

# Draft Joint Comments on IPA Plan Diversity, Equity, and Inclusion Questions

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## Introduction and Joint Comments

We - the below-listed Joint Commenters - value the opportunity to provide feedback on the Illinois Power Agency's (IPA) development of its draft Long-Term Renewable Resources Procurement Plan (LTRRPP or Plan). These comments are intended to address the Diversity, Equity, and Inclusion Questions raised by the IPA as well as questions in the other requests for comment that we believe relate back to Diversity, Equity, and Inclusion.

The Joint Commenters include members of and participants in discussions on the Long-Term Renewable Resources Procurement Plan convened by the [Illinois Clean Jobs Coalition](#), however the views in these comments are our own and do not necessarily represent the view of that coalition.

Central Illinois Healthy Community Alliance	Faith Coalition for the Common Good
Climate Reality Project Chicago Metro Chapter	Vote Solar
Sierra Club, Illinois Chapter	Illinois People's Action
Prairie Rivers Network	ONE Northside
Environmental Law & Policy Center	Central Road Energy LLC
The People's Lobby	Chicago Lawyers' Committee for Civil Rights
ACES 4 Youth	Union of Concerned Scientists

## Joint Commenters Goals for Diversity, Equity and Inclusion in IPA Programs and Procurements

In addition to answering IPA's thoughtful questions, we offer the following general comments. We believe there are several foundational ways that IPA can improve all of its programs and offerings -- through robust interagency work, deep stakeholder engagement and a holistic approach to the mandated disparity study.

### **Interagency Coordination, Engagement and Alignment**

IPA is tasked with implementing significant new programs and holds much responsibility for ensuring that CEJA's DEI goals are met. We recognize the challenge of implementing so much with a small staff and appreciate all the efforts being made to do so quickly and smoothly without sacrificing stakeholder input.

IPA is best positioned to conduct the needed interagency outreach to make sure the gears of CEJA mesh rather than clash. Specifically, interagency coordination is needed to ensure timely and adequate coordination and communication. For instance, DCEO's new training hubs, contractor incubators and prime contractor accelerator are nothing more than empty promises if they cannot become a pipeline to jobs and opportunities. For instance, IPA needs to coordinate with DCEO to ensure that training in the incubators renders participants well-versed in the mechanics of IPA processes, procurements and specific steps needed to effectively take advantage of equity-related incentives.

Similarly, IPA is best positioned to fill the gaps until CEJA's new inclusive financing mechanisms are up and running. Because access to capital is so critical to BIPOC contractors, we hope IPA will be creative and find ways to use its up-front payment mandate and other resources to provide equity eligible contractors with the financial resources they need.

Both DCEO and IPA will need well-designed, user-friendly databases of trained workers, contractors, job opportunities and more. Building on its experience in the last few long-term plans, we urge IPA to take the lead here and make sure that the data collected does more than facilitate the matching of job seekers to available work. There is an opportunity here to marry employment data with equity tracking data to build a true picture of the industry including its demographic and geographic diversity; the types of projects pursued in various sectors; and, the impact CEJA training and contractor development programs are having on workforce development, contractor pools and incentive awards. In order to streamline equity accountability, it will also be critical to have geographic lookup tools that enable workers and contractors to easily identify themselves as equity eligible.

As an adjunct to this work, we also recommend creating a parallel database of community-based organizations. This will be helpful in directing outreach funding toward local partners with a track record of engaging their communities. It will also identify areas of the state where better partnerships need to be built.

Finally, we would like to acknowledge the work involved in establishing effective interagency coordination, particularly in light of how strapped we already know the Agency to be. We would not ask this of the Agency if we did not feel that interagency coordination was critical to the success of IPA's renewables programs and procurements.

### **Stakeholder Engagement**

Given the ongoing and potentially unpredictable nature of implementing a law of such critical importance and complexity, we urge the IPA to create a permanent CEJA Implementation Working Group (CIWG). Undoubtedly, the IPA will have many questions and issues arise during its implementation of CEJA, and it's often true that real-time discussions can yield better results more quickly and efficiently than a back-and-forth written questioning process. IPA's recent hiring of a new diversity officer is a great start to creating deep stakeholder engagement and should be considered as the lead for the development and implementation of the CIWG.

