Clean Jobs Coalition (CJC) Response to Comments on ABP Reopening

Introduction and CJC Commenters

We - the below-listed CJC Commenters - value the opportunity to provide feedback on the IPA's proposals for reopening the Adjustable Block Program. The CJC Joint Commenters appreciate the considerable effort invested by the Agency and its Administrators to meet the challenge of developing robust proposals that enact the myriad of overlapping goals of the Climate and Equitable Jobs Act (CEJA) under the extremely constrained time period required for Adjustable Block Program Reopening. Our comments are intended to improve those proposals to help ensure that the Adjustable Block Program successfully meets those goals, from the outset.

The comments focus on five of the topics on which the IPA requests feedback. Specifically:

- Ensuring the prevailing wage process is minimally burdensome to participants and provides the support needed to ensure new and diverse businesses are able to comply.
- Ensuring the properties that the General Assembly intended to exempt from prevailing wage requirements have clear and minimally burdensome pathways for accessing that exemption. With regard to houses of worship, in particular, this includes ensuring that a property traditionally considered a house of worship is not excluded due to an overly narrow interpretation of religious exercise.
- Facilitating the immediate success of the Equity Eligible Contractor carveout by allowing the program to roll out provisionally while determining its long-term operation through the Long-Term Renewable Resources Procurement Plan Proceeding.
- Structuring the Solar on Schools category such that better-resourced schools do not "out-compete" lesser-resourced schools in securing REC contracts.
- And ensuring data collected on the initial reopening is synced with, rather than duplicative of, other anticipated reporting requirements and, critically, is adequate to inform the disparity study outlined in Section (c-15) of the IPA Act.

The CJC Commenters include members of and participants in discussions on Adjustable Block Program reopening convened by the Illinois Clean Jobs Coalition, including:

ACES 4 Youth
Central Illinois Healthy Community Alliance
Central Road Energy LLC
Environmental Law & Policy Center
Illinois People's Action
Midwest Renewable Energy Association
Natural Resources Defense Council
ONE Northside
Prairie Rivers Network
Sierra Club, Illinois Chapter
Vote Solar

Prevailing Wage

Prevailing Wage Compliance Proposed Process

The Illinois General Assembly has found that small clean energy businesses, especially those in or serving underserved or historically disinvested communities, need assistance and resources to help them comply with the Prevailing Wage Act (20 ILCS 1505/1505-220), and has assigned the Department of Labor the task of developing and administering a statewide program to assist small clean energy contractors with such compliance. In keeping with this finding, it is important that the administrative burden of prevailing wage (PW) compliance be simplified and minimized so as to support small clean energy businesses to successfully compete in the ABP with these new PW requirements - particularly in the context of the current reopening, when the statewide assistance program will not yet be active. It has become resoundingly clear that small contractors, non-profits, and clean energy associations need PW compliance to be straightforward and rely on existing systems within the Department of Labor.

Q: Is the Certified Transcript of Payroll (CTP) the appropriate documentation to request as proof that prevailing wage was paid?

Yes. The CTP is well known. It has details that can be verified (e.g., name, SSN, hours worked, dates/times and whether such work was PW or non-PW) by the payroll records kept by the contractor/employer. The Illinois Department of Labor (IDOL) is already very familiar with the CTP as are many contractors. We should not reinvent the wheel here but instead strive to make this process simple and relatively easy for small business and newcomer compliance. IPA coordination with IDOL is key.

Q: If not, what forms of documentation should be provided to verify prevailing wage was paid?

None other than that discussed above.

Q: *For facilities that were completed before submittal of Part I of the ABP project application, and which did not pay prevailing wages for the project, should prevailing wages be paid retroactively and be documented through a CTP? If not documented by a CTP, how should the Program Administrator verify that prevailing wage was paid retroactively for already completed facilities?*

The CJC Commenters believe requiring retroactive prevailing wage payment for solar projects that were already on a waitlist, while an arguable interpretation of the letter of the law in a narrow set of cases, flouts the intent of the law to require prevailing wage on a going-forward basis. We urge the IPA to abandon this interpretation. Nonetheless, for any case where there is a new statutory requirement regarding prevailing wage we recommend requiring the AV to demonstrate it has made make-whole payments where PW was not paid on projects completed before Part I submission.

Q: *How can the Program Administrator confirm prevailing wages were paid on 100% of the project construction and not only for the CTPs submitted?*

We recommend requiring an attestation that the CTPs that are submitted represent all of the required CTPs.

Q: What would be reasonable benchmark hours of construction labor per kW of installed capacity to use, and how would those vary by project size and type?

