



San José Clean Energy
2022 Direct Current Fast Charging Hubs Pilot
Request for Offers Protocol

Issuance Date: August 29, 2022

Final Response Deadline: September 19, 2022, at 5:00 PM PT

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1. Overview

a. Purpose

The City of San José as administrator of San José Clean Energy (“SJCE”) is soliciting competitive offers for Electric Vehicle (“EV”) Direct Current Fast Charging (“DCFC”) Hub(s) via a pilot program consistent with the terms and provisions in this Request for Offers (“RFO”).

b. Background

San José Clean Energy, or SJCE, is San José’s local, not-for-profit electricity supplier operated by the City of San José’s Community Energy Department. Since 2019, SJCE has provided clean energy for residents and businesses at competitive rates, while also offering community programs, local benefits, and increased transparency and accessibility.

San José Clean Energy serves more than 350,000 customers and has a peak load of almost 1 gigawatt. SJCE is responsible for purchasing over 4,500 gigawatt-hours of electricity annually and has an annual operating budget of over \$300 million. SJCE plays an important role in meeting San José’s ambitious goal to be carbon neutral by 2030 and in implementing Climate Smart San José, the City’s climate action plan.

SJCE prioritizes equity in its drive to provide clean, renewable energy at competitive rates and provide local benefits. Since inception, SJCE has sprinted ahead to now provide 60% renewable and 95% carbon-free energy in our base product and has invested \$1 billion to add nearly 550 megawatts of new solar, wind, and battery storage to the grid. SJCE’s low carbon energy supply is foundational as we work to meet the electrification goals outlined in Climate Smart San José. For more information about San José Clean Energy, please visit: www.sanjosecleanenergy.org.

SJCE’s audited financial statements for 2017-2020 are available for review and can be found on SJCE’s website: www.sanjosecleanenergy.org/key-documents/.

c. Objectives

SJCE is issuing this 2022 Direct Current Fast Charging Hubs Pilot RFO for turnkey DCFC systems. SJCE is considering entering into a tolling agreement with one or more counterparties for one to three public DCFC hubs located in low-income or disadvantaged communities in San José to increase access to reliable electric vehicle (“EV”) charging. At least one of the DCFC hubs must be located at a site owned by the City of San José (e.g., library, community center, etc.). The Respondent would own the DCFC infrastructure and would be responsible for siting, financing, design, engineering, procurement, permitting, construction, installation, interconnection, operation, maintenance, the Load Management System, and Back Office Services (e.g., communications, user account management, billing, reporting, utility interface applications) at each site in exchange for fixed monthly tolling payments with performance standards on hardware and software uptime. SJCE prefers a contract term of 10 years.

SJCE would provide the energy to the chargers and would retain the right to set EV charging rates and brand the charging stations and hub signage with SJCE branding. SJCE would have all rights to the environmental attributes (e.g., Low Carbon Fuel Standard credits).

Each DCFC hub should contain parking spaces to accommodate exactly 10 vehicles and 10 charging ports. Each DCFC hub should be accessible 24/7 for public use. Chargers must either be capable of delivering 1/at least 100 kilowatts (“kW”) if unpaired or 2/60 kW and be able to deliver at least 120 kW if power is shared.

Successful performance in the pilot could result in SJCE putting out an RFO for DCFC hub expansion in the future, including in concert with other Community Choice Aggregators (“CCAs”).

d. Joint Procurement Approach

Unless the bidder objects, this RFO could be shared with other Community Choice Aggregators in California for similar projects.

e. Schedule

The RFO schedule is subject to change at SJCE’s discretion. Any changes will also be reflected on the RFO webpage (<https://sanjosecleanenergy.org/energy-procurement/>). SJCE bears no liability or responsibility to any Respondent for any change in the schedule or for failing to provide notice of any change.

