equity Eligible Contractors have qualified based on the certification of majority owners as Equity Eligible Persons when there may be questions on that Equity Eligible Person's actual connection to the company. At least one company may have reoriented its ownership structure to qualify. A single EEP who qualifies based on primary residency is now seeking to serve as the majority-owner of multiple EECs. In another case, the Agency has anecdotally heard of an Equity Eligible Approved Vendor encouraging other non-EEC Approved Vendors to partner with them for a portion of the contract value for qualifying for the full 3 points provided in the Traditional Community Solar EEC-related project scoring. While it is possible that some of these situations may further equity objectives, it is unclear whether all of these novel structures truly further the statutory objective of combatting discrimination as sought through the Equity Eligible Contractor definition and program category.

The Agency is also grappling with the question of whether qualification on basis of residency alone truly advances the statutory purpose of increasing economic opportunity for "communities that have been excluded from economic opportunities in the energy sector, have been subject to disproportionate levels of pollution, and have disproportionately experienced negative public health outcomes."¹ The option to qualify as an Equity Eligible Person based on primary residency in an equity investment eligible community does not reflect the reality that communities change over time, and block by block. There are many areas experiencing gentrification, making one's home address a potentially misleading indicator of one's access to capital or vulnerability to discrimination.

The Agency has also received requests for greater transparency on the ownership structure and qualification basis of Equity Eligible Contractors. Additional transparency regarding the ownership structure and basis of EEC qualification may benefit the program; not only would such transparency provide the market with more information as to the effectiveness of the current equity requirements, it could also remove any potential for companies that qualify based on superficial or circumstantial means to avoid public accountability.

In light of the above, the IPA requests feedback on potential additions to the requirements for being certified as an Equity Eligible Contractor and whether any of these changes should only apply as a conditional applicant to participating in the Equity Eligible Contractor category of ABP. The ideas below should be viewed as starting points. The IPA welcomes suggested adjustments and new ideas to ensure that Equity Eligible Contractors are majority owned or governed by "persons who would most benefit from equitable investments by the State designed to combat discrimination." (20 ILCS 3855/1-10).

Potential Changes to EEC Eligibility Criteria

1. Should an Equity Eligible Person be able to serve as the qualifying EEP for more than one Equity Eligible Contractor?
 - a. The Agency is concerned that allowing a single Equity Eligible Person to serve as the majority-owner of multiple Equity Eligible Contractors could result in

¹ 20 ILCS 3855/1-75(c-10).

concentration of the benefits of state incentives, where the benefits that are supposedly going to multiple companies are in fact benefitting a single person.

2. Should the Agency require additional demonstrations of equitable impact for companies seeking EEC certification based on majority-ownership of a silent partner Equity Eligible Person? If so, what might those entail?
 - a. The Agency is concerned about ownership arrangements that may enable large, established, non-EEC companies to access state incentives intended to support companies facing barriers to business opportunities. The statutory requirement that an Equity Eligible Contractor be majority-owned by eligible persons loses its meaning if the minority owner is a large company and the majority-owner eligible person is a silent partner that would otherwise have no involvement in the solar sector – neither party is a person seeking to access the economic opportunities created by CEJA and facing discriminatory barriers in doing so. Below are some potential strategies for preventing such gaming, with the Agency open to implementing one or all of them, depending on stakeholder feedback.
 - b. For companies where the minority share is owned by another company, not a natural person, should the agency require that the applicant must demonstrate one (or more) of the following:
 - i. There is a contractual agreement guaranteeing the eventual increase in ownership share of the Equity Eligible Person.
 - ii. The company is located in an equity investment eligible community.
 - iii. The company is also a small and emerging business.
 - iv. The company employs local residents.
 - v. The company employs dislocated energy workers.
 - vi. The company employs an elevated percentage of EEPs above the minimum equity standard.
 - c. If the Agency does require one or more of the above additional showings for companies seeking EEC-certification, should it do so only where the minority owner is a large company or where EEP owns less than a certain percentage of the company?
3. To increase the transparency regarding companies that qualify as an Equity Eligible Contractor and submit projects to the Equity Eligible Contractor Category, what information might the Agency require be published on the ABP website?
 - a. Name of companies certified as EECs?
 - b. Ownership structure and shares?
 - c. Basis upon which the majority-owner(s) qualified as EEP?



4. What forms of documentation could IPA require all companies applying for certification as an Equity Eligible Contractor to submit that would verify the claimed ownership structure? Options include, but not limited to:
 - a. Articles of incorporation
 - b. Governance documents
 - c. Tax documents

5. Are there variations on the above that strike a better balance? For example, the Agency could implement a prioritization system within the Equity Eligible Contractor category based on the above factors, providing bonus points for EECs that meet one or more of those criteria and selecting projects based on points received. Alternatively, the Agency could reserve a portion of that capacity for entities that meet some of the above factors – what might be a reasonable reserve portion to ensure state incentives benefit the intended actors?

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The Agency is greatly interested in hearing directly from Equity Eligible Persons, Equity Eligible Contractors, or those looking to qualify as such, but generally seeks input from a wide array of stakeholders.