We recommend against the creation of benchmarks and instead recommend reliance on the existing enforcement mechanisms already in place within the IDOL.

Q: *How should the Program Administrator verify that workers were properly classified in the CTPs?*

If IPA has reason to suspect that a classification violation has occurred, we recommend referral to IDOL for enforcement.

Q: *Are there any other best practices for CTP verification that the Program Administrator should use for verification of prevailing wage requirements?*

Again, we recommend working in tandem with the IDOL, which has a system in place. We strongly urge collaboration with IDOL.

Q: *The law requires that "It shall also be mandatory upon the contractor to whom the contract is awarded to insert into each subcontract and into the project specifications for each subcontract a written stipulation to the effect that not less than the prevailing rate of wages shall be paid to all laborers, workers, and mechanics performing work under the contract." Should all contractors using subcontractors provide a copy of their contracts for the Program Administrator to verify this language for all of a project's subcontracts is in place, or would an attestation that this requirement has been met be acceptable (with the provision that the Program Administrator could request documentation for verification as needed)?*

We do not believe that submission of all contracts to the Program Administrator is necessary and that an attestation should be sufficient. While not necessary, an additional requirement to ensure workers are informed of their rights to PW could include an on-site notification prepared by IDOL of PW entitlement by job classification along with a signing requirement for each worker to ensure receipt and understanding of the information.

Proposed Residential and Houses of Worship Exemptions

The requirement to pay prevailing wage can be an onerous burden for small or fledgling clean energy businesses, especially those in or serving underserved or historically disinvested communities, and could in fact, serve as a roadblock to participation in the ABP. As such, it is

important that we get the residential and house of worship exemptions right so that a broad range of businesses can compete in Illinois' vastly expanded renewable energy market. While IPA's suggested approach to the residential exemption may be reasonable for the more brief ABP reopening period, we believe contractors should be provided an array of approaches to meet the exemption. The array of approaches described below should be easy to implement upon reopening, particularly if paired with the ability to self-attest. Finally, we have significant concerns about an overly narrow application of the House of Worship exemption.

Q: For residential projects, is 75% of a site's electrical usage for residential purposes the appropriate standard for considering a site residential? Will this adequately meet the spirit of the law while at the same time accommodating circumstances such as farms and multifamily buildings that include retail spaces?

The determination of what constitutes a residential property is not at first blush a simple one. Multiple factors may be at play such as mixed uses, different systems of metering, rural uses, commercial off takers with high energy usage in predominantly residential buildings, etc. In order to avoid the need for a case-by-case review or the danger of improperly excluding a valid residential use by using an overly narrow approach, we suggest providing the AVs with the ability to self-attest regarding the residential nature of the property using a variety of approaches as listed below.

1. All occupants of a building receive a residential rate classification from the utility; or
2. At least 75% of the site's electric use must be used for residential purposes; or
3. At least 75% of square footage of building is dwelling units[1]; or
4. At least 75% of gross rental income is from dwelling units[2]; or
5. At least 75% of total number of units are dwelling units;or
6. Request for individual review of unique circumstances constituting residential use,

Q: For residential projects, are there specific additional items beyond an electric bill showing a residential rate class or proof of the property's tax class code that should be considered acceptable documentation?

As noted above, we believe self-attestation is the best approach. Should IPA not agree, the following additional documentation should be acceptable.

- Evidence of building occupants' rate class.
- Building plans showing total square footage and number and type of units.
- Evidence of rental income and source thereof.

[1] The U.S. Tax Code (26 USC Sec. 168(e)(2)) defines "dwelling unit" as a house or apartment used to provide living accommodations in a building or structure, but does not include a unit in a hotel, motel, or other establishment where more than one-half of the units are used on a transient basis, and defines a rental property as residential where 80% or more of the rental income is from dwelling units.
[2] Ibid.

Q: *For Houses of Worship, are there specific considerations that should be included in the affidavit that the facility is used exclusively for religious exercise or religious worship?*

We believe the agency could put itself in a precarious place should it attempt to decide which activities conducted by a House of Worship are religious exercise and which are secular. In *Corporation of Presiding Bishop v. Amos* (483 U.S. 327 (1987)), the Court held that a church-run gymnasium operated as a nonprofit open to the public could require its employees to be church members. In recognizing an exemption to the Civil Rights Act's prohibition of discrimination in employment, the Court recognized a legitimate purpose in freeing a religious organization from the burden of predicting which of its activities a court will consider to be secular and which religious. Applying the rule across the board to nonprofit activities conducted by the religious organization served to "avoid . . . intrusive inquiry into religious belief" and to lessen entanglement of church and state. In addition, throughout history, houses of worship have been a major provider of social and community services such as schooling, athletic clubs, medical care, day care, meal and grocery provision, banking and financial services, and musical instruction. Any attempt to declare such activities inconsistent with religious worship or exercise leaves the state in a shaky moral and perhaps legal position.

