CALIFORNIA IBEW-NECA
LABOR MANAGEMENT COOPERATION COMMITTEE

July 11, 2013

California Energy Commission
DOCKETED
12-EBP-1
TN 71559
JUL 11 2013

By Email

California Energy Commission
Dockets Office, MS-4
RE: Docket No. 12-EBP-1
1516 Ninth Street
Sacramento, CA 95814-5512
docket@energy.ca.gov

Re: Comments on the California Energy Commission "Draft Action Plan for the Comprehensive Energy Efficiency Program for Existing Buildings"

Dear Commissioners and Staff:

The California Labor Management Cooperation Committee (LMCC) represents more than 1200 California state licensed electrical contractors, and more than 30,000 California state certified electricians.

The LMCC provides the following comments on the Draft Action Plan for the Comprehensive Energy Efficiency Program for Existing Buildings. Our comments address the Draft Action Plan's strategies and initiatives with respect to workforce education and training and voluntary pathways for achieving energy efficiency in public sector and commercial construction.

A. No Regrets Strategies – Foundational Workforce Resources

In developing an Action Plan for implementing Assembly Bill 758, the Commission should leverage existing resources, capacity, and infrastructure in the construction industry instead of creating a new short-term training and narrowly-skilled workforce that will not achieve the energy savings and the lasting economic impacts that are the Commission's goals. To that end, the Draft Action Plan should be revised to address and focus on integrating the existing resources that can prepare and deploy a highly-skilled workforce to perform energy efficient construction work. These strategies should include the following.

1. Alignment and collaboration with registered apprenticeship programs.

Registered apprenticeship programs provide a huge workforce resource for energy efficiency. The curricula and training offered by these programs meet stringent state apprenticeship standards that can ensure high quality work performance. The apprenticeship training prepares workers with a well-rounded in-class and on-the-job training, which is very critical when workers are expected to perform high quality energy efficiency construction.

2. Identify registered apprenticeship as a pathway for "stackable credentials" that should be pursued.

The recommendations for "stackable credentials" to increase skills for workers is vague, while apprenticeships, with its focus on teaching workers important foundational knowledge as well as the most cutting-edge technology is a time-tested model for creating a skilled workforce.

3. Identify registered apprenticeship programs and the Division of Apprenticeship Standards as a partner in building cross-sector partnerships.

Policy-makers and regulators must commit to working with the construction industry to improve building efficiency instead of trying to create a new industry that will confuse consumers even more and that would include many contractors that do not, or would not, have the same safety, workforce, and quality standards.

4. Emphasize quality job creation and career development, consistent with the State Energy Efficiency Strategic Plan.

The Draft Action Plan should focus on strategies for supporting quality job creation in energy efficiency construction. Job quality includes the payment of prevailing wages that include health and retirement contributions. Workers who perform this work should be compensated fairly. This will improve project outcomes, in terms of energy savings and quality installations, improve retention of skilled workers, and encourage other skilled workers to work in energy efficiency construction.

B. Voluntary Pathways – Public Sector Leadership and Upgrades in Small and Medium Commercial Buildings and Job Order Contracting

The Draft Action Plan expressly endorses the Job Order Contracting ("JOC") model. This is problematic for several reasons. First, the Commission should ensure that any contracting model for energy efficiency work in the public sector should be implemented in

a way that ensures that the work performed is done with high quality and efficacy, high safety, high accountability, and high levels of public benefits. Second, with the exception of the Los Angeles Unified School District, we question whether the California Energy Commission has the authority to regulate Job Order Contracting as applied to public agencies in the state. In any case, whether the efficiency projects are public or private, we feel strongly that it would be inappropriate for the CEC to state or communicate in any way that Job Order Contracting could or should be a model or best practice for energy efficiency work in California. The third problematic concern is that JOC is the only contracting model that is mentioned in the Draft Action Plan for public sector construction, and the Draft Action Plan fails to mention any of the risks and challenges of using the JOC model. The Draft Action Plan should note that JOCs have the potential to significantly increase project costs, reduce the abilities for public contracts to achieve public benefits such as local hire and apprenticeship, and reduce the abilities of public agencies and other groups to execute labor and contract compliance.

JOCs do not typically contain language on workforce development and workforce standards, so the public agencies lose out on opportunities to have their public investments generate quality job outcomes. Especially since the potentially random nature of the types of projects that are in a JOC contract and the many unknowns about those projects, it is difficult to have workforce development programs coordinate with JOC programs. In addition, public agencies have historically used public works projects to create local jobs, to focus on unemployed workers from disadvantaged communities, to require high training and safety standards of workers. The JOC model does not have a strong record of incorporating these types of public benefits and public investments. Public agencies who consider using JOC should be made aware of this, and we believe that a state agency should certainly not be holding up JOC as a model to be emulated.

Labor compliance and contract compliance for JOC projects is very difficult and is often not done. Because contractors are doing work on a short time-frame and on an "on-call" basis for many different projects, it is very difficult to create a compliance structure that can track all of this work - especially when there is high pressure for contractors to bid on projects that are unknown to them at the time of bid. In addition, because contractors are also bidding low to be competitive, they will often have to cut corners with regards to job quality and efficiency efficacy, as well as worker compensation/training in order to stay competitive.

JOCs also significantly increase the costs to bond projects. JOC is also called "Indefinite Quantity Construction Contracting." As such, JOC requires that contractors carry bonds for very large contract amounts without actually knowing specifics on what the actual projects are. For example, the San Francisco Public Utilities Commission JOC program listed a cumulative value of "$4.5 million. In order to bond this type of contract, it would tie up the bonding capacity for all but the largest contractors. Thus, JOC excludes many contractors, especially small and medium-sized contractors from participating in these public contracts. In addition, because the number of projects and the types of projects in a JOC are not clearly described during the bidding processes, the cost to bond these projects

are higher due to the many unknowns and risks that a contractor must assume. Bond companies typically charge much more to bond projects with this many unknowns.

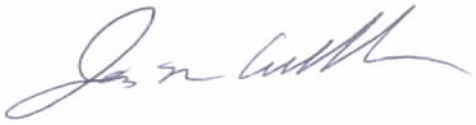
JOC also has the potential to increase project costs in other ways. If the information regarding total scope, size, timeline, and number of projects is not clear to a contractor before the contractor places a bid, then the contractor may over-estimate the cost of materials, administrative and field personnel, equipment costs, etc. needed to complete the JOCs. JOCs also can result in owners breaking up what is typically one construction project into many "mini-projects." This results in short timelines and a patchwork of un-organized projects that can make long-term planning difficult. The inability for contractors to plan and coordinate projects over the long-term will increase costs to execute each part of a construction project. For example, JOC may make it harder for contractors to plan ahead and to buy materials in bulk, even though buying in bulk often helps to reduce costs.

Lastly, JOC typically have specific requirements regarding the utilization of products that are only made and distributed by one manufacturer, which means that contractors and public agencies are beholden to that manufacturer's/distributor's product lines. This can also potentially increase costs under JOC programs by limiting competition between manufacturers.

For all the reasons stated herein, we respectfully and strongly urge the Commission to consider multiple models for contracting in energy efficiency construction, and acknowledge the drawbacks and potential pitfalls of JOC.

Thank you for the opportunity to comment on the Draft Action Plan.

Sincerely,



James Willson
Management Chair
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