



California Energy Commission

**DOCKETED**

**14-CCEJA-01**

TN 74072

DEC 02 2014

November 21, 2014

The Honorable Andrew McAllister  
Commissioner  
California Energy Commission  
1516 Ninth Street, MS-29  
Sacramento, CA 95814

Dear Commissioner McAllister:

On behalf of the School Energy Coalition (SEC), an organization made up of schools, community colleges, school construction and energy consultants focused on energy efficiency and renewable generation projects for California's K-14 students, I am writing to share our deep concern regarding the language contained in the Contracts Section of the California Energy Commission's (CEC) Draft Proposition 39: California Clean Energy Jobs Act - 2015 Program Implementation Guidelines. This letter does not abrogate earlier written communication from SEC on the proposed guidelines, but provides more detail regarding this specific Contract Section language.

The language in SB 73 (Senate Budget and Fiscal Review Committee) Chapter 29, Statutes of 2013 – legislation approved to implement Proposition 39 – is very clear: For every Proposition 39 dollar that is awarded, a non-sole source process must be used. This means that any awarding of Proposition 39 funds may *not* be done by negotiating with only one source and, according to statute, this must be shown to be the case at audit after project completion or funds may be taken back by the state. This statute specifically designates the California Department of Education (CDE) as the agency designated to determine whether funds must be returned should an audit show that only one source was solicited in awarding these funds.

The CEC Guideline language (p. 36), if approved, would read:

The Guidelines defer to the LEA's own procurement regulations and procedures, as long as they reflect applicable state and local laws and regulations and are not in conflict with the minimum legal standards specified above. (*current language*)

As stated above in PRC 26235(c), "A community college district or LEAs shall not use a sole source process to award funds pursuant to this chapter." This applies to all Proposition 39 program award funding, including award funding for energy planning activities. However, pursuant to Public Contract Code (PCC) Section 20111, any public projects involving an expenditure under \$15,000 do not need to be competitively bid. (emphasis added)



November 21, 2014

Page 2 of 4

---

Regarding, in particular, the emphasized reference to Public Contract Code (PCC) 20111; if this proposed language is approved, we are extremely concerned that it may now be interpreted (for example at audit) that awarding Proposition 39 dollars above the amount of \$15,000 is subject to a competitive bid process as defined for projects in PCC. As you know, these are funds that may be used for a variety of purposes, not just construction projects, and this new language goes beyond what is stated clearly in SB 73.

We do not believe that adding this reference to PCC clarifies the non-sole source requirement; in fact it would create additional requirements with respect to Proposition 39 funds.

Further, we believe that competitive bidding requirements were considered during the Legislative process (SB 39 DeLeón and Steinberg version as amended May 28, 2013) and was rejected in lieu of the non-sole source language that is contained in the final implementing bill.

In addition, the approved implementing legislation requires that the non-sole source process apply to the awarding of *funds* – not just to the awarding of projects. This includes surveys, analysis, benchmarking, meeting program requirements (which could be in-house district staff), and training.

If the CEC's goal is to allow smaller projects under \$15,000 not to be under the non-sole source requirement, then the proposed language would have to refer to that exact language in Proposition 39, as it is a separate and distinct process for awarding funding from the Clean Energy Job Creation Fund established under SB 73.

Finally, we would suggest that if clarifying language is contemplated regarding what the criteria is for a non-sole source process, it is more appropriately placed in audit guide language, which is under the CDE's purview.

#### CEC's Authority to Establish Guidelines

SB 73 did give authority to the CEC, in consultation with the Superintendent of Public Instruction, the Chancellor of the California Community Colleges, and the Public Utilities Commission to establish guidelines for the following purposes under Section 26235(a) of SB 73:

- Estimating energy benefits, including reasonable assumptions for current and future costs of energy.
- Computing the cost of energy saved as a result of implementing eligible projects funded by this chapter.



November 21, 2014  
Page 3 of 4

---

- Contractor qualifications, licensing, and certifications appropriate for the work to be performed, provided that the CEC not create any new qualification, license, or certification.
- Project evaluation, including benchmarking or energy rating systems, energy surveys, sequencing, and cost effectiveness.
- Creation of a “simple preinstallation verification form” that includes project description, estimated energy savings, expected number of jobs created, current energy usage, and costs in order to “ensure that adequate energy audit, measurement, and verification procedures are employed to ensure that energy savings and greenhouse gas emission reductions occur as a result of any funding provided pursuant to this section.”
- Achievement of maximum feasible energy efficiency or clean energy benefits, as well as job creation benefits resulting from projects implemented pursuant to this chapter.
- Ensuring LEAs assist classified school employees with training and information to better understand how they can support and maximize the achievement of energy savings envisioned by the funded project.

The Section goes on to task the CEC with specific requirements:

Item (b) asks the CEC to allow the use of data analytics of energy usage data, where possible, in the energy auditing, evaluation, inventorying, measuring, and verification of projects with prior technical validation by the Energy Commission, a local utility, or the Public Utilities Commission.

Finally, Item (c) is the sole source language in that section which is clear and does not ask for further clarification or definition in the Guidelines.

(c) A community college district or LEA shall not use a sole source process to award funds pursuant to this chapter. A community college district or LEA may use the best value criteria as defined in paragraph (1) of subdivision (c) of Section 20133 of the Public Contract Code to award funds pursuant to this chapter.

For all of these reasons, SEC respectfully requests that the reference to PCC 20111 be removed from the CEC Guidelines.



November 21, 2014

Page 4 of 4

Local Education Agencies (LEA) have appreciated the flexibility contained in these guidelines and, to date, millions of planning funds have been applied for by LEAs showing their commitment to future energy efficiency installations. LEAs are now in the process of gathering baseline data and benchmarking their sites for energy projects that will provide greater efficiency, job creation, and ongoing savings to LEAs and taxpayers statewide.

As you know, over 178 Proposition 39 Energy Expenditure Plans (EEP) have already been approved by the CEC for schools and we already see an uptick in applications and more projects in the pipeline now that a final decision has been made on a State School Bond. California schools may have been waiting to use State Facility Program modernization funds with Proposition 39 to allow the dollars to go further. That not being the case, we expect to see EEPs move more quickly in the months to come.

We appreciate the ability to share our concerns with you. Please do not hesitate to contact me (916) 441.3300 or [aferrera@m-w-h.com](mailto:aferrera@m-w-h.com)) with any questions regarding the information contained in this letter.

Sincerely,

Anna Ferrera  
Executive Director

AF:ad

- c: Robert B. Weisenmiller, Ph.D., Commissioner
- Karen Douglas, J.D., Commissioner
- David Hochschild, Commissioner
- Janea A. Scott, Commissioner
- The Honorable Kevin de León, Senate President pro Tempore
- Nidia Bautista, Office of Senate President pro Tempore Kevin de León
- Hazel Miranda, California Energy Commission
- Elizabeth Shirakh, California Energy Commission
- Marcia Smith, California Energy Commission
- Rob Oglesby, California Energy Commission
- Grant Mack, California Energy Commission