

**CALIFORNIA ENERGY COMMISSION**

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March 31, 2010

Senator Alex Padilla, Chairman  
Senate Energy, Utilities and Communications Committee  
State Capitol, Room  
Sacramento, CA 95814

Dear Senator Padilla:

This letter responds to your March 19, 2010 request for further information regarding the California Energy Commission's administration of American Reinvestment and Recovery Act (ARRA) dollars; specifically the Energy Efficiency Retrofit Program (often referred to as "SEP \$110") competitive solicitation.

California state and local government entities received over \$800 million in total energy-related ARRA funds, of which the Energy Commission was responsible for administering \$314.5 million.<sup>1</sup> As described in this letter, the California Energy Commission went through a rigorous public process to develop guidelines and scoring criteria for every dollar of ARRA funds we received. Numerous workshops were held throughout the state where evaluation criteria were specified in detail and vetted publicly. Award winners were selected based on a number of factors—well known ahead of time—including jobs created, energy savings, greenhouse gas reductions and value to California per dollar spent. As an additional evaluation of the integrity of the process used, the California Recovery Task Force has requested the Department of General Services to conduct a comprehensive review of the SEP \$110 solicitation.

We welcome the opportunity to discuss this process with you and the committee and the responses to questions posed in your letter (Attachment 1) are as follows:

**1. Please provide a summary of all applications for the "State Energy ARRA Program" including criteria by which they were rated and a copy of each applicant's score card. Please include the number of jobs to be created by job type/classification for each applicant along with wage rates, benefits, and job training for each.**

Although summaries of individual SEP 110 applications are not available, we can provide copies of the full applications in CD format. The application scoring criteria are included in Attachment 2(a). The ranking of all 104 applications is in the NOPA (Notice of Proposed Award) and also available on the Energy Commission's website

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<sup>1</sup> The energy ARRA funds include \$302 million disbursed on a pro rata basis to large counties and cities by U.S. Department of Energy as well as \$185.8 million for the weatherization programs administered by the Department of Community Services and Development.

[\[http://energy.ca.gov/contracts/index.html#nopa\]](http://energy.ca.gov/contracts/index.html#nopa), and attached for your convenience (Attachment 2(b)). The scorecards are also attached (Attachment 2(c)).

**2. Please provide a list of CEC staff that was involved with crafting the SEP ARRA Program guidelines.**

The SEP 110 competitive solicitation guidelines, which were adopted unanimously by the Energy Commission, are the product of an extensive, open, transparent and inclusive public process. The evaluation criteria were specified in detail and vetted at several well-attended public workshops, including workshops held in Los Angeles, San Diego, Stockton and San Francisco. Once the solicitation was released, the Energy Commission held a Pre-Bid conference for prospective bidders—attended by approximately 500 people. Several hours were devoted to providing detailed answers to each question posed by the attendees. In addition, the Energy Commission accepted written questions following the conference. Questions and answers from both the conference and written submittals were compiled and posted on the Energy Commission website. This public input was used in developing the final solicitation. A list of Energy Commission staff involved in preparing the guidelines are attached (Attachment 3).

**3. Please provide a list of CEC staff involved with scoring and ranking the applications.**

All proposals received by the Energy Commission by the mandatory due date and time (5:00 PM, December 21, 2009) were opened and evaluated in two stages. In the first stage, the Energy Commission's Contracts Office determined whether the proposals complied with the RFP formatting and administrative requirements, including requirements for the use of Disabled Veteran Business Enterprises (DVBE). Proposals that met stage one requirements were then submitted to the Commission's Technical Evaluation Committee to complete the second stage of the evaluation process.

In stage two, the Evaluation Committee screened and scored the proposals based on the evaluation criteria specified in the applicable RFP. During this stage of the evaluation, the Evaluation Committee could ask clarifying questions to the proposal applicants. Proposals that did not receive a score of 70% of the total possible points (280 points of the 400 points possible) were eliminated from further consideration. Proposals that scored 280 points or more were then assigned any applicable non-technical preference points. Preference points were available for Small/Micro Small Businesses, Non-Small Businesses and DVBE, and in accordance with the Target Area Contract Preference Act, the Enterprise Zone Act, and the Local Agency Military Base Recovery Act.

After the preference points were assigned, the proposals were ranked within each of the three solicitations based on their stage two scores. The Energy Commission subsequently issued a Notice of Proposed Awards (NOPA) for each of the solicitations, which were posted at the Energy Commission's headquarters in Sacramento and on the Energy Commission's Web Site.

Attachment 4 includes the list of Energy Commission staff involved with scoring and ranking applications.

**4. As was raised during the hearing, are you or any of the CEC Commissioners concerned about the roles and relationships between CEC staff and grant applicants? Do you believe that these roles or relationships provide any applicant with an unfair advantage in the process? Were any Portland Energy Conservation Inc. officials involved in the development of any aspect of the SEP ARRA program guidelines?**

The Commissioners and I do not believe that any applicant had an unfair advantage in this competitive solicitation process. Our conflict of interest attorney has reviewed the potential for conflict of interest you identified for particular Commission staff members and has concluded there was and is no conflict (see Attachment 5(a)). As a further step to address your concerns, the California Recovery Task Force has requested the Department of General Services to conduct a comprehensive review of the solicitation in question. (Attachment 5(b))

**5. How does CEC justify the salary schedule of Portland Energy Conservation Inc. (PECI) staff that will work in Portland when ARRA funds awarded to California are intended to address California unemployment?**

The Energy Commission selected winners based on jobs created, energy savings, greenhouse gas reductions and value to California per dollar spent in line with the adopted, well publicized and vetted guidelines and scoring criteria. PECI will deliver a large number of jobs in all parts of the state, with emphasis on Southern California and the Central Valley. PECI's proposal is innovative in how it uses California's underemployed youth for the screening audits through a number of local conservation corps (Los Angeles, Pomona, Inland Empire and San Diego Locals Corps in Southern California and the Fresno Local Corps in the San Joaquin Valley) and training and developing the technicians for the more advanced work by collaborating with California's community colleges in local areas. The program will directly create at least 117 new jobs in California, provide job skills and training for 400 people, initially create an estimated \$13.9 million of energy savings for electric rate payers and result in more than \$41 million in sustainable energy savings over a five-year period.