In the short term, the CIWG could focus on IPA procurement processes. As other parts of CEJA are implemented, its scope could expand to include creating strong synergies between IPA processes and programs in other agencies. This will be essential to build out the linkages recommended under Interagency Coordination, Engagement and Alignment above.

Members of the CIWG should include representatives that are working on CEJA's goals -- from the transition of our energy grid to green sources; to expanding the carbon-free transportation sector; and to ensure that these historic climate investments are distributed equitably with a particular focus on the communities harmed by environmental and economic injustice.

Perhaps most importantly, the CIWG would create a climate of trust and communication between the IPA and the many industries and stakeholders affected by the passage of CEJA. In other words, stakeholders that know each other from working together on an on-going basis are more likely to identify new and higher quality solutions to the many challenges that lie ahead. Also, the very process itself will enhance the sense that best faith efforts are in play.

### **Disparity Study**

We encourage IPA to take both a broad and tailored view of the disparity study that it is charged with conducting. An effective disparity study for Illinois will need to account for the fact that solar is a relatively new industry and a pool of ready, willing and able BIPOC contractors does not exist in a number of the industry classifications that serve the clean energy sector. This points to the importance of continuing to assess disparities as the industry grows and CEJA's pipeline programs take root, and the importance of ensuring that a disparity study thoroughly considers availability including, for example, by accounting for contractors within industrial codes that serve the clean energy sector as well as other areas of the economy.

The Agency, including through its disparity study, will need to look at a broad swath of the renewables industry to effectively identify those factors, such as a lack of capital, a lack of technical assistance or other barriers, that are keeping qualified BIPOC contractors from participating in IPA procurement events. We ask IPA to collect data to (1) meet the

requirements of a legally sound disparity study as well as to (2) truly understand who can and can't access procurement opportunities and for what reasons.

Because CEJA touches far more than REC procurement, it will also be essential to evaluate more than IPA's own attempts to widen participation in procurement events and its incentive structures. IPA's study should also assess underlying factors such as access to worker training and contractor development opportunities, contractors' ability to access capital, and more.

Because the solar contracting industry in Illinois is relatively small, we recommend that IPA conduct both quantitative and qualitative research -- evaluate the narrative in addition to the numbers. Specifically, we recommend that IPA start with interviews of participating BIPOC contractors as well as contractors who were not successful in getting RECs to better understand the barriers they face.

## Diversity, Equity, and Inclusion Questions (DEI)

*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?*

**Yes.** In order to facilitate sufficient and effective outreach to create needed community partnerships, IPA should name an Outreach Coordinator. The Outreach Coordinator would be responsible for public outreach including the creation of recruiting materials (brochures, ads, etc.) that reflect the diversity of the communities they are reaching out to. The Outreach Coordinator should prioritize establishing partnerships with established Community Based Organizations (CBOs), especially those working with small businesses, contractors and community development corporations. IPA should make its distribution/outreach list as well as its recruitment materials publicly available. This will allow groups like the ICJC and other CBOs to verify effective outreach and, where necessary, suggest additional CBOs for IPA to contact and partner with. Due to the technical nature of many of IPA's programs/procurements, we recognize CBO partnerships in this area will look different than those built to enhance job training recruitment. We believe these partnerships will be an important complement to IPA's recruiting efforts, rather than a complete assumption of recruitment responsibility.

Beyond proactive outreach to recruit diverse businesses, IPA's outreach should encompass two other goals. First, IPA's outreach should facilitate feedback from diverse businesses to understand what challenges they face in actually participating in programs/procurements and how best to set up programs/procurements to facilitate their participation. Programmatic recommendations to address barriers identified via outreach will be particularly critical to the successful implementation of the Equity Eligible Contractor category of the Adjustable Block

Program. Second, IPA's direct outreach should also include technical assistance to help contractors get set up in and navigate the program/procurement systems.

