



2019 Request for Offers for Long-term Renewables COD 2020-2021

San José Clean Energy, or SJCE, is the City of San José's new electricity supplier—charting our path to a greener future. We are the Community Energy Department of the City of San José, dedicated to creating a more sustainable future for our customers and our community. The San José City Council unanimously voted to create SJCE in May 2017 and we began serving residents and businesses in February 2019.

Offers due Thursday, May 30, 2019 at 5:00 PM PPT

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RFO Overview

San José Clean Energy (“SJCE”) is the City of San José’s new electricity supplier. SJCE is a program operated by the Community Energy Department of the City of San José. The San José City Council unanimously voted to create SJCE in May 2017. SJCE began delivering power to residents and businesses in February 2019. SJCE provides cleaner electricity, at lower rates than the incumbent investor-owned utility (“IOU”), Pacific Gas and Electric Company (“PG&E”). SJCE plans for and secures commitments from a diverse portfolio of energy generating resources to reliably serve the electric energy requirements of its customers over the near-, mid-, and long-term planning horizons. For more information on SJCE, please go to www.sanjosecleanenergy.org.

The goal of this 2019 Request for Offers for Long-term Renewable Energy (“RFO”) is to provide a competitive, objectively administered opportunity for suppliers to propose projects to fulfill SJCE’s desire for long-term renewable resources that have a commercial on-line date of in 2020 or 2021. Specifically, SJCE plans to enter into one or more long-term power purchase and sale agreements (“PPAs”) to purchase energy from Portfolio Content Category 1¹ (“PCC1”) eligible renewable resources (“ERRs”),² and all associated products such as resource adequacy. SJCE intends to release an additional solicitation for projects with later start dates in the near future.

By participating in SJCE’s RFO process, a Participant acknowledges that it has read, understands, and agrees to the terms and conditions set forth in these RFO Instructions, including all attachments. SJCE reserves the right to reject any offer that does not comply with the requirements identified herein. Furthermore, SJCE may, in its sole discretion and without notice, modify, suspend, or terminate the RFO without liability to any organization or individual. The RFO does not constitute an offer to buy or create an obligation for SJCE to enter into an agreement with any party, and SJCE shall not be bound by the terms of any offer until SJCE has entered into a fully executed agreement. Should there be any discrepancies between this document and the attached term sheet, the term sheet will control.

RFO Process and Timeline

This RFO was released on Thursday, May 16, 2019. This amended version was released at 10 AM PPT on May 22, 2019.

Questions are due Thursday, May 23, 2019 at 5 PM PPT. Participants may submit questions concerning the RFO to RFO@sanjosecleanenergy.org. These questions will be answered in a document in the form of an Addendum posted to www.sanjosecleanenergy.org/energy-procurement for all to see on **Friday, May 24, 2019 at 12 PM PPT**. All addenda shall become part of this RFO.

¹ See Section 399.16(b)(1) of the California Public Utilities Code and CPUC Decision 11-12-052.

² See Public Utilities Code Section 399.12, Public Resources Code Section 25741, and the California Energy Commission’s “Renewables Portfolio Standard (RPS) Eligibility Guidebook,” available at: <http://www.energy.ca.gov/portfolio/index.html>.

SJCE will host an informational webinar on May 23, 2019 from 9:30-10:30 AM PPT. To register for the webinar, please visit the RFO website: www.sanjosecleanenergy.org/energy-procurement

Participants' Offers must be submitted by Thursday, May 30, 2019, 5 PM PPT. Offers must include the required documents described below. All proposals must meet requirements of the RFO in order to be considered.

Participants may submit multiple Projects and may submit variations on each Project. A Project is defined as a generating facility that qualifies as an ERR as defined above. A Project variation may include, for example, different sized offers from the same generating facility, and different commercial operation dates ("CODs"). For this solicitation, the COD must be in 2020 or 2021.

Only electronic submittals will be accepted via e-mail sent to RFO@sanjosecleanenergy.org. Late proposals shall be rejected. This deadline is absolute and proposals received after the due date and time shall not be considered.

The submission of a proposal shall be deemed a representation and certification by the Participant that they have investigated all aspects of the RFO, that they are aware of the applicable facts pertaining to the RFO process, its procedures and requirements, and that they have read and understood the RFO. No request for modification of the proposal shall be considered after its submission on grounds that Participant was not fully informed as to any fact or condition.

