

**RESPONSE TO ILLINOIS POWER AGENCY REQUEST FOR COMMENTS ON
BEHALF OF THE SOLAR ENERGY INDUSTRIES ASSOCIATION, THE COALITION
FOR COMMUNITY SOLAR ACCESS, AND THE ILLINOIS SOLAR ENERGY ASSOCIATION**

December 3, 2021

The Solar Energy Industries Association, the Coalition for Community Solar Access, and the Illinois Solar Energy Association (collectively the Joint Solar Parties) appreciate the opportunity to respond to the Illinois Power Agency's most recent solicitation for comments on the Diversity, Equity, and Inclusion Questions.

The Joint Solar Parties appreciate the opportunity to comment on topics in preparation of the IPA's publishing of its updated Long-Term Renewable Resource Procurement Plan (LTRRPP) in January of 2022, in compliance with Public Act 102-0662. The Joint Solar Parties note that the programs intended to increase participation by historically underserved populations in the solar industry were a critical component of legislative negotiations. While the Joint Solar Parties' preference of minimum race-based criteria for Adjustable Block Program participation was not ultimately adopted, the Joint Solar Parties continue to strongly support participation by minority-owned businesses and minorities as employees across all participants.

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." The Joint Solar Parties support all of these goals as well.

While it does not fit well into responses to any of the questions below, the Joint Solar Parties recommend that the IPA establish a single map that overlays both R3 and EJ communities, allowing quicker verification of Eligible Person status without consulting two separate maps (one of which is not administered by the IPA or its designee).

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

JSP RESPONSE: Yes. Responding further, the Joint Solar Parties note that Illinois has a number of existing programs through the Department of Labor, Department of Commerce and Economic Opportunity, and other state agencies including the Business Enterprise Program. Further, the Illinois Commerce Commission has yearly Supplier Diversity reporting that includes a database of qualifying companies interested in doing business in the energy space. In addition to those sources, the Joint Solar Parties encourage soliciting input from training graduates and contractor graduates directly as current or future business owners (or as employees with a company that is not minority-owned or disadvantaged).

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)?

JSP RESPONSE: The Joint Solar Parties support the IPA using all tools at their disposal to encourage and incentivize minority-owned businesses to meet goals of Public Act 102-0662. However, the incentive should be considered for Approved Vendors that go beyond statutory percentage requirements, especially given that some race-neutral programs are not guaranteed to increase participation of minority-owned businesses. Further, if the IPA considers incentives for subcontractors, then incentives for hiring within Approved Vendors or associated developers (if the Approved Vendor is a single project/single Product Order Approved Vendor) themselves should be considered especially in the Small DG category where relatively fewer participants use outside contractors for customer-facing interactions.

The Joint Solar Parties propose a few recommendations regarding incentives for exceeding diversity targets, if the IPA chooses to implement diversity incentives. For all three types of systems across all blocks (Small DG, Large DG, and Community Solar), the Joint Solar Parties propose REC price adders as there is no other equitable way to prioritize first-come first-serve in mass market, customer-facing categories. Prioritizing projects in the two DG categories would result in inequitable treatment or penalizing customers. Further, the Joint Solar Parties propose that for Small DG and certain Large DG, there should only be a requirement to file annual compliance reporting to access REC adders or incentives. That is because it is impractical to report on each project for at least Small DG and below 100 kW Large DG categories due to the large number of projects with relatively few hours involved but potentially a number of touches. For larger Large DG and community solar, reporting could conceivably be on the project level for systems that participate in the specific incentive program for exceeding diversity targets but should be submitted annually.

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 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(c-10)(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?

JSP RESPONSE: (i) Other than acknowledging the statutorily required starting point and ending point (as the question above does), the Joint Solar Parties encourage the IPA to constantly evaluate availability of Equity Eligible Contractors and Equity Persons registered with the IPA. The availability of Equity Eligible Contractors and Equity Persons to a particular Approved Vendor operating in a particular region or set of regions will depend on how the IPA defines regions and availability (i.e. distance from the worksite, capacity of Equity Eligible Contractors and Equity Persons). In order to meet the increasing goals—which the Joint Solar Parties supported in legislative negotiations and continue to support—the IPA should not only come up with robust and practical definitions for availability but also focus recruitment efforts of new businesses or existing businesses offering a new line of business into those areas where capacity is limited. Those availability rates and recruitment will also inform whether steady, accelerated, or back-loaded growth when the state is taken as a whole is feasible. The Joint Solar Parties note that recruitment efforts (to the extent they are necessary and undertaken) tend to pay off over a longer time period so early detection of issues is critical to those efforts paying off more quickly.

(ii) The Joint Solar parties suggest that the requirement should apply to new applications on or after June 1, 2023. This not only allows a bright-line application of project obligations but it also provides the IPA or its designee with maximum time to stand up (with appropriate coordination with others) an Equity Eligible Contractor/Equity Person recruitment and registration effort. The Joint Solar Parties also anticipate that individual market participants will seek out potential Equity Eligible Contractors/Equity Persons, although given the eligibility requirements frequently require deeper knowledge of a person or entity it may take some time to get recruitment efforts off the ground.

