To: Illinois Power Agency, ipa.contactus@illinois.gov
From: Members of the Renewables and Decarbonization Subcommittees, IL Clean Jobs Coalition
Re: Illinois Power Agency Requests Stakeholder Feedback for 2024 Long-Term Plan Development - Chapter 10
Date: June 29, 2023

Introduction

The Renewables and Decarbonization Subcommittees were convened to help implement CEJA as envisioned by the Illinois Clean Jobs Coalition (ICJC). Our focus includes renewable programs and procurements, with a particular interest in ensuring the IPA helps facilitate the attainment of the state's renewable portfolio standards while also meeting its equity goals. The ICJC is made up of hundreds of environmental advocacy organizations, businesses, community leaders, consumer advocates, environmental justice groups, and faith-based and student organizations working together to improve public health and the environment, protect consumers, and create equitable, clean jobs across the state.

The below-signed Commenters from the Renewables and Decarbonization Subcommittees thank the IPA for an opportunity to provide input on revising the Long-Term Renewable Resources Procurement Plan (LTRRPP). These sets of responses correspond to the IPA's requests for input, due on June 29, 2023.

Signatories:

A Just Harvest
Central IL Healthy Community Alliance
Central Road Energy
Clean Power Lake County
Climate Reality Chicago Metro
Faith in Place
Metro East Green Alliance
Illinois Environmental Council
Sierra Club Illinois
Vote Solar

Chapter 10: Diversity, Equity, and Inclusion

TOPIC 1: Definition of "project workforce"

Background

The IPA adopted several definitions of key terms in Section 1-75(c-10) and Section 1-10 of the IPA Act in developing the program requirements for the Equity Accountability System. The current definition of "project workforce" as included in the 2022 Long-Term Plan is: Employees, contractors and their employees, and subcontractors and their employees, whose job duties are directly required by or substantially related to the development, construction, and operation of a project that is participating in or intended to participate in the IPA-administered programs and procurements under Section 1-75(c) of the IPA Act. This shall include both project installation workforce and workforce in administrative, sales, marketing, and technical roles where those workers' duties are performed in Illinois. (2022 LTP at 328).

The Agency adopted this definition to ensure the greatest access to the diverse range of economic opportunities created by solar development in Illinois. In addition, the IPA currently interprets the Minimum Equity Standard as a percentage of the number of persons in the workforce – whole persons, regardless of the number of hours worked on that project.

Questions

2. What would be the benefits or risks of moving to a hours-worked basis instead of a total number-of -individuals basis for the MES?

    a. Would some combination of hours-worked and number of individuals be possible or preferrable?

Answer: The Agency should use hours to determine employee count. For example, if an EEP moves from Company A to Company B during the course of the MES reporting year, each company should report the number of hours the EEP was paid for work at that company divided by 2080 hours. This provides a head count based on hours of paid work and both Company A and B get reasonable credit for the EEP's employment. A focus on hours also avoids the possibility that EEPs are hired for temporary or part-time positions to meet the MES requirement.

The regulated community also needs a clear definition of "workforce." Is it the total number of employees for the company? How will a large national or international company meet the requirement? Sunrun currently has 8,500 employees. If none are currently EEPs, the MES would require them to hire 944 EEPs in the first year to meet the 10% MES requirement as it is currently written.

We recommend that the determination of the workforce should be based on tracking the hours worked on projects in Illinois by the employer's workforce. By dividing those hours by 2080, the company can report "equivalent employees" for the purpose of calculating the MES percentage.

If you don't use hours, how long must an EEP be employed by a company to be counted? It's not fair to the employer if an EEP quits on day 364 and cannot be counted towards the MES for that year nor to the EEP if the employer hires the EEP for a single day and the employer gets to count that employee toward their MES.

TOPIC 2: Certifying Equity Eligible Persons

Background

The IPA Act defines an "equity eligible person" as "persons who would most benefit from equitable investments by the State designed to combat discrimination," and lists four specific criteria that meet that standard. However, the IPA has faced challenges in applying this definition and ensuring that those qualifying as EEPs under those criteria are also "persons who would most benefit from equitable investments by the State designed to combat discrimination." The IPA seeks feedback on that challenge and on balancing the need to prevent gaming with increasing participation.

