



Stakeholder Feedback Request - Minimum Equity Standard Waiver Request and Evaluation (Adjustable Block Program/Illinois Shines and IPA REC Procurements)

February 8, 2023

The Illinois Power Agency (“IPA”) seeks public comment on the following proposal for the process to request a waiver for the Minimum Equity Standard (“MES”), a requirement for both Adjustable Block Program/Illinois Shines participants and participants in IPA competitive REC procurements. This proposal also clarifies the role of EECs in meeting the MES and details the proposed criteria for evaluating such requests and basis for granting or denying them.

A draft MES waiver request, scoring criteria, and associated questions are outlined below. Stakeholders may comment on as many or as few of the items outlined within this document as they would like. Stakeholders should not feel limited by the questions offered below and may provide comments on these proposals beyond the scope of these specific questions as it relates to the MES waiver.

Please provide comments via email attachment to IPA.Solar@illinois.gov with the subject “[Responder’s Name] – Stakeholder Feedback on MES Waiver” by February 22, 2023.

Responses will be published on both the IPA and Adjustable Block Program websites. Should a commenter seek to designate any portion of its response as confidential and proprietary, that commenter should provide both public and redacted versions of its comments. Independent of that designation, if the Agency or the Program Administrator determines that a response contains confidential information that should not be disclosed, the IPA reserves the right to provide its own redactions.

Background on MES Requirements & Need for Feedback Request

Section 1-75(c-10) of the Illinois Power Agency Act (“IPA Act”) establishes the Equity Accountability System designed to advance “priority access to the clean energy economy for businesses and workers from communities that have been excluded from economic opportunities in the energy sector, have been subject to disproportionate levels of pollution, and have disproportionately experienced negative public health outcomes” within the renewable energy programs and procurements established in Section 1-75(c) of the IPA Act. One of the mechanisms that Section 1-75(c-10) creates for advancing such priority access is the Minimum Equity Standard (“MES”), which requires “at least 10% of the project workforce for each entity participating in a procurement program outlined in this subsection (c-10) must be done by [sic] equity eligible persons or equity eligible contractors.”¹

¹ 20 ILCS 3855/1-75(c-10)(1); see 20 ILCS 2855/1-10 (“Equity eligible persons” or “eligible persons” means persons who would most benefit from equitable investments by the State designed to combat discrimination,

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Furthermore, it directs the “Agency [to] increase the minimum percentage each delivery year thereafter by increments that ensure a statewide average of 30% of the project workforce for each entity participating in a procurement program is done by [sic] equity eligible persons or equity eligible contractors by 2030.”²

In addition to providing detailed requirements for entities participating in the Adjustable Block Program and competitive REC procurements regarding the planning for and reporting of compliance with the Minimum Equity Standard, Section 1-75(c-10)(4)(e) also directs the Agency to create an “application for waiver of the minimum equity standards of this subsection, which the Agency shall have the discretion to grant in rare circumstances.”

In the 2022 Long-Term Plan, the Agency committed to conduct this stakeholder feedback process to develop the waiver application and a quantitative scoring system through which the Agency will evaluate each waiver request.³

The 2022 Long-Term Plan provided that the quantitative scoring system would include “the [waiver] criteria enumerated [in the Plan], with each criterion earning a discrete number of points.” Those criteria are meant to demonstrate “evidence of significant due diligence” in attempting to hire equity eligible persons sufficient to meet the MES, and include:

- i. A brief narrative describing the entity’s effort to recruit Equity Eligible Persons prior to the start of project development. Such an effort should include utilization of the Energy Equity Workforce Database developed by the Agency as well as the following:
 - a. Working consistently and assertively with approved State job training and workforce development programs⁴ to recruit a diverse workforce and provide evidence of outreach
 - b. Maintaining applications of individuals not selected for an opening for contact regarding future project openings

specifically: (1) persons who graduate from or are current or former participants in the Clean Jobs Workforce Network Program, the Clean Energy Contractor Incubator Program, the Illinois Climate Works Preapprenticeship Program, Returning Residents Clean Jobs Training Program, or the Clean Energy Primes Contractor Accelerator Program, and the solar training pipeline and multi-cultural jobs program created in paragraphs (a)(1) and (a)(3) of Section 16-108.21 of the Public Utilities Act; (2) persons who are graduates of or currently enrolled in the foster care system; (3) persons who were formerly incarcerated; (4) persons whose primary residence is in an equity investment eligible community. “Equity eligible contractor” means a business that is majority-owned by eligible persons, or a nonprofit or cooperative that is majority-governed by eligible persons, or is a natural person that is an eligible person offering personal services as an independent contractor).

