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**DOCKETED**

**13-CCEJA-01**

TN # 72207

OCT. 25 2013

October 25, 2013

Robert P. Oglesby  
Executive Director  
California Energy Commission  
1516 Ninth Street  
Sacramento, CA 95814

Re: Comments on Proposition 39 Draft Guidelines, Docket#: 13-CCEJA-1

Dear Mr. Oglesby:

On behalf of the San Diego Region K-12 Schools Sustainability Strategy Collaborative, CleanTECH San Diego submits these comments for consideration by the California Energy Commission (CEC) and the agencies it consulted with in the development of the Proposition 39 *Draft Guidelines*.

As background, in June 2013, CleanTECH San Diego launched a San Diego Regional K-12 Schools Sustainability Strategy Collaborative. We've achieved a critical mass of representation and participation in creating an open forum that is fostering collaboration and best practice sharing in pursuing the next wave of sustainability initiatives. All of these initiatives are aimed at reducing operating costs while also benefitting both the classroom and local environments.

As a non-profit trade association, CleanTECH San Diego is also keenly focused on replicating its "Public Agency Collaboration Model" that over the years continues to demonstrate significant, regional success in accelerating local job creation and economic development, made possible through several ARRA grant programs.

CleanTECH San Diego in partnership with SDG&E, launched this K-12 Schools Collaborative in advance of the Proposition 39 funding allocations. By facilitating with our regional partners and proactively strategizing for the Energy Expenditure Plans, we aim to identify and enable the San Diego Region LEA's targeted projects that are "shovel-ready" once funds become available.

After San Diego County's 42 LEA's Energy Expenditure Plans are prepared and submitted, the *Collaborative* will identify one or two projects with broad regional interest and maximum energy efficiency impact. Furthermore, we will develop focused project working groups to leverage synergies amongst all LEA participants in expediting both the specification and procurement processes.

CleanTECH San Diego commends the CEC for its excellent job it has done in adhering to the transparency and accountability mandates of Proposition 39 and SB 73. We fully respect the effort in keeping the application process, subsequent measurement and verification requirements as simple as possible for the LEA's. In keeping with that spirit, we offer the following suggested clarifications and modifications to the *Draft Guidelines* to further streamline both the application and implementation processes for our LEA's to achieve our common goals:

**1) pg. 9/pg. 12 – “Energy Planning Activities” and “Award Funding for Energy Manager”**

“On page 9, in Table 3 – Energy Planning Activities it states, “If an LEA needs assistance completing the Proposition 39 program requirements, it may use part of the award for Proposition 39 program assistance activities.” Furthermore, “Energy planning funds requested for Proposition 39 program assistance activities can be used to complete any of the required Proposition 39 program steps.”

One of the key resources that LEA's, will need to complete the required Proposition 39 program steps will be an Energy Manager. For those LEA's that need and plan to hire an Energy Manager, they will need this resource immediately during the initial Planning Process. On page 12 of the *Draft Guidelines* it states that “Each fiscal year, an LEA will have the option of requesting up to 10% of its award or \$100,000, whichever is greater to hire or retain an Energy Manager.”

For many of the smaller and medium-sized LEA's they will not have enough funding in their 15% Proposition 39 Program Assistance allocation of Energy Planning Funds to cover up to the maximum \$100,000 allowance for annual Energy Manager expenditures. This is clearly a critical issue that needs to be addressed with urgency so that those LEA's who require the assistance of an Energy Manager can initiate this process in the November 2013 timeframe when the first wave of Energy Planning applications are due to the CDE.

**Suggested Amendment:**

On page 10 under the section “Maximum Energy Planning Award Funding Request” the following language should be added:

*“If an LEA hires or retains the services of an Energy Manager to provide Proposition 39 Program Assistance, any allowable funding amount for that LEA (10% of their total grant allocation up to \$100,000) that exceeds their 15% Program Assistance allocation can be charged to the Energy Manager line item in their Energy Expenditure Plan(s).”*

*“If an LEA requires other Proposition 39 Program Assistance in addition to the Energy Manager, the total allowable amount in the Energy Expenditure Plan will be the original 15% Energy Planning Award Program Assistance plus the allotted Energy Manager allocation for that LEA (10% of their total grant allocation or \$100,000, whichever is greater).”*

**2) pg. 11 – “Large Expenditure Plan Award Requirements (Tier 4)”**

A number of our larger San Diego Region LEA’s recognize that for the large number of sites and buildings in their school districts, there are a number of significant procurement, commissioning, operational and maintenance benefits for taking a “standardized, enterprise-wide” approach to the implementation of the comprehensive energy efficiency measures that they have determined will yield the maximum energy and cost savings.

Public Resources Code section 26233(b)(3) states “For every LEA that receives over one million dollars (\$1,000,000) pursuant to this subdivision, not less than 50 percent of the funds shall be used for projects larger than two hundred fifty thousand dollars (\$250,000) that achieve substantial energy efficiency, clean energy, and jobs benefits.” However, the current *Draft Guidelines* have made a rather restrictive interpretation of what a large project is in the statement “A large expenditure plan project is defined as a project at a school site whose costs total more than \$250,000.” Applying this narrow definition for “large expenditures” would preclude our large LEA’s from pursuing an enterprise-wide approach to large projects which leverage bulk quantity pricing, standardized training, common standard operating procedures, reduced spare parts inventories, just to cite a few of the quantifiable benefits.