IPA should avoid any review that might constitute an "intrusive inquiry into religious belief" by staying out of the determination of which activities conducted at a House of Worship constitute religious exercise or religious worship, and which do not. Instead, the Agency should require an officer of the House to attest that the activities conducted within the facility constitute religious exercise or worship central to the House's religious tenets.

Equity Eligible Contractor Proposed Process

We are excited to see this program launched and have very high hopes for its success. However, we are concerned about the program being administered at the "Approved Vendor (AV) level." In the ABP, there is no differentiator between aggregators and approved vendors. That is, both are considered AVs. Consequently, an Equity Eligible Contractor (EEC) aggregator could aggregate Renewable Energy Certificate (REC) contracts on behalf of non-EEC AV Designees (AVDs). Under the proposed system, the total megawatts (MW) of the REC contract would be counted against the EEC carveout even though the aggregator is only taking a small percentage of the REC contract as a fee. That said, we do not want to discourage any potential EEC participation in the program. Ideally, we think the simplest way to avoid this unintended consequence would be to only allow some fixed percentage of the project size to count against the EEC allocation, with the remainder assigned to the ABP category it would otherwise fall into. For instance, 3%[3] of the total MW that an EEC Approved Vendor Aggregator (AVA) submits could count against the program. We would define an AVA as any approved vendor that holds REC contracts on behalf of unrelated companies. This would allow a company that sets up wholly owned subsidiaries for their projects to not be considered an AVA. For the purposes of

[3] Three percent is commensurate with the portion of REC contract revenue that we estimate typically flows to an AVA vs an AVD in projects that utilize aggregators.

reopening, we recognize that this approach may not be feasible because most of the non-EEC categories are fully subscribed. If, in fact, it is infeasible, for the purposes of reopening we recommend making only a small percentage of the EEC category - perhaps between 5 and 15% - available to aggregator EEC projects and reserving the rest for non-aggregator projects and/or aggregator projects that pair with installers that are also EECs[4]. As with the Schools category, we would recommend that unused capacity reserved away from aggregator projects be released to aggregator EEC projects on a waitlist, prior to any reallocation of capacity from the EEC category to other categories.

Furthermore, we do not want to see this pre-Long Term Renewable Resources Procurement Plan (pre-LTRRPP) version of the program devolve into a gold rush where EEC AVs are being awarded REC projects and then immediately flipping those projects to non-EEC AVs. We think the ramifications of and the conditions under which this type of business model can operate need to be carefully vetted. Consequently, we ask that EEC AVs that are awarded REC contracts prior to the finalization of the LTRRPP be required to hold the REC contract till at least the finalization of the LTRRPP, which will define how these situations will be handled, or the completion of the Part 2 Application (see comment below). If they do sell the project and hold the REC contract, then they are acting as AVAs and only a minimum percentage of the REC contract should be counted against the EEC allocation prior to the approval of the LTRRPP.

Registration Process

Q: What information submitted through the EEC application process should be designated as confidential, if any?

We feel the best solution at this stage (pre-LTRRPP) is to consider all information that is submitted as confidential. The checks and balances associated with confidentiality can be determined through the LTRRPP process. Anyone submitting information pre-LTRRPP who then does not want that information divulged after the LTRRPP is finalized should be given the opportunity to withdraw from the EEC program.

Q: Will an affidavit from the applicant certifying that the information submitted is complete and accurate be sufficient to verify eligibility, or should some other verification process take place to confirm that the documentation provided by the applicant meets EEC criteria? If some other verification process is needed, please specify how the proposed verification process would work and identify what entity or entities would be best suited to provide documentation that would support verification.

We think that, prior to the LTRRPP, self-certification should be adequate with the caveat that whatever eligibility restrictions (e.g., minimum level or period of incarceration) and confirmation processes approved in the LTRRPP will be applied to those that have self-certified pre-LTRRPP for future participation in the program. Those projects that are awarded REC contracts under the

[4] Non-aggregator EEC projects or aggregator EEC projects that pair with installers that are also EECs should be able to access 100% of category capacity - the limit should only be on how much category capacity aggregator EECs can access.

EEC program during this pre-LTRRPP phase should be allowed to be completed as EEC projects should the standard change in such a way that the EEC no longer qualifies as an EEC. For example, should the definition of incarcerated include a minimum term or level of incarceration in the LTRRPP, those that self-certified as incarcerated pre-LTRRPP but don't meet the LTRRPP standard should be allowed to complete their projects as EEC but cannot apply for any new REC contracts under the EEC program. We think this should be adequate to protect against egregious fraud.