The expected schedule for this RFO is as follows; all time listed in **Pacific Prevailing Time (PPT)**:

Date /Time	Event
August 29, 2022	SJCE issues RFO.
September 7, 2022, no later than 2 p.m.	Final deadline to submit questions.
September 12, 2022	SJCE to post Q&A document, inclusive of <u>all</u> questions in by September 7, 2022, 2 p.m.
September 19, 2022, no later than 5 p.m.	Offers due.
October 3, 2022	SJCE identifies shortlisted Respondents and Offers.
September - October 2022	Negotiations
October - November 2022	Contract approvals by City Council and Department Director.

f. RFO Process

By responding to this RFO, Respondents agree to be bound by all terms and conditions of the RFO including any changes or supplements that may be issued by SJCE.

Offers Due: Offers must be submitted via e-mail to RFO@sanjosecleanenergy.org. Offers are due no later than 5 p.m. PPT on September 19, 2022. Offers must include all documents described in **Section 6: Offer Information**.

Offer Selection: SJCE will evaluate Offers in accordance with the terms described in **Section 4: Evaluation Criteria** and based upon reasonableness and desirability of commercial terms reached by both parties through the negotiations process.

Following shortlisting, SJCE will engage in limited negotiations with counterparties as relevant to the Offer(s). The final selection of Offers for execution will be evaluated against each other, considering reasonableness and desirability of commercial terms reached by both parties through the negotiations process. SJCE may elect to work with one or more counterparties, but never more than one counterparty per site.

Presentation to Council: SJCE will present contracts for transactions it hopes to execute to the San José City Council (“Council”) for Council consideration and approval, unless Council authorizes the Director of Community Energy or her designee to negotiate and execute such contracts.

Execution of Contracts: If Council approves moving forward with the proposed transaction, SJCE will proceed to execute contracts. In the event that the Council requires additional information related to any transaction, those transactions will be held and their execution will be delayed. SJCE maintains the right to execute some agreements along an earlier timeline if commercial terms are agreed to faster than described in the RFO schedule.

g. Supplier Diversity

Pursuant to California Senate Bill 255, CCAs are required to report to the California Public Utilities Commission (“CPUC”) on their diverse suppliers, as defined by CPUC General Order 156. Consistent with the California Public Utilities Code and California Public Utilities Commission policy objectives, respondents that execute an agreement with SJCE will be provided with a Supplier Diversity questionnaire. SJCE will not consider race, sex, color, ethnicity, or national origin in procurement decisions; providing such information in an Offer will not impact the selection process or good standing of executed agreements.

SJCE encourages all eligible parties to become certified with the CPUC as a woman, minority, disabled veteran and/or LGBT owned business enterprise (WMDVLGBTBE).

For overview information on the CPUC Supplier Diversity Program, please visit the program homepage (<https://www.cpuc.ca.gov/supplierdiversity/>). For information on the certification process and requirements, please visit the Certifications page (<https://www.cpuc.ca.gov/Certifications/>).

h. Disclaimers for Rejecting Offers and/or Terminating this RFO

This RFO does not constitute an offer to buy and creates no obligation for Council to approve a specific transaction or for SJCE to execute any agreement or enter into any transaction as a result of the RFO. SJCE retains the right at its sole discretion to reject any Offers on the grounds that it does not conform with the terms and conditions of the RFO and reserves the right to request additional information at any time during the solicitation process. SJCE reserves the right to waive any informality or irregularity in any response.

SJCE retains the right to: (1) modify this RFO and/or its form Term Sheets and/or form agreements as SJCE deems appropriate to implement the RFO, comply with applicable laws, or best meet the

organization's evolving understanding of its procurement needs; or (2) reject any Offer on the basis that it is not competitive or is the result of market manipulation.

SJCE will not be liable in any way by reason of such withdrawal, rejection, suspension, delay, or termination of any RFO Respondent, whether submitting an Offer or not.

