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# **Response to Comments for the Proposed Updated Project Selection Protocol**

## Overview

The Program Administrator and the Illinois Power Agency (the “Program Team”) published a draft updated Project Selection Protocol on April 21, 2020, with a request for public comments due on May 8, 2020. The Program Team also held a workshop on May 1, 2020 to discuss the draft updated Project Selection Protocol and the request for comments with interested parties. Five parties submitted written comments.

The Program Team has considered these written comments and is appreciative of the thoughtful input that they provided. The comments have been grouped into six categories by subject area: Anchor Tenant Scoring, Utility Territory Balancing, System Size Scoring, Distributed Generation Project Selection Process, MWBE Eligibility and Other. Summaries of the submitted comments are included in bullet points below, with the Program Team’s response detailed underneath.

## Anchor Tenant Scoring

- A commenter asserted that the Long-Term Renewable Resources Procurement Plan (Revised Plan) provides clear guidance that community solar projects must have “deep community connections” and that the way in which these connections are ensured is through the prioritization of certain types of anchor tenants and site hosts. The proposed point system does not reflect this priority because the total points awarded for various characteristics of anchor tenants and site hosts are less than the points available for other attributes, particularly compared to the points available for medium-sized projects. Doubling the points awarded for anchor tenant and site host types and reducing the points awarded to medium-sized projects to 1 is recommended.
- A suggestion to decouple the points awarded for qualifying project hosts from those awarded for qualifying anchor tenants was also recommended. In addition, it was recommended to make the critical service provider points applicable to both anchor tenants or site hosts and revising point values to make sure that they reflect the importance of community engagement by increasing the anchor type value to match the host value.

The Program Team agrees with commenters that the anchor tenant scoring can be balanced more effectively with other scoring categories, such as project size scoring, in order to more directly reflect the intent of the Revised Long-Term Renewable Resources Procurement Plan. A table detailing the point values for project attributes, including the revised scores for community solar size attributes and anchor types, is included on page

8 of this document. Points for the Anchor Type attribute<sup>1</sup> will be increased from 0.5 to 2, and size scores will be reduced, with the  $\leq 100$  kW size category decreasing from 3 points to 1.5 points, the  $>100$  to  $\leq 500$  kW size category decreasing from 2 points to 1 point, and the  $>500$  to  $\leq 1000$  kW category decreasing from 1 point to 0.5 points.

The Revised Plan prescribes prioritization of projects based on the possible combination of characteristics (anchor tenant, critical service provider, project host and non-profit or public facility). Because of the detail provided in the Revised Plan, the recommendations for decoupling the points awarded for qualifying project hosts from those awarded for qualifying anchor tenants, although instructive about the relative value commenters place on the various characteristics, do not align with the Revised Plan's intent.

## Utility Territory Balancing

- A commenter supports the proposed approach to utility territory balancing and believes it is an improvement over the previous scoring mechanism used.
- Other comments stated that the utility territory designations of Group A and Group B as a starting point in the first two project selections was reasonable given the lack of data. For the Low-Income Community Solar and Non-Profit/Public Facility sub-programs in particular, the commenters advocated for a more targeted approach that more clearly rewards project development in underrepresented areas of the state now that two program years have occurred. The proposed approach has the following issues:
  1. There is a risk of overweighting the category of projects with fewer applicants.
  2. The proposed approach fails to provide clear incentives to locate projects in underserved areas.
  3. Implicit weights do not align with the distribution of low-income (LI) communities and Environmental Justice Communities (EJCs) across the state.

The comments suggested using five regions instead of two, with the weighting for each region determined by estimating the LI and EJC populations and then calculating the funding per capita that region has received over time. Regions that were underserved could then be given a point. The comments acknowledged that this change would be too large to implement at the given moment, with

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<sup>1</sup> The Anchor Type attribute is defined in the Project Selection Protocol as a "a non-profit or public facility (NP/PF)" that "must provide a Letter of Intent (LOI), and the anchor tenant subscription must be at least 10% of project size, and not more than 40% of project size."

Program Year 3 (PY 3) beginning in June 2020, but asked for incremental changes and for the implementation of the larger scale change to be made prior to Program Year 4 (PY 4).

The point about overweighting the category of projects with fewer applicants seems to reflect a misunderstanding of the draft updated Project Selection Protocol in that, as proposed, there is no longer any weighting based on the distribution of the submitted projects. Rather, a point is awarded based on the actual outcome of projects chosen from a given utility territory in the first stage of the project selection process.

