



East Bay Community Energy / San José Clean Energy
2023 Long-Term Resource
Request for Offers

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1. Overview

a. Purpose

East Bay Community Energy (EBCE) and the City of San José, as administrator of San Jose Clean Energy (SJCE) are soliciting competitive proposals for the sale and purchase of renewable energy and/or energy storage consistent with the terms and provisions in this 2023 Long-Term Resource Request for Offers (RFO).¹ EBCE and SJCE may sometimes hereinafter be referred to individually as “CCA” and collectively as the “CCAs.”

b. Background

EBCE is a Joint Powers Authority formed on December 1, 2016, pursuant to California Government Code § 6500 et. seq. On August 10, 2017, EBCE filed its Community Choice Aggregator (CCA) Implementation Plan with the California Public Utilities Commission (CPUC). On September 7, 2017, the CPUC provided PG&E notice of the receipt of EBCE’s Implementation Plan, and on November 8, 2017, the CPUC certified EBCE’s Implementation Plan. EBCE began serving commercial, industrial, and municipal customers in June 2018, and began serving residential customers in November 2018. EBCE currently serves the County of Alameda, and each of the following cities incorporated therein: Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Oakland, Piedmont, San Leandro, and Union City. In April 2021, the cities of Newark, Pleasanton and Tracy will join EBCE’s service territory. The city of Tracy is located in San Joaquin County. In 2024, the city of Stockton (in San Joaquin County) will join EBCE’s service territory.

EBCE’s audited financial statements for 2018-2022 are available for review and can be found in the RFO Materials section of the EBCE RFO webpage (<https://ebce.org/key-documents/>).

SJCE is the City of San José’s electricity supplier—charting our path to a greener future. The Community Energy Department of the City of San José operates SJCE and is dedicated to creating a more sustainable future for the San Jose community. The San José City Council unanimously voted to create SJCE in May 2017 and SJCE began serving residents and businesses in February 2019.

SJCE’s audited financial statements since 2018 are available for review and can be found at: <https://sanjosecleanenergy.org/key-documents/>.

c. Objectives

EBCE and SJCE are issuing this 2023 Long-Term Resource RFO to procure long-term renewable energy and storage resources from new facilities or existing facilities adding incremental capacity, to provide long-term clean energy hedges and Resource Adequacy (RA), and to contribute to EBCE’s and SJCE’s respective Renewable Portfolio Standard (RPS) and Integrated Resource Plan (IRP) obligations under SB 350, SB 100 and the CPUC’s Mid-Term Reliability Requirements.

EBCE and SJCE seek Offers for the sales of RPS-eligible energy and/or stand-alone storage for a contract term with a minimum of 10 years, with a preference for Offers with terms less than 20 years. Eligible Offers may be for: (1) As available RPS product; (2) As available RPS product plus energy storage; (3) Shaped clean/RPS energy; and/or (4) Stand-alone energy storage. Any Respondent to this RFO

¹ For the purposes of SJCE only, the phrase “request for offers,” defined herein as RFO, shall take the same meaning as the phrase “request for proposal,” pursuant to the municipal code of the City of San José.

(individually, Respondent or collectively, Respondents) may submit Offers for as many or as few products as they wish, relative to their capabilities and expertise.

EBCE and SJCE seek energy and related products from both new construction resources and will consider existing resources. Offers must include projects that only begin delivery of energy and related products no later than June 1, 2030 to be considered eligible for this RFO. The CCAs have preference for deliveries beginning by 2025. The eligible products are described in greater detail in **Section 5: Guidelines for Offer Development**.

d. Joint Procurement Approach

EBCE and SJCE are cooperating in this solicitation. However, each CCA will make its own shortlisting decisions and will contract separately with selected Respondents. To the extent EBCE and SJCE are both interested in contracting for renewable energy and/or storage capacity from the same project, the CCAs will determine the allocation of capacity between themselves and intend to work together on negotiating an agreement. Nonetheless, each CCA is a separate entity with an individual governing board and will need to meet the needs and requirements of their organization.

