



Request for Offers for Disadvantaged Community Green Tariff Program

San José Clean Energy, or SJCE, is the Community Choice Aggregator for San José. SJCE serves more than 345,000 residential and commercial customers with clean electricity at competitive rates. SJCE is operated by the City of San José's Community Energy Department and governed by the City Council.

Launch Date: September 1, 2021

Offers Due: September 21, 2021 at 5:00 PM PPT

RFO Website: <http://www.SanJoseCleanEnergy.org/Energy-Procurement>

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1. Request for Offers Overview

On June 21, 2018, the California Public Utilities Commission approved [\("D."\)18-06-027](#) Alternate Decision Adopting Alternatives to Promote Solar Distributed Generation in Disadvantaged Communities. This decision adopted three new programs to promote the installation of renewable generation among residential customers in disadvantaged communities ("DAC")¹, as directed by the California Legislature in Assembly Bill ("AB") 327 (Perea), Stats. 2013, ch 611. Pursuant to D.18-06-027, Community Choice Aggregators ("CCAs") may develop and implement their own Disadvantaged Community Green Tariff ("DAC-GT") and Community Solar Green Tariff ("CS-GT") programs.

Per [Resolution E-4999](#), San José Clean Energy ("SJCE") has been allocated 1.7 MW for its DAC-GT program.² SJCE is pursuing a solicitation for competitive proposals for new, in-front-of-the-meter renewable energy resources located in eligible disadvantaged communities. The requirements for these renewable energy resources are listed below in Section 3.

General instructions for participating in SJCE's RFO and product-specific requirements are described in the text of this document ("RFO Instructions").

About San Jose Clean Energy

In 2017, the City established the Community Energy Department to administer San José Clean Energy (SJCE), San José's Community Choice Energy provider. In February 2019, SJCE launched electricity generation service to residents and businesses. Today it serves more than 345,000 customers and has a peak load of almost 1 GW. SJCE is responsible for purchasing over 4,000 GWh of electricity annually and has an annual operating budget of over \$300 million.

SJCE is driven to provide clean, renewable energy at competitive rates to help the city meet its Climate Smart San José goals and provide local benefits. In 2021, SJCE's default energy service GreenSource is 90% carbon-free and 55% renewable at competitive rates. Customers can also choose to upgrade to SJCE's TotalGreen service to receive 100% renewable energy or enroll in SJCE's lowest cost service GreenValue which is 36% renewable energy. More than 1,200 customers have chosen TotalGreen to date, including large corporate customers Samsung Semiconductor, HPE, and eBay. To meet customer demand for renewable energy, SJCE has invested in nearly 500 MW of new solar plus battery storage across three projects that will be built in the Central Valley and New Mexico by the end of 2022.

As a not-for-profit government agency, operational surpluses are reinvested into the community in the form of lower rates and community programs that further reduce greenhouse gas emissions and promote equity. SJCE is beginning to implement its first community programs, including a partnership with the California Energy Commission that will provide \$14 million in

¹ DACs are defined under D.18-06-027 as communities that are identified in the CalEnviroScreen 3.0 as among the top 25 percent of census tracts statewide, plus the census tracts in the highest five percent of CalEnviroScreen's Pollution Burden that do not have an overall CalEnviroScreen score because of unreliable socioeconomic or health data. Resolution E-4999 clarified that Program Administrators must file a Tier 1 Advice Letter to update program eligibility rules within 30 days of a new release of the CalEnviroScreen tool.

² SJCE will not pursue a Community Solar Green Tariff program.

funding for electric vehicle charging stations, doubling the current level of infrastructure. For more information about the Community Energy Department, please visit: sanjosecleanenergy.org/

Acknowledgment of Terms

By participating in SJCE’s RFO process, a Bidder 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 it has entered into a fully executed agreement.

This procurement shall be conducted according to the guidelines set forth in the San José Clean Energy Risk Management Regulations.