SJCE expects to notify short-listed Participants by Friday, June 6, 2019. SJCE will evaluate all Offers according to the criteria listed below. SJCE will identify submitted Offers for short-listing, and then notify short-listed Participants. Short-listed participants interested in moving forward to the negotiation phase will be required to provide additional documentation and bid security within two weeks of notification of short-listing. SJCE will negotiate PPA(s) with short-listed participants with the intention of executing PPA(s). SJCE may execute PPAs with selected participants at any time during the negotiation phase or may choose to execute none at all. Selected projects will be presented at a public meeting to the City of San José's City Council for approval. The City Council may also authorize the Director of Community Energy or her designee to negotiate and execute power supply contracts for selected projects.

Required Information

The following documents are required for each Project:

- A completed offer form (Attachment 2), including the Generation Profile form. This form can be downloaded from the RFO web site. If you are submitting the same project with different size options, please include a separate generation profile for each size.
- Material terms that the Participant requires as a condition of the offer. SJCE's term sheet is attached as Attachment 1.
- A Milestone schedule.
- If applicable, local and/or small business forms (Attachment 4).

The following documents are required for each RFO Participant:

- A cover letter describing the offer(s), including the relationships among offers, if multiple Projects are submitted or multiple offers are presented for the same Project.
- A document describing the roles, experience and qualifications of all project team members including the following:
 - Years of experience developing similar projects
 - Number, type, and size of projects
 - Experience financing projects
- Parent company
- Organization chart
- Financial strength of RFO Participant.

Participants shall provide such additional information as reasonably requested by SJCE.

Short-listed Offer Required Documents

Within 2 weeks of short-list notification, the following items or documents must be submitted to SJCE:

- A signed Exclusivity Agreement (Attachment 3) and Shortlist Deposit (\$3,000/MW)
- The most recent Phase 2 Interconnection Study and (if available) Generator Interconnection Agreement (GIA)
- Site map, showing nearest cross streets, latitude and longitude
- Demonstration of site control
- Financing plan
- Credit rating and financial statements
- Evidence of claimed environmental permitting status
- Full redline of the term sheet attached as Attachment 1.

Products

SJCE is considering offers from renewable energy generating facilities capable of delivering renewable energy meeting the requirements for PCC1 renewable energy and all associated products such as resource adequacy. SJCE would prefer full deliverability but will consider energy only proposals.

SJCE requires participants to submit offers for products with delivery terms of at least ten years. In addition, SJCE will consider favorably projects that include a bridge contract for PCC1 energy until the Project begins delivering. SJCE will not evaluate storage products in this solicitation but will do so in future solicitations. Nevertheless, SJCE favors PV sites that can accommodate storage.

Eligibility Criteria

Resource Location: Eligible renewable resources located within the Western Electricity Coordinating Council (“WECC”) will be considered. SJCE will evaluate the potential for congestion between the project’s point of interconnection and SJCE’s service territory and will consider this as a part of the Project analysis.

Generating Capacity: Minimum ten (10) megawatt (“MW”) AC.

Initial Date of Delivery: All eligible offers will be considered. Projects with a guaranteed commercial operation date (“COD”) including all permitted extensions occurring before the end of 2021 are required. SJCE intends to issue a separate solicitation for projects with later CODs in the near future.

Annual Delivery Specifications: Maximum 1,000,000 MWh per year from any one project.

Labor Requirements: Must comply with prevailing wage laws. See term sheet.

Minimum Development Progress: To the extent that a proposed generating resource is not yet commercially operational, a Project must have achieved the following development milestones: 1) site control, and 2) a Phase 2 interconnection study or an executed interconnection agreement. Short-listed Participants will be required to provide documentation substantiating these milestones within two weeks after short-listing.

Product: Any purchase of capacity and energy made pursuant to this RFO will also include all associated Capacity, Energy, and Environmental Attributes/Renewable Energy Credits (RECs).

