

Clean Energy Alliance
JOINT POWERS AUTHORITY

Board Memorandum

Aug. 18, 2020

To: Honorable Chair and Board Members of the Clean Energy Alliance
Re: **Additional Materials Related to Staff Report Item No. 5 – Inclusive Sustainable Workforce Policy**

This Additional Materials memorandum provides Attachment B regarding the Letter from Altshuler Berzon dated July 21, 2020 on behalf of International Brotherhood of Electrical Workers Local 569 regarding suggested edits to the proposed policy for the Board's consideration.

Attachment: B. Letter from Altshuler Berzon dated July 21, 2020 on behalf of International Brotherhood of Electrical Workers Local 569

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July 21, 2020

By electronic mail

Board of Directors
Clean Energy Alliance

Re: Proposed Inclusive and Sustainable Workforce Policy

Dear Board Members:

I write on behalf of International Brotherhood of Electrical Workers Local 569 (“IBEW Local 569”) to submit a proposed Inclusive and Sustainable Workforce Policy that differs in some respects from the draft policy prepared by staff for your July 23, 2020 meeting. A redline showing IBEW Local 569’s proposed changes to the staff draft is included as Attachment A to this letter and a clean version is included as Attachment B.

The proposed changes to the staff draft are necessary for the Clean Energy Alliance to have a meaningful workforce policy that actually will benefit the local community, rather than a watered-down policy that, as a practical matter, will not accomplish anything. The main changes from the staff draft are as follows:

1. The proposed policy strengthens language in the staff draft that would have provided that CEA will merely “strive” to achieve or “encourage” certain goals. This language watered down the prior proposals from IBEW Local 569 and other stakeholders.
2. The proposed policy provides that CEA-owned generation projects “shall make use of project labor agreements that include the taxpayer protection provisions of Public Contract Code Section 2500 to ensure fair and open competition and that include provisions to create local jobs for journey-level workers and apprentices.” PLAs that include local hire provisions are the best practical means for CEA to achieve its goal of developing the local workforce.

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I understand that an argument has been made that CEA *cannot* use PLAs on CEA-owned energy generation projects because the Joint Powers Agreement includes the following recital: “By establishing the Authority, the Parties seek to: ... Pursue the procurement of local generation of renewable power developed by or within member jurisdictions with an emphasis on local jobs, where appropriate, without limiting fair and open competition for projects or programs implemented by the Authority....” That argument is not correct.

As an initial matter, the quoted provision is just a recital of an aspiration, not a limit on the Board’s authority, and the recital also does not even refer to PLAs, much less provide definitions of the vague terms in the recital.

Second, the California Legislature has specifically provided by statute that “[t]he members of the governing board of a local public entity may choose by majority vote whether to use, enter into, or require contractors to enter into a project labor agreement that includes all the taxpayer protection provisions of [Public Contract Code] Section 2500 for a specific project or projects awarded by that entity.” Thus, the Board has legislatively conferred authority to use PLAs. The Board can direct staff to negotiate PLAs for CEA-owned projects that meet the CEA’s goals, which would then come back to the CEA for approval.

Third, PLAs that include the “taxpayer protection provisions of Public Contract Code Section 2500” are entirely consistent with “fair and open competition.” Section 2500 requires that the PLA must “permit[] all qualified contractors and subcontractors to bid for and be awarded work on the project without regard to whether they are otherwise parties to collective bargaining agreements” and that the PLA must “prohibit[] discrimination based on ... membership in a labor organization in hiring and dispatching workers for the project.” Public Contract Code §2500(a)(1),(2). The California Supreme Court has held that such PLAs are “consistent with the general principles underlining the competitive bidding law,” which protects fair and open competition. *See Associated Builders & Contractors, Inc. v. San Francisco Airports Com.*, 21 Cal. 4th 352, 365-74 (1999).

3. The proposed policy would require (not merely “encourage”) contractors on CEA feed-in tariff and energy efficiency projects to pay prevailing wages and use a skilled and trained workforce. Maintaining high labor standards for projects is necessary to support the creation and maintenance of a skilled local workforce that can complete projects in a streamlined manner with the highest quality workmanship.