In terms of the other two issues raised by the comments, the Program Team agrees that the utility territories are not representative of the state's population distribution. The Program Team further agrees that there should be a more nuanced approach to geographic diversity, which would be based on additional analysis of funded projects and the relative EJC and LI community distribution of those projects' locations. An additional year of project submission and selection data, which will include the changes implemented for this project year, would better inform any wholesale change away from a system based strictly on geographic diversity as defined by utility territory. Therefore, the Program Team agrees that this is too big of a change to take on in the limited time available and without the necessary advance notice to Approved Vendors planning projects, but that additional analysis will be conducted after the PY 3 project selection process to determine a better way to prioritize projects based on location.

## System Size (Non-Profit/Public Facilities Sub-Program)

- A commenter felt that the current scoring protocol for non-profit and public facility project sizing both risks overweighting categories with fewer applicants and fails to provide clear incentives based on project size. In the short-term, i.e. for this program year, the commenter recommends this be addressed by limiting the number of stages at which system size scoring is applied, applying screens that limit the use of system size scoring if certain application levels are reached, or implementing similar incremental changes to the current proposed approach.
- For PY 4, it was recommended to award higher points to smaller projects. Based on an analysis of funded projects to date, the following are the recommended point values:
  - ▶ 0 – 100 kW: 1 Point
  - ▶ >100 – 275 kW: 0.75 Points
  - ▶ >275 – 500 kW: 0.5 Points
  - ▶ >500 – 1,000 kW: 0.25 Points
  - ▶ > 1,000 kW: 0 Points

Based on the Program Team's review, we believe that the commenter may be misinterpreting the current Project Selection Protocol's reliance on total incentive value for project weighting rather than raw project number. Currently, points are allocated based on the total **incentive values** for the  $\leq 100$  kW and  $> 100$  kW scoring groups as percentages of the total group's **incentive value**. Given the fact that incentives are based on the project's size, even though there may be a larger number of  $\leq 100$  kW projects, their combined sizes, and so also their combined incentives, are most likely to be in the 0-25% or 26-50% ranges, with 2 points or 1 point awarded respectively, unless there are very few large projects. The total of the incentives for the projects  $> 100$  kW, then, would either be in the 51-75% or 76-100% ranges, with 0.5 points and 0 points awarded respectively. In this case, the smaller projects would most likely be awarded more points than the larger projects.

The PY 1 and PY 2 data can be used as an example by assuming the incentives in each of the four groups presented. If all of the non-profit and public facility projects from PY 1 and PY 2 had been submitted in one year, the  $\leq 100$  kW projects would have an incentive value of \$1.7M, which is 24.2% of the total \$7.0M incentive value. Therefore, those smaller projects would have received 2 points each. The  $> 100$  kW projects would account for 75.8% of the total incentive value, thus receiving 0 points.

If the weighting were done based on the **number** of projects for the two groups, as percentages of the total **number** of projects, and not the incentive values of the projects, a smaller number of large projects would be awarded the 0-25% or 26-50% values of 2 points or 1 point respectively, and a larger number of small projects would be awarded the 51-75% or 76-100% values of 0.5 points and 0 points respectively. Therefore, in this case, the small projects would most likely be awarded less points than the larger projects. Using the project data presented by the commenter, 17 projects would be  $\leq 100$  kW, which is 68% of the 25 total projects. Therefore, those projects would receive 0.5 points each, and the 8 projects  $> 100$  kW would account for 32% of the total number of projects and receive 1 point each. In this case, the small projects would, once again, be awarded less points than the larger projects. A few more small projects and/or fewer large projects could switch this to 0 points for the small projects and 2 points for the large projects.

Given this analysis, the Project Team does not propose any additional change for PY 3. The suggestion for PY 4 scoring is for a pure points-based-on-size method, similar to the current Low-Income Community Solar proposal rather than a percentage of incentive-based normalization, which depends on total incentive values. The Program Team is willing to consider the merits of this proposal, especially given the additional data for analysis that will be provided by another year of project data.

## System Size (Low-Income Community Solar Sub-Program)

- Comments expressed concern that small project size, once incentivized, is no longer a proxy for community engagement.
- Comments recommended reducing the score for medium-sized projects to 1 in order to address the fact that the anchor tenant type scoring also has an impact on the project size scoring.

The Program Team is restructuring the point system as noted above so that project size points and anchor tenant scoring align with the intent of the Revised Plan. This change also gives less weight to project size and, in doing so, may address some of the concern over the relationship between project size and community engagement.