² 20 ILCS 3855/1-75(c-10)(1).

³ Illinois Power Agency, 2022 Long-Term Renewable Resources Procurement Plan at 334.

⁴ While these efforts should focus on the workforce training programs that would qualify an individual as an equity eligible person (see footnote 1), the Agency acknowledges that most of those programs are not available yet. Evidence of outreach to workforce training programs beyond those which qualify an individual as an EEP will also be accepted for satisfaction of this criterion, provided the entity makes clear in that outreach to potential employees that a candidate would need to qualify as an EEP through one of the other criteria (e.g., graduate of the foster care system).

- c. Participating in State approved workforce training facilities for job fairs and related local community events to recruit a diverse workforce
- ii. Efforts to hire or contract with Equity Eligible Contractors should be demonstrated through documentation from affiliated community-based organizations and/or training program facilities, State workforce hubs, union hall registers, professional development associations, etc. This should include the date of contact and title of the individual contacted.
- iii. An attestation providing details of open positions or request for bids where the entity has not received applications or proposals from Equity Eligible Persons or Equity Eligible Contractors.
- iv. Demonstrable utilization of the Energy Workforce Equity Database.
- v. Efforts to proactively establish contracting relationships with Equity Eligible Contractors.
- vi. Advertising or formal solicitation using various platforms of targeted social media for no less than thirty (30) business days. Engagement in direct and extensive outreach to associations or other relevant organizations to notify them of the project opportunity.
- vii. Evidence that the entity posted all project solicitations on appropriate State agency websites, include direct targeted e-mail alerts to appropriate respondents who have registered with State agencies to learn of opportunities.⁵

The 2022 Long-Term Plan states that use of the Energy Workforce Equity Portal alone will not qualify as sufficient due diligence to comply with the MES, and that these criteria may be adjusted based on stakeholder feedback. The Agency emphasizes that the Energy Workforce Equity Portal should be *one among many* tools that Approved Vendors and Designees use to comply with the MES. The Agency is actively working with state and community partners to drive utilization of the portal by workers that may qualify as Equity Eligible Persons. Additionally, the Agency notes that qualification based on primary residency in an Equity Investment Eligible Community alone captures almost 25% of the state's population. Given that there are three paths to qualifying as an Equity Eligible Person outside of participation in a qualifying workforce training program, the Agency still views the MES waiver as a last resort to be granted in "rare circumstances" as set forth in Section 1-75(c-10)(4)(E) of the IPA Act.

Clarification Related to Counting EEPs and EECs toward MES

The IPA Act requires that "at least 10% of the project workforce for each entity participating in a procurement program outlined in this subsection (c-10) must be done by [sic] equity eligible persons or equity eligible contractors." The Act does not detail how an equity eligible contractor might be counted toward meeting the 10% Minimum Equity Standard, and the Agency therefore clarifies these provisions within the context of the 2022 Long-Term Plan.

In the 2022 Long-Term Plan, the Agency explained its approach to determining how to define "project workforce" for the purpose of measuring compliance with the MES:

For the purposes of the Minimum Equity Standards, the IPA will define "project workforce" as the following:

⁵ IPA, 2022 Long-Term Plan at 333.



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Employees, contractors and their employees, and subcontractors and their employees, whose job duties are directly required by or substantially related to the development, construction, and operation of a project that is participating in or intended to participate in the IPA-administered programs and procurements under Section 1-75(c) of the IPA Act. This shall include both project installation workforce and workforce in administrative, sales, marketing, and technical roles where those workers' duties are performed in Illinois."