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)?*

**Yes.** In order to properly incentivize contractors to meet DEI goals established in CEJA, **REC payment amounts should be tied directly to equity goals.** Companies that meet or exceed equity goals should be financially rewarded for doing so. Prioritization and streamlining applications are also important, but until all of CEJA's inclusive financing mechanisms are in place and fully funded, REC payments will remain critical for EEC-led projects.

As we'll explain further below, we believe that this is the fundamental purpose of the Equity Eligible Contractor (EEC) category created in the Adjustable Block Program. That category should include tiered REC incentives that reward different levels of equitable engagement. Hypothetically, the threshold to participate in the EEC category might be that 60% of the work be done by EECs. In this scenario, projects with 80% or 90% of work performed by EECs would be awarded REC "adders" via higher incentive prices. This would create the corresponding "carrots" needed to incentivize equitable partnerships and to ensure additional financial support for EECs. It would reward deeper commitments to equity with bigger incentives.

We are mindful that "adders" and higher REC prices come with a tradeoff. Fewer projects will be developed if the REC award per project is increased, potentially slowing the amount of renewable energy that Illinois develops. Until we can find a suitable alternative -- and we are certainly open to suitable alternatives -- we believe that this tradeoff is necessary and important to support the underlying equity goals of CEJA.

*Section 1-75(c-10) of the IPA Act (as created by Public Act 102-0662) requires the establishment of an **equity accountability system** that,*

*is successful in 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. Further, it is the purpose of this subsection to ensure that this equity accountability system is successful in advancing equity across Illinois by providing access to the clean energy economy for businesses and workers from communities that have been historically excluded from economic opportunities in the energy sector, have been subject to disproportionate levels of pollution, and have disproportionately experienced negative public health outcomes.*

*With the next Long-Term Plan scheduled to be approved in July of 2022, equity accountability requirements would not begin to apply until the delivery year that starts June 1, 2023.*

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*

*ramp-up 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?*

**We propose that the ramp up of Minimum Equity Standards accelerate over time to accommodate the delayed start and the gradual increase in workforce and contractor development programs.** For example, it might make sense to have 10% in year one, 11% in year two, 12% in year three, and then jump to 17% in year four. Exponential growth, rather than steady linear increases, will best match the dramatic increase that we expect in eligible persons and eligible contractors over time. The percentage requirements should be standard across all geographies and all subprograms.

The initial ramp up should consider the reasonably expected growth trajectory of the diverse workforce and strike a balance between actively encouraging that ramp up and targeting commitments that can reasonably be achieved (and therefore making the use of waivers less likely). It may be appropriate to adjust percentages differently in successive Long-Term Plans.

- 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.*

Equity eligible worker and contractor availability may be constrained until all CEJA workforce and contractor development efforts are up and running. **This does not mean the IPA should plan for variations across different regions of the state.** Past experience indicates that this just means Downstate is held to a lower standard. There is already a waiver process outlined in statute for entities that can demonstrate that eligible persons or eligible contractors are truly unavailable. This should be used judiciously to resolve regional issues -- however, waivers should be an exception to the rule rather than an expectation for certain areas of the state.

- 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?*

**The calculation should track all work done during that delivery year, regardless of when the project was submitted or completed.** The numerator should be the work that was completed by eligible persons or eligible contractors in that delivery year and the denominator should be the total amount of work that was completed by that entity in that delivery year. See our answers to question 4 below for additional details on how we believe “work” should be defined in this context.

- 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?*

As discussed above, **the IPA should not create variations across different regions of the state.** Based on the information we have at this time, we don't see any reason for different

requirements for different project categories. We expect to see additional data as part of the Agency's obligation to collect and report on program demographics, including through the disparity study. This data will help us and other advocates better understand if certain categories or certain geographies need additional support in achieving the Minimum Equity Standards.

- 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?)*

**The definition of "project workforce" should refer to the total hours that contribute towards projects in a given delivery year. We believe that this merits a broad definition that includes all roles that contribute to a renewable energy project, including sales, marketing, and finance.**

Although we believe that hours may be most representative, we encourage the IPA to work through what this calculation would look like using prorated hourly payroll spend. In an ideal world, hours worked and associated payroll would both be equitably distributed. Some coalition members voiced concern about equity eligible contractors being siloed into lower-paying jobs such as call center recruitment work.