2. RFO Goals

SJCE seeks transactions that will commence delivery by May 1, 2023, with a preference for projects that begin delivery earlier, have the lowest cost, and are located at City-owned sites and in an area with a combined equity score (race and income) of 8, 9 or 10 per the City San José's Equity Atlas: (<https://www.arcgis.com/apps/MapSeries/index.html?appid=9921c7e45b874c1ebcc8ef918a130018>). Each DCFC hub must provide reliable electric vehicle charging services to the public; hardware and software uptime must be a minimum of 98%.

3. Eligibility

a. Project Viability Requirements

All Offers must meet the requirements detailed in each of the following sections. Some of this information will be captured in relevant fields within Attachment A - Pricing Exercise. Some of this information must be provided in a written narrative in Attachment B - Offer Supplement.

Respondents attest that all eligibility requirements are met and acknowledge that SJCE retains the right to request documentation at any time to verify project details or status.

i. DCFC Hubs

New sites are eligible to participate. All Offers for DCFC Hub(s) must be able to meet the requirements listed in Attachment A - Pricing Exercise.

ii. Interconnection

Respondent is responsible for all interconnection matters with Pacific Gas & Electric, including installing all necessary interconnection equipment and meters, and conducting all testing necessary for interconnection. All work and associated costs for make ready infrastructure up to the meter are the responsibility of Pacific Gas & Electric under Rule 29.

iii. Site Control

For this pilot, at least one of the DCFC hubs must be located at a site owned by the City of San José (e.g., library, parks, community center, etc.). The Respondent would need to conduct an engineering site assessment for approval by City of San José staff. The list of City sites below is indicative of sites that may be available for the DCFC hub pilot:

1. Edenvale Library - 37°16'07.2"N 121°49'13.5"W
2. Emma Prusch Farm Park - 37°20'19.1"N 121°50'45.6"W
3. Evergreen Library – 37°18'50.8"N 121°47'47.5"W
4. Rancho del Pueblo Golf Course - 37°20'49.3"N 121°51'01.1"W
5. Seven Trees Community Center – 37°17'06.7"N 121°50'01.6"W

A Term Sheet for the lease of City-owned sites would come at a later date.

For privately owned sites, Respondents must provide evidence of site control which may include (1) ownership of the site, a leasehold interest, or a right to develop a site for the purpose of constructing a generating facility; (2) an option to purchase or acquire a leasehold site for purposes of constructing a generating facility; and (3) any other arrangement that amounts to the same right to develop the property, in SJCE’s sole discretion.

iv. Commencement of Commercial Operation Date

The project must be able to begin commercial operation under the agreement no later than May 1, 2023.

b. Participation in Other Procurements

Respondents in this solicitation are not barred or limited from offering their projects or products in other procurements.

c. Participation in Future Solicitations

Projects that are not selected in this RFO may be offered again in future solicitations.

4. Evaluation Criteria

When Respondents have met the eligibility requirements described above, SJCE will employ the evaluation criteria described in this section to select Offers for shortlisting using quantitative and qualitative evaluation criteria. SJCE will evaluate Offers within the following categories:

Economic valuation: responses to pricing exercise	40%
Community Impact: location, accessibility, impact to geospatial charging coverage	25%
Counterparty Execution Risk: Development experience, experience working with Community Choice Aggregators, and term sheet markups	20%
Development Status Risk: experience and approach to interconnection, permitting, and environmental project-specific risks	5%
Local Business Enterprise	5%
Small Business Enterprise	5%
Total	100%

Quantitative Evaluation Criteria include:

a. Cost

SJCE will evaluate Offers based on cost.