As explained in the litigation surrounding the approval of the 2022 Long-Term Plan, the Agency understands the primary policy objective of Section 1-75(c-10) to be "advancing equity across Illinois by providing access to the clean energy economy for businesses and workers from communities that have been historically excluded." Accordingly, the Agency developed a Plan under which the scope upon which to apply the Minimum Equity Standard would be employment in Illinois created by the clean energy sector.⁶

Given the central objective of providing equitable access to the economic opportunities created by the Illinois clean energy sector, if the Agency were to permit an Approved Vendor or utility-scale renewable energy developer to comply with the MES through contracting with an EEC that employs sufficient workers to represent at least 10% of the total project workforce, regardless of the composition of those workers employed by the EEC, it would undermine the purpose of Section 1-75(c-10) of the IPA Act. For example, assume an Approved Vendor contracts with an EEC to do most of the installation work on its only project in the Adjustable Block Program for a given Program/delivery year. This project has a total workforce of 100 people, so the MES requires 10 of the workers on this project to be equity eligible persons. If the EEC is majority-owned by one equity eligible person and has a staff of 15 people, none of whom are equity eligible persons, then this project's use of an EEC only provides economic opportunity to a single equity eligible person, the majority-owner, as opposed to the 10 equity eligible persons that the MES would benefit if the 10% minimum applied to the entire project's workforce of 100 people. Allowing the Approved Vendor to rely on its contract with the EEC, which employs 15% of the project workforce, to meet the MES would result in economic benefits for fewer Equity Eligible Persons overall.

The Agency is concerned that an interpretation of Section 1-75(c-10) that accepts contracting with EECs, without regard to the makeup of that EEC's workforce, as compliance with the Minimum Equity Standard would reduce the effectiveness of the MES in advancing economic opportunities for equity eligible persons, and doubts that such an outcome aligns with the state policy objectives of P.A. 102-0662. Thus, the Agency has determined that compliance with the MES must include the employees of *any* subcontractor, including an EEC. To clarify further, the number of EEPs within an EEC will be counted individually towards MES compliance; the mere fact that an entity is an EEC will not alone meet compliance with the MES.

⁶ Illinois Commerce Commission, Docket No. 22-0231, IPA Response, at 124.



Questions Regarding Waiver Structure for Feedback

Timing of Waiver Requests

1. The Agency seeks feedback on whether there should be specific time periods during which AVs and Designees may request a waiver, or whether the Agency should accept waiver requests on a rolling basis. Specifically, the Agency would like insight into the following relevant factors:
 - a. Do developers rely on long-term employees or contracted individuals for single projects?
 - b. When using contracted individuals, how far in advance do project developers or their subcontractors hire the project installers and other employees required for project development? Does that vary across project types, and if so, how?
 - c. If the Agency accepts waiver requests on a rolling basis, how much lead time would developers require for a response on the waiver request in the event that the request is denied and they must still comply with the MES?
 - d. To what extent do developers know how many projects they will be working on in a given program year?
 - e. At what point would a developer know that compliance with the MES is not possible on a particular project?

Project vs. Portfolio Basis for Waivers

Section 1-75(c-10)(4)(e) states that “[MES w]aivers shall be project-specific, unless the Agency deems it necessary to grant a waiver across a portfolio of projects, and in effect for no longer than one year.” Yet Section 1-75(c-10) also requires that participants report on compliance with the MES once per year, and thus necessarily report on the workforce they employed over the course of that entire year.

The Agency understands that some program participants work on many hundreds of small projects annually, while other renewable developers may work on only a handful of larger projects per year. As a result, it would be administratively burdensome for the Agency – and developers – to accept waiver requests only on a per-project basis at the initial launch of the MES. With this in mind, the Agency proposes that on an annual basis within the Adjustable Block Program, AVs and Designees developing Distributed Generation projects may seek portfolio-wide waivers, while entities developing Community Solar projects within the ABP and utility-scale projects selected through the Agency’s competitive REC procurements must submit waiver requests on an annual basis that are project-specific.



Draft Waiver Request Form/Fields for Feedback

Minimum Equity Standard Waiver Request

Program Year Delivery Year 2023-24

Please use this form to request a waiver from the Minimum Equity Standard. All questions below should be answered as fully as possible and all responses should be accurate and truthful.