You will note in the attached letter (Attachment 6) from the U.S. Department of Energy that the intent of the Recovery Act is to encourage states to utilize best available resources regardless of where a company is located. Finally, while a very small percentage of the PECI proposal funding goes to Oregon administrative staff, the Energy Commission is aware of several other ARRA projects from other states that benefit California workers. For example, \$4.5 million of a \$6.7 million contract in Kokomo Indiana was sub-contracted to a California company based in El Segundo, California.

**6. As quoted in the Los Angeles Times, a CEC spokesperson stated that the hourly pay rates of the project managers include fringe benefits and overhead yet the Portland Energy**

**Conservation. Inc. proposal clearly states that the rates are unloaded (that is, before fringe benefits or any other overhead). Are they loaded or unloaded?**

The pay rates in the NOPA listed on the Energy Commission website were loaded. The rates in the PECl application (loaded and unloaded) are comparable to those of the other applicants.

**7. How is it that the PECl proposal includes CCC workers making minimum wage when projects funded by SEP ARRA must comply with the Davis-Bacon Act?**

The Davis-Bacon Act (DBA) requires payment of locally prevailing wages (including fringe benefits) to laborers and mechanics on federal government contracts in excess of \$2,000 for construction, alteration, or repair (including painting and decorating) of public buildings or public works who are employed directly on the site of the work. Congress has added DBA prevailing wage provisions to approximately 60 laws—known as Davis-Bacon and Related Acts (DBRA)—under which federal agencies assist construction projects through grants, loans, loan guarantees, and insurance. Section 1606 of ARRA states that the DBA prevailing wage requirement broadly applies to construction projects funded with ARRA appropriations. More specifically, Section 1606 provides that all “laborers and mechanics employed ... on projects funded directly by or assisted in whole or in part” with ARRA funds are subject to the requirements of the DBA.

In the case of the PECl proposal, the Corpsmembers from California Conservation Corps (CCC) are expected to provide energy assessments to inform prospective program participants of potential energy savings. In addition, the Corpsmembers are expected to perform post-audit energy assessments for program participants who have installed energy saving devices. This energy assessment work, in and of itself, would not be subject to the DBA prevailing wage requirements.

The attached memorandum from the CCC (Attachment 7(b)) outlines the training and services to be performed by the CCC under the PECl proposal and concludes that these services are not subject to DBA prevailing wage requirements.

**8. Why did CEC exclude geographic distribution criteria or regional unemployment levels in scoring criteria to ensure equitable distribution of SEP ARRA funds throughout the state?**

More than \$350 million in energy efficiency and conservation block grant funds have been awarded to California on a population basis.<sup>2</sup> The SEP 110 program was a competitive solicitation designed to attract high quality and innovative proposals to create sustainable programs with long-term benefits in terms of energy savings and job creation. Also note that, in addition to the \$5 million contract awarded to the City of Los Angeles, another \$57.7 million

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<sup>2</sup> The DOE dispersed \$302 million to large cities and counties in California, with distribution determined solely on population. The Energy Commission is dispersing approximately \$33.5 million to smaller cities and counties, with awards distributed on the basis of population with an unemployment adder.

of the SEP 110 is dedicated to *statewide and rural programs* which will include a number of projects to be implemented in Southern California.

**9. What options does the CEC have to modify the SEP ARRA awards to reflect and address unemployment throughout the state?**

The SEP 110 program criteria gave consideration to applications from areas of the state with high unemployment rates. That said, any modification to the SEP 110 program would open up the solicitation to protest and effectively force the Energy Commission to cancel the solicitation and start over. This would require modifying the program guidelines and developing a new solicitation, which would subsequently delay the distribution of ARRA funds by 5 to 6 months. This delay would force the state to miss the ARRA implementation deadlines, which would, in turn, put the state in jeopardy of losing the ARRA funds altogether. In addition, the administrative costs to rebid the solicitations and make new contract awards, if supported with federal funds, could be viewed by the Department of Energy as unreasonable costs, since federal funds were already used to cover the administrative costs associated with the original SEP 110 program awards. For these reasons, the Energy Commission is not prepared to modify the proposed SEP 110 awards absent a finding by the independent review currently being conducted by the Department of General Services that the SEP 110 process violated state law.

Implementing the ARRA stimulus funding has been both a tremendous opportunity and an enormous challenge for the Commission. With the SEP 110 awards, the Energy Commission will have encumbered 90% of the funds for which it was responsible. While there is much left to be done, we are very excited by California's ARRA-funded energy projects, and we strongly feel that these projects will play a critical role in helping California to achieve the ambitious environmental and energy policies that the Legislature and Governor have adopted. In conclusion, the Energy Commission looks forward to working with you, your legislative colleagues, and the Administration to maximize the benefits of the Recovery Act to the Golden State.

Sincerely,

KAREN DOUGLAS  
Chairman