Questions

1. IPA currently only requires supporting documentation to verify two of the bases for qualifying as an Equity Eligible Person: primary residence in an equity investment eligible community and former or current participant in a listed workforce training program. Should the Agency also require documentation to support certification for the other two criteria: formerly incarcerated and former participant in the foster care system? If so, what documentation should the Agency accept?

Answer: We support requiring documentation to verify EEP on the bases of former incarceration and foster care enrollment in those cases where a contractor is seeking EEC certification based on such EEP status. We fear the EEC category is being used by some companies and individuals that do not in fact face discrimination in participation.

2. Individuals that qualify as EEPs based on a "primary residence in an Equity Investment Eligible Community" (EIEC) may move residences over time.

a. How could the Agency track any changes in residence?

Answer:

b. What would be the advantages or disadvantages to allowing a "grace period" so that an individual that qualified as an EEP based on a primary residence in an EIEC but subsequently moved remains EEP-certified for a certain amount of time?

If IPA adopts our recommendation requiring an EEP to live in a qualifying area for 5 of the last 10 years, we support providing that individual a grace period of 3 years should they move out of that area following EEP certification.

Answer: Advantages include the recognition that the impacts of social and economic barriers are long-lived and do not disappear simply because someone is able to move out of a particular area. This understanding and recognition allow the Program to continue to provide assistance to EEPs that first qualified based on residency.

3. Relatedly, stakeholders have expressed concern that the "primary residence" criterion is too broad, given the rapid change in demographics in many EIECs. To prevent gaming or benefits from flowing to those that do not actually face barriers to entering the solar market, one stakeholder proposed learning from the Social Equity Applicant model in the cannabis sector. To qualify as a SEA, an entity had to demonstrate that a majority of its owners had lived in a qualifying community for at least 5 of the last 10 years (though it did not need to be the same address or community for all 5 years).

a. What could be the benefits or risks of such an approach?

Answer: We support the adoption of the Social Equity Applicant model used in the cannabis sector.

4. The map of EIECs is a combination of the Illinois Solar for All (SFA) Environmental Justice Communities and the R3 Communities. The IPA has recently updated the SFA Environmental Justice map based on 2020 census data and other updated sources of data. The Agency will accept EEP certification requests based on the previous map for the 2023-2024 Program Year.

a. Is one year of accepting both maps sufficient?

Answer: For the DG programs, one year is fine. For categories and programs with longer development timelines, such as Traditional Community Solar or utility-scale procurements, two years would be more appropriate.

5. Individuals may use the Energy Workforce Equity Portal to receive certification as an Equity Eligible Person without disclosing sensitive information to their employer or to potential employers. To verify the EEP status of the minimum number of individuals in their project workforce to satisfy the MES, entities will submit a Year-End Report that includes either the certification from the Portal or an EEP application for each individual EEP.

a. What would be the advantages or disadvantages of moving all EEP certifications to the Energy Workforce Equity Portal?

Answer: We support the Agency's proposal of using a streamlined webform on the Equity Portal to determine and track compliance.

The hope of using the Equity Portal would be to provide an additional pathway for Minimum Equity Standard (MES) compliance, not to shift the burden to Equity Eligible Persons or to make this a requirement for them. We view the Agency's proposal to utilize the Equity Portal for compliance a helpful addition to the compliance framework.

Ultimately, we are all trying to find a streamlined way to determine the numerator and the denominator for MES compliance. The denominator is the total workforce (as defined separately and discussed in another topic). The numerator is the workforce that are Equity Eligible Persons. We believe that ultimately the burden of reporting and tracking MES compliance should rest on the Approved Vendors and their designees. They should still be required to submit verifying paperwork at the end of the year to verify payroll and employment status.

We imagine a use case of the Equity Portal whereby an AV or Designee asks all of their employees to complete the EEP webform. The AV or Designee should be able to see the employees that have completed the webform and indicated that they are on the company's payroll. That way, the company can have visibility into its compliance status on an ongoing basis and better understand how it would have to shift its workforce to comply, all without intrusive questions about how an EEP qualified for EEP status.