Qualitative Evaluation Criteria include:

a. Counterparty Execution Risk

Respondent experience and financial health, as well as markups to the term sheet will be evaluated. Rejection of conditions of the term sheet or markups to those terms will be evaluated and weighted.

b. Development Status Risk

Interconnection, permitting, and environmental project-specific risks will be evaluated.

c. Community Impact

SJCE has a preference for projects in low-income and disadvantaged communities, though the ultimate goal is more complete coverage and availability of DCFC hubs throughout the city. SJCE will prioritize projects that are easy to access, highly visible from major thoroughfares, and maximize EV charging geospatial coverage at the time of Offer selection. SJCE prefers siting the DCFC hubs in an area with a combined equity score (race and income) of 8, 9 or 10 per the City San José's Equity Atlas: (<https://www.arcgis.com/apps/MapSeries/index.html?appid=9921c7e45b874c1ebcc8ef918a130018>).

d. Environmental Stewardship

SJCE is committed to being an environmental leader by providing customers with energy that delivers multiple benefits for air, water, and natural ecosystems and avoids impacts to important lands, species, and waters. For example, a site near a shopping center or library would score better than a site located under a freeway overpass. A site design that incorporates native and drought tolerant landscaping would score better than a site with hardscape. SJCE will prioritize projects that are considered multi-benefit, including for energy resiliency for City-owned sites.

e. Local and Small Businesses

SJCE adds a 5% premium for local businesses and a 5% premium for small businesses during scoring. See Attachment D - SJCE Request for Local and Small Business Preference.

5. Guidelines for Offer Development

a. Price

Respondents must submit Offers with their best and final price using Attachment A - Pricing Exercise. The price must be stated in dollars per kilowatt-month (\$ / kW-month). The site must have 10 ports and 10 parking spaces with charging capability. The price must remain constant throughout the agreement term (no escalators).

The price submitted for an Offer must include (1) all grant funding, subsidies, and tax credits applicable to the Project; (2) any costs incurred by the Respondent including any interconnection costs, site design, ongoing site costs¹ (lease, etc.), procurement, and operations and maintenance; (3) the acceptance of the non-price terms and conditions of the term sheet, except to the extent that Respondent specifically rejects a non-price term or condition in their term sheet markup; and (4) all other benefits the Respondent expects to apply.

¹ For City-provided sites, assume a no cost lease.

b. Compliant Submission Specifications

All Offers must meet the following specifications to be considered for selection. Please ensure that Offers 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.

Products	DCFC Hub(s)
Location	Within the City of San José (i.e., San José Clean Energy service territory). Include approximate latitude and longitude of the project site.
Term	10 years from Commercial Operation Date, with option to extend or option for SJCE to buy outright at \$0
Price	Dollars per kilowatt-month (\$ / kW-month) per charging port assuming two ports per parking space.
Installed Capacity	10 parking spaces
Expected Commercial Operation Date (COD)	On or prior to May 1, 2023.
Price Setting	SJCE shall set the charge pricing
Ownership	All projects will be owned by the Respondent, with SJCE providing and paying for the electricity (Seller cannot opt out of SJCE service). SJCE will collect the revenue earned for the sale of electricity and retain LCFS and FCI credits.
City Standard Terms and Conditions	Any exceptions to the City's Standard Terms and Conditions may result in immediate disqualification of your solicitation response without further review

c. Variations

All Offers must comply with the Standard Offer requirements outlined in Section 5 above and in the associated forms. SJCE may consider non-standard offers which may be described in the Respondent's Offer Supplement or cover letter.

6. Offer Information

a. Required Documents for Offers

The following documents must be completed and submitted to constitute a complete Offer to this solicitation. The relevant documents are included as Attachments to this solicitation and noted below.

1. Completed Pricing Exercise (Attachment A)

- Please provide all applicable information requested in the Pricing Exercise at each unique site. In the event that multiple sites are offered, a unique Pricing Exercise must be completed for each site.
- File Format: Microsoft Word
- 2. **Offer Supplement** (Attachment B)
 - Please provide all applicable information requested in the Offer Supplement template found in Attachment B. ***Only one Offer Supplement PDF is required per Respondent even if multiple Offers/sites are offered.***
 - File Format: Microsoft Word
- 3. **Redlined Term Sheet** (Attachment C)
 - Please include a redline of the Term Sheet(s) relevant to your Offer(s) in “tracked changes” format.
 - Redlines should reflect all necessary changes that Respondent desires in connection with the pricing set forth in the Offer. Requested changes must be identified with sufficient detail. Comments such as “to be discussed” or “for discussion” are not sufficiently detailed and will not be considered a desired change for Respondent. SJCE will prioritize negotiations with Respondents that adapt their Offer to existing contract terms and conditions and limit requested changes to SJCE Term Sheet. Exceptions to the City’s Standard Terms and Conditions may result in immediate disqualification of your solicitation response without further review. Negotiated Term Sheets will be used to create full agreements for execution.
 - File Format: Microsoft Word