Q: What will the qualifying criteria be for eligible persons? What documentation should be required for those seeking to verify their classification as an eligible person? Specifically:

i. *What approach to verification of provided materials should be used to confirm a person is a graduate of or currently enrolled in the foster care system? What approach to verification should be used to confirm graduation from or current enrollment in a foster care system outside of Illinois?*

We support self-certification for the Pre-LTRRPP period. Please see our response above.

ii. *What documentation should be required, and which verification method should be used, to verify persons who were formerly incarcerated? Should there be a minimum time and level at which a person was incarcerated in order to qualify for eligibility? If so, please explain the rationale for the minimum time/level and how such information could be verified.*

We support self-certification for the Pre-LTRRPP period. Please see our response above.

Duration of Certification

Q: How long should EEC certification last? Should it coincide with the AV renewal process thus requiring reverification each year?

The duration of an EEC certification should be defined during the stakeholder process associated with the LTRRPP. Any pre-LTRRPP self-certifying EEC should remain an EEC until the LTRRPP is finalized. At that time, their continued participation in the EEC program can be defined by the LTRRPP.

Q: How long does eligibility need to be maintained?

a. *Until project is Part I verified, Part II verified, for the duration of the project's contracted delivery term under the Program, or for the life of the project?*

EEC eligibility should be maintained from the Part 1 Application through the Part 2 approval date. After Part 2 approval, the EEC AV should be allowed to transfer the project to a non-EEC AV. This is a common practice in the solar industry and, because the EEC will be able to extract significant value from the project, the EEC's potential business model should not be restricted from this type of activity. We expect that as an EEC AV builds the means, experience, and

wealth necessary to construct and manage projects beyond the trade date, they will begin to assume these post Part 2 application operational roles.

b. *If certification isn't maintained, what will the impact be to the project?*

Ideally, any projects awarded to an EEC that does not maintain its eligibility through completion of the Part 2 Application process should lose its REC contract and the ABP should keep the project's performance assurance money. As previously discussed, the only exception should be EEC's that self-certify prior to the LTRRPP but then are not eligible due to LTRRPP defined minimum requirements. However, we also believe that exceptions may be relevant for EEC certifications that are tied to residency and the IPA may want to offer some sort of case-by-case consideration for certification lost due to residency change and/or allow existing projects to proceed while revoking EEC eligibility for future projects.

c. *What is the impact to projects that are assigned from an EEC AV to a non-EEC AV? Should this be allowed?*

See comment above.

<u>EEC Marketing</u>
Q: Should EECs be provided with a unique Program badge that they can use to identify themselves as Program-approved EECs? Are there any other unique identifiers that should be provided to EECs?

We think any EEC badging that is sanctioned by the ABP program should be addressed in the LTRRPP. This avoids the potential for self-certifying companies to be badged and then have their badges withdrawn due to LTRRPP requirements through no fault of their own.

Q: Should Designees of EECs be provided with a Program badge or other unique branding? Additionally, should these Designees be subject to limitations in identifying themselves as the Designee of an EEC to avoid customer confusion? How will Designees of multiple Approved Vendors identify themselves with respect to the potentially different EEC status of the varied Approved Vendors with whom they work?

See comment above.

<u>Block Sizes and Group Allocation</u>
Q: Is the Agency's proposed allocation of the nameplate capacity for the EEC blocks (70% to Group B, and 30% to Group A, respectively), a reasonable allocation? If not, what would a more appropriate allocation be? Please include an explanation of the reasoning supporting this response.

The 70%/30% allocation appears, on its face, to be a reasonable initial way to try and incent the development of equity eligible contractors across the state. We do recommend that, as with the

Schools category, unused capacity in one Group be released to the other Group, prior to any reallocation of capacity from the EEC category to other categories.

Q: Should the capacity allotted for EECs be further divided across the Small DG, Large DG, and Community Solar have separate allocations, or should the allocation only exist at the Group level?

No, not at this time, we recommend seeing how this capacity gets utilized before dividing further. See above comment.

