



Clean Grid Alliance's Response to Illinois Power Agency's Request for Stakeholder Feedback on Diversity, Equity, and Inclusion

December 3, 2021

On November 12, 2021 the Illinois Power Agency posted eight documents seeking stakeholder feedback on certain topics in preparation for publishing its updated Long-Term Renewable Resources Procurement Plan on January 13, 2022, in compliance with P.A. 102-0662. Enclosed are Clean Grid Alliance's response to certain questions presented by the IPA regarding Diversity, Equity, and Inclusion

CGA's comments respond to the following questions: 1 through 10.

GENERAL RESPONSE:

CGA reserves the right to change its position in response to comments made by others, and its lack of a response to a question should not be interpreted as not having a position on that topic, or waiving its right to comment in future workshops or litigation on the matter.

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RESPONSE

Question #1 – Background:

Section 1-75(c)(1)(P) of the IPA Act (as created by Public Act 102-0662) requires that the Agency's programs and procurements be "designed to encourage participating projects to use a diverse and equitable workforce and a diverse set of contractors, including minority-owned businesses, disadvantaged businesses, trade unions, graduates of any workforce training programs administered under this Act, and small businesses."

1. To achieve this goal should the Agency conduct proactive outreach to businesses and organizations to promote IPA programs and procurements?

ANSWER:

Yes, the IPA should conduct proactive outreach to potential Equity Eligible Contractors and persons, to ensure there will be sufficient contractors to meet the minimum equity standards. Furthermore, CGA would be supportive of a process through which the IPA qualifies the Equity Eligible Contractors and persons so there are sufficient proficient contractors to meet developer's needs. Lack of qualified contractors and technicians can make a developer a price-taker, which can adversely impact the RPS Budget.

In addition, the IPA should educate potential competitive procurement bidders, and ABP vendors about the Equity Eligible Contractor requirements and the steps the IPA has taken to implement the Equity Eligible Contractor requirements, particularly with respect to interfaces and information that developers will need to use and rely upon to secure workers for compliance with the statute.

2. Should the Agency consider incentives to Approved Vendors based on subcontractor diversity (incentives could either be financial in terms of REC price adders, or in the form of prioritization or streamlining of project applications)?

ANSWER:

Incentives for Adjustable Block Program Vendors would likely provide an advantage to vendors with fewer employees ("small vendors") over vendors with a lot of employees or work in multiple states. Small vendors would likely use its employees to install its projects, whereas larger vendors are likely to use contractors or sub-contractors for its projects. Moreover, at the time of bid submission or application for ABP the Vendors who use contractors or sub-contractors may not know which contractors or sub-contractors it will use to be able to demonstrate its diversity at that time.

3. If equity commitments start at 10% of project workforces, and must increase to 30% by the 2030 delivery year, how should the Agency implement that increase be an even rampup over that time (e.g., 2.5% per year), or on a different schedule? Should the requirements vary in different regions of the state? Should percentages be adjusted in each successive Long-Term Plan based on observations of prior years' progress?
- i. What challenges will exist to meet the initial 10% requirement? Are there significant variations to consider in different areas of the state? Section 1-75(c10)(1) references "at least 10% of the project workforce for each entity" as the minimum starting requirement.
 - ii. Should this requirement apply to work conducted starting in the delivery year starting June 1, 2023 regardless of when the project application was approved, or only for new applications received on or after June 1, 2023?
 - iii. Should the agency apply different growth rates of the minimum requirement for different project categories and/or geographic regions? If so, what criteria should the agency use to determine those different rates of growth?

ANSWER:

To CGA's knowledge, the programs that would develop Equity Eligible Contractors and persons are not yet in place and operating, therefore, it is too early to establish a reasonable and achievable ramp rate, or determine if it should vary across the state.

CGA would appreciate the opportunity to revisit these topics in successive LTRRPPs after the programs are in place and can be evaluated.

(i) For the same reasons discussed above, CGA cannot provide guidance on challenges to meeting the requirements and whether those challenges vary across the state.

(ii) CGA has no comment on this topic at this point in time, and reserves the right to change its position in response to comments made by others.

(iii) For the same reasons discussed above, CGA cannot provide guidance on challenges to meeting the requirements and whether those challenges vary across the state.

4. How should "project workforce" be defined for equity accountability provisions? Does it cover just construction and installation activities, or should it also cover work on sales, marketing, finance, etc.? If so, how should those activities be defined and how should the percentages be calculated? (For example, for sales how would time spent on unsuccessful leads be accounted for?)

