

## **SAN JOSE CLEAN ENERGY ZERO-OR LOW-CARBON POWER PURCHASE**

San José Clean Energy (SJCE) is seeking proposals from power suppliers (Sellers) to supply greenhouse gas (GHG) free or asset controlling supplier (ACS) power for calendar year 2021. SJCE will consider either (1) an indexed energy price such that the payment due from purchaser to seller is equal to the delivered and accepted contract quantity multiplied by the attribute contract price or (2) one fixed price for the firm bundled product (energy and attribute).

SJCE plans to purchase each of the energy products listed in the attached file, but reserves the right to reject any or all offers. SJCE will consider pricing for the quantities (or fraction thereof) and products listed in the attached spreadsheet.

**Responses to this RFP are due at 3:00 PM Pacific Time on Monday, July 22, 2019.** Short listed bidders will be notified by COB Monday, July 22, 2019. Please submit your offers by returning your contact information, offer prices, and minimum offer quantities for each offer price by email in the attached Excel file to:

- San José Clean Energy: [RFO@sanjosecleanenergy.gov](mailto:RFO@sanjosecleanenergy.gov)
- Tony Zimmer (NCPA): [tony.zimmer@ncpa.com](mailto:tony.zimmer@ncpa.com)
- Ken Goeke (NCPA): [ken.goeke@ncpa.com](mailto:ken.goeke@ncpa.com)
- Bernard Erlich (NCPA): [bernard.erlich@ncpa.com](mailto:bernard.erlich@ncpa.com)

All bids submitted by prospective sellers in response to this Request for Proposals, shall include at a minimum the following information:

1. The product being offered
2. The price (\$/MWh) for each product
3. A description of any specific terms and conditions that your company considers to be applicable to the proposed transaction
4. Resource ID
5. If offering PCC1 fixed price, also please attach the generation profile.

### **MASTER AGREEMENT & CONFIRMATION**

SJCE intends to transact under the WSPP Agreement or an EEI-based agreement. SJCE's preferred forms for a PCC1 WSPP transaction confirmation, and an EEI transaction confirmation are attached. Parties are encouraged to submit any proposed changes to these forms (or alternative preferred enabling agreements and/or confirms) to Stephen Hall [steve@hallenergylaw.com](mailto:steve@hallenergylaw.com), Luisa Elkins [Luisa.Elkins@sanjoseca.gov](mailto:Luisa.Elkins@sanjoseca.gov), Jeanne M. Solé [Jeanne.Sole@sanjoseca.gov](mailto:Jeanne.Sole@sanjoseca.gov), Kelly Morris (SJCE): [Kelly.morris@sanjoseca.gov](mailto:Kelly.morris@sanjoseca.gov), Ken Goeke [Ken.Goeke@ncpa.com](mailto:Ken.Goeke@ncpa.com), and Bernard Erlich [Bernard.Erlich@ncpa.com](mailto:Bernard.Erlich@ncpa.com), on or before submitting their bids.

In addition, SJCE may only transact with qualifying counterparties pursuant to its Risk Management Policies. Parties are encouraged to contact Jeanne M. Solé at [Jeanne.Sole@sanjoseca.gov](mailto:Jeanne.Sole@sanjoseca.gov) and Kelly Morris at [kelly.morris@sanjoseca.gov](mailto:kelly.morris@sanjoseca.gov) as soon as possible if they intend to respond to this RFO and have not been qualified by SJCE's Finance Department.

SJCE provides the following information to interested suppliers to facilitate their assessment of SJCE as a counterparty:

- San José Clean Energy is housed in the City of San José's Department of Community Energy. The program is provided for in San José's municipal code Title 26, available at the following link:  
[https://library.municode.com/ca/san\\_jose/codes/code\\_of\\_ordinances?nodeId=TIT26COEN](https://library.municode.com/ca/san_jose/codes/code_of_ordinances?nodeId=TIT26COEN)
- San José Clean Energy's Implementation Plan is available at  
<https://www.sanoseca.gov/DocumentCenter/View/71410>
- San José Clean Energy's risk management policy was approved by San José City Council and is available at  
<https://sanose.legistar.com/LegislationDetail.aspx?ID=3478118&GUID=32319D40-8EA7-4D1A-9E48-B1CC78BB2E5E&Options=&Search>
- SJCE's initial funding plan is described in a memo to City Council in August 2017. The SJCE has followed through with this plan:  
[https://sanose.granicus.com/MetaViewer.php?view\\_id=&event\\_id=2699&meta\\_id=650894](https://sanose.granicus.com/MetaViewer.php?view_id=&event_id=2699&meta_id=650894)
- The City of San José is the signatory to WSPP Agreement and will be the signatory to the confirmations.
- The Department of Community Energy is an enterprise department of the City of San José. Please see below language that we have added to our draft confirmations to explain this arrangement.