Public Schools Projects Category

In general, the IPA's proposed implementation concepts are in keeping with the letter and spirit of CEJA. We advocate that, regardless of the system that ultimately gets implemented, data is collected and made available to stakeholders in a timely fashion. This information can and should also be utilized for educational purposes to the wider public and Illinois school districts themselves. For comparison, the Midwest Renewable Energy Association's Solar on Schools program has collected data and formed case studies for all the Wisconsin grant recipients which include a short story-telling portion along with project technical information. These case studies have been highly useful and effective in communicating the benefits and processes of solar for Wisconsin schools. We recommend that the collected data, at minimum, include:

- School location
- System size
- number and dollar amount of RECs awarded
- generation model used to estimate REC production
- percentage of electrical usage the solar array is expected to displace
- Locational criteria (school tier & EJC status)
- Identification of AV and major subcontractors
- Project stage
- Projected system lifetime financial savings
- Ownership method (third-party financing, direct ownership, community solar, debt-financing, direct ownership, …)

Furthermore, stakeholders should be engaged early and often in the decision-making process. We advocate for a standing regularly scheduled meeting where the administrator can present the status of the program and get feedback on the issues the program may be facing, especially at the beginning of the program. We recommend that in combination with this stakeholder feedback, the Agency report out on projects that are developed during the reopening period.

Additionally, a key benefit of solar schools is the reach that these systems can have on the next generation. The clean energy industry grew 70% faster than the overall economy from 2015-2019 so as we continue to transition our energy economy away from fossil fuels and into clean energy, it's integral that we use these systems to provide students with hands-on

curriculum and exposure to renewable energy, engaging them and exposing them to these career fields. According to Generation180, by the end of 2019, 7,332 U.S. schools had installed solar, nearly double the number of five years earlier. The overall installed solar capacity also increased 81% compared to five years prior. More than 5 million students attend schools with solar, a 24% increase since 2017 and an 81% rise since 2014. Both the Minnesota and Wisconsin Solar on Schools programs [linked below] either require or emphasize curriculum and education as part of their respective programs. It is our recommendation that ABP consider how to incorporate the emphasis of curriculum and solar dashboards into the long-term planning of the program.

- Wisconsin Solar on Schools
- Minnesota Solar on Schools

We also ask that the ABP and Illinois Solar for All programs consider the impact of the ABP Schools Program on the Illinois Solar for All (ILSfA) program in the long-term renewable resources plan. For context, public schools are considered critical service providers and, as such, have been awarded REC contracts under ILSfA's Non-Profit/Public Facility subprogram. These ILSfA RECs are roughly two times the value of the ABP RECs in the large DG category resulting in a disincentive for public schools that qualify for ILSfA to participate in the ABP Schools Program. For instance, one question to ask in the context of the plan update might be whether public schools projects should have two different REC prices, one for Tier 1, Tier 2, and schools located within Environmental Justice communities, roughly equivalent to the ILSfA NP/PF REC prices and the ABP large DG REC price for schools for Tier 3 and 4 schools.

Q: Is the proposed 70% (35 MW) for schools categorized as Tier 1, Tier 2, and schools located within Environmental Justice communities and 30% (15 MW) for Tier 3 and Tier 4 schools appropriate? If a different split is proposed, please provide the reasoning behind that split.

We propose a slight edit to this approach. To begin, we recommend that the IPA bump up the designation to a 75/25 split from 70/30 for this initial reopening period to help further incentivize and drive home the stated goal of the law that Tier 1/2/EJC schools be given priority access to funding. We hesitantly agree that any unspoken funds reserved for Tier1/2/EJC schools should be released to remaining waitlisted schools prior to reallocation of capacity away from this category. However, we urge the Agency to leave the door open for the release of such capacity (in this and in any other categories where capacity is reserved) to occur past the 180-day mark. While we are aware that the next renewables plan approval will occur shortly after the 180-day mark, the opening of a new block of capacity could take a good deal longer, depending on how long is needed to adapt the ABP to the next iteration of the plan - meaning there could reasonably be considerably more runway for priority Tier/1/2/EJC schools to access this category. With this in mind, our ideal approach would be for the Agency to indicate that the release would occur no sooner than 180 days into the program, but would actually occur as late as practicable to facilitate the use of program capacity prior to reallocation.

Furthermore, like all aspects of the ABP, utilization of capacity by priority vs non-priority schools should be monitored and potentially tweaked in the long-term plan. Specifically, should a significant portion of funds be released to Tier 3 and Tier 4 schools, the long-term plan should consider additional research and design methods to help ensure that Tier1, Tier 2, and EJC schools are able to fully utilize future funds, keeping the program aligned with the legislation's stated priorities. For one example, the State of Minnesota's Solar on Schools program similarly includes criteria to ensure funding prioritizes low-income school districts and provides funding for a Program Manager to help administer the program and necessary technical assistance. Additionally, via stakeholder engagement and other methods, barriers to entry for the priority schools should be identified and addressed, with possible solutions to include increased technical assistance, modifying the REC payout structure, and more.