TOPIC 3: Certifying Equity Eligible Contractors (EECs)

Background

The IPA issued a request for stakeholder feedback on the criteria for certifying Equity Eligible Contractors in April 2023, with responses due on May 5, 2023. These questions build on the responses to that request and seek additional perspectives.

Questions

1. Some commenters raised the potential for "sleeving" and "pass-throughs" in EECs - where a non-EEC company partners with an EEP as the majority owner, but that EEP has little involvement in of the management of the company, or where an EEC subcontracts out most of the development and construction, such that only a small portion of the state incentives flow to the EEP.

    a. Do such structures further the objectives of the Equity Accountability System, which is to advance "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"? If so, how?

Answer: No. We fear the category is being used by companies that do not face discrimination and are seeking access to an extra pot of community solar incentives due to the high demand and competition in the traditional community solar category.

b. If they do not, how might the Agency prevent such structures?

Answer: To prevent against the involvement of companies with token EEP involvement, IPA should assess whether owner EEPs can demonstrate meaningful control of the company. This could be shown where owner-EEPs serve as the final decision maker for key aspects of the business — financial, production, contracting, etc. — or have delegated that authority to an employee manager or another partial owner. It can also be demonstrated by the EEP owner serving as the general partner (or the managing general partner if there is more than one general partner) of a limited partnership or limited liability company; and if the EEP serves as the sole manager, or is able to appoint unconditionally the majority of managers, of a manager-managed LLC.

We also believe that prioritizing small and emerging businesses, as proposed above, could avoid the scenario where large national companies are utilizing pass-through entities to compete in the EEC category. Our earlier recommendation that IPA also favor projects that are above the 51% EEC participation threshold complements this recommendation.

2. What benefits or risks might be posed by requiring that registered EECs be listed publicly, even if only by company name? (Currently, EECs can decline to be listed on the Illinois Shines website.)

Answer: We believe EECs should not be allowed to opt out of being listed on the Illinois Shines website. They are taking public money to provide a service to the residents of the state. As such, they should be willing to be transparent about their participation in the program. We would want to take it a step further, they should also publish their company structure and their company ownership.

TOPIC 4: Minimum Equity Standard for Non-Illinois Shines Procurements and Programs

Background

Section 1-75(c-10) creates a new requirement for entities participating in IPA programs and procurements included in Section 1-75 (Illinois Shines, Self-Direct, and Indexed REC) such that at least 10% of their project workforce is comprised by Equity Eligible Persons, with that percentage set to increase to 30% in 2030. Not all of the statutory requirements of the Minimum

Equity Standard align with the timelines and structures of utility-scale projects seeking REC payments through IPA procurements and programs. For example, the statute requires participating entities to submit a Compliance Plan and Year-End Report every program year, but neither Self-Direct nor utility-scale projects are likely to be developed within a single year.

Questions

1. In the stakeholder feedback questions related to Chapter 6 on Self-Direct, the Agency requested input on the application of the MES to projects participating in the Self-Direct program.

a. How should the IPA apply MES to Self-Direct, which has a unique timeline in which entities apply after the project is already operating?

b. Should the applicable MES be that in place during the year of construction, or of application (which will occur after construction)? What if the project is constructed across multiple years?

c. How could the IPA adjust the compliance plan requirement for Self-Direct participants, who will not "participate" in an IPA "program or procurement" until after the project is built and energized?

Answer: We understand the predicament of the timeline for Self-Direct programs. Rather than these projects receiving REC contracts in advance of construction, most of the projects seeking Self-Direct participation are already constructed and are not receiving a REC payment directly.

Though we do not have any clear solutions yet, we look to the Double Black Diamond project developed in Sangamon County, largely to serve a portion of the municipal load of the City of Chicago. While that project may not yet be participating in the Self-Direct program, the developers and off-takers reached a deal that required the minimum equity standards to apply to this project voluntarily. This was a choice by the development team, and we would like to make the choice to pursue MES compliance an easy one for future developers.

Has the Agency considered providing a higher Self-Direct credit for projects that can demonstrate compliance with the Minimum Equity Standards for the year of construction? Would this be possible? We encourage the Agency to provide price signals to developers that await them when they eventually participate in the Self-Direct program.