e. Schedule

The RFO schedule is subject to change at EBCE’s and SJCE’s discretion and each CCA will attempt to notify RFO Respondents of any schedule changes via email. Any changes will also be reflected on the RFO webpage (<https://ebce.org/ebce-sjce-2023-rfo/>). Neither EBCE nor SJCE bears liability or responsibility to any Respondents 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
Ongoing	Respondents may register online to receive notices regarding the RFO.
March 22, 2023	EBCE and SJCE jointly issue RFO.
March 31, 2023	Offer forms and Pro forma offtake agreements posted to RFO website.
April 5, 2023, no later than 2pm	Deadline to submit questions for Respondent Webinar.
April 12, 2023, 11am	Respondent Webinar for RFO.
April 19, 2023, no later than 2pm	Final deadline for Respondents to submit questions.
April 24, 2023	EBCE/SJCE to post Q&A document, inclusive of <u>all</u> questions in by April 19.
April 26, 2023, no later than 2pm	Final deadline for Respondents to submit Notice of Intent to Offer.
May 2, 2023, no later than 5pm	Offers from Respondents are due. Offers must be submitted via Dropbox, including all required files and related information.
June 5, 2023	EBCE and SJCE, respectively, identify shortlisted Respondents and Offers.
June 19, 2023	Shortlisted Respondents are required to sign exclusivity agreement and post a shortlist deposit with the appropriate CCA.

June 30, 2023	Comprehensive redlines of pro forma agreements due for shortlisted Respondents.
July - October 2023	Negotiations between CCAs, respectively, and Respondents.
November - December 2023	Contract approvals by the respective governing board of each EBCE & SJCE.

Note: The CCAs will fast track projects with earlier CODs and consider them on a more expedited timeline.

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 the CCAs, respectively.

Webinar: The CCAs will hold a Respondent Webinar on April 12, 2023, at 11am PT to review key information in this protocol related to the solicitation and form agreement terms. Questions submitted by April 5, 2023, will be answered if time allows. All interested parties may register for the webinar at this link: <https://ebce-org.zoom.us/meeting/register/tZlqfuqprD8iEtHkCadtdKDHFaoKuG-Pdrhl> The information to register for the webinar will also be available on this RFO’s webpage. Attendance is not mandatory but encouraged.

Notice of Intent to Offer: All Respondents who wish to submit Offers must complete and submit a Notice of Intent to Offer (NOI) via e-mail, to RFO@ebce.org in order to receive a unique submission folder link on Dropbox. EBCE/SJCE will provide a submission folder link within two business days of NOI being returned. NOI must be submitted no later than 2pm PPT on April 26, 2023; early submission is welcomed and appreciated. NOI form and instructions can be found in Attachment A.

Offers Due: Offers must be submitted via the Respondent-specific Dropbox folder that will be designated and shared upon return of a completed NOI. Offers are due no later than 5pm PPT on May 2, 2023. Offers must include all documents described in **Section 6: Required Information**. Until this RFO is closed, the CCAs may, but are not required to consider late filed Offers provided that, EBCE/SJCE will proceed with shortlisting and contract negotiations for timely filed proposals without regard for any such late filed Offers. Moreover, to be considered, all Offers must provide a full Offer package.

Offer Selection: EBCE/SJCE will evaluate Offers in accordance with the terms described in **Section 4: Evaluation Criteria**. Selected Respondents will be shortlisted and required to enter into an Exclusivity Agreement and provide an Offer deposit in an amount of \$3.00/kW multiplied by the Project’s capacity (for RPS + storage proposals, this is calculated based on sum of RPS capacity AND storage capacity).

Following shortlisting, EBCE and SJCE, respectively, will engage in limited negotiations with counterparties as relevant to any Offer. 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, and the impact of the Offer on EBCE’s and SJCE’s portfolio as a whole.

Presentation to Governing Board: EBCE will present contracts for transactions it hopes to execute to its board of directors in advance of execution. Confidential terms, including pricing and other market sensitive terms, will be redacted for public review. SJCE will present contracts for transactions it hopes

to execute to the City of San Jose City Council in advance of execution. Confidential market sensitive terms such as price and quantity, will be redacted from public review.