Q: Are the prior year results of the annual Evidence-Based Funding Distribution process conducted by the Illinois State Board of Education an adequate and timely source to determine Tier 1 or Tier 2 status? Are there other ways to verify a school qualifies for the Tiers 1 and 2 and Environmental Justice Community categories?

The Evidence-based funding Tier designations are by school district, not school. For communities with a city-wide district like Peoria and Rockford, the program should incentivize school projects in environmental justice and R3 areas of the community.

Q: Are the proposed size categories (< 250 kW, 250 kW to 1 MW, over 1 MW) appropriate and allocations to each category appropriate? If not, please suggest alternatives and explain the rationale behind the allocations proposed.

According to data compiled and released by Generation180, the total solar capacity at Illinois schools through 2019 was 19.98 MW on 459 schools. To note, only 39 of these projects were over 50 kW in size, and only three greater than 1 MW. Those 39 installations represent 18.78 MW of the total capacity. While the average overall Illinois solar school system size is 43.98 kW, the average system size for recent installations (2018-2019) is 215 kW. Similarly, the overall national average system size is 182 kW with recent installations (2017) averaging 300 kW, up from a 100 kW average in 2010. As such, we propose that the allocations and categories mirror this national system average as a benchmark while eliminating a category beyond 1 MW completely: 35 MW for projects 0-300 kW dc and 15 MW for projects >300 kW dc. As these numbers are likely outdated, we also recommend, when designing the long-term plan, that these numbers be revisited as Illinois schools begin to develop and ramp up solar projects and more information and data is made available.

Q: At this time,the Agency is not proposing specific allocations between projects in Group A or Group B, nor does the Agency propose a specific allocation for community solar projects located at public schools. The Agency expects that such allocations may be proposed in the next Long-Term Plan. In this interim period,should specific allocations be made to groups or to community solar projects?

We are concerned about the potential impact and unintended consequences of community solar development at schools and on the program. We would like to have time to identify and think through potential issues. Consequently, we ask that for this initial round, the agency allocate little or no funds to community solar at public schools. We think the best venue for a successful program will be to vet stakeholder's concerns and ideas through the LTRRPP drafting process.

Proposed Process for the Collection of Demographic and Geographic Data

First, we strongly support the addition of questions and criteria that expand the universe of demographic data available to program administrators and implementing agencies. Demographic data gathered about beneficiaries of the state-funded renewable energy incentive programs - whether that's Approved Vendors, subcontractors and designees, or customers - will help us better understand if the programs are adequately serving all Illinoisans. This information has been missing to date and it's availability will help better inform decisions about program implementation and how we measure success.

Second, we believe that this data collection process is part of a broader landscape of demographic analysis designed to better understand disparities that might exist in renewable energy procurement programs. If disparities do exist, or if the equity accountability system has otherwise failed to achieve the goal of eliminating disparities, the Agency is instructed to reform the system, including by altering the definitions for equity investment eligible person and equity investment eligible community if necessary. This process - of determining the need for and establishing the legal basis for a transition from race-neutral criteria in the bill such as the Equity Eligible Contractor (EEC) definition to race-specific criteria such as a Minority-owned Business Enterprise (MBE) definition - relies on the results of the disparity study outlined in Section (c-15) of the IPA Act. That disparity study, in turn, relies significantly on the demographic data made possible in this Section (c-20), the section in question for this Request for Stakeholder Feedback. With this in mind, our top recommendation is to consult directly with experts who have conducted disparity studies in similar industries to better understand the data they will need to perform a robust study. Longitudinal data, gathered by asking the same questions of Approved Vendors and subcontractors over time, is likely to be needed. For this reason, we recommend that the Agency finalizes these demographic questions with the disparity study in mind and in consultation with experts in disparity studies.

Third, we recommend making the data reporting requirements of Approved Vendors and subcontractors as streamlined as possible in pursuit of these overarching goals. CEJA includes multiple different ways that demographic data is tracked, including the Minimum Equity Standards (per the Equity Accountability System described in subsection (c-10) of the IPA Act) and the workforce diversity data to be submitted to the newly expanded Bureau on Apprenticeship Programs and Clean Energy Jobs at the Department of Labor. It is likely that some of the information required under Section (c-20) will also be required through these other

processes. For example, employee demographic data from certified transcripts of payroll reports is required under the new workforce diversity requirements in the edits to the Department of Labor Law (20 ILCS 1505/1505-215).