2. Section 1-75(c-10) authorized the IPA to create "distinct equity accountability systems for different types of procurements or different regions of the State if the Agency finds that doing so will further the purposes of such programs." Although it is still early in the implementation of the current approach, the IPA seeks feedback on potential changes to the equity accountability system:

a. What would be the benefits or risks of establishing a different Minimum Equity Standard for the Self-Direct program or utility-scale projects that receive an Indexed REC contract?

b. How might the Agency adjust the MES requirements for utility-scale developers to accommodate the longer development timeline of those projects and the different workforce structure?

Answer: Section 1-75(c-10) provides the Agency with significant opportunity to improve the Equity Accountability System over the years, so long as it furthers the purposes of supporting Equity Eligible Persons and Contractors. We encourage the Agency to consider two questions when they explore changes to the Equity Accountability System:

1) Is the system too "tight"? Are the rules incompatible with the subprogram or category that there is no feasible path to compliance? Are many participating entities pursuing waivers as a result?
2) Is the system too "loose"? Is compliance so easily achieved that the Equity Accountability System is not driving solar development toward equitable outcomes? Are most participating entities already in compliance without needing additional action?

We believe that the system may be incompatible with the development timelines seen in the Self-Direct program and encourage the Agency to seek alternative compliance pathways, as explored above.

We also imagine a scenario where regional differentiation of the Minimum Equity Standards might ensure that the system is just right - neither too loose nor too tight. We discuss this further in the next topic.

TOPIC 5: Other Minimum Equity Standard Issues

Background

Integrating the Minimum Equity Standard into existing programs and procurements has required significant new reporting and verification processes. Entities must provide a Compliance Plan and Year-End Report to the Program Administrator, the latter of which demonstrates that the entity in fact met the Minimum Equity Standard (MES). The Agency has developed significant guidance on how to calculate which employees or contractors make up the project workforce, how to count Equity Eligible Contractors (EECs) within the MES, requesting a waiver of the MES, and the potential disciplinary consequences of failing to meet the MES. As a new program requirement, the Agency seeks feedback on potential levers to make the MES more effective while accounting for practical realities faced by entities with diverse structures and resources. In designing the program rules for the first year of implementing the MES, the Agency has

encountered several issues where the practical, on-the-ground process of developing and constructing a solar project may not align with the broad language of the statute, or may not be addressed by the statute.

Questions

1. The 2022 Long-Term Plan proposed to increase the MES for the 2024-2025 Program Year from 10% to 12%. Is this increase still reasonable?
    a. If so, should the Agency increase the MES to 15% for the 2025-2026 Program Year? Or would another level be more appropriate?
2. Should the Agency create different Minimum Equity Standards for projects in different areas of the state? If so, which areas?
    a. If the Agency were to adopt differing MES for distinct geographic areas, what criteria or factors should the IPA consider in setting those Standards?

Answer: We support the Agency performing an analysis of the availability of Equity Eligible Persons based on the proportion of census tracks that are deemed Equity Investment Eligible Communities (EIECs). Geographic regions of the state should be ranked by their proportion of EIECs compared to non-EIEC census tracks. We would like to see the data before suggesting a remedy. That said, we could imagine a scenario whereby companies that primarily or exclusively operate in regions that have significantly fewer EIECs might be granted additional flexibility in securing waivers and demonstrating compliance.

3. The current MES of 10% may result in fractional targets, especially for small businesses (<10 employees). How should the Agency calculate a company's MES in that case? Should the Agency round to the nearest whole number?

Answer: Using an hours approach could ameliorate this issue, however, we recognize that the MES can be problematic for small companies. For instance, anyone starting a business must ensure one of their first hires is an EEP and small companies with dedicated and loyal staff and no current need for additional staff are in a bit of a bind. We suggest companies with ten or fewer employees be eligible for waivers from MES requirements to the extent that they can demonstrate circumstances such as these.