To avoid this calculation process being too cumbersome, we believe that the IPA should provide an option for companies to use established percentage values for different roles. For example, the IPA might determine that an Approved Vendor Aggregator represents 10% of the project workforce, the installation process claims 40% of the project workforce, sales another 20%, etc. These numbers are purely illustrative -- we believe that the IPA should consult with project developers to determine percent values for different roles. Furthermore, we believe that these standardized percent values should be unique to different project categories to reflect the relative effort by various roles required for different scales of renewable energy development.

In general, we are supportive of creative approaches to streamline reporting generally and project workforce reporting in particular, including some use of simplifying assumptions, so long as the reporting captures a broad definition of project workforce and meaningful data, especially with regards to actual equity.

***Entities participating in Agency procurements are required to file annual compliance plans and reports related to meeting equity accountability requirements.***

- 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?*

In the compliance plan, the IPA should require information regarding how equity eligible individuals come into the system (e.g., existing employee, hired from a workforce hub, matched from the DCEO site, etc.), where the individuals are coming from (e.g., zip code) and what

percentage of payroll the equity eligible employees comprise (payroll information). This process should not be burdensome. The IPA could put up a website where participating companies can input these numbers. We also suggest that the website allow compliance plan updates so that participants do not have to submit a wholly new plan each year.

We are mindful that employers are restricted in what information they can share about employees, including addresses. **Whatever route the IPA chooses to collect data and verify compliance should allow for multiple pathways to demonstrate compliance.** For example, there should be opportunities for eligible persons to self-certify with the IPA to avoid them having to share sensitive information with their employer, and for employers to demonstrate compliance without having to share addresses or other eligible person compliance pathways (e.g., returning resident status) externally.

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?*

**The lag time should not matter, since these Minimum Equity Standards are designed to measure equitable workforce and contracting per entity, not per project.** If we use the definition that we suggest above, then it will not matter if the project takes two years to be completed. The work done on any given project will be tracked alongside all work done during that delivery year to determine whether the entity is in compliance with the minimum equity standards.

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

**Full compliance should be demonstrated in all categories.**

Given that we believe that all categories should have the same Minimum Equity Standard requirements, and that eligibility should be determined per entity instead of per project, we could support a system that allows an entity that participates in multiple categories to comply over their entire portfolio, even if they are slightly above or below the minimum standards in a specific category or subprogram.

*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?*

**Criteria should measure involvement of Equity Eligible Contractors (EECs) and Equity Eligible Persons (EEPs) during the development and construction of a project.** As with other elements of the Equity Accountability System, these criteria should be adjusted if the



proposed system does not achieve equitable outcomes, especially if the disparity study results reveal discrepancies that might only be resolved through race-conscious remedies.

*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?*

This type of minimum requirement would likely be sufficient to comply with this section. That said, **we believe that the proposal described below in response to question 10 is better aligned with the intent of this section and we encourage the Agency to adopt that instead.** Should the Agency determine that this is the most productive route forward, we would encourage them to emulate the ramp-up of requirements in the Minimum Equity Standards.

*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?*

**Yes, we believe that this would be the most productive approach to prioritizing equitable outcomes in competitive procurements.** CEJA includes multiple priorities for utility-scale and brownfield resources, including siting projects in Energy Transition Community Grant areas per Section 1-75(c)(1)(P) and this equity-oriented prioritization from Section 1-75(c-10)(3). We believe there is a way to bundle these priorities together and still ensure that bids are cost-competitive.

This would involve establishing different bid price “handicaps” for different non-cost priorities, either in the form of a specific dollar amount or a standard percentage of bid price. A procurement system like this could simultaneously reward multiple priorities at once (e.g., pollinator friendly siting *and* Equity Eligible Contractor involvement) and could even be tailored to provide different degrees of “handicap” benefit to reflect different levels of commitment. All bids would still arrive at once for competitive procurements, just as they are in the current system, to ensure cost competitive bids. Each bidder would know in advance which bid “handicaps” they are eligible for, but potential cost competition would still be unknown.

