COMMENTS OF VISTRA CORP.
ON DIVERSITY, EQUITY, AND INCLUSION QUESTIONS
POSED BY ILLINOIS POWER AGENCY

Vistra Corp. (Vistra) is submitting the following comments in response to the "Diversity, Equity, and Inclusion Questions" posted by the Illinois Power Agency (IPA) for Stakeholder feedback on November 12, 2021. Vistra appreciates the opportunity to comment on these important implementation topics.

Vistra notes that new Section 1-75(c-5)(11) of the Illinois Power Agency Act, added by P.A. 102-0662, sets forth a separate, self-contained set of Diversity, Equity, and Inclusion requirements applicable to entities selected pursuant to new Section 1-75(c-5) to enter into contracts to provide renewable energy credits from solar generation facilities installed at the sites of existing or retired coal-fueled power plants in Illinois and/or to enter into grant contracts with the Department of Commerce and Economic Opportunity to install energy storage facilities at the sites of existing or retired coal-fueled power plants in Illinois.

<u>IPA Questions and Vistra Comments</u>

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 administeredunder 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?

   <u>Vistra Comment</u>: Yes. Outreach should be done in coordination and collaboration with federal, state, and local public entities with small and diverse business outreach activities as well as state, local and national non-governmental organizations such as the National Minority Supplier Development Council (NMSDC), Women's Business Enterprise National Council (WBENC), National Veteran Owned Business Association (NaVOBA), National Gay & Lesbian Chamber of Commerce (NGLCC) and Disability:IN (which certifies Disability Owned Business Enterprises (DOBE)), and their respective local affiliates in Illinois.

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 formof prioritization or streamlining of project applications)?

   <u>Vistra Comment</u>: YES - Both incentives for desired outcomes and penalties for lack of effort drive behavior.

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?

   <u>Vistra Comment</u>: A steady increase would be the most beneficial to drive the right behavior in creating a sustainable outcome for the long-term vs. inserting goals that force artificial increases that will not continue post-project/plan. A statewide Availability/Disparity study by market would best determine a rational starting point by region and realistic ramp-up targets.

   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.

   <u>Vistra Comment</u>: There are differences in areas across the State that should be recognized. A Statewide Availability/Disparity study by market would best determine these differences. Renewables is still such an emerging industry that even the utilities and Vistra's large prime suppliers are still learning and taking risks/losses that might inadvertently put smaller businesses out of business as an unintended consequence. However, setting goals will help drive creativity in developing programs and processes that include participants throughout the supply chain, including engagement at multi-tiers as long as reported at the level at which they participate. It is also important to note that the programs outlined in the legislation need to be fully in place in order to help provide the path for equitable access. It must also be noted, however, that some projects under P.A. 102-0662 may be underway before all of the training and other programs called for by the legislation are fully in place, so early-moving projects (and their contractors) may not have access to or the benefits of all of these programs. For these projects, the good-faith efforts of the developers and their contractors towards the goals of the legislation must be recognized.

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?

Vistra Comment: Yes – This requirement should not apply to projects that start before 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?

Vistra Comment: Yes - A statewide Availability/Disparity study by market would best determine a rational starting point by region and realistic ramp-up targets. Regional ramp-ups likely will be the most effective.

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?)

   Vistra Comment: This is a difficult question, as "project workforce" may not apply to full-time equivalent employees or individuals only a small portion of whose time is applicable, and may not be tracked or accounted for in any way internally – particularly in a smaller company with limited overhead/administrative resources. The recording and reporting requirements should not be defined in a way that sets up a company (particularly a smaller company with limited overhead resources) for failure. Construction, installation, and ongoing site operations activities are easily tracked and reported and afford the ability to realistically and measurably ensure compliance.

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?

   Vistra Comment: Direct Tier 2 and sub-tier spend where trackable and auditable. All expenditures should be broken out by category (Minority, Women, Veteran, LGBT, Disabled, Returning Citizens, Foster Care participants) and Tier (e.g., 2, 3).

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?

<u>Vistra Comment</u>: Compliance can include outreach/recruiting efforts in addition to actual employee/vendor payments so a company can begin activities upon a REC contract being awarded.

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)?

Vistra Comment: By category based on availability in each region.

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?

<u>Vistra Comment</u>: Weighting should be applied to each individual solicitation based on region and scope of work, to include Equity Eligible (sub) Contractors at the Tier 1, Tier 2 and sub-tier levels as well as committed workforce composition among those sub-tier contractors, including both Equity Eligible Contractors (EEC) and non-EECs.

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?

<u>Vistra Comment</u>: No – Other metrics of a Good Faith Effort should apply as well, including outreach efforts, community engagement and visibility, internal policies and procedures supporting EECs, etc.

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?

    <u>Vistra Comment</u>: Yes, but the approach used should be based on a quantitative weighting methodology so it is objective and drives sustainable growth behavior.

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?

    <u>Vistra Comment</u>: The training, guidance and support should be provided through all of the methods referenced in the question. In addition, awarded entities could also "incubate" EEC's to grow with the company for future awards.

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?

Vistra Comment: Yes - Internal policies and procedures that support equity in the workforce and the supply chain; executive-level support, commitment, and participation; economic impact studies; recognition programs supporting equity in the workforce and supply chain; and community involvement.

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?

    Vistra Comment: If the study is intended to measure the effectiveness of the programs put in place through the legislation, the study should begin one year after the equity actions system and its components are in place.

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

    Vistra Comment: There may be other studies that have been conducted in the last 2 years (since the pandemic began) that could be considered. See http://chicago.disparity-study.com/. Conducting a baseline study prior to implementation of the equity actions system would allow more meaningful measurements long term.

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

    Vistra Comment: The disparity study will provide actual availability of EECs by market/region and category to assist in setting realistic and achievable goals by region. It can also provide a list of EEC's by region. Finally it will provide a legally defensible ability to establish race and gender specific goals.

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?

Vistra Comment: Vistra has had positive experience in this area with Colette Holt & Associates (http://www.mwbelaw.com/)

Vistra stands ready to discuss its comments with the IPA, to provide additional information in support of its comments, or to respond to additional questions from the IPA. Please contact the undersigned representative.

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