Toro Construction Corp. Response to Stakeholder Feedback Request – Eligibility Criteria for Equity Eligible Contractors and the Equity Eligible Contractor Category

May 5, 2023

Introduction

Toro Construction Corp. is a commercial prime contractor business located in Orland Park, IL. We are a minority, women-owned business and have been active in the Chicagoland area for over a decade. We employ over 110 people, many of whom are from historically disadvantaged communities, and have completed 300 projects, totaling over $150 million in value and almost 1.5 million work hours. In March 2021, our CEO and owner, Socorro Vazquez, took part in a solar contractor boot camp program to expand Toro's capabilities into the solar construction market. Despite this effort, we found the high barrier to entry and the requirement for large amounts of capital to successfully participate in solar precluded us from successfully adding solar construction to our list of skillsets.

In Summer 2022, we began learning about the Equity Eligible Contractor (EEC) program offered by the Illinois Shines Solar Program and realized we could qualify as an equity eligible business. However, we still had minimal solar experience and had no way of accessing the benefits intended for equity eligible businesses. We began working with an experienced developer in the solar industry that had several years of experience working in the IL solar market and significant financial backing. We have built a strong relationship has with this counterparty, and we continue to learn about how solar development and construction works from their team, and plan to continue to learn as this partnership grows and we get hands-on solar construction experience ourselves.

Given program requirements, we have decided to work with this counterparty in a Joint Venture (JV) approach, which allows us to develop projects with the assistance of this counterparty and maintain rights to construct any projects we successfully develop. This structure provides us with access to the invaluable market experience of our partner, a low-risk source of development and construction capital, and the opportunity to grow our local business. The JV structure is needed because solar is not our core business, and we cannot put significant capital at risk trying to enter the IL solar market on our own. If we were to sell equity in the business or take on new debt to raise capital, we would be putting our entire business, current projects, and all our employees at risk. We learned the EEC program offers accelerated capital at signing of the incentive contract; however, that capital does not solve the issue of finding investors for any projects we submit, nor would it help us in keeping a solar project operational for 20+ years. Moreover, given the requirements for program submission, the capital from the incentive contract comes too late in the process. We would need to already have projects with signed lease agreements and discretionary permits, and capital is required simply to arrive at that point in the solar development process, with no guarantee of receipt of the incentive contract capital. Thus, the solution we have settled on is to work as part of this JV, protecting our core business whilst expanding our solar capabilities.

Toro Construction's end goal is to work as a solar contractor without the need for a partnership with an experienced, well-capitalized solar developer. However, at present, we do not have the expertise, relationships, or capital to learn or compete in this market, and require a partnership approach to have the success we believe the Illinois Shines Solar Program envisioned for equity eligible businesses like us.

<u>Responses to questions</u>

1. Should an Equity Eligible Person be able to serve as the qualifying EEP for more than one Equity Eligible Contractor?

a. The Agency is concerned that allowing a single Equity Eligible Person to serve as the majority-owner of multiple Equity Eligible Contractors could result in concentration of the benefits of state incentives, where the benefits that are supposedly going to multiple companies are in fact benefitting a single person.

Toro understands the concern that a single Equity Eligible Person (EEP) could have an oversized benefit by partnering with multiple companies. However, the developer cap that is contemplated in the recently proposed updates to the long-term plan should solve this issue.

Furthermore, EEPs setting up an additional JV with a new company may be required for the purposes of financing solar projects. Our understanding is this is typical for solar developers to submit a new entity to serve as the owner of the solar incentive contract in order to achieve third-party financing, which is crucial to benefit from federal tax credit incentives. The EEC category must have the ability to set up these JVs so we can get our projects financed in a similar manner while still maintaining Toro's ability to participate in the projects.