Ultimately, we want this process to be robust enough that it provides the data necessary to support a disparity study and comply with other reporting requirements and streamlined enough that it doesn't create undue reporting burdens. We also recognize that delaying the collection of crucial demographic data until after all other reporting requirements are finalized in the LTRRPP could delay crucial equity-oriented solutions - including delaying the collection of longitudinal data critical to a disparity study by nearly a year. We make the below recommendations in light of the meaningful and harmful cost of such a delay. However, we would also underscore that we are neither experts in disparity studies nor do we represent the range of companies that will have to comply with this data collection. As such, there is undoubtedly room for improvement to these recommendations through consultation with experts as well as through stakeholder discussions with advocates, companies, program administrators, and other stakeholders. We urge the Agency to facilitate direct stakeholder discussion on this topic and solicit further and more detailed stakeholder feedback on these issues as part of the long-term plan update process.

Data Collection

Q: Are there demographic categories or classifications that the above proposed list fails to capture? Please provide specific examples and reasons for their inclusion.

We recommend one additional criteria: the number of employees that live in Equity Investment Eligible Communities. The statute explicitly references the collection of "geographic location of the residency of real persons employed" and this will help build awareness of the geographic qualifiers of Equity Eligible Persons alongside the other criteria (e.g., foster care system or incarceral system involvement) already tracked in the proposed criteria.

Q: Are there any proposed demographic categories or classifications as proposed above that should be altered? Please provide specific examples and reasons for proposed changes.

We propose eliminating the "not available" response for the question regarding employee racial demographic data. *Employees* should be given the option not to divulge this type of information but reporting entities should be required to report all data.

This is one of the most consequential metrics that the proposed criteria introduces - especially given that part of the purpose is to "measure any potential impact of racial discrimination on the distribution of benefits" - and will provide crucial information about disparities. We are concerned that having a "not available" option for racial data will result in employers taking the path of least resistance and effectively ignoring this question.

Q: Are there any proposed demographic categories or classifications that should be removed? Please provide specific examples and reasons for removal.

We urge the Agency to consider whether or not the sensitive information requested in Questions 10-14 is necessary to support a disparity study. We do not know the answer to this question, but do know that requesting information about prior incarceration or participation in the foster care system might have unintended negative consequences for those individuals. In the long term, we envision a system where these individuals would apply to the Agency for their certification as an Equity Eligible Person for whichever reason or reasons they qualify (e.g. returning resident, R3 community resident, etc.) and present that certification to the employer. The employer would only ever know that they were an Equity Eligible Person, not specifically how they earned the status. This certification process would provide the Agency with more granular data that could be used to draw important macro-level conclusions without having employers gather sensitive information about vulnerable employees.

Q. The Agency seeks feedback on the process for the submission of data collected by Approved Vendors from subcontractors. One possible approach would be for Approved Vendors to submit subcontractor information on a project-by-project basis. Another approach would be for Approved Vendors to submit subcontractor information on a quarterly basis. The Agency is also open to alternative proposals; for each proposal, please provide an explanation as to why a particular approach may or may not be preferable.

We recommend the Agency consider data submission on a project-by-project basis or, in the case of smaller projects, allow for reporting on a batch or portfolio of projects at once. In which case, the Agency may want to make this a requirement of Part 2 applications. We recommend considering project-by-project reporting on subcontracting for two reasons: 1) an effective disparity study might require reporting to this level of detail and 2) this level of project-by-project reporting will likely already be required through the Minimum Equity Standards that will be finalized in the LTRRPP.

1) Disparity studies rely on an understanding of who benefits from state contracts to better track if specific demographics are being excluded from opportunities. In large-scale public infrastructure contracts, such as highway construction, this process appears relatively straightforward. You could observe, over time, who won bids for state contracts and who they partnered or subcontracted with in their application for that contract. This information is then analyzed to identify disparities by comparing winning bidders and subcontractors with the total universe of bidders and subcontractors. We believe that the same principles should apply to the Adjustable Block Program, even though the scale of projects is much smaller and the types of projects much more diverse. Gathering information about subcontractors on a project-by-project basis - or by batch/portfolio for smaller projects - will help us track the complete value of the REC contract to better understand the extent of potential disparities.

2) While project-by-project reporting runs the risk of being burdensome, we make this recommendation in part to optimize the data reporting process with the Minimum Equity

Standards reporting required in Section (c-10) that will be finalized in the LTRRPP. As we understand Section (c-10), the Minimum Equity Standards will require fairly granular reporting to demonstrate compliance. REC-seeking entities such as Approved Vendors will need to show that their annual portfolio is compliant with these standards, meaning that the percentage of work hours done by Equity Eligible Persons or Equity Eligible Contractors is above the minimum thresholds set each year. While the details of the Minimum Equity Standards reporting and the definition of work hours will be determined in the LTRRPP, we believe that compliance could require project-by-project tracking of some of the demographics listed in the proposed questions. This proposal - data tracking on a project-by-project basis by incorporating some of these questions into the Part 2 application process - would balance the need to have granular, project-level data with the goal of streamlining program participation. This would replace the need to ask many of the questions suggested by the Agency through the Approved Vendor registration process because the data would already be collected from each Approved Vendor over the course of the year. We encourage the Agency to avoid any scenarios where they are asking the same question in multiple ways or using multiple forms.