Proposed Pricing:

- The energy price shall include procurement of the energy commodity, all Green Attributes/Renewable Energy Credits related thereto, Capacity Attributes (if available), transmission charges to the delivery point, including but not limited to CAISO imbalance costs, fees and penalties associated with delivered energy volumes. The term sheet attached to this RFO assumes that SJCE will be its own scheduling coordinator, but changes will be considered if Seller has a strong preference otherwise. If the project requires the Seller to serve as the SC, scheduling fees, if any, should be broken out separately. Each submitted offer must specify both of the following:
 - A single, flat price for each MWh of electric energy delivered from the proposed resource in which Seller shall be financially and operationally responsible for delivery of all electric energy to the generator’s applicable production node. This energy price shall remain constant throughout the entire contract term and shall not be adjusted by periodic escalators or time of delivery adjustments.
 - A single, flat price for each MWh of electric energy delivered from the proposed resource in which Seller shall be financially and operationally responsible for delivery of all electric energy to the NP15 trading hub (or subject to a price adjustment reflecting such delivery). This energy price shall remain constant

throughout the entire contract term and shall not be adjusted by periodic escalators or time of delivery adjustments.

- The attached term sheet calls for 50 hours per contract year of uncompensated buyer curtailment. SJCE requests Seller to itemize the cost impact, if any, of the Curtailment Cap on PPA Price.
- **Transfer of Environmental Attributes/Renewable Energy Certificates:** As part of the proposed transaction associated with any renewable energy product, all Environmental Attributes/Renewable Energy Certificates must be tendered and transferred to SJCE via the Western Renewable Energy Generation Information System ("WREGIS"), or its successor, without any additional costs or conditions to SJCE. As appropriate, any e-tags associated with delivered product volumes shall be matched to associated renewable energy certificates within the WREGIS system before transferring such certificates to SJCE.

Evaluation Criteria

Proposals will be reviewed to determine if all required documentation was included with the proposal submittal as described above (Required Information). Proposals that fail to contain the required documents may be disqualified from further consideration.

SJCE staff and consultants will evaluate proposal submissions. SJCE reserves the right to rely on information from sources other than the information provided by the respondents. SJCE staff may also seek written clarification from any or all proposers to better understand and evaluate the proposal. This process may not be used as an opportunity to submit missing documentation or to make substantive revisions to the original proposal.

Evaluation will be based on the criteria listed below. SJCE will evaluate each Offer against these criteria and select a subset of Offers to move to the negotiation phase. In addition, throughout the negotiation process, as discussed below, SJCE will continue to evaluate a Participant's fit and each Offer's fit with SJCE's goals and objectives.

Evaluation Criteria:

- The value (energy, attributes, and capacity (net of curtailment and degradation))
 - Contract cost
 - Contract term
- Project viability:
 - Project status regarding interconnection, site control, permits and equipment
 - Technology viability (no research, development, or demonstration projects)
 - Financial stability of project owner/developer
 - Progress on EPC contract
- Environmental impacts and related mitigation requirements
- Project team experience
- Material terms that the Participant requires as a condition of the offer (see Attachment 1)
- Clarity and thoroughness
- Local business and/or Small Business (see Attachment 4)

Evaluation Criteria	Points
Value (energy, attributes, capacity)	40
Project Viability	10
Environmental impacts and related mitigation requirements	5
Project team experience	10
Material terms	20
Clarity and thoroughness	5
Local Business Enterprise	5
Small Business Enterprise	5
Total	100

During the first stage, SJCE will rely to a large extent on representations made by Participants, as specified in the bidder’s submitted offer form.

Seller Credit Requirements

Following supplier notification (i.e., shortlist selection), the selected respondent(s) will be required to execute an Exclusivity Agreement and submit a Shortlist Deposit of \$3,000/MW of proposed project capacity for each shortlisted project within two weeks of such notification. For further details, please see Exclusivity Agreement (Attachment 3).

The following performance assurance will be required from Seller following PPA execution. Seller is solely responsible for the cost of providing this performance assurance and this should be included in the price offered to SJCE.

- Following PPA execution: Development Security of \$60/kW of Guaranteed Capacity for the Generating Facility. This can be provided as cash or Letter of Credit.
- Upon Commercial Operation: Performance Security of \$75/kW of Guaranteed Capacity. This can be provided as cash, Letter of Credit, or acceptable guaranty.

Protest

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 notice that the proposer was unsuccessful, 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 RFO 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 at Lori.Mitchell@sanjoseca.gov and Jeanne M. Solé at Jeanne.Sole@sanjoseca.gov.

Interpretation

SJCE shall not be responsible for nor be bound by any oral instructions, interpretations or explanations issued by the SJCE or its representatives.