**Suggested Amendment:**

On page 11 under the section “Large Expenditure Plan Award Requirements (Tier 4)”, please change to read: *“A large expenditure plan project is defined as an individual project whose costs total more than \$250,000.”*

### **3) pg. 12 – “Awarding Funding for an Energy Manager”**

As fully explained in Item 1) above, and for completeness and continuity of the “*Final Guidelines*” we suggest adding language to clarify how/where Energy Manager funds can be acquired and accounted for.

#### **Suggested Amendment:**

On page 12 under the section “Awarding Funding for an Energy Manager”, the following language should be added:

*“If an LEA hires or retains the services of an Energy Manager to provide Proposition 39 Program Assistance, any allowable funding amount for that LEA (10% of their total grant allocation up to \$100,000) that exceeds their 15% Program Assistance allocation can be charged to the Energy Manager line item in their Energy Expenditure Plan(s).”*

### **4) pg. 19 – “Step 7: Complete and Submit an Energy Expenditure Plan”**

The Energy Expenditure Plan is the application an LEA uses to request Proposition 39 award funds to implement proposed energy projects. It is the key document that consolidates all of the required data and strategic rationale for how and why LEA’s selected the projects that they are requesting approval from the CEC to apply grant funds to implement. It is the central document that the entire Proposition 39 process revolves around.

In the *Draft Guidelines* it says, “The energy expenditure plan form is available on the Energy Commission website at \_\_\_\_\_(website)\_\_\_\_\_.” There is currently no draft version of the “Energy Expenditure Plan” available for review by the LEA’s who will be responsible to complete this form. It is as important, if not more important for the LEA’s to have an opportunity to review and provide constructive comments on a draft Energy Expenditure Plan template, as it is to have this opportunity to review the rest of the current 57-page *Draft Guidelines*”.

#### **Suggested Action:**

We recommend that the CEC post a *Draft Energy Expenditure Plan document* as soon as possible, so the LEA’s and the public at large may provide comments and feedback concurrently with the CEC’s review of the other Public Comments on the 57 pages that currently constitute the Proposition 39 Guidelines which are due on October 25<sup>th</sup>. In this manner, the CEC can still meet its stated target of finalizing the Proposition 39 Guidelines by the end of November, without leaving it to chance that there will be no issues or constructive recommendations to improve the key central document that will drive the entire Proposition 39 Program.

## **5) pg. 28 – “Contracts”**

Presently in the *Draft Guidelines* the second bullet under “Contracts” reads: “LEAs shall follow applicable law related to contractor qualifications, licensing, and certification requirements related to the project. Public Resources Code section 26235(a)(2).”

With the new revisions to Title 24, Part 6 becoming effective January 1, 2014, there will be additional new contractor qualification requirements. Specifically, there is a new requirement that any work involving advanced lighting controls be checked and certified as correct by a Certified Acceptance Tester. As we expect a vast majority of LEAs to be implementing lighting retrofits, which hopefully will integrate advanced lighting controls to maximize the energy efficiency benefits, it is important to make them aware of this new requirement.

### **Suggested Amendment:**

On page 28, under the section “Contracts”, the following language should be added to the second bullet: “LEAs shall follow applicable law related to contractor qualifications, licensing, and certification requirements related to the project. Public Resources Code section 26235(a)(2). NOTE: Beginning January 1, 2014, California law (Title 24, Part 6) will require that any work involving advanced lighting controls be checked and certified as correct by a Certified Acceptance Tester.”

## **6) pg. 28 – “Contracts”**

Presently in the *Draft Guidelines* the third bullet under “Contracts” reads: “LEAs shall not use a sole-source process to award grant proceeds. LEAs 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. Public Resources Code section 26235(c).”

One of the key best practices that has emerged from CleanTECH San Diego’s previous regional ARRA collaborations with public agencies, including cities, universities and K-12 schools is what we refer to as “the piggyback clause”. We request that whenever any of our collaborating public agencies conduct a competitive procurement, that they include a clause in the RFP and the final contract that requests that the winning bidder will offer the same goods and/or services to other public agencies in the San Diego/Southern California region at the same price and terms.

In the case of Proposition 39, we are proposing that instead of each of our 42 LEA’s having to start with a clean sheet of paper and develop a technical specification, prepare and conduct the competitive RFP process, and then manage through the typical post bid opening vendor protest process, all of which on average takes about 12 months, that they be given the opportunity to implement this “sole-source piggyback procurement model” as is provided for in California Government

Code 4217, Public Contract Code 20118/20652, and Education Code 17595, or any other state or federal procurement code which is applicable.

**Suggested Amendment:**

On page 28, under the section “Contracts”, the following language should be added as a fourth bullet:

*“LEAs may use a sole-source process to award grants if they apply California Government Code 4217, Public Contract Code 20118/20652, Education Code 17595, or any other state or federal procurement code which is applicable.”*

In summary, on behalf of the San Diego Region K-12 Schools Sustainability Strategy Collaborative, CleanTECH San Diego respectfully submits these recommended amendments to the CEC Proposition 39 *Draft Guidelines*. Our singular intent is to provide further clarification to the LEAs on key points raised in our collaborative as we seek to streamline the application, planning, and implementation processes to accelerate the achievement of our mutual goals of energy and cost reduction, and job creation. We thank you in advance for your thoughtful consideration and adoption of these proposed amendments.

Sincerely,

Marty Turock  
Chairman  
San Diego Region K-12 Schools Sustainability Strategy Collaborative

cc: Andrew McAllister, Commissioner, California Energy Commission  
Marcia Smith, California Energy Commission