Some criteria could be binary (e.g., whether or not the project is located in an Energy Transition Community Grant area) and some criteria could be on a sliding scale (e.g., projects with 90% or more equity eligible involvement might receive a larger bid handicap than those that only commit to 50% equity eligible involvement). All in all, this could ensure that a developer who commits to additional social benefits, and perhaps has to pay higher development costs as a result, is still able to submit cost-competitive bids for competitive procurements.

As mentioned earlier, we understand that spending on adders, handicaps and other incentives raises the REC award per project and could ultimately reduce the state’s total renewable energy build. In the short term, we believe it is worth accepting the tradeoffs to jumpstart progress toward achieving CEJA’s underlying equity goals.

***Section 1-75(c-10)(4)(C) calls for the establishment of a “program for approved vendors, designees, eligible persons, and equity eligible contractors to receive trainings, guidance, and other support from the Agency or its designee regarding the equity category outlined in***

*item (vi) of subparagraph (K) of paragraph (1) of subsection (c) and in meeting the minimum equity standards of this subsection (c-10).”*

11. *What are the recommended approaches to provide this training, guidance and support? For example, should it be through educational events, classes, published guidelines, or mentorships?*

All of IPA’s outreach efforts and associated technical assistance should cover Minimum Equity Standards as well as opportunities for contractors that go above and beyond the minimum. **Educational offerings for these standards should be coordinated with contractor offerings available through the DCEO network of hubs and contractor incubators as well as the prime contractor accelerator.**

*Section 1-75(c-10)(4)(E) provides for a process through which an applicant may apply for a waiver of the minimum equity standards, where they can show “evidence of significant efforts toward meeting the minimum equity commitment.”*

12. *Other than the criteria listed in that section (“use of the Energy Workforce Equity Database, efforts to hire or contract with entities that hire eligible persons”), are there any other types of information that the agency should consider when evaluating an application for a waiver?*

**Waiver requests should include documented lack of availability of eligible persons/contractors within a wide geographic range (which includes the nearest equity workforce hub), because people will travel for work.** Waiver requests should also be given more consideration if accompanied by a supporting letter from a nearby CEJA hub or relevant CBO partner. The IPA should include demographics on waivers in their annual report and identify potential remedies for avoiding these waivers in the future.

We further recommend that the waiver applicant be required to demonstrate there are no available EEPs and EECs within a specific drive-time zone, perhaps using an hour’s drive of the company’s office or project location as the standard. It would be acceptable to define this regionally based on commuting times.

*The Agency is tasked with conducting a **study of racial disparity and discrimination** that focuses on the effectiveness of the equity actions system to increase participation of equity eligible persons and equity eligible contractors. This study is to be published within one year of when contracts are awarded that account for equity actions.*

13. *Given that the equity accountability requirements do not begin until June 1, 2023, when is the earliest that this study should be conducted?*

**We recommend that data collection and analysis begin as soon as possible.**<sup>1</sup> The disparity study is a mechanism for evaluating the need and legal basis for pursuing equitable remedies

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<sup>1</sup> Note that while the language is fairly clear that the minimum equity standards are to be implemented “starting in the delivery year immediately following the next Long-Term Renewable Resource Procurement Plan,” Section 1-75(c-10)(1)), we believe that this is just a small component of the Equity

that are more assertive than those already prescribed in CEJA. In that sense, it is not merely a study of the effectiveness of the equity accountability system, it is a study to determine whether there is a “strong basis in evidence” of discrimination in Illinois’ clean energy market that would justify IPA and other state actors adopting more assertive and targeted strategies. This is particularly important because the equity accountability system is a race-neutral approach that targets workers and contractors from economically underserved and environmentally overburdened communities. To the extent that there is racial discrimination in Illinois’ clean energy economy, the equity accountability system, as well as CEJA’s other equity programs, should help remedy it, but more targeted strategies that a disparity study might justify would enable IPA and other agencies to address such discrimination more directly and expediently.

When considering whether race-conscious remedies are justified, courts also consider whether race-neutral strategies have been tried first, with results that indicate a need for more aggressive, race-conscious strategies. Given this, we also recommend that the IPA develop as part of its disparity study effort a clear plan for assessing the extent to which the equity accountability system, and other past and current equity programs, are effectively remedying potential discrimination in Illinois’ clean energy economy.