2. Should the Agency require additional demonstrations of equitable impact for companies seeking EEC certification based on majority-ownership of a silent partner Equity Eligible Person? If so, what might those entail?

a. The Agency is concerned about ownership arrangements that may enable large, established, non-EEC companies to access state incentives intended to support companies facing barriers to business opportunities. The statutory requirement that an Equity Eligible Contractor be majority-owned by eligible persons loses its meaning if the minority owner is a large company and the majority-owner eligible person is a silent partner that would otherwise have no involvement in the solar sector – neither party is a person seeking to access the economic opportunities created by CEJA and facing discriminatory barriers in doing so. Below are some potential strategies for preventing such gaming, with the Agency open to implementing one or all of them, depending on stakeholder feedback.

Per our introductory paragraphs above, Toro Construction could not benefit from the EEC program without partnership and support from a large, established solar developer. We are looking to use the JV structure in order to prevent our own company from being at risk as we continue to grow and enter this sector. The ownership structure of the JV entity does not tell the whole story – we are looking to develop and construct projects with support from our partner and learn a new and complicated industry. We do not see the below ideas as adding to the value of the program that is intended to benefit equity eligible businesses.

b. For companies where the minority share is owned by another company, not a natural person, should the agency require that the applicant must demonstrate one (or more) of the following:

i. There is a contractual agreement guaranteeing the eventual increase in ownership share of the Equity Eligible Person.

This does not benefit Toro Construction nor would it benefit other equity persons. We are not looking to serve as a long-term owner/operator of solar projects, which requires significant capital and resources we do not have access to. We want to enter the construction side of the industry, so there is no benefit to us increasing our ownership share over the term of a contractual agreement. Toro is skeptical there are other equity persons interested in long-term ownership of significant solar assets.

ii. The company is located in an equity investment eligible community.

This would preclude us from working with an established solar developer, whose partnership we require in order to successfully enter this market.

iii. The company is also a small and emerging business.

This would preclude us from working with an established solar developer, whose partnership we require in order to successfully enter this market.

iv. The company employs local residents.

This would preclude us from working with an established solar developer, whose partnership we require in order to successfully enter this market.

v. The company employs dislocated energy workers.

This would preclude us from working with an established solar developer, whose partnership we require in order to successfully enter this market.

vi. The company employs an elevated percentage of EEPs above the minimum equity standard.

This seems like an unnecessary addition when any companies we are working with are looking to work with us, an EEC that employs a significant number of EEPs that easily meets the minimum equity standard.

c. If the Agency does require one or more of the above additional showings for companies seeking EEC-certification, should it do so only where the minority owner is a large company or where EEP owns less than a certain percentage of the company?

We do not think any of the above requirements are necessary, so they should not apply in any cases regardless of the EEC ownership structure.

3. To increase the transparency regarding companies that qualify as an Equity Eligible Contractor and submit projects to the Equity Eligible Contractor Category, what information might the Agency require be published on the ABP website?

a. Name of companies certified as EECs?
b. Ownership structure and shares?
c. Basis upon which the majority-owner(s) qualified as EEP?

Toro disagrees that any additional details beyond what the EEC wants published should be public on the program website. If an EEC wants to be public, they can opt for the program to publish them on the website. Beyond that, the ownership structure and basis upon which the majority-owner(s) qualify as an EEP are details that we would not feel comfortable sharing publicly.

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

a. Articles of incorporation

b. Governance documents
c. Tax documents

Per above, Toro does not see the importance of submitting these documents. To become an approved vendor, a breakdown of company ownership is required. Beyond that, we do not see the value of providing all these additional documents when they will still not tell the full story of the true partnership that may be at work behind the scenes of governance and tax documents.

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

Toro has an opportunity to enter a new construction market due to the equity eligible program. We believe an additional bonus point system could make it unnecessarily difficult for us to benefit from this program when we are the intended audience. Reserving some portion for "intended actors" could easily lead to additional structures and/or "gaming" that we believe the IPA is looking to avoid based on this request for feedback from equity eligible businesses like us