Execution of Contracts: EBCE and SJCE, respectively, will seek to execute contracts following approval of proposed transactions by their respective governing boards. In the event that the governing board of either CCA requires additional information related to any transaction, such transactions may be suspended, and their execution may be delayed. EBCE and SJCE maintain 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, Community Choice Aggregators (CCAs) are required to report to the California Public Utilities Commission on their diverse suppliers, as defined by CPUC General Order 156. Consistent with the California Public Utilities Code CPUC's policy objectives, Respondents that execute an agreement with either EBCE or SJCE will be required to complete a supplier diversity questionnaire. Neither EBCE nor SJCE will consider race, sex, color, ethnicity, or national origin in their respective procurement decisions; providing such information in an Offer will not impact the selection process or standing of any executed agreement. For additional information, please visit <https://ebce.org/supplier-diversity/index.html>.

EBCE and SJCE encourage all eligible parties to get certified with the CPUC as a woman, minority, persons with disabilities, disabled veteran and/or LGBT owned business enterprise (WMDVLGBTBE).

For overview information on the CPUC's 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 by either CCA to buy nor does it create an obligation by either CCA to execute any agreement or enter into any transaction as a result of this RFO. EBCE and SJCE retain the right, each at its sole and absolute discretion, to reject any Offers on the grounds that it does not conform with the terms and conditions of this RFO and further reserves the right to request additional information from Respondents at any time during the solicitation process.

EBCE and SJCE reserve the right, respectively, to: (1) modify this RFO, any form term sheet, and/or form agreement, as either CCA deems appropriate to implement this RFO, comply with applicable laws, or best meet either CCA's evolving understanding of either CCA's procurement needs; or (2) reject any Offer on the basis that it is not competitive or is the result of market manipulation.

Neither EBCE nor SJCE, respectively, will be liable in any way by reason of such withdrawal, rejection, suspension, delay, or termination to any Respondent, whether submitting an Offer or not.

2. RFO Goals

The CCAs seek transactions that will commence delivery in calendar years 2024, 2025, 2026, 2027, 2028, 2029, and/or 2030. Both CCAs have a preference for projects that begin delivery closer to the date of

this RFO issuance. Offers can be for new facilities, capacity expansions to existing resources, or existing resources. All energy must be deliverable to the California Independent System Operator Corporation's (CAISO) electrical energy grid, but projects may be within or outside the jurisdictional boundaries of the State of California.

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 any Offer Form provided by the CCAs as Attachment C.1 to this RFO (Offer Form). Some of this information must be provided in a written narrative Offer Supplement (Offer Supplement) detailing the project site. Instructions for the Offer Supplement are detailed in Attachment D.

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

i. Generating & Storage Resources

All Offers for Energy Product must be able to demonstrate:

1. The generating resource component of the project must meet the requirements of California Public Utilities Code 399.16(b)(1)(A) or 399.16(b)(1)(B); i.e. the generating resource must meet the requirements to be defined as an RPS Portfolio Content Category 1 resource.²
2. All resources must **indicate** if they meet the CPUC's definition of "incremental resources" as described in the Decision Requiring Procurement to Address Mid-Term Reliability (2023-2026) (D.21-06-035) or in the Decision Requiring Supplemental Mid-Term Reliability Procurement (2026-2027).³
3. The resource's contract capacity must be 5 MW or greater.
4. Intermittent generating facilities must be certified as an eligible intermittent resource and comply with the requirements of the CAISO Eligible Intermittent Resource Protocol (EIRP).
5. Facilities are required to have the capability to respond to CAISO market signals from both Automated Dispatch System (ADS) and Automated Generation Control (AGC). Existing and new resources will be contractually required to demonstrate ADS and AGC response capabilities as a condition precedent to delivery under the contract. Storage tolling Offers must be fully dispatchable.

ii. Interconnection

New Resources

Respondents submitting Offers for new resources offering RA or with an in-service date before December 31, 2028, must have, at the minimum, a completed and returned Phase I Impact Study (or equivalent) at the time any Offer submitted in response to this RFO.