We also urge the IPA to consider whether it will be able to meet the requirements of the Minimum Equity Standards and deliver a meaningful and effective disparity study through more creative means of data collection. To be clear - meeting the Minimum Equity Standards and delivering a meaningful disparity study are primary goals. Without doing this, the Agency will be failing to deliver on CEJA's promise of equity. At the same time CJC is aware of the burden such reporting could create and would be open to creative solutions to allow reporting in batches or portfolios, particularly on small projects, so long as such aggregation does not significantly harm the quality or usability of the data.

Q. For purposes of subcontractor reporting, should Approved Vendors be required to report demographic and geographic data on each subcontractor with whom the Approved Vendor worked on a project in the Program during the reporting period? Should the subcontractors from which this data is collected be limited to those with a direct role in project development, such as sales/marketing and installation? Are there other categories of subcontractors to be included (or excluded) and if so, why?

For the first question, yes - they should report this data on behalf of each subcontractor. As mentioned above, we believe that this should likely be tracked in a project-specific way to align with other requirements and support a disparity study that tracks the full value of REC incentives. As for the second question, around how broadly to define work or involvement, we believe that the definition of subcontractor should be broad enough to accommodate the range of partnership and subcontracting opportunities. To our collective understanding, most of this would be covered by the two categories of subcontractors mentioned in the prompt: sales/marketing and installation subcontractors. We would want to ensure that the definitions of those categories are broad and flexible enough that they could accommodate other potential subcontracting roles that emerge.

Q. New Section 1-75(c-20) refers to collecting data on "program participants." Might this be understood as referring to customers or hosts? If so, how should the IPA seek to obtain demographic information about customers, and what sensitivities apply to making such inquiries of customers? Who is the right entity to collect that information and how, and how should that information then be reported back to the IPA?

We believe that the term "program participants" does in fact apply to customers and hosts. We would like to see demographic data woven into the process for residential customers, potentially as an addendum to the Standard Disclosure Form (SDF). There could be an option for customers to opt out of this question but it should be a mandatory part of the SDF process.

Reporting & Accuracy of Data

Q: For the purposes of determining an Approved Vendor's geographic location, the Approved Vendor may be headquartered outside of Illinois or may have more than one branch office. Is the main office of an Approved Vendor an accurate reflection of that Approved Vendor's geographic location? Alternatively, should the branch office which runs the Approved Vendor's ABP participation be used or is there a better representation of an Approved Vendor's geographic location?

We believe that the office location used for geographic data should be the largest office location of that Approved Vendor in Illinois, as measured by personnel. In the case where there are two functionally independent branches operating in two different utility territories, the data collection should accommodate Approved Vendors to submit the largest office location in each utility service territory.

Q. What measures should the Agency consider to facilitate the collection of accurate data from Approved Vendors?

As mentioned above, removing the "not available" option for racial demographic data will help ensure that sufficient demographic data is reported. We also recommend instituting a system of audits - with corresponding consequences for non-compliance - to ensure data fidelity. Perhaps most importantly, we will again underline how important it is to track this data on a project-level basis, at least in some cases. Take this hypothetical example: a minority-owned lead generation subcontractor is listed as a "real persons...subcontracted through the program" by a dozen Approved Vendors. The proposed framework might show robust subcontracting opportunities for minority-owned businesses, when in actuality that subcontractor might only be contracted for a few hours each year from each Approved Vendor. We believe that getting to this level of granularity will tell the broader story about benefits from employment and contracting opportunities.

In addition, we recommend the Agency develop a uniform framework for submission of data that ensures that data provided by AVs is thorough, consistent in form, and submitted in a format that facilitates compilation and analysis without the time-intensive need for the Agency to clean

the data on the back end. We spoke with experts in conducting disparity studies as part of our work around CEJA and they emphasized the importance of effective data collection practices and the difficulty and inefficiency of working with data where the format was left to the discretion of each individual contractor. Such a framework should be user-friendly, particularly for AVs that may have limited capacity and back-office staff. Ideally, data would be submitted via an on-line portal that is easily accessible and that allows for easy compilation and analysis on the back end, such as the Part 2 application process.