2. RFO Process and Timeline

Timeline

| Date | Item |
|----------|---|
| 9/1/21 | RFO issuance and Q&A open |
| 9/9/21 | Bidder Webinar to discuss RFO process at 1 PM PPT. Registration . |
| 9/13/21 | Deadline to submit Q&A questions. Submit questions to: RFO@sanjosecleanenergy.org |
| 9/15/21 | Q&A responses posted to the SJCE RFO website |
| 9/21/21 | Deadline to submit RFO Proposals to RFO@sanjosecleanenergy.org |
| 9/30/21 | Bidders notified of shortlist status |
| 12/15/21 | Power Purchase Agreement (“PPA”) negotiations and awards |

Communications

All RFO documents are available at the RFO [website](#). All announcements, updates and Q&As will be posted on the website. Any communications regarding this RFO should be sent to RFO@sanjosecleanenergy.org. Please only send questions and communications to the RFO email address. Emails sent to any other address or individual and not to the RFO email may not be reviewed or responded to.

Webinar

SJCE will host an informational webinar on Thursday, September 9, 2021 from 1:00 – 2:00 PM PPT. To register for the webinar, please visit this [URL](#). SJCE encourages Bidders to submit questions in advance of the webinar to support a more efficient webinar.

Submission and Posting of Q&A

Questions are due Monday, September 13, 2021 by 5 PM PPT. Bidders are encouraged to submit questions concerning the RFO. All questions must be submitted via e-mail to RFO@sanjosecleanenergy.org. Bidders are urged to submit RFP questions to SJCE as early as possible, in consideration of the proposal submission deadlines.

SJCE intends to post all questions submitted by Bidders before and after the webinar, as well as responses to those questions in the form of an Addendum posted to the RFO website. Answers will be posted by Wednesday, September 15, 2021 by 5:00 PM PPT. All addenda shall become part of this RFO. All questions will be posted anonymously to shield the identity of Bidders who posed the questions. SJCE's objective in posting questions and answers is to afford Bidders equal access to information potentially relevant to their proposals.

Bid Submittal

Bidders' Offers must be submitted by Tuesday, September 21, 2021 by 5:00 PM PPT. Offers must include the required documents described below. All proposals must meet the requirements of the RFO to be considered. However, SJCE reserves the right to waive any deficiency of an offer.

Only electronic submittals will be accepted via e-mail sent to RFO@sanjosecleanenergy.org. Please include "Disadvantaged Communities Green Tariff Program offer from [Company Name]" in the subject line. 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 Bidder 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 Bidder was not fully informed as to any fact or condition.

Shortlist Selection Process

SJCE expects to notify short-listed Bidders by Thursday, September 30, 2021 by 5:00 PM PPT. SJCE will evaluate all Offers per the evaluation criteria described below. SJCE will identify submitted Offers for short-listing, and then notify short-listed Bidders. Short-listed Bidders 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 contracts with short-listed Bidders. SJCE may execute contracts with selected Bidders at any time during the negotiation phase or may choose to execute none at all.

Contracts with projects selected by SJCE will need to be approved by the San José City Council prior to execution unless San José City Council has already authorized the Director of Community Energy or her designee to negotiate and execute such contracts.

3. RFO Overview and Project Eligibility

The goal of this RFO is for SJCE to solicit and evaluate offers for renewable energy in order to fill our eligible program capacity allocation under the DAC-GT program. Below is a description of eligibility requirements for projects offered in this RFO.

- The Project must be physically located in and connecting electrically to a circuit, load, or substation within PG&E's service territory and located within an eligible DAC, as further described below.
- The Project must be a new solar, wind, hydroelectric, or biomass/biogas Renewable Portfolio Standard ("RPS")-eligible, in-front-of-the-meter, generating facility with a nameplate rated generating capacity between 500 kW and 1.7 MW, inclusive. Behind-the-meter projects, non-renewable technologies, and other complementary technologies such as energy storage are not eligible.
- The Project must have an online date no later than December 31, 2023.
- The Project must have completed a Phase I Interconnection Study.
- The Project must comply with the California Air Resources Board's Voluntary Renewable Electricity Program.
- The Project must be Green-e certified.