b. Optional Documents for Offers

The following documents may be submitted with an Offer but are not required at this time. SJCE reserves the right to request these or other documents later to help evaluate an Offer. **Please note that SJCE will not sign a Non-disclosure Agreement.**

1. **Interconnection studies from Pacific Gas & Electric**
2. **Site design documents and maps**
3. **Environmental studies and permit information**
4. **Local/small business preference** (only submit if qualified)
 - Qualified Respondents wishing to claim local/small business status must complete Attachment D - SJCE Request for Local and Small Business Preference. Please review requirements and do not submit this form unless your company qualifies.
 - Respondents who fail to complete and submit the Request for Local and Small Business Preference Form with their response will not be considered for the preference. This information cannot be submitted after the specified response submittal deadline.

c. Required Documents at Shortlisting

The following items will be required within 10 business days of the shortlist announcement. SJCE will not require an exclusive negotiating agreement or shortlist deposit for this RFO.

- **Credit Rating and Financial Documents**

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, must 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 must include, but is not limited to, the following:

- **If publicly traded:**
 - Annual and quarterly reports on Form 10-K and Form 10-Q, respectively
 - Form 6-K and 8-K, if filed during the last period
- **If privately held or governmentally owned:**
 - Management’s Discussion & Analysis (if available)
 - Report of Independent Accountants (if available)
 - Financial Statements, including:
 - Balance Sheet
 - Income Statement
 - Statement of Cash Flows
 - Statement of Stockholder’s Equity (privately held only)
 - Notes to Financial Statements

7. Communications

SJCE will be using a solicitation page on its website (<https://sanjosecleanenergy.org/energy-procurement/>) where all RFO documents, information, announcements, and Q&A will be posted and made available to the market.

To promote efficiency and accuracy in communications, all Respondents must submit any inquiries via email to RFO@sanjosecleanenergy.org. SJCE will not respond to any material questions submitted after the final question deadline of September 7, 2022. All answers will be compiled into a document and posted to the RFO web page by September 12, 2022. The identity of the Respondents asking questions will be anonymized. SJCE reserves the right to combine, rephrase, or not respond to some questions.

8. Respondent Representations

By submitting an Offer, Respondent agrees to be bound by the conditions of the RFO Protocol, 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 Respondent’s submittals and are deemed to be material to SJCE’s consideration of the proposals:

1. Respondent agrees that SJCE is not liable to any Respondent 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 Respondent has no legal recourse against SJCE, its members, directors, officers, employees, and agents for rejection of their submittal(s).
2. Respondent 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. Respondent has obtained all necessary authorizations, approvals, and waivers, if any, required by Respondent to submit its offer pursuant to the terms of this RFO.
4. Respondent acknowledges that SJCE reserves the right to enter into transactions with more than one Respondent, can choose not to proceed with any Respondent with respect to one or more Offer(s), and can choose to suspend this RFO or issue a new RFO that would supersede and replace this RFO.

5. In order to avoid a conflict of interest or the perception of a conflict of interest, Respondent(s) selected to provide goods and services under this RFP will be subject to the following requirements:
 - a. The Respondent selected under this RFP will be precluded from submitting proposals or bids as a prime contractor or subcontractor for any future procurement with the City if the specifications for such procurements were developed or influenced by the work performed under the agreement resulting from this RFP.
 - b. Respondent may not have any interest in any potential Respondents for future City procurements that may result from the work performed under the agreement resulting from this RFP.
6. All goods and services provided to the City by the successful vendor shall comply with all City policies, rules, and regulations which may be in effect during the term of the agreement, as well as all applicable federal, state, and local statutes, ordinances, and regulations. The successful vendor is also required to comply with all applicable equal opportunity laws and regulations. Respondent warrants that all information submitted by Respondent in connection with this RFO is true and accurate as of the date of the Respondent's submission. Respondent also covenants that it will properly update any submitted information immediately upon any material change thereto.
7. Respondent acknowledges and accepts that SJCE does not intend to provide collateral or performance security in connection with any agreement.