## Distributed Generation Project Selection Process

- Comments agreed with the proposal to hold two separate project selection processes for the Low-Income Distributed Generation sub-program, but stated the condition that “25% of the program year budget for the Low-Income Distributed Generation sub-program will be reserved for 1-4 unit building projects for the first nine months of the program year” is unclear regarding when the start of the nine months would be. They suggested that it should begin after the 75% budget allocation for 5+ unit building projects has been filled and that any remaining budget be released at the end of a program year if that comes before the nine months elapse.
- There was also concern expressed that, with the current proposal, the 25% funding has an artificial cap. The commenter questioned whether the 1-4 unit projects would be competing against one another during the project selection process if the total submitted incentive value of those projects was higher than 25%, even if the total incentive value of the projects submitted overall is less than the available funding.

The intent of the Plan revision was for the nine months to begin at the start of the program year, allowing time at the end of the year for larger projects to receive funding that had been reserved for small projects, should any funding remain. The Program Team will update the language in the updated Project Selection Protocol to make this timeframe clearer.

The Program Team’s intent was for any 1-4 unit projects not selected within the first project selection process to be added to the pool for the second project selection, which will include both 1-4 and 5+ unit projects.

To clarify this intent, the language in the updated Project Selection Protocol will be changed as follows: “Project selection will be done based on the incentive values of projects submitted during the initial submission window in two sub-categories: 1-4 unit projects and 5+ unit projects. Project selection will be considered necessary if the incentive value of 1-4 unit projects exceeds 25% of the total sub-program budget ~~total submitted projects exceeds the sub-program budget~~ and/or ~~or~~ if the incentive value of 5+ unit projects exceeds 75% of the total sub-program budget.”

## MWBE Points for Subcontractors

- A commenter disagreed with awarding points for subcontractors, saying many homeowners prefer not to have a subcontractor involved and that extra points would favor one Approved Vendor business model over another. Companies may provide guarantees of no outsourcing as a benefit to the consumer, making any change prioritizing subcontractors a disadvantage the Approved Vendors who perform all the work themselves.
- It was suggested to update the term Seller and to add Approved Vendor Designees to the definition of MWBE while excluding Approved Vendor Aggregators, or only giving them 0.25 points.
- Another commenter supported awarding points to projects that utilize MWBE subcontractors.
- It was suggested to reward points based on the percentage of the REC contract that would be performed by the MWBE subcontractor. The percentage would be calculated by dividing the total value of all MWBE contracts by the value of the REC contract. This would allow for verification at the time of project proposal by using REC contract amount rather than the project costs, which are unknown at that time. The point distribution suggested was as follows:

Sub-Program	Percentage of REC contract performed by MWBE	Score
Distributed Generation	10 to 25%	0.25
	26 to 50%	0.50
	51 to 75%	0.75
	≥76%	1.0
Community Solar	10 to 25%	0.5
	26 to 50%	1.0
	51 to 75%	1.5
	≥76%	2.0

Non-Profit/Public Facilities	10 to 25%	0.25
	26 to 50%	0.50
	51 to 75%	0.75
	≥76%	1.0

- A commenter suggested that any substitution of an MWBE subcontractor must be with an alternative MWBE subcontractor, or the project should be deemed to have failed the MWBE commitment. In order to make a substitution, an Approved Vendor must demonstrate:
  - Unavailability after receipt of reasonable notice to proceed;
  - Failure of performance;
  - Financial incapacity;
  - Refusal to honor the bid or proposal price or scope;
  - Material mistake of fact or law about the elements of the scope of work of a contract where a reasonable price cannot be agreed upon;
  - Failure of the MWBE to meet insurance, licensing or bonding requirements;
  - The MWBE's withdrawal of its bid or offer; and/or
  - Failure of the MWBE to continue to meet the MWBE qualifying criteria as set forth by the Agency.
- It was recommended to add the contract provision that any contract assignment requires the assignee to assume all MWBE utilization obligations.
- It was recommended that any breach of MWBE contractual agreement be remedied with either REC contract rescission or reduction of REC contract payment following sufficient demonstration of Good Faith Effort to meet MWBE commitments.

In regards to the comment that some Approved Vendor business models may not include subcontractors, the Program Team wishes to clarify that the intent of the proposal was not to include additional points for subcontractors, but rather to determine whether the definition of an MWBE can be extended beyond the Approved Vendor level to allow the awarding of points for the MWBE attribute through the use of MWBE sub-contractors.