The Project must qualify as a DAC-GT Project pursuant to [D.18-06-027](#), [D.18-10-007](#), and [Resolution E-4999](#). The CPUC has defined an eligible DAC as census tracts that either: (1) score at or above the 75th percentile (i.e., scoring in the top 25 percent statewide) in the California Environmental Protection Agency's ("CalEPA") CalEnviroScreen 3.0 on a statewide basis, or (2) are one of the census tracts that score in the highest five percent of CalEnviroScreen's pollution burden, but that do not have an overall score.

The CalEPA has created an online map that displays the CalEnviroScreen results that allows the user to pan and zoom into various areas of California to graphically identify the general location of DACs. There are multiple ways to identify DACs:

- A. Via Data List (Spreadsheet). In order to download a data list of areas that correspond to the preceding map, one can:
 1. Visit the CalEPA DAC website
 2. Download the List of Disadvantaged Communities Excel file
 3. Filter the data set (on either tab)
- B. Search by Address. One can also determine DAC status of one or more specific addresses. For a single address, go back to the CalEnviroScreen map and, in the "Find address or place" field, input the address and determine the color coding alongside the map's Legend.

4. Eligibility Criteria

All offers must meet the following specifications in order to be considered for selection. Please ensure that proposals conform to the appropriate specifications for the project submitted. Any deviations from the following list will be treated as non-compliant and excluded from consideration.

| | |
|--|---|
| Price | <p>Fixed \$/MWh with zero percent (0%) annual escalator. Prices must be offered at the project node AND NP15.</p> <p>Note: Actual payments to bidder will be consistent with the terms of the PPA Agreements for each project.</p> |
| Number of Offers | <p>Bidders may submit a maximum of one (1) offer per unique facility/location. This project should be the largest size and most competitive offer that meets all compliance requirements. All projects will be evaluated with the assumption that smaller project sizes may be priced and negotiated during final shortlisting negotiations.</p> <p>Alternative configurations, durations, or pricing schemes may be submitted as descriptions within the narrative document (see full description in "Submission Package" section below) but will not be evaluated or considered until after shortlisting if at all.</p> <p>NOTE: If a single Bidder wishes to submit multiple unique facilities (at different locations), each project must be submitted as an entirely separate Submission Package with fully completed copies of each relevant document.</p> |
| Term | <p>Bidders must submit a conforming offer with a term of fifteen (15) years. Bidders may also provide additional alternate offers of ten (10) years and twenty (20) years, if desired in the narrative document as described above.</p> |
| Scheduling Coordinator | <p>Buyer shall be the Scheduling Coordinator ("SC"). Bidders may also provide an alternative offer that reflects Seller as the SC in the narrative document as described above.</p> |
| Ownership | <p>All projects will be owned by the Bidder, with SJCE contracting the output of the resource for the duration of the contract term.</p> |
| Expected Commercial Operation Date ("COD") | <p>On or prior to December 31, 2023.</p> |
| Deliverability | <p>Both "Energy Only" projects and projects with Full Capacity Deliverability Status ("FCDS") are eligible for this RFO. Energy Only projects will not receive any value for providing Resource Adequacy benefits.</p> |
| Seller Security Requirements | <p>Development Security of \$60/kW of Contract Capacity. Performance Security equivalent to one year of expected project revenues.</p> |
| Guaranteed Energy Production | <p>One hundred sixty percent (160%) of proposed estimated annual energy production in each 2-year performance measurement period.</p> |
| Labor Requirements | <p>Must comply with prevailing wage laws.</p> |

5. Required Information

Project bids should be submitted via email to RFO@sanjosecleanenergy.org by the submission deadline with a subject line of "SJCE 2021 DAC-GT RFO". Submissions must include the following attachments, as detailed in the sections following:

- i. Project Narrative
- ii. Fully completed Offer Form template, Attachment 1
- iii. Redlined PPA Template, Attachment 2. *NOTE: the template is set up with SJCE as Scheduling Coordinator but this can be modified pending negotiations.*
- iv. OPTIONAL: Local and Small Business Forms, Attachment 3
- v. ArcGIS file of project's geospatial footprint. Instructions are in Attachment 4

Project Narrative

Bidders should submit a brief narrative of the proposed project and vendor qualifications. This narrative will be primarily used as a reference for specific project details that are not fully captured in the Offer Form template and for further assessment of shortlisted proposals. The contents of the narrative will not be used as part of initial quantitative or qualitative project evaluation but is mandatory for the bid submission. **The project narrative should be submitted as a pdf document.** The project narrative must include the following sections in the order listed below:

1. Project summary
 - i. Brief summary of project including location, sizing, and any relevant high-level details (1-2 paragraphs)
2. Project details summary table
 - i. Should include project name, location city and county, capacity size, COD, and pricing (\$/MWh).
3. Detailed site description
 - i. Detailed description of the current land use of the project footprint, description of status of site control and a detailed site map showing nearest cross streets, latitude and longitude, any gen-tie required.
 - ii. Description of the project's proposed interconnection, including proximity to transmission interconnection, any new interconnection facilities or Network Upgrades that would need to be built, provide queue position, status of completed studies (System Impact Study, Facilities Study, Phase 1 Study, Phase 2 Study, CAISO Full Deliverability Study), Interconnection level of the proposed generator (Distribution or Transmission), Scheduled Commercial Operation Date and progress related to any applicable agreements.
4. Project risk
 - i. Brief overview of project risks, particularly related to status of:
 - a. Project interconnection
 - b. Site control and permitting
 - c. Environmental zoning, studies, and permitting
 - d. Financing
 - e. Community experience
 - i. Describe what benefits the project provides the community in which it is located, including resiliency and grant eligibility

- ii. Describe completed or planned community outreach and communications strategy
5. Bidder Experience and Qualifications: Describe developer experience, particularly as it relates to previously completed projects of a similar scope and scale including the following:
 - i. A description of the roles, experience and qualifications of all project team members including the following:
 - ii. Years of experience developing similar projects
 - iii. Number, type, and size of projects
 - iv. Experience financing projects
 - v. Parent company
 - vi. Organization chart showing project personnel and their role within the development company; and the relationship between the project owner, developer, financing entity, owner upon operation, and operator.
 - vii. Financial strength of RFO Bidder.
6. Offer variants
 - i. Description of additional variants the bidder would like SJCE to consider.
 - ii. If the bidder would like to propose offer variants beyond the one proposed in the Offer Form Template, these variants may be described in text in this section. These additional variants may not be submitted as additional Offer Form Templates and will not be evaluated in the quantitative evaluation phase but may be assessed for additive value if the initial proposal is chosen for shortlisting consideration.
 - iii. Alternative offers that might be proposed in this section include distinct CODs, alternative pricing schemes, alternative Scheduling Coordinator arrangements, or any other arrangements that may provide additional value.
7. Milestone schedule: At minimum, include the following:
 - i. [date] – Evidence of Site Control
 - ii. [date] – Receipt of CEC pre-certification
 - iii. [date] – Receipt of Phase 2 interconnection study
 - iv. [date] – Execution of Interconnection Agreement
 - v. [date] – Documentation of Conditional Use Permit, federal, and/or state discretionary permits, as applicable
 - vi. [date] – Financial Close
 - vii. [date] – Expected Construction Start Date
 - viii. [date] – Full Capacity Deliverability Status obtained, if applicable
 - ix. [date] – Initial Synchronization
 - x. [date] – Network Upgrades completed
 - xi. [date] – Expected Commercial Operation Date

Offer Form Template

Attachment 1 - Offer Form is a Microsoft Excel file and is the primary source of data for evaluating submissions. It is mandatory and must be fully completed for a submission to be considered compliant.

If your project requires the construction of a new substation, please identify the nearest pnode and note that it is a proxy. Nodes must be spelled exactly as they are listed in OASIS: <http://oasis.caiso.com/mrioasis/default.do?tiny=aeQdVQ>. You must submit the offer price at the pnode and NP15.