9. Termination of RFO-Related Matters

SJCE reserves the right at any time, in its sole discretion, to terminate the RFO without prior notification to Respondents and without liability of any kind. Grounds for termination may include, without limitation, that no Offers are deemed cost competitive or as a result of an inability to reach final commercial agreement between parties.

In the event of termination of the RFO for any reason, SJCE will not reimburse Respondents for any expenses incurred in relation to the RFO.

10. Attachments

The following Attachments are hosted on the RFO webpage (<https://sanjosecleanenergy.org/energy-procurement/>) and hereby made part of this RFO.

- 2022 DCFC Hubs Pilot RFO Protocol (this document)
- Attachment A: Pricing Exercise
- Attachment B: Offer Supplement
- Attachment C: Term Sheet
- Attachment D: Request for Local and Small Business Preference
- Attachment E: Exhibit A - Insurance Requirements

11. 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 provisions in this RFO are 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
San José, CA 95113

Please submit electronic versions of any protest to Lori Mitchell at protestSJCE@sanjosecleanenergy.org.

An appeal of the Director's decision may be filed with the City Council. All such appeals must be in writing, and shall be filed with the City Clerk within ten (10) calendar days of the sending of the Director's decision.

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 Term Sheet, requests for clarification may be sent via e-mail to RFO@sanjosecleanenergy.org. Requests for clarification received after the deadline provided in Section 7 will not be considered.

If there are any discrepancies between the RFO and the Term Sheet, the Term Sheet shall control.

13. Grounds for Disqualification

All Respondents 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 Respondents who violate 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 Respondents 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 of the Consolidated Open Government and Ethics Provisions, the following conduct may also result in disqualification:

1. Offering gifts or souvenirs, even of minimal value, to City/SJCE officers or employees.
2. Existence of any lawsuit, unresolved contractual claim or dispute between Respondents and the City.
3. Evidence of Respondent's inability to successfully complete the responsibilities and obligations of the proposal.
4. Respondent's default under any City/SJCE agreement, resulting in termination of such Agreement.

14. Code Adherence and Policies

Respondents 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. Respondents 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 Term Sheet. **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>

Respondents shall enter into a contract with the City in substantial conformity with the selected proposal, as mutually modified during negotiations. The Term Sheet outlines the City's standard terms and conditions as part of the agreement between the City and the successful Respondent. SJCE reserves the right to negotiate project deliverables and associated costs.

All agreements will require the Respondent 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 Respondent, at Respondent'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 SJCE and specified in Attachment E.

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 Respondent 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 the City and will become public records under the California Public Records Act (Cal. Government Code section 6250 et seq.) All documents that Respondents send 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 a Respondent may submit information that the Respondent 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 Respondent’s 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 Respondent must clearly stamp and identify the specific portion of the material designated with the word “Confidential” and provide a citation to the provision(s) of the California Public Records Act that supports keeping the information confidential. Respondent should not 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 (“Requestor”) for production, inspection and/or copying of information designated by Respondent as confidential information (such designated information, the “Confidential Information”), SJCE will notify the Respondent as soon as practical that such request has been made. The Respondent 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 Respondent 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, SJCE 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 Respondent of the required disclosure, such that the Respondent 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 its sole discretion, to not enter 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 reserve the right to rescind this RFO at any time prior to the 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 Respondent. SJCE will not be liable at any time for any costs the Respondent may incur in preparing or submitting its response to this RFO.