4. Current Illinois Shines guidance requires that entities interacting directly with customers should register as Designees. Designees must submit their own Compliance Plan and Year-End Report and must meet the MES for their workforce. Given the variety of entities that might employ the majority of workers on a given project, should the Agency allow a wider range of firms to register as Designees in order to allow subcontractors that do not interact with customers the ability to report on MES compliance?

Answer: A ready-made and tested solution exists in the Illinois Solar for All program where entities can register as “subcontractors.” The ILSfA subcontractor registration process is simple and easy. It allows the program to track those companies involved in the program, implement reporting requirements like MES, and punish bad behavior by those entities. We suggest that the Agency implement a “subcontractor” designation in the Adjustable Block Program.

a. If so, how should the Agency define which entities must register as a Designee?

Answer: Any company that directly participates in the development, design, installation, REC contract management (i.e., AV Aggregators) or sales to the general public (including sales of community solar subscriptions) of solar systems that utilize the Adjustable Block Program should meet the MES requirements (with the temporary exemption for small companies) and therefore be required to register as an AV, AVD, or subcontractor. The definition language should also specifically exclude entities such as REC trading platforms (e.g., PJM GATS), third-party REC reporters (e.g. AlsoEnergy), panel, inverter, and other electrical equipment manufacturers, software and SAAS providers (e.g., helioscope), and outside counsel and accounting firms.

b. Should that registration be mandatory?

Answer: Yes.

c. Would subcontractors without direct interaction with end-use customers be required to meet the same requirements applicable to current Designees?

Answer: No. Only MES reporting at this time although additional reporting could be required in the future.

5. Currently, the Agency considers EECs to be in compliance with the MES by virtue of their ownership. Should the Agency narrow or adjust that interpretation, and if so, how? Should the Agency require that EECs also submit Compliance Plans?

Answer: Yes, at this time, we believe EECs should be considered to be compliant by virtue of their ownership. It may become more appropriate as the program matures to implement additional MES requirements for these entities. This also increases the importance of ensuring the EEC designation meets the spirit of CEJA and that EECs are owned and operated by disadvantaged persons. If the Agency senses that EECs are not reflecting the smaller, newer, and disadvantaged businesses that CEJA had intended, we encourage the Agency to apply MES to EECs to avoid accidental inequitable outcomes (i.e. established companies using EEC designation as a loophole for MES compliance.)

TOPIC 6: Equity Eligible Contractor Category in Illinois Shines

Background

Illinois Shines includes a project category reserved for projects submitted by Equity Eligible Contractors. Section 1-75(c)(1)(K)(vi) of the IPA Act required that 10% of the total program capacity be reserved for this category, with that percentage increasing to 40%. In the 2022-2023 Program Year, the applications submitted to the EEC Category Group A exceeded the available capacity on day one, and Group B also filled its capacity. The Agency is considering various methods for prioritizing or differentiating projects when applications exceed available capacity.

Note: Some of these items are also included in the request for feedback on Chapter 7 regarding Illinois Shines. Commenters do not need to provide the same comments to both chapters.

Questions

1. Considering that the Category received more applications than available capacity in the 2022-2023 Program Year, the IPA seeks feedback on a potential developer cap of 20% across all project types applicable for the entire Program Year, to mirror the developer cap in the Traditional Community Solar category.

a. Is 20% the right level?

Answer: At this time, yes. We also advocate for lifetime caps for EECs. Please see our responses to Topic 3 and our responses in Chapter 7. With the allocation scheme we proposed in Topic 5, program year developer caps become less meaningful with the hoped-for increase in participation.

b. One stakeholder responded to the IPA's request for feedback on May 5, 2023, that the IPA should apply a cumulative cap on the amount of capacity awarded to a single developer (and its affiliates) across the life of the EEC category. What would be the advantages and disadvantages of that approach?

Answer: See our response to Topic 3.

2. Also due to the oversubscription in PY 2022-2023, the Agency seeks to develop a method for selecting projects should applications exceed capacity on the first day. The Traditional Community Solar category uses a point system to prioritize projects with qualitative aspects that reflect policy objectives in the IPA Act. Would it be appropriate to use a similar scoring system for project selection in the EEC Category?