The form contains the following sections and a guide for which sheets must be completed is provided on the instructions sheet in the Offer Form.

- 1. Participant & Project Info:** these values provide summary information for the project
- 2. Generation Profile:** these values will be used for quantitative modeling of intermittent renewable generation resources
- 3. Qualitative Assessment:** this questionnaire gathers information for qualitative selection criteria
- 4. Development Risk:** these questions are intended to assess potential project development risk

Redlined PPAs

SJCE is including the Pro Forma PPA (Attachment 2) that SJCE intends to use as the basis for contracting with successful Bidders. The Pro Forma PPA is the same for all counterparties, and SJCE will only accept changes to the Pro Forma PPA related to Project-specific characteristics and information. Bidders must consider the commercial terms stipulated in these RFO Instructions as well as those commercial terms defined in the agreement when submitting an offer to this RFO. SJCE will consider limited requests for adjustments and edits to its form agreement, provided that such requested edits are incorporated as redline edits to the Pro Forma PPA Word document and submitted as part of the submission package. While SJCE will consider limited requests for adjustments and edits to its form agreement, adherence to SJCE's standard contract terms is an important factor in the evaluative process that will be strongly weighted. Offers that accept SJCE's standard contract terms will be given preference during such evaluation. Bidders should be aware that changes to the standard contract terms submitted after the response deadline may result in disqualification of the offer and, if applicable, forfeiture of the Shortlist Deposit provided under the Exclusivity Agreement.

ArcGIS Project File

All projects are required to submit an ArcGIS file of the relevant geospatial footprint of the project. Please refer to **Attachment 4 - Instructions For Geospatial Footprint** for further instructions.

Local and Small Business Status

Qualified Bidders wishing to claim this status should review the requirements listed in **Attachment 3 - Local Or Small Business Form**, and submit only if they qualify. This is optional and applies to the developer's status, not the location of the project.

Screening and Compliance

After the submission deadline, all submissions will be reviewed for basic compliance and completeness. At the discretion of SJCE, developers may be contacted to notify them of deficiencies in their submission materials. Bidders will have five (5) business days to respond with updated and compliant submission materials or risk rejection from consideration. Bidder is solely responsible for checking compliance of all submitted materials. Lack of communication from SJCE does not imply confirmation of a compliant submission.

Please do not include extra documentation not listed here. Bidders shall provide such additional information as reasonably requested by SJCE.

6. Short-listed Offer Required Documents

Within 14 days of short-list notification, the following items and documents must be submitted to SJCE:

- A signed Exclusivity Agreement (Attachment 5) and Shortlist Deposit (\$3,000/MW of generation).
- The most recent Phase 1 (required) and Phase 2 Interconnection Studies and Generator Interconnection Agreement (if available).
- Demonstration of site control.
- Credit rating and financial statements.

Shortlist Deposit

The Shortlist Deposit is intended to secure the obligations of any shortlisted Bidder(s) during the negotiating period and to ensure that each offer has been carefully considered. The Shortlist Deposit must be in the form of either a cash deposit or a Letter of Credit. "Letter of Credit" means an irrevocable standby letter of credit, in a form reasonably acceptable to SJCE, issued either by (i) a U.S. commercial bank, or (ii) a U.S. branch of a foreign commercial bank that meets the following conditions: (A) it has sufficient assets in the U.S. as determined by SJCE, and (B) it is acceptable to SJCE in its sole discretion. The issuing bank must have a credit rating of at least A- from S&P or A3 from Moody's, with a stable outlook designation. In the event the issuer is rated by both rating agencies and the ratings are not equivalent then the lower rating will apply. All costs of the Letter of Credit shall be borne by Bidder.

Please refer to **Attachment 5 - Exclusivity Agreement** for additional details regarding the Exclusivity Period and return of the Shortlist Deposit.