As part of this, we recommend that the IPA evaluate whether it has the authority, perhaps through its audit powers, to collect data from past renewable energy projects that would help inform a disparity study. We understand that currently there is limited data on various contractors and subcontractors that have worked on renewable energy projects, but if IPA does determine that the authority exists, it would be valuable for the disparity study to be retroactive.

As described more fully below, **in the immediate future, we recommend that IPA retain and consult with legal counsel that has expertise in this area.** Such counsel may already exist within state government, if it does not, we recommend the Agency retain external counsel. This is a highly litigious area. Expert legal counsel can ensure that a disparity study, and any remedial actions that are founded upon it, withstand legal scrutiny. Such counsel would enable the Agency to:

- Have frank, privileged discussions about the design of the study, the broader policy context in which it sits, and potential remedies with the Agency’s interests front of mind.
- Help inform a request for proposals for the disparity study and evaluate those proposals with the state’s best interests in mind. Such an expert can help advise the state on the methods commonly used in disparity studies and the strengths and limitations of those methods for evaluating Illinois’ clean energy sector.

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Accountability System described in Section (c-10). For example, the “equity accountability within the adjustable block program” will begin in December 2021 and the “equity accountability system within competitive procurements” will likely begin shortly after this Plan is finalized. Additionally, the disparity study is not exclusively measuring the effectiveness of the Equity Accountability System. It is also tracking ongoing disparities in the market to determine whether race-specific remedies are necessary

- Ensure that the disparity study is designed to survive legal scrutiny. It is important to keep in mind that a disparity study is not simply a social scientific study, it is the expert report that the state would need to rely upon to defend any remedies that result from it in court. This brings unique considerations that legal counsel can help inform.
- Ensure, after completion of a disparity study, that any remedies the Agency and other state actors might consider are within the legal bounds of what the study enables the state to do.

*14. Are there interim reports or studies that should be considered?*

The overall CEJA framework includes routine data collection to assess the effectiveness of the Act's various equity programs and gives implementing agencies the discretion to make course corrections where performance falls short of goals. The Act further emphasizes the importance of transparency and stakeholder engagement when interpreting data and designing fixes. The disparity study process is an important part of this and could lay the foundation for race-conscious remedies if there is evidence of discrimination in the clean energy economy, but it is only one part.

IPA and other implementing agencies have the discretion under CEJA to adapt programs and broad latitude under constitutional law to pursue the Act's important goals through race-neutral strategies. Given this, and given the importance of getting CEJA right, **we strongly recommend that IPA and other implementing agencies regularly and publicly assess and report on performance data, perhaps semi-annually, and commit to a regular, structured stakeholder engagement process where outcomes, potential causes, and potential remedies can be discussed.**

*15. How should the need to conduct a disparity study inform the Agency's data collection requirements and ongoing data analysis efforts?*

As discussed above, we strongly recommend that the Agency work with legal counsel early in the process to develop a clear understanding of the data needs for such a study. Such counsel will help inform the characteristics by which data will need to be disaggregated as well as the actors from whom data will be necessary to collect, including subcontractors on projects with whom IPA may not have had direct contact historically.

**It will be important to collect and analyze data in a manner that allows IPA to connect root causes driving a lack of diversity in the renewable energy sector to potential future remedies, including to establish the evidentiary record to justify potential actions IPA and the state broadly might take.** Some of this can be done in the context of a disparity study and some of this may be done outside of, and as a compliment to that study. This holistic picture should include an analysis of disparities around factors that drive disparate outcomes, e.g. access to training and licensing programs, access to capital, etc. and should include qualitative as well as quantitative data.

It will also be important to design a system for collecting data that ensures data consistency and ease of analysis, and that is accessible for market actors of varying sizes and varying

administrative capacities. We spoke with experts who conduct disparity studies as part of our research into policies that identify and remedy racial disparities. They emphasized that access to consistent, clean data is essential to conducting an effective study in a timely way. Inconsistent and incomplete data collection practices can add years to the amount of time it takes to conduct a study, as study authors must spend significant time generating data, cleaning existing data, etc. This will require clear data requirements and protocols, and a clear, user-friendly system for data submission. Ideally, this will build on existing reporting systems with which industry actors are already familiar.

