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California Energy Commission

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13-CCEJA-01

TN 73911

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October 27, 2014

Mr. Robert Weisenmiller, Ph.D
Chair, California Energy Commission
1516 Ninth Street, MS-33
Sacramento, CA 95814

**RE: Docket #: 13-CCEJA-01
Comments on Revisions to Proposition 39 Guidelines**

Dear Chair Weisenmiller:

On behalf of the Coalition for Adequate School Housing (C.A.S.H.), I appreciate the opportunity to provide remarks on the *Proposition 39 Program Implementation Guidelines*. C.A.S.H. was formed in 1978 to advocate for school districts and their industry partners on issues related to school facilities and construction. Our school district members represent approximately 93 percent of the public school pupils in California.

We appreciate all the work that has been done by the California Energy Commission (CEC) to successfully implement Proposition 39. We offer the following comments and recommendations for your consideration regarding the proposed updates to the *Guidelines*.

Definition of an Eligible Project

C.A.S.H. supports the proposed revision to the definition of an “eligible energy project.” This update will allow energy efficiency measures and/or clean energy installations in or at one or more school sites within a Local Education Agency (LEA), rather than limit projects to one school site. This modification will allow applicants to layer projects LEA-wide, thus providing more flexibility to meet the Savings to Investment Ratio (SIR) requirement. We very much appreciate this change and believe that it will go a long way toward helping districts craft viable projects to generate energy savings that will translate into operational savings.

LEA Coordination and Sole Source Prohibition

The proposed revisions include language intended to clarify the prohibition on the use of a sole source procurement process, as identified in Public Resources Section 26235(c). The statute states that “A community college district or LEA shall not use a sole source process to award funds pursuant to this chapter.” The proposed language would clarify

that this prohibition applies to all Proposition 39 award funding, including award funding for energy planning activities.

School districts often work together or in conjunction with their county office of education (COE) to pursue important initiatives, achieving economies of scale or sharing expertise. We would argue that such collaboration between governmental entities does not constitute a “sole source” process, and as such we would ask you to update the *Guidelines* to specify that an exchange of funds related to such collaboration is not a violation of sole source provisions. Such collaboration traditionally involves an operational agreement and payment or pooling of funds between LEAs; this is a common accounting process, under which dollars remain within the education system. Without such an allowance in the *Guidelines*, it will continue to be difficult for school districts to work in concert with their county offices of education or other districts to pursue comprehensive joint projects or to receive guidance and expertise to assist in planning and developing EEPs. Such collaboration would be especially beneficial to small school districts, who often lack the resources of their larger counterparts. It would also provide a mechanism for COEs to provide direct services to their school districts, payable from Proposition 39 award funding.

Additionally, we are seeking clarification regarding the permissibility of using “piggyback” contracts to procure Proposition 39 services, such as an Energy Manager or energy services company. The piggyback delivery method is described in Public Contract Code Section 20118, and it allows an LEA to obtain goods and services, specifically the acquisition and installation of personal property, from a vendor without advertising for bids by participating in an existing contract originally negotiated by another public agency. The original contracting agency is also permitted to charge the LEA for “incidental services” related to the administration of the transaction. If the original contract was the result of a competitive process, we believe that this should suffice in meeting the sole source statutory requirements. We are seeking your affirmation of this determination and clarification that LEAs may use their Proposition 39 award funds for project components that are obtained through a piggyback mechanism. We would also like confirmation that payment to the original contracting agency for incidental services is an eligible expenditure under Proposition 39.

We recognize that you do not have the authority to modify the sole source provision in the statute, however we believe that you may have some flexibility to address these issues in the program *Guidelines*. Many districts have been slow to move through the planning process, and such a mechanism could help facilitate additional support and guidance.

Public Works Project Award Notification and Payroll Reporting

The Department of Industrial Relations (DIR) is implementing a new prevailing wage monitoring and contractor registration program which will be fully in effect by April 2015. The requirements extend to all public works projects over \$1,000, including maintenance projects, and this will have a significant administrative impact on school districts. DIR has indicated that Proposition 39 projects are also subject to these requirements, and the proposed *Guidelines* are consistent with that determination.

The *Guidelines* provide updated information and clarification regarding the new DIR program and related public works project award notification and payroll reporting, requiring bid and contract documents to provide notice of these requirements.

The new program will increase school district administrative costs, primarily through the processing and filing of additional paperwork and monitoring contractor compliance with the requirements. We believe that such costs associated with Proposition 39 projects should be eligible expenditures payable by Proposition 39 funding awards. We would ask you to update the *Guidelines* to reflect this.

Proposition 39 provides schools with a unique opportunity to maximize energy savings and budget benefits while creating jobs and stimulating the economy. We appreciate the work you have done to implement the program, and we hope that you will take these remarks into consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas G. Duffy". The signature is fluid and cursive, with the first name "Thomas" being the most prominent.

Thomas G. Duffy, Ed.D

cc: Commissioners, California Energy Commission