1. Is this waiver request intended for projects which received a REC contract under the Adjustable Block/Illinois Shines Program, or through an award under one of the Agency's utility-scale competitive REC procurements?
2. What projects does this waiver request encompass?
3. Please provide a brief narrative describing the entity's effort to recruit Equity Eligible Persons prior to the start of project development. Such an effort should include the following:
 - a. Working consistently and assertively with job training and workforce development programs (Up to 4 points)
 - i. Evidence could include correspondence with Department of Commerce and Economic Opportunity to identify EEP-qualifying workforce training programs in target areas; correspondence with trainers notifying them of open positions
 - ii. Outreach to workforce training programs could include contacting programs that would not qualify a person as an equity eligible person, but (1) are located in communities where residents may qualify as an EEP based on residency, (2) are focused on providing job training to formerly incarcerated individuals, or (3) are focused on providing job training to graduates of the foster care system.
 - b. Maintaining applications of individuals not selected for an opening for contact regarding future project openings (Up to 2 points for Adjustable Block Program participants; utility-scale projects will not be scored on this item)⁷
 - i. Demonstration that this criterion has been met is required, and could include, e.g., providing documentation of "waitlisted/reserved" resumes
 - c. Participating in job fairs (in-person or virtual) and related local community events to recruit an equitable workforce (Up to 5 points)
 - i. Demonstration of participation must be submitted with the waiver request. Documentation supporting this criterion could include emails from entities/staff organizing job fairs confirming AV's booth/slot at job fair or event, printed materials handed out at such events, picture of sign-in list for those that visited the AV's booth or attended event, etc.
 - ii. Demonstration of attempted participation will be scored as well. Documentation supporting a partial score under this criterion could include correspondence with local entities asking about potential job fairs or events, even if the response was that there are none.

⁷ The Agency agreed to exempt utility-scale renewable energy projects from this criterion during litigation over the 2022 Long-Term Plan.



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- d. Direct outreach to EECs listed on the ABP website (where applicable – if AV did not work with any subcontractors, please assert that and this point category will not be included in waiver request evaluation) (Up to 4 points)
 - e. For all of the above, please include the dates associated with the event, meeting, or contact, and the names and titles of the staff you worked with, where available.
4. Did the entity advertise any available positions on the Energy Workforce Equity Portal? Or review the list of EEPs looking for opportunities posted on the Energy Equity Portal and contact available EEPs? If no to either, why not? If yes to either or one of the previous questions, please provide documentation/explanation. (Up to 6 points)
 - a. The IPA will verify whether this criterion was met using records within the Energy Workforce Equity Portal.
5. Engagement in direct and extensive outreach to appropriately targeted associations or other relevant organizations to notify them of the project opportunity.
 - a. Efforts to contact unions (up to 2 points)
 - b. Efforts to contact community colleges (up to 2 points)
 - c. Efforts to contact community-based organizations (up to 2 points)
6. Provide documentation of the platforms used to announce or publicize available positions? E.g., employment websites, alumni listservs, union halls, social media, etc. (Up to 4 points)
7. What state-sponsored platforms were utilized to announce or publicize available positions to Equity Eligible Persons? E.g., WorkNet (www.illinoisworknet.com), Illinois Job Link (illinoisjoblink.illinois.gov) (Up to 4 points)



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Questions Regarding Scoring of Waiver

1. The Agency seeks feedback on how to score each element and what the thresholds for certain scores should be.
2. The Agency is interested in feedback on the minimum point threshold in order to grant a waiver request.
3. Are there any scoring criteria that if not demonstrated by the entity requesting the waiver that should disqualify that entity from being granted a waiver?
4. For the subtraction of points where similarly situated Approved Vendors achieve different results in regards to the number of EEPs they are able to hire, what should the Agency consider as “similarly situated” (geographic location, company size, resources available to entity)?
5. The Agency appreciates any other feedback regarding the proposed scores within.

Draft Scoring Table for Feedback

Criterion	Total Points Possible	Points Awarded
Collaboration with qualifying workforce training programs	4	-
Maintaining a list of EEPs for future openings (ABP only)	2	-
Participation in job fairs	5	-
Evidence of outreach to EECs listed on ABP site	4	-
Posting positions or contract opportunities on and contacting EEPs via the Energy Workforce Equity Portal	6	-
Efforts to contact unions	2	-
Efforts to contact community colleges	2	-
Efforts to contact community-based organizations	2	-
Posting of positions or contract opportunities on different platforms	4	-
Utilization of WorkNet or other state-run employment site	4	-
Number of similarly situated AVs that are able to meet MES	-5	-
TOTAL	35	-