As noted above, qualitative data has an important role to play in substantiating the actual experiences of workers and contractors in Illinois' clean energy industry, and in understanding root causes that drive disparities. Creating stakeholder engagement/collaboration frameworks will provide an important and ongoing way for collecting this data and the Agency should work with disparity study experts to figure out how best to incorporate this important information into the disparity study process itself (which should also include methods such as focus groups, public hearings, and interviews).

A critical element of any disparity study, and of heightened importance in emerging industries, is the availability analysis. It will be critical that the Agency's disparity study captures contractors that are not currently active in the clean energy sector but could be. This would include contractors in areas such as plumbing and heating, light manufacturing, electrical services, and roofing and siding, where capacities translate across industry. It will also be important for the Agency to consider issues such as the accessibility of MBE certification. If such certification is difficult to obtain for some or all non-white groups, it is critical that the Agency not rely on any disparity study methodology that uses certification lists as its primary method of establishing the presence of contractors of color in Illinois' clean energy industry.

*16. Are there helpful examples that the Agency can draw from for how to best prepare for a disparity study, conduct that study, and modify program requirements thereafter? Are there specific firms and organizations with whom the Agency should consider a partnership?*

As noted above, given the nuanced legal terrain around disparity studies, the likelihood of legal challenge if race-conscious remedies are pursued, and the importance of developing a study that effectively guides potential reform efforts, **we highly recommend that the Agency retain legal counsel to advise on the process, and consult and partner with a firm expert in conducting disparity studies.** The number of such firms is relatively small, as is the range of methodologies employed by such firms. Experienced legal counsel can help advise the Agency on a disparity study RFP and on the relative strengths of the proposals the Agency receives.

## DEI in Adjustable Block Program (ABP) Questions

### *Select Questions from the Equity Eligible Contractors Category*

*Public Act 102-0662 requires that the Equity Eligible Contractor (“EEC”) category **grow over time to 40% from the initial 10%** of Adjustable Block Program capacity.*

*12. Over how many years should that increase from 10% to 40% occur?*

We believe that this increase should happen in response to demand. While we would appreciate seeing the IPA set a goal to have this category grow to 40% by 2030, we recognize that arbitrarily increasing this category before Equity Eligible Contractors are available to claim the funding does not provide any additional benefit. That said, **we would like to see the IPA establish a process to automatically increase the EEC category percentage subject to demand in between delivery years without having to wait for the next Long Term Renewable Resources Procurement Plan.**

*13. What mechanisms should be used to ensure that this percentage goal is met?*

We believe these mechanisms are not specific to a single category. **The same recruitment, training and technical advice that will help meet Minimum Equity Standards are the same tools that will help fill the EEC category.**

*The Agency understands that in allowing only “**applicants**” who are Equity Eligible Contractors to be eligible for this block, an applicant cannot qualify for this category through having a portion of subcontractors or workforce being Equity Eligible Contractors or persons.*

*14. Are there interpretations of this language for the Agency to consider, such as qualification through Designees, subcontractors, or workforce?*

The language does not specify that an “applicant” must be the Approved Vendor or Approved Vendor Aggregator. The term applicant is not defined in statute, and **we believe that the underlying intent is to support and incentivize equity eligible persons to own businesses and other entities involved in renewable energy development.** This should include Equity Eligible Contractors at multiple levels, including subcontractors who have significant involvement in the project, so long as they are identified and involved at the time of application.

A narrow interpretation of the term “applicant” could have a number of harmful effects on the Equity Eligible Contractors Category’s chances of success. First, the funding in this category could go underutilized year after year, especially in the years before the Clean Energy Prime Contractor Accelerator and the Clean Energy Contractor Incubator programs take full effect. This will likely be seen by the general public as a failure of implementation as the nuanced statutory interpretations of the term “applicant” will not be on the collective radar. Second, Equity Eligible Contractor (EEC) Approved Vendor Aggregators could serve as pass-through entities for non-EEC businesses, thereby claiming the majority of the budget but only passing along

limited financial benefit to a small pool of EECs. These “applicants” would only represent a small share (typically less than 10%) of the total value stack of the project.

