

To: California Energy Commission
From: Rick Brown, PhD, President
Subject: Doc # 13-CCEJA-1: Prop 39 Guideline Comments
Date: 10/25/13



Thank you for the opportunity to submit comments on the Proposition 39: California Clean Energy Jobs Act - 2013 Program Implementation Draft Guidelines. We commend you for your leadership to improve California's schools, address climate change and improve our state's economy. We offer the following comments to support successful program implementation and ensure the best possible outcomes in achieving the program's objectives.

Comments

1. On page 7-9, Planning guidelines.

Comment: The current guidelines on use of planning funds are too prescriptive. For example, developing performance/bid specifications and the RFP for the competitive bid process, contract negotiations, and construction management and reporting and tracking, are activities key to delivering the most cost-effective projects. These activities may require a higher proportion of their planning funds than 15%, especially for smaller Districts. Furthermore, those Districts that use the CCC or other low cost methods for their audit work will not need anything near 85% of their planning funds for audit work.

2. On page 21, "**Option 3:** Five-year complete award energy expenditure plan. Under Option 3, the LEA submits one energy expenditure plan, with energy projects amounting to the estimated total five-year Program award. Based on the known first-year funding award, the LEA can estimate the remaining yearly awards and develop a complete five-year energy expenditure plan. The LEA and the Energy Commission will annually review the five-year plan to ensure the projects are still on track and adjust the plan if necessary."

Comment: All Districts, regardless of award, should be able to utilize Option 3. Not doing so would be in conflict with the legislative intent of Prop 39 and SB 73. First, the Clean Energy Jobs Act clearly states the importance of directing funds to energy projects that generate jobs as quickly as possible. Second, it puts significant emphasis on optimizing cost-effectiveness. By allowing all Districts to develop and implement a five year plan, there is the greatest likelihood that more construction jobs will be generated sooner. Furthermore, by bidding out a complete project scope, in one or two large increments, versus in five or more separate increments, the District is much more likely to secure more favorable pricing, allowing the District to potentially expand the project, and resulting job and costs savings impacts. Finally, to the extent a District wants to use leverage to expand the project scope beyond what the Prop 39 award allows; doing so as one financing versus several significantly reduces any associated financing transaction costs.

3. On page 29, 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).

Comment: There is confusion re: application of the multiple bid requirement. The draft guidelines strongly encourage Districts to begin planning now to make sure projects get going as soon as possible. And the CDE has notified Districts that they can apply to have planning funds released as of November 1. However, there is confusion around whether planning activities conducted under professional services contracts were intended to be covered by the multiple bid requirement. From our involvement in the legislative process, it was our understanding that the multiple bid requirements was intended to apply to the construction and installation of the energy projects, not planning activities. In fact, we were very strong advocates for the multiple bid requirement for the construction and installation contract work. We would encourage you to provide some guidance on the legislative intent regarding this issue.