Answer: See our response to Topic 3 and to Chapter 7.

a. If so, what would be the advantages or disadvantages of awarding points based on elements such as:

i. Status as a small and emerging business or MWBE - Small and emerging businesses owned by EEPs and MWBEs are historically disadvantaged in competitive bidding processes.

ii. Number of EEPs employed - Let's reward those that offer enhanced opportunities to EEPs.

iii. Amount of capacity awarded to the EEC AV in previous program years (providing points to those that have not previously received a REC contract) - The EEC category was designed to assist the historically disadvantaged in gaining a foothold in the clean energy economy. Those with more experience in receiving incentives are better equipped to compete in the other ABP categories.

iv. Whether the majority-owner EEP qualifies under multiple criteria - This helps ensure the program is meeting its goals and also serving those who face compound barriers and have the most need for the EEC ABP to be successful.

v. Amount of REC contract value flowing to EECs - It's good to spread the wealth and this might incentivize mentorship and partnerships among EECs, rather than just utilizing an EEC Approved Vendor as a pass-through entity.

c. Are there other characteristics that the Agency should or could prioritize in such a project selection method for the EEC category?

Answer: We fully support a project scoring protocol given its success in the traditional community solar category and the Illinois Solar for All Non-profit Public Facilities subprogram.

Factors to consider in developing the protocol could also include:

- Individuals providing EEC eligibility live in or maintain a business office in EIECs
- Number of individuals that provide the AV EEC status
- Project location in Brownfield and/or EIEC.
- Participation in the project by other EECs that are not acting as AVs
- Participation in the project by MWBEs that are not acting as AVs
- Total number of EECs reported by the companies in the previous program year that will be participating in the project.
- Project size, with a preference for smaller projects
- Years of participation in the program, with preference given to newer EECs
- Total MW of REC contract requested, with preference given to those EECs with smaller capacity requests
- We also recommend that IPA consider the degree to which an EEC's EEP ownership exceeds 51% and projects where more than 51% of the value stack/project revenue is going to EECs. The most points/highest priority should go to projects that achieve 100% EEC participation. To prevent against the involvement of companies with token EEP involvement, IPA should also consider assessing whether owner EEPs can demonstrate meaningful control of the company. This could be shown where owner EEPs serve as the final decision maker for key aspects of the business — financial, production, contracting, etc. — or have delegated that authority to an employee manager or another partial owner. It can also be demonstrated by the EEP owner serving as the general partner (or the managing general partner if there is more than one general partner) of a

limited partnership or limited liability company; and if the EEP serves as the sole manager, or is able to appoint unconditionally the majority of managers, of a manager-managed LLC.

TOPIC 7: EEC Requests for Advance of Capital

Background

Section 1-75(c)(1)(K)(vi) allows the Agency to create a payment structure within the EEC category of Illinois Shines such that, "upon a demonstration of qualification or need, applicant firms are advanced capital disbursed after contract execution but before the contracted project's energization." In the 2022 Long-Term Plan, the Agency established that an application for an advance of capital must include "a short narrative description of the need being addressed, and what key project development milestone will trigger the disbursement" (2022 Long-Term Plan at 175). The Agency has interpreted that "narrative description of the need being addressed" as directly related to the statutory purpose of the advance of capital, which is "to overcome barriers in access to capital faced by equity eligible contractors" (20 ILCS 3855/1-75 (c)(1)(K)(vi)).

Questions

4. The 2022 Long-Term Plan requires that applications for an advance of capital include a list of expected costs that would be met by the advance. Should the Agency limit the types of costs that may be included in the request for an advance of capital? If so, what types of costs should or should not be eligible? Note that Section 1-75(c)(1)(K)(vi) of the IPA Act expressly allows the advance to cover "increase[s] in development costs resulting from prevailing wage requirements or project-labor agreements."

Answer: Whatever scheme is adopted for determining the amounts that will be advanced to EECs, guardrails must be in place to prevent large non-EEC partners from accessing this upfront capital. A detailed description of the entities involved in the project that will be receiving any subcontracted payment of the funds to be advanced should be included in the request for an advance of capital.