#### **DESIGNATED FUND AND LIMITED OBLIGATIONS**

(a) Designated Fund. Buyer's payment obligations under this Agreement shall be paid from a Department of Community Energy designated fund ("Designated Fund") that shall be used solely for San José Clean Energy costs and expenses, including the obligations under this Agreement. Subject to the requirements and limitations of Applicable Law and taking into account other available money specifically authorized by the San José City Council and allocated and appropriated to the San José Clean Energy's obligations, the Buyer agrees to establish San José Clean Energy rates and charges that are sufficient to maintain revenues in the Designated Fund necessary to pay its obligations under this Agreement and all of Buyer's payment obligations under its other contracts for the purchase of energy for San José Clean Energy. Buyer shall provide Seller with reasonable access to account balance information with respect to the San José Clean Energy Designated Fund during the Term.

(b) Limited Obligations. Buyer's payment obligations are special limited obligations of the Buyer payable solely from the Designated Fund. Buyer's payment obligations under this Agreement are not a charge upon the revenues or general fund of the City of San José or upon any non- San José Clean Energy moneys or other property of the Community Energy Department or the City of San José.

#### **APPROPRIATION OF FUNDS**

In addition, SJCE is developing language to reflect the fact that contracts for products to be delivered beyond the current fiscal year will be subject to the appropriation of funds.

Here is a link to our municipal advisor letter: [www.sanjoseca.gov/DocumentCenter/View/39975](http://www.sanjoseca.gov/DocumentCenter/View/39975)

Finally, to do business in San José, Sellers who are not already registered will have to register with the City of San José within 90 days of commencing business within the city. Details are available at the following: <http://www.sanjoseca.gov/BusinessTax>

### **PUBLIC NATURE OF PROPOSAL MATERIAL**

All correspondence with SJCE including responses to this solicitation will become the exclusive property of the City of San José and will become public records under the California Public Records Act (Cal. Government Code section 6250 et seq.) All documents that you send to SJCE will be subject to disclosure if requested by a member of the public. There are a very limited number of narrow exceptions to this disclosure requirement.

Therefore, any proposal which contains language purporting to render all or significant portions of their proposal “Confidential”, “Trade Secret” or “Proprietary”, or fails to provide the exemption information required as described below will be considered a public record in its entirety subject to the procedures described below. Do not mark your entire proposal as “confidential”.

The City will not disclose any part of any proposal before it announces a recommendation for award, on the ground that there is a substantial public interest in not disclosing proposals during the evaluation process. After the announcement of a recommended award, all proposals received in response to this RFP will be subject to public disclosure.

In order to designate information as confidential, the Seller must clearly stamp and identify the specific portion of the material designated with the word “Confidential” and provide a citation to the California Public Records Act that supports keeping the information confidential. Seller should not to over-designate material as confidential. Over-designation would include stamping entire pages or series of pages as confidential that clearly contain information that is not confidential. Upon request or demand of any third person or entity not a party to this Agreement (“Requestor”) for production, inspection and/or copying of information designated by Seller as confidential information (such designated information, the “Confidential Information”), SJCE will notify the Seller as soon as practical that such request has been made. The Seller shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the City. If the City takes no such action after receiving the foregoing notice from the Seller, the City shall be permitted to comply with the Requestor’s demand and is not required to defend against it.

If required by any law, statute, ordinance, a court, Governmental Authority or agency having jurisdiction over the City, including the California Public Records Act, the City may release Confidential Information, or a portion thereof, as required by the Applicable Law, statute, ordinance, decision, order or regulation. In the event the City is required to release Confidential Information, it shall notify the Seller of the required disclosure, such that the Seller may attempt (if

it so chooses), at its sole cost, to cause the recipient of the Confidential Information to treat such information in a confidential manner, and to prevent such information from being disclosed or otherwise becoming part of the public domain.

## **DISCLAIMERS**

SJCE reserves the sole and discretionary right to (i) reject any offers received in response to this RFO for any reason, and (ii) accept any offers received after the deadline for submittals as indicated herein. Additionally, SJCE reserves the right, at its sole discretion, to not enter into any confirmation for the transaction at the conclusion of this RFO. SJCE reserves the right to modify the terms and conditions of this RFO at any time based on changing needs and market feedback. SJCE also reserves the right to rescind this RFO at any time prior to SJCE's execution of a binding agreement.

Notwithstanding anything to the contrary, including the WSPP Agreement and the EEI Agreement, no proposal, bid, offer, or proposed transaction (however described) shall be binding upon SJCE except pursuant to a written agreement signed by SJCE and the counterparty. SJCE will not be liable at any time for any costs the prospective supplier may incur in preparing or submitting its response to this RFO.

If an unsuccessful proposer wants to dispute an award or award recommendation, a protest must be submitted in writing to the Director of Community Energy, Lori Mitchell, no later than ten (10) calendar days after announcement of the successful proposer, detailing the grounds, factual basis and providing all supporting information. Protests will not be considered for disputes on the grounds that material provision in this RFP is ambiguous. Failure to submit a timely written protest to the contact listed below will bar consideration of the protest.

The address for submitting protests is:  
Attention: Lori Mitchell, Director  
City of San José, Department of Community Energy  
200 East Santa Clara Street, 14th Floor  
San José, CA 95113

Please submit an electronic version of the protest to Lori Mitchell [Lori.Mitchell@sanjoseca.gov](mailto:Lori.Mitchell@sanjoseca.gov), and Jeanne M. Solé [Jeanne.Sole@sanjoseca.gov](mailto:Jeanne.Sole@sanjoseca.gov).