4. On page 50, “There is insufficient data for renewable and other generation projects in the DEER database and there is not a consensus number for these projects. The Energy Commission will consider other renewable and generation projects on a case basis based on available information, required maintenance and project warranty period.”
Comment: Given that CSI requires at least a 25 year warranty on modules and a ten year warranty on inverters, if renewable contracts included a 20 year warranty on inverters, we would suggest consideration of at least a 20 year EUL. That said, major independent appraisal firms consider 35 years as the EUL in valuation analyses they conduct for investors in solar project financing, assuming a market budget for ongoing operations and maintenance.
5. On page 19, “An individual project may have a SIR lower than 1.05, but the portfolio of bundled projects at each individual school site, submitted in one energy expenditure plan, must achieve a minimum SIR of 1.05.”
Comment: Because District’s pay one energy bill across all sites, prioritizing projects across the full set of school sites is a much more effective way of optimizing cost savings than on an individual site basis. That said, the legislation also places an emphasis on prioritizing expenditures by school sites. A compromise between these somewhat contradictory interests would be to allow Districts to create a portfolio of bundled projects across the District that meets the 1.05 threshold, and require that at least one project included in the portfolio is implemented at the highest energy intensity sites.
6. On page 12, “LEAs too small to justify hiring their own energy managers may consider pooling their energy manager funding within a county and share the services of an energy manager.”
Comment: We suggest that Districts that are too small to justify hiring a full-time Energy Manager also be allowed to contract with an independent contractor to provide Energy Manager services.
7. On page 19 and Exhibit E, SIR calculation uses a utility cost escalator of 2% and an inflation rate of 2.1%
Comment: Given that the CEC’s own projection long-term forecast of electricity prices is 4-5%/year, that nominal tariff increases from 1982-2010 in California were 2.7%/year (based on CEC data), and with the economy coming back, there are expectations of longer term inflation, we suggest that the combined number be increased to at least 4.5%.
8. In Exhibit E, the Savings to Investment Ratio (“SIR”) formula references the use of “Net Present Value” as the numerator in the calculation of energy savings benefits, as opposed to “Present Value”. Further, the discount rate assumption used in the SIR of 5.1% is significantly higher than the typical weighted average cost of capital for most School Districts, based on a long-term view of market conditions and typical LEA capitalizations.
Comment: In fact, the formula describing “NPV” in the guidelines is not technically “Net Present Value” as this term is traditionally used, but rather is “Present Value”. Therefore, the term “Present Value of Gross Project Savings” should be used. More importantly, the discount rate should be closer to 3-4 %.”
9. SB 73 directs the state to track and report job creation and training outcomes resulting from Proposition 39 investments. This will provide critical data to measure progress toward the Proposition’s goal to “create good-paying energy efficiency and clean energy jobs in California” and will help implementers evaluate program outcomes and improve program performance.
Comment: We strongly urge you to ensure accountability and good quality jobs and workforce data by requiring local education agencies (LEAs) to track and report metrics for job quantity and job quality, along with the demographic and geographic distribution of workers. At minimum, LEAs should require contractors to report data based on certified payroll records for each worker employed on a project that receives Proposition 39 funds, including:
 - Job classification by trade, craft, and prevailing wage category;
 - Job classification by journey level or apprentice level;
 - Hourly rate of pay;
 - Number of hours worked per week; and
 - Zip code of worker residence.
This information above should be linked to a description of work performed (scope of work) so that the job outcomes can be evaluated on a project-by-project basis. We recommend using an online labor compliance reporting system to ensure accurate and consistent data, generate comprehensive reports, and facilitate reporting for LEAs, contractors and the State

10. On page 6, “LEAs are encouraged to submit their completed energy expenditure plans as soon as possible to allow timely review and approval by the Energy Commission, so LEAs can meet targeted implementation schedules”.

Comment: Given the interest in timely review and implementation, instead of quarterly distribution of funds by the SSPI, we suggest that funding distribution be initiated at the time of Energy Commission approval. This is particularly critical for those projects that can only be implemented during summer construction seasons.

11. Charter School allocations: The way the allocations are organized appears to make it look like a separate “application and expenditure plan” will be required for each separate Charter School allocation. Given that in most cases the parent District owns and operates Charter facilities and pays the energy bills, this creates unnecessary complexity and could sub optimize choices regarding the most cost-effective approach to generating both jobs and energy savings (i.e., leading to increased use of funds for administrative activities versus project capital).

Comments: Provide Districts the option of negotiating with their Charters to submit one comprehensive 5 year Application and Expenditure Plan.

Questions:

1. Why doesn't SIR consider cost of financing (P. 47)
2. If implementation of a current project includes time before **and** after Guidelines approval, can funds be used to cover activities taking place **after** Guidelines approval? (p.29)
3. Water Efficiency Measures: how to translate in cost/sf and kbTU/sf? (p.39)