The Program Team will replace the term Seller with the more commonly used terms Approved Vendor or Aggregator, depending on which is applicable. In addition, the Program Team will clarify that projects which have an MWBE Approved Vendor Designee associated with them are eligible for the MWBE points if the application comes from that Designee. The Program Team believes that the intent of providing points for projects that utilize an MWBE is to encourage diversity and participation by historically



disadvantaged people and that goal is furthered regardless of which type of Approved Vendor is participating in the project. Therefore, the Program Team has determined that total number of MWBE points should remain at 2 for the Low-Income Community Solar Sub-Program and at 1 point for the Low-Income Distributed Generation and Non-Profit/Public Facility Sub-Programs. Projects are eligible to receive those points if the Approved Vendor is an MWBE or if either the Approved Vendor Aggregator OR the Approved Vendor Designee submitting the project is an MWBE.

Projects will also be eligible to receive MWBE attribute points if the Approved Vendor, Approved Vendor Aggregator or the Approved Vendor Designee (henceforth referred to as Approved Vendors) commits to subcontracting with an MWBE. The Program Team appreciates the Working Group's input on how to extend the MWBE points consideration to include MWBE subcontractors. As stated in the Request for Comments, the Program Team has been concerned about how upfront verification of participation could be reduced to contractually enforceable provisions. The Working Group's suggestion to use REC contract value in lieu of project costs in determining a subcontractor's participation allows for this verification at the time of project submission without the need for estimates subject to change. For a community solar project, the REC Contract Value will, for purposes of calculating that commitment, be based upon the REC Contract Value not including any small subscriber adder. The Working Group also outlined helpful guidelines for considering whether the substitution of an MWBE subcontractor for another is allowable. The Program Team agrees with both of these suggestions and will incorporate them into the Project Selection Protocol, with the adaptation that the points would be awarded for Approved Vendors working with MWBE subcontractors that have contracts on the project for 50% or more of the REC contract value. This is the same point value as an MWBE Approved Vendor or Designee could receive and cannot be applied as additive to those MWBE attribute points. In order to receive the MWBE attribute points, Approved Vendors will need signed contracts as part of the Part I application. Any contract with an MWBE subcontractor must include the signature of both the Approved Vendor and of the subcontractor dated prior to the close of the initial project selection window.

The Program Team believes it is of the utmost importance to ensure that MWBE commitments protect against gaming by Approved Vendors seeking to receive more points at the time of project selection, without the intent of following through with the commitments. This guided our thinking around what contractual provisions should be considered a failure to meet an MWBE commitment and what the appropriate consequences of failure to meet an MWBE commitment should be. Therefore, the Program Team will be updating ILSFA contracts to reflect that contract rescission prior to payment, including forfeiture of collateral, is a consequence should an Approved

Vendor fail to satisfy the minimum required MWBE contractual commitment. Any Approved Vendor that is awarded MWBE points based on the commitment of working with MWBE subcontractors will be held to fulfilling the minimum requirement of 50% of the contract value with the MWBE subcontractor as compared to the REC contract value. This will be verified based on invoices submitted as a part of the Part II submission. Although Approved Vendors may propose a higher percentage of participation, they will be held to the minimum percentage in the contract.

Although the Working Group suggested instituting point ranges based on the MWBE’s level of participation, the Program Team believes setting a minimum participation amount allows for some flexibility for unforeseen circumstances that could arise between the Part I and Part II project submissions, while still providing clear contract provisions for cancellation if that minimum is not met. As noted in the Working Group’s suggestion, replacing the MWBE initially proposed is acceptable under certain circumstances and allows for additional flexibility.

These contract requirements are meant to prevent gaming within the project selection process. If the Project Selection Protocol is not necessary within a sub-program, the Program Team acknowledges that contract recession will not be a consequence for Approved Vendors that fail to keep their MWBE commitments for projects within that sub-program, although such failures are strongly discouraged.

The updated attributes scoring table for Low-Income Community Solar Prioritization 1 is included below. Please note that the Program Team has updated the term Seller to adhere to the recommendation detailed above.