(iii) Generally speaking, the Joint Solar Parties believe that the IPA should use regions or specific vendor services (i.e. installation, engineering, maintenance, sales, etc.) to identify where recruitment efforts must pick up, based on some definition of Equity Eligible Contractor/Eligible Person availability. The Joint Solar Parties note that, particularly in

rural areas where there are limited R3 or EJ communities in close proximity, it may be substantially harder to identify and attract interested Equity Eligible Vendors. To the extent that a particular region has inadequate supply of registered Equity Eligible Contractors/Eligible Persons, the IPA should take that fact into account in not only setting future year increases (with the understanding that 30% by 2030 is a statutory minimum) and granting waiver requests under Section 1-75(c-10)(4)(E) but also in outreach and workforce development efforts.

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?)

JSP RESPONSE: The Joint Solar Parties interpret “project workforce” broadly so that it aligns with the broad intent of the law to increase participation of historically marginalized communities in clean energy. Thus, project workforce should be broadly construed to also include sales, marketing, warehouse, permitting, and other functions supporting development. The broad range of tasks and skills within the solar industry workforce is essential to making each project a success. This workforce is not limited to just construction and installation projects, but inclusive of sales, permitting, construction supervisors, warehouse managers, inspection supervisors, and more.

To calculate “project workforce” for all categories, participation should be a calculation that applies to a developer’s Illinois-based workforce across all activities related to IPA programs and procurements. Reporting should not be on a project basis and should not be limited to projects that successfully Energized or successfully sold prior to Energization.

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?

JSP RESPONSE: The required compliance plans should align with criteria used in current supplier and workforce reporting requirements among other State agencies such as the Illinois Commerce Commission. State of Illinois EEO/AA reporting for state agencies can also be a source for a basic framework. In addition, the compliance plans should allow an Approved Vendor to report their progress towards/challenges in achieving the goals that the Approved Vendor set out for itself in the initial report. Once again, the Joint Solar Parties note it is generally not practical to report on the project level; even for developers of larger systems some functions are difficult to allocate on a project-by-project basis especially in fields where employees or contractors do not currently track their time on a project-by-project basis.¹

¹ For instance, a marketing campaign—a function that the Joint Solar Parties believe as noted above should be included in the participation goals—may not be assignable to a particular small DG, large DG, or even community solar system.

The Joint Solar Parties agree that the report at the end of the delivery year should be a new document to ensure there is a track record of progress. The Joint Solar Parties look forward to working with the IPA or its designee on the technical aspects of the reports once the basic structures are set.

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?

JSP RESPONSE: Collection of data for compliance with workforce requirements should align with already existing compliance requirements and be recorded and collected annually. Because compliance should be based on an Approved Vendor (and affiliates') total operations and not on a project-by-project basis, there is substantially less lag than there would be if compliance were tracked on a project-by-project basis. In addition, no approved Product Order to a REC Contract should be impacted by compliance.

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)?

JSP RESPONSE: The Joint Solar Parties suggest that the IPA employ full compliance goals across all categories. The Joint Solar Parties note that it has a negative impact on all parties involved if a particular region or type of project is lagging, including due to lack of availability. The Joint Solar Parties encourage the IPA to develop clear standards for compliance based on the existing compliance models in other state agencies and to work with potential Equity Eligible Contractors/Eligible Persons, the solar industry, and other stakeholders on increasing outreach and new registration where demand for Equity Eligible Contractors/Eligible Persons outstrips availability.

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?

JSP RESPONSE: One model would be requiring an estimate of work hours along with the bid that would go to Equity Eligible Contractors and using that as a pass-fail screen for participation. This is the Joint Solar Parties' preferred approach. Another model would be to create tranches of Equity Eligible Contractor participation (for instance above 10%, above 20%, etc.) and if there is a tie or other need to allocate winning bids on terms other

It also is difficult to allocate time spent on a particular marketing campaign to specific projects. Even allocating sales will dramatically undercount time spent because much time will be spent developing and following up on leads that do not end up converting to sales.

than price (for instance if the Procurement Administrator is authorized to consider factors other than price under the bidding rules), the tranching should rank projects with the highest participation level and increasingly lower levels until the procurement capacity is met (or qualifying bidders are exhausted).

The Joint Solar Parties note that every utility-scale wind or solar project must have a Project Labor Agreement pursuant to Section 1-75(c)(1)(Q)(2). Nothing in these responses should be construed to suggest anything inconsistent with the Project Labor Agreement requirement. To that end, the Joint Solar Parties note that the definition of Project Labor Agreement in the IPA Act includes “provisions for minorities and women, as defined under the Business Enterprise for Minorities, Women, and Persons with Disabilities Act, setting forth goals for apprenticeship hours to be performed by minorities and women and setting forth goals for total hours to be performed by underrepresented minorities and women.” (Section 1-10, definition of Project Labor Agreement, subsection (5).) The Joint Solar Parties respectfully recommend that the IPA develop a methodology for including provisions for minority and women apprentices toward satisfying either the minimum or the tranching proposed above.

