



**EAST BAY COMMUNITY ENERGY
ENERGY RESILIENT MUNICIPAL CRITICAL FACILITIES
2023 REQUEST FOR OFFERS**

ATTACHMENT B: RFO PARTICIPATION AGREEMENT

DEFINED TERMS

For the purposes of this RFO:

A "Respondent" is any party that attempts to or successfully submits an Offer.

An "Offer" refers to the submission of requested information pursuant to this RFO. A complete Offer must contain the required forms outlined in Section 7 of the protocol.

PARTICIPATION AGREEMENT

Each Respondent submitting an Offer shall provide the electronic signature of a duly authorized officer of the Respondent entity below. By providing such signature the Respondent (a) agrees to be bound by all terms, conditions and other provisions of this RFO and any changes or supplements to it that may be issued by East Bay Community Energy (EBCE) respective to the Offers that it is seeking, and (b) makes the following representations and warranties to EBCE unless otherwise indicated:

1. Respondent has read, understands, and agrees to be bound by all terms, conditions and other provisions of the RFO.
2. Respondent has had the opportunity to seek independent legal and financial advice of its own choosing with respect to the RFO and all Exhibits to the RFO.
3. Respondent agrees that to its knowledge no EBCE Board member, officer, or employee of EBCE has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, or in the business of the Respondent, and that if any such interest comes to the knowledge of either party at any time, a full and complete disclosure of all such information will be made in writing to the other party or parties, even if such interest would not be considered a conflict of interest under Article 4 of prohibition applicable to specified officer, Chapter 1 of Division 4 of Title 1 (commencing with Section 1090) of the Government Code of the State of California or the Political Reform Act.

4. Respondent has obtained all necessary authorizations, approvals and waivers, if any, required of Respondent to submit its Offer and, if Respondent's Proposal is selected for negotiations, Respondent will be prepared to negotiate in good faith and execute a definitive agreement with EBCE on the terms of such Offer.
5. Respondent is submitting its Offer subject to all applicable laws including, but not limited to, the Federal Power Act and all amendments thereto, and Public Utilities Code section 454.5, and all amendments thereto.
6. Respondent has not engaged in and will not engage in communications with any other Respondent responding to or intending to respond to this RFO concerning any terms contained in Respondent's Offer, unless explicitly authorized by EBCE as applicable to the Respondent's Offer, and has not engaged in activities in violation of State or Federal antitrust laws or other unlawful or unfair business practices in connection with the RFO ("Prohibited Communication Activities"). Respondent has not and will not engage in collusion with other Respondents or other unlawful or unfair business practices in connection with this RFO. Notwithstanding the foregoing, Respondent may engage in communications with its advisors, attorneys, experts or employees who have a need to know the content of the communications and have agreed to keep such information confidential (collectively, "advisors"). In addition, Respondent may engage in communications with other Respondents submitting an Offer to the RFO and their advisors ("Other Respondents"), so long as: (1) such Other Respondents are under common ownership and control with Respondent; (2) Respondent and Other Respondents do not engage in Prohibited Communication Activities; and (3) in the event Respondent and Other Respondent share a common advisor, Respondent has, prior to sharing communications with such Other Respondent and the common advisor, provided EBCE with (a) notice of such Other Respondent and common advisor and (b) an attestation that Respondent has not and will not engage in Prohibited Communication Activities with either the Other Respondent or the common advisor.
7. If Respondent's Offer is selected for the EBCE Shortlist and Respondent accepts the position on the EBCE Shortlist, then Respondent agrees to execute a Confidentiality Agreement, to negotiate in good faith, and to inform EBCE if the project that is the subject of the Offer on the EBCE Shortlist has been submitted into another solicitation with EBCE or any other entity.
8. Respondent will promptly notify EBCE of any change in circumstances that may affect its ability to fulfill the terms of its Offer, at any time from Offer submission to EBCE's execution of a PPA or Respondent's withdrawal of the Offer or EBCE's rejection of the Offer.
9. Respondent will not communicate with EBCE officers, directors, employees, attorneys or advisors in any way up until notification of Offer shortlisting, other than to submit written questions through the appropriate channels and provide requested documentation and/or clarifications as provided in the RFO.

A BREACH BY ANY RESPONDENT OF THE REPRESENTATIONS AND WARRANTIES IN THIS AGREEMENT, IN ADDITION TO ANY OTHER REMEDIES THAT MAY BE AVAILABLE TO EBCE UNDER APPLICABLE LAW, IS GROUNDS FOR IMMEDIATE DISQUALIFICATION OF SUCH RESPONDENT FROM PARTICIPATION IN THE RFO AND, DEPENDING ON THE NATURE OR SEVERITY OF THE BREACH, MAY ALSO BE GROUNDS FOR TERMINATING THE RFO IN ITS ENTIRETY.

Company Name: _____

Authorized Officer Signature: _____

Authorized Officer Name: _____

Date: _____