Credit Rating and Financial Statements

Based on availability, counterparties must submit a financial statement for the most recent financial quarter, as well as audited financial statements for the most recent two fiscal years, or the period of existence of the counterparty, if shorter. If audited financial statements are not available, financial statements, as described below, should be submitted, signed and attested to by an officer of the counterparty as a fair representation of the financial condition in accordance with generally accepted accounting principles. The information should include, but is not limited to, the following:

If publicly traded:

- a. Annual and quarterly reports on Form 10-K and Form 10-Q, respectively
- b. Form 6-K and 8-K, if filed during the last period

If privately held or governmentally owned:

- a. Management's Discussion & Analysis (if available)

- b. Report of Independent Accountants (if available)
- c. Financial Statements, including:
 - i. Balance Sheet
 - ii. Income Statement
 - iii. Statement of Cash Flows
 - iv. Statement of Stockholder’s Equity (privately held only)
- d. Notes to Financial Statements

Financial statements should be sent to RFO@sanjosecleanenergy.org. If the Bidder is short-listed and requires a Non-Disclosure Agreement (NDA) in order to share non-publicly available financial information, Bidder may request the City of San José’s Finance Department to execute the NDA provided as **Attachment 6 – NDA For Financial Information**. The City’s Community Energy Department (administrator of SJCE) will not execute NDAs with Bidders. More instructions will be shared upon shortlisting.

7. 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 according to both quantitative and qualitative evaluation factors described below. SJCE reserves the right to rely on information from sources other than the information provided by the Bidders. SJCE staff may also seek written clarification from any or all Bidders 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 Criteria | Points |
|---|------------|
| Value (energy, attributes, capacity) ³ | 40 |
| Project Viability | 10 |
| Environmental impacts | 5 |
| Project team experience | 10 |
| Redline to PPA | 20 |
| Impact on DACs | 2 |
| Project Location | 2 |
| Local Business Enterprise | 5 |
| Small Business Enterprise | 5 |
| Total | 100 |

SJCE will evaluate each Offer against these criteria and select a subset of Offers to create a shortlist and move to the negotiation phase. During the first stage, SJCE will rely to a large extent on

³ Please refer to the Quantitative Evaluation Criteria section for additional detail.

representations made by Bidders, as specified in the Bidder's submitted Offer Form (Attachment 1).

8. Seller Credit Requirements

As described in Section 6, the selected Bidder(s) will be required to execute an Exclusivity Agreement and submit a Shortlist Deposit of \$3,000/MW of proposed generation project capacity for each shortlisted project within two weeks of such notification.

The following development and performance assurance will be required from Seller following PPA execution:

- **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 equivalent to one year of expected project revenues. This can be provided as cash, Letter of Credit or acceptable guaranty.

Seller is solely responsible for the cost of providing this development and performance assurance and this should be included in the price offered to SJCE.

9. Buyer Security

SJCE does not intend to provide collateral or performance security in connection with any PPAs that they may execute in connection with this RFO. By submitting an offer through this RFO, Bidder acknowledges and accepts that SJCE does not intend to provide collateral or performance security in connection with any PPA, and no such offer submitted will be subject to a requirement that the SJCE post collateral or security. SJCE intends to pursue a credit rating once it has several years of operations on its books. No offer through this RFO shall be dependent on SJCE acquiring a credit rating. Financial documents for SJCE may be found at the bottom of its resources web page: <https://sanjosecleanenergy.org/resources/>.

10. Protest

If an unsuccessful proposer wants to dispute an award or award recommendation, a protest must be submitted in writing for SJCE 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 a 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 addresses 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 electronic versions of any protest to Lori Mitchell at protestSJCE@sanjosecleanenergy.org.