Should there be a need to clarify this RFO or any of its attachments, including but not limited to the Term Sheet, requests for clarification may be sent via e-mail at RFO@sanjosecleanenergy.org, to the attention of the procurement contact designated in the Communications Section. Requests for clarification received after the deadline provided in the RFO Process and Timeline section to submit questions on the RFO would not be considered.

If there are any discrepancies between the RFO and the Term Sheet (Attachment 1), the Term Sheet would apply.

Grounds for Disqualification

All RFO Participants are expected to have read and understand the "Procurement and Contract Process Integrity and Conflict of Interest", Section 7 of the Consolidated Open Government and Ethics Provisions adopted on August 26, 2014 ("Section 7"). A complete copy of the Resolution 77135: <http://www.sanjoseca.gov/DocumentCenter/View/35087>.

Any RFO Participants who violates Section 7 will be subject to disqualification. Generally, the grounds for disqualification include:

1. Contact regarding this procurement with any City official or employee or Evaluation team other than the RFO procurement contact designated in this solicitation from the time of issuance of this solicitation until the end of the protest period.
2. Evidence of collusion, directly or indirectly, among RFO Participants regarding the amount, terms, pricing, or conditions of this proposal.
3. Influencing any City staff member or evaluation team member throughout the solicitation process, including the development of specifications.
4. Evidence of submitting incorrect information in the response to a solicitation or misrepresent or fail to disclose material facts during the evaluation process.

In addition to violations of the Section 7, the following conduct may also result in disqualification:

1. Offering gifts or souvenirs, even of minimal value, to City officers or employees.

2. Existence of any lawsuit, unresolved contractual claim or dispute between RFO Participant and the City.
3. Evidence of RFO Participant's inability to successfully complete the responsibilities and obligations of the proposal.
4. RFO Participant's default under any City agreement, resulting in termination of such Agreement.

Code Adherence and Policies

RFO Participant shall agree to abide by all laws, rules and regulations of the United States, State of California, Santa Clara County, and the City of San José.

RFO Participant must comply with City of San José Policies, which include but are not limited to the following:

- Environmentally Preferable Purchasing:
<http://www.sanjoseca.gov/DocumentCenter/View/3862>
- Prohibition of City Funding for Purchase of Single Serving Bottled Water:
<http://www.sanjoseculture.org/DocumentCenter/View/16099>
- Business Tax and Registration:
<http://www.sanjoseca.gov/BusinessTax>

Terms and Conditions of Agreement

All agreements entered into by SJCE pursuant to this solicitation are subject to the Appropriation of Funds, Designated Fund, and Limited Obligations provisions set forth in the Term Sheet, Attachment 1. These provisions are non-negotiable.

Participant shall enter into a contract with SJCE in substantial conformity with the selected proposal, as mutually modified during negotiations with SJCE. Attachment 1, Term Sheet for Power Purchase Agreement – Renewables Only, outlines SJCE's standard terms and conditions as part of the agreement between SJCE and the successful Participant. SJCE reserves the right to negotiate project deliverables and associated costs.

All agreements will require the Participant to adhere to the terms of their proposal and to act in accordance with all applicable laws and regulations. An agreement shall not be binding or valid unless and until it is executed by authorized representatives of the City and approved by the City of San José's City Council. The City Council may also authorize the Director of Community Energy or her designee to negotiate and execute power supply contracts.

SJCE's municipal advisor letter can be found at the following location:
www.sanjoseca.gov/DocumentCenter/View/39975

Insurance Requirements

The selected Participant, at Participant's sole cost and expense and for the full term of the Agreement or any extension thereof, shall obtain and maintain insurance as required by the Risk Manager of the City of San José at any time.

All policies, endorsements, certificates and/or binders shall be subject to approval by the Risk Manager of the City of San José as to form and content. Insurance requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. The selected Participant agrees to provide SJCE with a copy of said policies, certificates and/or endorsements.

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 RFO 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 Seller takes no such action after receiving the foregoing notice from the City, 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.

Disclaimer

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 transaction at the conclusion of this RFO. The City shall not be obligated to respond to any proposal submitted, nor be legally bound in any manner by submission of the proposal. 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, 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.

Communications

All RFO documents are available on SJCE's website at www.sanjosecleanenergy.org/energy-procurement

All announcements, updates and Q&As will be posted on the website. The procurement contact for this RFO is Phil Cornish. Questions and all other communications should be sent to Phil.Cornish@sanjoseca.gov.