IBEW Local 569 respectfully urges that the Board adopt the proposed Inclusive and Sustainable Workforce Policy included as Attachment B. Thank you for your consideration of this proposal.

Sincerely,

/s/Scott A. Kronland
Scott A. Kronland

Attachments
cc: IBEW Local 569

Attachment A: Redline Version

INCLUSIVE & SUSTAINABLE WORKFORCE POLICY

The Clean Energy Alliance (CEA) Board of Directors desires to establish a policy that supports local jobs, sustainable and inclusive workforce opportunities, local economic sustainability, and diversity through contracting for power sources, procuring goods and services, and implementing hiring initiatives where appropriate, without limiting fair and open competition for projects or programs implemented by CEA.

CEA Staff

CEA relies on its employees to provide clean, cost-effective, alternative energy to its customers. These customers live in diverse communities and an inclusive workforce of staff who reflect and are invested in these communities allows CEA to serve them more effectively. An inclusive staff also provides good jobs for people from diverse communities.

To help maintain and strengthen CEA's inclusive staff, CEA will ~~strive to~~:

1. Engage in broad outreach efforts in diverse communities, including disadvantaged and low-income communities, to ensure a diverse pool of candidates for open positions;
2. Provide fair compensation that aligns with regional market indicators for compensation levels for each position;
3. Be transparent about these practices and lessons learned; and
4. Provide contact information for staff who can answer questions about this policy.

Supply Chain

CEA also ~~commits to strives for~~ inclusion in its supply chain. Where and from whom CEA purchases good and services have important consequences for businesses, customers, and their communities. Where appropriate, an inclusive supply chain is an important driver for successful delivery of CEA's services to its customers, and of fair and equitable economic development generally.

Where appropriate, and without limiting fair and open competition, to support an inclusive supply chain, CEA will ~~strive to~~:

1. Use local businesses and provide fair compensation in the purchase of services and supplies;
2. Proactively seek services from local businesses that are taking steps to protect the environment;
3. Engage in efforts to reach diverse communities to ensure an inclusive pool of potential suppliers;
4. Collect information from suppliers and contractors on the inclusivity of their workforce;

5. Include questions about supplier inclusivity in requests for proposals (RFPs) for services;
6. Encourage reporting from developers and vendors on inclusivity in business ownership and staff;
7. Be transparent about these practices and lessons learned; and
8. Provide contact information for staff who can answer questions about this policy.

Inclusive Business Practices

To fulfill its goals of providing a range of energy product and programs, available to all CEA communities and customers, that best serve their needs and their local communities, and support local sustainability efforts, CEA will ~~strive to~~:

1. Provide information in the multiple languages commonly spoken in CEA's service area (including mailers, tabling materials, customer service, call center, workshops and outreach events, advertisements, and other means of customer engagement);
2. Conduct marketing and outreach in diverse communities to increase awareness of CEA's services and programs;
3. Attend multi-cultural community events with multi-lingual materials and speakers;
4. Share information about activities and initiatives that promote inclusion, access, and diverse engagement in the community.

Non-Discrimination Pledge

CEA will not discriminate, and will require in its contracts with suppliers that they will not discriminate, on the basis of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.

Sustainable Workforce

Support of local businesses, fair compensation, apprenticeship and pre-apprenticeship programs that create employment opportunities, without limiting fair and open competition, are important components of building and sustaining healthy and sustainable communities. It is in the interest of CEA to provide fair compensation and sustainable workforce opportunities, within a framework of fair and open competition and the promotion of renewable energy, energy efficiency and greenhouse gas reduction.

CEA recognizes the importance of locally-generated renewable energy (local is defined as within the San Diego County region) in assuring that California is provided with (1) adequate supplies of renewable energy for economic growth, (2) sustained local job opportunities and

job creation, and (3) effective means to reduce the impacts of greenhouse gas emissions. CEA also recognizes the opportunities that energy efficiency programs provide for local workforce training and employment.