11. Bidder Representations

By submitting a bid, Bidder agrees to be bound by the conditions of the RFO Instructions, and makes the following representations, warranties, and covenants to SJCE, which representations, warranties, and covenants will be deemed to be incorporated in their entirety into each of Bidder's submittals and are deemed to be material to SJCE's consideration of the proposals:

1. Bidder agrees that SJCE is not liable to any Bidder or party in law or equity for any reason whatsoever for any acts or omissions arising out of or in conjunction with this request for submittals and that Bidder has no legal recourse against SJCE, its Members, SJCE directors, officers, employees, and agents for rejection of their submittal(s).
2. Bidder acknowledges that it has had the opportunity to seek independent legal and financial advice of its own choosing with respect to this RFO and agrees to be bound by the terms and specifications of this RFO and any addenda subsequently issued prior to the due date of the submittal.
3. Bidder has obtained all necessary authorizations, approvals, and waivers, if any, required by Bidder to submit its bid pursuant to the terms of this RFO.
4. Bidder acknowledges that SJCE reserves the right to enter into relationships with more than one Bidder, can choose not to proceed with any Bidder with respect to one or more identified Tasks, and can choose to suspend this RFO or issue a new RFO that would supersede and replace this RFO.
5. Bidder warrants that it has no employees in its employ who in any capacity have a position at SJCE that enable him/her to influence the selection of a Bidder or any competing RFO, nor does Bidder have in its employ any of SJCE's Directors, or SJCE employee who is the spouse or economic dependent of such a SJCE employee.
6. Bidder's submission complies with all applicable laws.
7. Bidder warrants that all information submitted by Bidder to SJCE in connection with this RFO is true and accurate as of the date of Bidder's submission. Bidder also covenants that it will properly update any submitted information immediately upon any material change thereto.
8. Bidder acknowledges and accepts that SJCE does not intend to provide collateral or performance security in connection with any PPA.

12. Interpretation

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

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

If there are any discrepancies between the RFO and the PPA, the PPA would apply.

13. Grounds for Disqualification

All RFO Bidders 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: <https://www.sanjoseca.gov/home/showdocument?id=29663>.

Any RFO Bidders 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 Bidders 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 Bidder and the City.
3. Evidence of RFO Bidder's inability to successfully complete the responsibilities and obligations of the proposal.
4. RFO Bidder's default under any City agreement, resulting in termination of such Agreement.

14. Code Adherence and Policies

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

- Environmentally Preferable Purchasing:
<https://www.sanjoseca.gov/home/showdocument?id=12833>
- Prohibition of City Funding for Purchase of Single Serving Bottled Water:
<https://www.sanjoseca.gov/home/showdocument?id=12885>
- Business Tax and Registration:
<http://www.sanjoseca.gov/BusinessTax>

15. 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 PPA Template, Attachment 2. These provisions are non-negotiable. SJCE's municipal advisor letter can be found at the following location: <https://www.sanjoseca.gov/home/showdocument?id=32199>

Bidder shall enter into a contract with SJCE in substantial conformity with the selected proposal, as mutually modified during negotiations. Attachment 2, the PPA Template, outlines SJCE's standard terms and conditions as part of the agreement between SJCE and the successful Bidder. SJCE reserves the right to negotiate project deliverables and associated costs.

All agreements will require the Bidder 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.

16. Insurance Requirements

The selected Bidder, at Bidder's sole cost and expense and for the full term of any PPA or any extension thereof, shall obtain and maintain insurance as required by SJCE.

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

17. Public Nature of Proposal Material

All correspondence with SJCE including responses to this solicitation will become the exclusive property of SJCE 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.

SJCE acknowledges that another party may submit information that the other party considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code sections 6254 and 6255) ("Confidential Information").

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".

SJCE will not disclose any part of any proposal before it announces a recommendation for award, on the grounds 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 Bidder 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. Bidder 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 Bidder as confidential information (such designated information, the "Confidential Information"), SJCE will notify the Bidder as soon as practical that such request has been made. The Bidder 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 SJCE. If the Bidder takes no such action after receiving the foregoing notice from SJCE, SJCE 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 SJCE, 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 SJCE is required to release Confidential Information, it shall notify the Bidder of the required disclosure, such that the Bidder 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.

18. 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 their sole discretion, to not enter into any transaction at the conclusion of this RFO. SJCE 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 the authorized representative of 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.