Given that the term “applicant” remains undefined in statute, we believe that the Agency should create a definition that ensures that EECs are reaping the majority of the value of the renewable energy project. For example, perhaps the Approved Vendor is not an EEC, but the installation subcontractor and the marketing subcontractor are EECs. Or a non-EEC Approved Vendor Aggregator supports EEC designees who subcontract EEC electrical contractors to install the project. Regardless of what the IPA determines, we believe that 1) the percentage of the involvement from EECs should be over 50% and 2) that the nuances of this system should be determined in consultation with actual disadvantaged businesses and entities that are likely to participate in the market as Equity Eligible Contractors.

We agree with the Agency’s determination that this category is not designed to incentivize equitable hiring practices. This is what differentiates the EEC Category of the Adjustable Block Program from the Minimum Equity Standards seen elsewhere in the legislation.

*15. If Designees are permitted to qualify as EEC, would the EEC category be limited to projects that have both an EEC Designee and Approved Vendor or would just an EEC Designee qualify a project for utilizing the capacity set aside for this category? How can the Agency ensure that this category is not dominated by a select few qualifying aggregators or firms who, outside of company status, may not otherwise substantially advance equity goals? Should the Agency consider additional workforce or subcontractor requirements? Can those be considered under the language of the law?*

As we describe in response to Question 13 above, **we firmly believe that the language allows for a definition that includes designees and does not require an EEC Approved Vendor.** It is abundantly clear that both an EEC Approved Vendor who is vertically integrated and an EEC Approved Vendor Aggregator who supports EEC designees are eligible for the EEC category. We believe that an “applicant” that includes an EEC designee with significant involvement in the project should also be eligible for the project, even if the Approved Vendor or Aggregator is not an EEC.

Similarly, this concept of requiring significant involvement by EECs would also prevent the feared situation introduced in this question whereby EEC Approved Vendor aggregators could serve as pass-through entities for non-EEC companies who retain the majority of the benefits outlined in this subprogram.

**In line with our position on competitive procurements, we believe that the Agency could also explore different tiers of REC incentives based on the degree of EEC involvement for the project or portfolio of projects applying for RECs.** The Agency should also consider tightening this category over time to increase the degree of EEC involvement needed for an applicant to qualify.

*16. Equity Eligible Contractors may be eligible for an advance payment for a portion of their REC contract. To be eligible for pre-development capital, what standard for*

*“demonstration of qualification or need” should be considered? Should this demonstration be required on a project-by-project level, or should an Equity Eligible Contractor be able to demonstrate the need on a periodic basis? What types of documents might the Agency request as evidence of such need?*

**We believe that all EECs should be eligible for upfront payments ahead of the typical REC delivery schedule.** They should not need to demonstrate any additional need or eligibility beyond what is required to qualify for the EEC designation when submitting projects. We recommend that 100% of the REC payment for the first year is advanced upon receiving the Part I application. For residential projects, we recognize that this would be an advance of the full REC contract value.

*17. For the advance of predevelopment capital, what costs, in addition to the incremental cost of prevailing wage compliance, should be considered in determining the amount that could be advanced? Would those costs vary by project type or size? What should be the penalties or consequences if a project is not completed and energized, such as clawback mechanisms or limiting future program eligibility?*

**Initially, we urge the IPA to consider using advance payments to bridge the gaps until CEJA’s inclusive financing mechanisms are up and running.** We know that many BIPOC contractors are shut out of the solar space because they lack access to the capital needed to carry project costs until REC payments, tax credits and energy cost savings begin. Short-term, advance payments may be a lifeline for new and expanding EECs and the best way to recruit the very contractors needed to achieve CEJA’s goals. Longer term it should be possible to scale back these payments as other mechanisms are deployed to address disparities in access to capital.

*18. Should the Agency cap the share of projects eligible for pre-development capital? If so, at what level and why?*

**No, we do not believe that there is a need to cap projects eligible for pre-development capital.**