To the extent the IPA is considering scoring or other evaluation criteria that makes use of Equity Eligible Contractors/Eligible Persons (or other non-price criteria) part of selection, the Joint Solar Parties urge the IPA to restrict scored criteria to this specific issue (working with more Equity Eligible Contractors/Eligible Persons) and preserve to the maximum extent possible the competitive bidding structure.

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?

JSP RESPONSE: Yes, although bidders should also provide good-faith estimates to the IPA that the type and amount of work will be equal or equitable as compared to other contractors. The Joint Solar Parties further recommend that a winning bidder should have the right to use Equity Eligible Contractors for different or expanded functions so long as the total actual hours are greater than or equal to the amount in the proposal.

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?

JSP RESPONSE: The Joint Solar Parties note that under bid rules for past competitive procurements, the Procurement Administrator does have the discretion to consider factors other than price in limited circumstances as necessary to advance important goals. Similarly here, the Joint Solar Parties support use of these specific non-price factors (use of Equity Eligible Contractors/Eligible Persons) in limited situations (the circumstances in which the Procurement Administrator is otherwise allowed to consider non-price factors). The Joint Solar Parties suggest tranching by ranges (i.e. 10-20%, 20-30%) rather than ranking all qualifying bidders solely by percentage. The Joint Solar Parties do not recommend a bid “bonus” or deemed reduction for evaluation purposes based on Equity

Eligible Contractor participation due to potential impact on the benchmark pursuant to Section 16-111.5(e) of the Public Utilities Act; instead, a minimum or tranching as a ranking (in those limited circumstances it is needed) is preferable. The Joint Solar Parties note that this approach is not a way to avoid use of Equity Eligible Contractors/Eligible Persons, because the Joint Solar Parties' preferred recommendation requires use of a minimum amount of Equity Eligible Contractor/Eligible Person work as a prerequisite to bidding.

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?

JSP RESPONSE: Yes, the training should include all of the examples listed above. The goal is to encourage partnerships with other state-run programs as well as to encourage virtual and online options to reach complies in all corners of the state. This will be beneficial in giving EECs the necessary support and guidance.

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?

JSP RESPONSE: There are a few other types of information that the IPA should use when evaluating an application for a waiver including, geographic location of the business and projects as compared to census data, proof of outreach to relevant organizations or contractors, the size of the company, any lack of hiring or attrition, and the time the company has been in existence as well as how long it has been an Approved Vendor. Generally speaking, evidence that an Approved Vendor has made a genuine effort should be considered. The Joint Solar Parties further note that the expected effort level may look different depending on whether the IPA or its designee has provided suggestions to the Approved Vendor pursuant to the final sentence of 1-75(c-10)(4)(E).

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.

JSP RESPONSE: The Joint Solar Parties both publicly and in negotiations over what became Public Act 102-0662 supported a mandatory minimum participation level of minority employees or contractors on projects in aggregate for each developer. However, for a variety of reasons, the Joint Solar Parties' preferred approach did not make it into law at this time. The Joint Solar Parties note that the goal of the disparity study is to provide support for race-based preferences (specifically to provide support if those preferences were subject to a legal challenge), so the Joint Solar Parties support the disparity study. The Joint Solar Parties hope that in collecting the data necessary to justify the diversity requirements that the Joint Solar Parties supported and continue to support, the IPA is able to find a collection method that minimizes the burden on the solar community relative to the information required.

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

JSP RESPONSE: The Joint Solar Parties support an interim report which may be useful if some data is collected prior to the accountability requirements becoming due. To the extent that an interim report accelerates the intended relief, all the better. The interim report would be used to inform the IPA and industry of how to best move forward. It may also be beneficial for the IPA to conduct a baseline study in mid-2023 in order to be used as a comparison of where the industry was before and where it is projected to be headed.

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

JSP RESPONSE: See answer to Question 13 above.

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

JSP RESPONSE: The Joint Solar Parties supports broad collection of data that aligns with the goals of the law and includes the entirety of the workforce—respectfully, this requires aggregate annual data and not project-level data. The systemic issues that a disparity study attempts to identify will be apparent in annual aggregated data by Approved Vendor. An Approved Vendor or the solar industry as a whole will be no less accountable but will have substantially less administrative burden.

In addition, the Joint Solar Parties respectfully recommend that the IPA consider what types of protected statuses (race, ethnicity, gender, etc.) might be subject of a future change in law and work backwards on the disparity study data collection from that end goal. While other information might be of general interest, given the level of effort necessary to track and faithfully report demographic information the Joint Solar Parties recommend keeping the scope to the information that would help justify a racial preference at law.

That said, because the IPA is collecting data that may be considered sensitive about employees and vendors (and their employees), the Joint Solar Parties strongly recommend

that workforce and vendor demographic information—including the basis for claiming Equity Eligible Contractor/Eligible Person—strictly confidential and publicly available only at the aggregated level. In addition, for the purpose of the disparity study, employee and vendor employee home addresses should not be collected and instead ZIP codes only should be used.

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?

JSP RESPONSE: The Joint Solar Parties have no examples at this time but commit to continuing dialogue with the IPA.