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California Energy Commission

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13-CEJA-01

TN 74023

NOV 19 2014

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& HOLMES**
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November 19, 2014

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

Dear Commissioner McAllister:

On behalf of California's Coalition for Adequate School Housing (C.A.S.H.), an organization made up of schools, attorneys, architects and school construction related firms, I am writing to share our comments regarding the California Energy Commission's (CEC) Draft December 2014 Proposition 39: California Clean Energy Jobs Act - 2015 Program Implementation Guidelines.

Overall, public schools statewide have found the flexibility in the energy project funding program to be of assistance in planning and managing projects. As a school organization C.A.S.H. appreciates that the Energy Commission has listened to Local Education Agencies (LEA) concerns, making adjustments where needed and warranted over the past year, as individual schools have moved through the approval process.

C.A.S.H. has the following concerns regarding the proposed language.

Proposed Language in the "Contracts" Section of the Guidelines

C.A.S.H. is concerned about the proposed language in the "Contracts" section (p. 36), which adds language from the Public Contract Code to the Guidelines:

"As stated above in PRC 26235(c), "A community college district or LEA shall not use a sole source process to award funds pursuant to this chapter." This clearly restates the statutory prohibition on sole source contracts contained in Senate Bill 39. The prohibition applies to all Proposition 39 program award funding, including award funding for energy planning activities. C.A.S.H.'s strong concern, however, is because of contradictory language proposed to be added as "*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*)

The language states that Proposition 39 projects estimated to cost more than \$15,000 are required to be competitively bid under the Public Contract Code. The Statute is not accurate in that other alternatives are acceptable under law. Competitive bidding (low bid) is different from "non-sole source;" we are concerned that the proposed language could be interpreted that *all* projects over \$15,000 must be competitively bid.

We would strongly recommend that the last sentence “*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.*”- be removed from the Guidelines.

Change of Project Cost Definition to not include Design:

“Design” was removed from the definition of Project Cost for the SIR calculation; Construction costs only are considered in the equation. Please clarify whether this means that only the construction costs may be included in the funding request for each project as well.

Design costs (and other project “soft costs” such as inspection services, testing, construction management, etc.) are already not allowable Planning Funds Expenditures.

Therefore, it appears that these costs cannot be funded by Proposition 39 and LEAs must provide other funds to cover these costs on projects. Is this correct? If so, this may be problematic for some LEA’s, and especially small LEA’s, with limited resources or no available facility funding.

In addition to these concerns regarding the proposed Draft language, C.A.S.H. respectfully requests that the Commission consider the following issues that remain of some concern to schools with the current Proposition 39 Program:

SIR

- Some school districts and county offices of education are in low energy cost areas. They have a greater problem meeting SIR than LEAs in high energy cost areas. C.A.S.H. recommends that CEC allow LEA’s use either their energy costs or the statewide average per unit cost for electricity or natural gas to calculate SIR.

Credit for Recent Efficiency Installations

- Many schools have already been proactive on energy efficiency and have installed new lighting and sensors over the past few years. We request some consideration in the SIR target for energy installations and savings that have occurred within the past three years prior to Guideline Approval.
- In some cases LEAs have completed extensive energy efficiency and renewable energy projects to the degree that they do not have any upgrades left to complete that would meet the SIR requirements. We suggest that there be a process identified for allowing LEAs in this situation to fund projects of a lesser SIR than 1.05.

Solar

- C.A.S.H. supports suggestions to change the way the SIR is calculated for Power Purchase Agreements (PPAs) to allow these projects to better go forward under the Proposition 39 Program.
- C.A.S.H. supports revisions to the solar calculator that better match industry standards for such variables as solar panel life span, inverter life span and solar panel degradation.

Proposition Funding Relationships between LEAs

- Clarify how LEAs may show that funding has been pooled for the purposes of the Program, for example an energy manager or other planning fund uses. Such could be documented by action of the governing board committing funds from different sources for various projects. Existing relationships between LEAs. How might Charter Schools document compensation to school districts, or vice versa, with Prop 39 funding for energy assistance to meet program requirements?
- Please clarify whether sole source language applies to work provided between or among LEAs such as COEs, Districts and charters.
- There are some charter schools that do not have school facilities, but operate online. How are these funds to be allocated? Will those funds revert back into the fund if they are not accessed – or can that funding be assigned by the charter school to the chartering LEA?

Correlating with Other Energy Programs

- Schools may access other energy programs and must comply with other existing regulations. It would be useful to have guidance on how schools may integrate the changes to the state's Green Codes and Title 24 requirements for schools with Proposition 39 projects.
- Due to the recent 2013 California Energy Code incentive, programs across the state are in the process of being re-calculated to align with the new code requirements. In some cases these changes in incentive calculations may have a significant impact on SIR calculations. However, the updated incentive calculations are not expected to be available until early in 2015. What will be the requirements for LEAs to update incentive calculations in their SIR once the programs are updated?

We appreciate the ability to share our concerns with you. Please do not hesitate to contact me (916.441.3300 or dwalrath@m-w-h.com) with any questions regarding the information contained in this letter.

Sincerely,



David Walrath
C.A.S.H. Legislative Advocate

cc: Robert B. Weisenmiller, Ph.D., Commissioner
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