ANSWER:

Section 1-75(c-10) refers to "project workforce" in terms of equity eligible persons and equity eligible contractors. Thus, competitive procurement bidders and ABP vendors

have flexibility in using either their own employees or contractors to comply with the minimum equity standards of Section 1-75(c-10)(1). Such flexibility needs to be reflected in the structure of the equity accountability provisions and how compliance is determined.

Renewable developers with a lot of employees and build/own/operate renewable projects in multiple states are likely to use contractors and sub-contractors to build their projects. In contrast, renewable developers with a smaller staff and works in Illinois, or in close proximity to their main office, will likely use their employees to install their projects. Thus, it is imperative that the definition of project workforce be flexible, such that the renewable developers – whether a competitive procurement bidder or ABP vendor – can determine the pathway to compliance that best fits their business plan.

5. What specific items should be required in those compliance plans? Should the report at the end of the delivery year simply update that plan or should it be a wholly new document?

ANSWER:

The compliance plan should be flexible so as to allow the competitive procurement bidder or ABP vendor determine the pathway to compliance that best fits their business plan.

Competitive procurement bidders will likely use contractors and sub-contractors to build their projects, but they will not know what contractors they will use when it submits, much less when it needs to submit a compliance plan. A competitive procurement bidder would be able to estimate: # of workers per project or across multiple projects, and can include a statement that it will comply with Equity Eligible Contractors criteria by hiring employees, using contractors, or both.

The end of delivery year report could identify what projects were completed or are under construction or yet to start construction, describe whether the bidder hired EE contractors or persons, provide # of EE contractors and total # of workers on project.

6. How should compliance with workforce requirements be applied given the potential lag between the year an Approved Vendor's project receives a REC delivery contract and the year (or years) work is undertaken to build them?

ANSWER:

As noted in CGA's response to question 5, the mid-year and end of year reports should allow the bidder or vendor to identify which projects were completed, under construction or yet to start construction. This will allow for tracking of actual development lag.

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7. For the Adjustable Block Program, should the Agency employ compliance goals by category, or across all categories (with the Equity Eligible Contractor category presumably requiring full compliance)?

ANSWER:

As noted in CGA's response to question 3, the programs that would develop Equity Eligible Contractors and persons are not yet in place and operating, therefore it is too early to establish compliance goals by ABP category. CGA would appreciate the opportunity to revisit these topics in successive LTRRPPs after the programs are in place and can be evaluated.

Question #8 – Background:

Section 1-75(c-10)(3) requires the Agency to “develop requirements for ensuring that the competitive procurement processes, including utility-scale solar, utility-scale wind, and brownfield site photovoltaic projects, advance the equity goals of this subsection” and to “develop bid application requirements and a bid evaluation methodology for ensuring that utilization of equity eligible contractors.”

8. What types of criteria might such a methodology include?

ANSWER:

Similar to the responses provided above, bid or application requirements require developers to know their workforce composition at the time it submits its bid or application (beyond what is in their Compliance Plan). Typically, renewable energy developers who contract or subcontract project work will enter into contracts with such entities after the developer has been awarded a contract, not at the time it submits bids. Therefore, a bid or application requirement would not be effective in ensuring minimum equity standards are met by developers who typically contract or subcontract their construction work.

The compliance plan and reporting requirements set forth in section 1-75(c-10)(1) should be sufficient to ensure compliance with the minimum equity standards.

If criteria are to be established, they are to ensure the minimum equity standards are met. Criteria should be narrowly tailored to resolving an identified hurdle or problem, so as to avoid creating overly broad criteria that may inadvertently and unduly limit developer participation in competitive procurements.

9. Would simply requiring that winning bidders use at least a certain percentage/number of equity eligible contractors be sufficient to comply with this section?

ANSWER:

Yes, requiring winning bidders to comply with the minimum equity standards would be sufficient. Changes can be implemented over time as the pool of equity eligible contractors increase to meet market needs.

10. Should the agency consider an approach that takes bids out of purely price order to prioritize bids that support a higher number of equity eligible contractors or that direct a larger proportion of project revenue toward equity eligible contractors?

ANSWER:

This is nearly impossible to implement for competitive procurements. Bidders for these contracts typically use sub-contractors to comply with the equity eligible contractor criteria, and most, if not all CGA members, do not know what contractors or sub-contractors they will use for a project at the time it submits its bid in an IPA competitive procurement. Therefore, they can make no firm commitments to Equity Eligible Contractors requirements, beyond what is in the Compliance Plan they've submitted.

Respectfully submitted for your consideration

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