CEA encourages fair compensation in direct hiring, renewable development projects, energy efficiency programs and in procurement of CEA services and supplies. CEA also encourages use of State of California approved apprenticeship and pre-apprenticeship training programs in construction craft occupations to foster long-term, fairly compensated employment opportunities for program graduates.

Where appropriate, without limiting fair and open competition, CEA will ~~pursue-strive to accomplish~~ the following objectives:

1. Support for and direct use of local businesses;
2. Support for and direct use of green and sustainable businesses;
3. Encourage the use of skilled and trained workers who receive fair compensation;
4. Encourage the use of State of California approved apprenticeship programs, and preapprenticeship programs within CEA's service territory.

CEA Power Purchase Agreements with Third Parties

CEA will ~~encourage-invite~~ the submission of information from respondents to any bidding and/or RFP/RFQ process regarding planned efforts by project developers and their contractors to achieve the following goals:

- Employ workers and use businesses from the San Diego county area.
- Employ properly licensed (~~e.g., A, B, C10, C7, C46~~) contractors and California Certified electricians.
- Utilize local apprentices, particularly graduates of San Diego County pre-apprenticeship programs.
- Pay workers prevailing wage for each craft, classification and type of work performed.
- ~~Display a poster at jobsites informing workers of prevailing wage requirements.~~
- Provide workers compensation coverage to on-site workers.
- Support and use State of California approved apprenticeship programs.

Relevant information submitted by proposers will be used to evaluate potential impact on local jobs and workforce of the planned project.

CEA Owned Generation Projects

CEA owned generation projects shall make use of project labor agreements that include the taxpayer protection provisions of Public Contract Code Section 2500 to ensure fair and open competition and that include provisions to create local jobs for journey-level workers and apprentices.~~Each construction contractor or subcontractor performing work on any CEA-owned project is encouraged to use local labor and apprenticeship programs and follow fair compensation practices including and to ensure~~ proper assignment of work to crafts that traditionally perform the work. Contractors and subcontractors shall be required to pay at least the prevailing rate of wages, as defined in Article 2 (commencing with Section 1770) of Chapter 1 of Part 7 of Division 2 of the California Labor Code and shall be required to use ~~encouraged to use~~ a skilled and trained workforce, as defined in Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the California Public Contract Code.

CEA Feed-In Tariff Projects

CEA will use best efforts to ensure that encourage construction contractors or subcontractors performing work on any CEA Feed-In Tariff project utilize local businesses and local apprenticeship programs, and fair compensation practices including proper assignment of work to crafts that traditionally perform the work.

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CEA will require, as a condition of eligibility, that encourages ~~encourages~~ contractors and subcontractors performing work on any CEA Feed-In-Tariff project must to pay at least the prevailing rate of wages, as defined in Article 2 (commencing with Section 1770) of Chapter 1 of Part 7 of Division 2 of the California Labor Code and encouraged to use a skilled and trained workforce, as defined in Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the California Public Contract Code.

CEA Energy Efficiency Projects

CEA will require, as a condition of eligibility for CEA funding or financing of energy efficiency projects, that contractors and subcontractors performing work on the project must pay at least the prevailing rate of wages, as defined in Article 2 (commencing with Section 1770) of Chapter 1 of Part 7 of Division 2 of the California Labor Code and use a skilled and trained workforce, as defined in Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the California Public Contract Code.

CEA will use best efforts -strive to support local businesses and apprenticeship programs, in the implementation of its energy efficiency programs. CEA will use best efforts to ensure that

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CEA Inclusive and Sustainable Workforce Policy
Redline showing IBEW 569's Proposed Changes to July 23, 2020 Staff Draft

~~encourage~~ construction contractors or subcontractors performing work on any CEA energy efficiency program utilize local businesses and ~~local~~ apprenticeship programs and ~~make fair compensation practices including~~ proper assignments of work to crafts that traditionally perform the work.

Union Neutrality Pledge

CEA will remain neutral regarding whether its employees choose to join or support labor unions and will not interfere with decisions by its contractors' and suppliers' employees about whether to join or support labor unions.

Attachment B: Clean Version

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