TOPIC 8: Demographic and Geographic Data Collection

Background

Section 1-75(c-20) of the IPA Act directs the IPA to "collect data from program applicants in order to track and improve equitable distribution of benefits across Illinois communities for all

procurements the Agency conducts." Currently, the Agency collects the workforce demographic information (race and gender) for projects participating in Illinois Shines and Illinois Solar for All at the Part II application phase. The Agency also collects demographic information on project workforce members as part of the MES Compliance Plan and in the Annual Report from Approved Vendors.

Questions

1. Are there other workforce characteristics or data that the IPA should collect and monitor? For example, veteran-status, disability, other?

Answer: Yes. There are several benefits to collecting more robust data. Such data will better enable IPA to assess whether CEJA goals are being met, identify specific areas where programs are falling short, and help identify communities and populations that may be unintentionally left out of CEJA programs. As noted above (and in previous comments from this group), CEJA's disparity study process is a critical component of the Act and effective data collection is essential for determining the need and providing the empirical foundation for equity strategies that are directly targeted to contractors experiencing discrimination in the renewable energy market. Moreover, because this is a heavily litigated area, it is critical that this process is done properly from the start. In litigation, the disparity studies itself and any strategies adopted pursuant to it are subjected to heavy scrutiny. And by the time litigation is brought, it is too late to retain legal counsel to ensure that the entire process stands up to such judicial scrutiny. To ensure that the disparity study is as effective as possible, and to minimize any legal risks should remedies pursuant to it be challenged, we urge IPA and other involved agencies to consult with legal counsel who has experience and expertise in guiding government bodies through this process successfully. Engaging such a legal expert as early as possible will ensure that no steps are taken that could inadvertently put the state at legal risk and jeopardize important remedies. If it would be helpful, we can provide information on individuals the state may want to consider for this role.

Regarding the collection of specific data, the Agency should ensure that it collects data that reflect:

- The Agency needs to study the broader market to determine the availability of various positions.
- All the bases for EIP status, including whether a person resides in an EIEC. We also recommend that collect specific address information to inform any future deliberations around the need to adjust the EIEC definition to better serve intended beneficiaries.
- All recognized legal bases for discrimination – specific racial/ethnic group, gender, disability status, national origin, and language status. This will help the Agency determine whether some populations are underserved by CEJA programs and, if so, will inform remedies.
- For each program, data should be collected at each step of the way so that the Agency and other agencies can determine whether each component is functioning as

it should. For example, data on the workforce hubs should include the demographic data noted above disaggregated by: applications submitted, applications approved, matriculation, graduation, and post-graduation hiring status. Data on applications submitted, for example, will help the Agency determine whether outreach and recruitment efforts are succeeding.

- For both program evaluation and a disparity study, the Agency will need to be able to disaggregate the data by other factors that might affect success. For example, jurisprudence on disparity studies makes clear that successful participants need to be compared to the universe of "available" participants, i.e. those that have the qualifications and ability to perform the job or take on the contract. This could include data about job qualification or in the context of contracting, data on contractor size and expertise..
- The Agency should collect data in a manner that allows it to evaluate the quality of opportunity offered to intended beneficiaries. As suggested above, for jobs this could include total hours worked, temporary vs. permanent positions, employees vs. independent contractors, and wage levels. For contractors, this should include the value of the contract and the significance of growth opportunities and mentoring.
- The Agency's disparity study will also need to identify potential discrimination with particularity, including by:
    - Appropriate geographic area or market.
    - Size/type of contractor.
    - Specific racial and ethnic groups, as well as other protected classes, that may be experiencing discrimination.

2. Are there ways the Agency could streamline the data collection on these topics?

Answer: Yes. Currently, the data entry process is grossly inefficient and will result in reporting errors. Entering the same information for the same employee over and over for each new Part 2 application is highly problematic. The registry of EECs should include non-EECs as well. When entering a Part 2 Application, the employee whose hours are being reported could be referenced by their unique registration number. This avoids data entry inconsistencies like name derivatives or abbreviations (e.g., listing the same person as Robert in one entry, Bob in the next, and Rob in the third) and it allows the program to easily generate reports. Lastly, AVs, AVDs, and Subcontractors can keep their own registries of employees up to date, simplifying the data collection necessary at the completion of projects by the general contractor or AV.