<b>Prioritization 1: EJCs (assessing total incentive value of eligible projects within this bucket)</b>		
<b>Attribute:</b>	<b>Definition:</b>	<b>Score:</b>
Low-income Community	Located within a qualifying ILSFA low-income community	2
MWBE	<p>An Approved Vendor, Approved Vendor Aggregator, or an Approved Vendor Designee (if the Designee is the entity submitting the project application) that is registered with public or non-public third-party certifying bodies approved by ComEd and Ameren Illinois, including but not limited to, the National Minority Supplier Development Council and its regional affiliates, and the Women’s Business Enterprise National Council and its regional affiliates.</p> <p>An Approved Vendor, Approved Vendor Aggregator, or Approved Vendor Designee who has demonstrated for the</p>	2

	applicable project contractual commitments with MWBE subcontractors of 50% or more of the proposed REC contract value. The contractual commitments must be met prior to energization.	
Anchor Type	Anchor is a non-profit or public facility (NP/PF). The anchor institution must provide a Letter of Intent (LOI), and the anchor tenant subscription must be at least 10% of project size, and not more than 40% of project size.	2
Project host	Additional if the Anchor NP/PF is also the project host (PH)	0.75
Critical Service Provider	Additional if the Anchor NP/PF is also a critical service provider (CSP)	0.5
System size ≤ 100 kW	Eligible project is less than or equal to 100 kW	1.5
System size > 100 kW ≤ 500 kW	Eligible project is greater than 100 kW and less than or equal to 500 kW	1
System size > 500 kW ≤ 1000 kW	Eligible project is greater than 500 kW and less than or equal to 1000 kW	0.5
<b>Total possible score:</b>		<b>8.75</b>

## MWBE Eligibility for Non-Profits

- Comments supported extending MWBE points to include non-profit organizations and believed the proposed requirements are appropriate.
- Other comments supported non-profits receiving MWBE status, but suggested adding the criteria that qualifying non-profits must have 51% of their board made up of disadvantaged persons or that residents of EJC's or LI communities be served by the non-profit.

While the Program Team appreciates the feedback provided, after further review and consideration, the Program Team has determined that MWBE eligibility for non-profits will not be included in the Program Year Three Project Selection Protocol.

The Program Team is concerned about open issues applicable to MWBE non-profits. For example, while the Program Team was intrigued by the Working Group's additional Board composition requirements, additional clarification is required for how to define a "disadvantaged person" or how to ensure that connection between the community served by the non-profit and the applicable photovoltaic project. Additionally, a non-profit is not a "business enterprise," and it is unclear whether and to what extent providing preferences to non-profits based on Board and staff composition accomplishes the same ends as supporting actual minority- and woman-owned business enterprises.

At this time, an MWBE non-profit preference would be limited in impact by the low number of non-profit ILSFA Approved Vendors. Prior to providing preference to such organizations, the Program Team would like to explore this issue further; in the meantime, any non-profit Approved Vendors could still achieve preference in selection through the use of MWBE sub-contractors.

The Program Team will thus continue to explore this idea for Program Year 4 (expected to open summer 2021). This exploration may include additional requests for comments and stakeholder workshops, with the goal of establishing any non-profit MWBE preference with sufficient lead-time for qualified non-profits to apply for Approved Vendor status.

## Other

- One commenter stated that the Project Selection Protocol scoring is too random and unpredictable in that projects cannot be scored until after the project submission window closes. For example, Approved Vendors can't assess whether or not a larger project will be awarded points. The commenter suggested removing points for attributes that can only be determined after the window closes.
- Other comments urged for the program year scoring protocols be released as soon as possible.
- It was suggested to revise the savings points awarded to Non-Profit/Public Facilities projects given the new requirement of 65% savings.

Many of the changes in this proposed Project Selection Protocol were based on the updates made in the Revised Plan, which received the Illinois Commerce Commission's approval. The Program Team does understand and share the desire to have as much time as possible between the determination of the Project Selection Protocol and the opening of the next project submission window and will work toward this goal to the extent possible in the future.

Although we understand there is some frustration in not being able to determine the ultimate number of points for a given project ahead of the project submission window's closing, the Program Team feels that the overall goal of the Project Selection Protocol should be to select the projects that align most closely with the overall program goals, which include ensuring diversity of project types and which can't be determined in isolation from other project proposals. Therefore, projects that, when compared to the other submitted projects, are most aligned with overall program goals will continue to receive more points.

The Program Team agrees with the ranges for point values based on the update to the Non-Profit/Public Facilities sub-program's savings requirement as follows:

#### Participant Savings above the Minimum Requirement Points

- $\leq +10\%$ : 0.25 Points
- +11% to +30%: 1 Point
- +31% and greater: 2 Points