Respondents submitting Offers for new generating resources must remain active in the applicable interconnection queue until the project's required network updates have been completed and an

² California Public Utilities Code:

https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=PUC&division=1.&title=&part=1.&chapter=2.3.&article=16.

³ CPUC D.21-06-035 - <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M502/K956/502956567.PDF>

interconnection agreement is signed. Respondents must provide any status updates and details as they are received in relation to interconnection and the related studies.

Existing Resources

Capacity expansions to existing projects will need to ensure the expansion can participate in CAISO markets prior to the commercial operation date under any agreement executed with EBCE or SJCE. Except as described below, for products including RA, no documentation is required to be submitted in response to this RFO, though it may be requested by either CCA.

Except as described below, for products, including RA, existing resources not adding capacity are similarly not required to submit documentation associated with their interconnection in response to this RFO, though it may later be requested by either CCA.

Energy-Only Products

Respondents submitting Offers for energy-only products are not required to demonstrate deliverability.

Products Including Resource Adequacy

Respondents submitting product Offers that include RA are required to demonstrate that the project meets one of the conditions below:

1. A valid interconnection request for Partial or Full Capacity Deliverability Status has been submitted to the CAISO with a deliverability status that matches the Offer.
2. A valid interconnection request for Partial or Full Capacity Deliverability status where a Phase II report has been issued (or, for Cluster 14, is expected to be issued during the RFO evaluation period) and the project has maintained its request for Partial or Full Capacity Deliverability status.
3. Evidence of allocated or retained deliverability per the CAISO's annual post Phase II deliverability allocation process, Transmission Plan Deliverability (TPD), that indicates the project will be deliverable pursuant to the CAISO Tariff.
4. An executed Interconnection Agreement or Amendment to an Interconnection Agreement is in place and full effect reflecting, at a minimum, the offered deliverability status and evidence of retained deliverability per the CAISO's deliverability allocation process.
5. Documentation has been obtained that the project has received deliverability through the CAISO's Distributed Generation Deliverability (DGD) assessment process pursuant to the CAISO Tariff.

iii. Site Control

Respondents offering projects with commercial operation dates (CODs) between 2023 and 2028 must attest they have secured site control for the entire delivery term of any Offer. Respondents must complete the required fields in the RPS Facility Info tab and/or Storage Toll Info tab of the Offer Form, as well as required narrative detail in the Offer Supplement. Examples of site control 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 EBCE or SJCE's sole and absolute discretion. Respondents offering projects with CODs in 2029 and 2030 must describe plan to obtain site control; if an agreement is executed Respondents will wear all risk associated with obligation to obtain site control.

iv. Commencement of Commercial Operation Date

The project must begin commercial operation and/or begin deliveries under the contract no later than June 1, 2030.

b. Participation in Other Procurement

Respondents to this RFO are not barred or limited from offering their projects or products in other procurements provided that, upon shortlisting, the Respondent will be required to execute an exclusivity agreement with each CCA that has shortlisted it for the generating and/or storage capacity, as applicable.

c. Participation in Future Solicitations

Products and projects that are not selected in this RFO may be offered again into future solicitations.

4. Evaluation Criteria

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

EBCE will evaluate Offers within the following categories:

Counterparty Execution Risk: Development experience, CCA experience, and term sheet markups (20%)

Offer Competitiveness: Economic valuation, project location, and labor and workforce development (55%)

Development Status Risk: Interconnection, permitting, and environmental project-specific risks (20%)

Local Business Enterprise: 4%

Small Business Enterprise: 1%

SJCE will evaluate Offers within the following categories:

Counterparty Execution Risk: Development experience, CCA experience, and term sheet markups (22.5%)

Offer Competitiveness: Economic valuation, project location, and labor and workforce development (49.5%)

Development Status Risk: Interconnection, permitting, and environmental project-specific risks (18%)

Local Business Enterprise: 5%

Small Business Enterprise: 5%

Quantitative Evaluation Criteria include:

a. Energy including Shaped Offerings & Storage Tolling Offers

EBCE and SJCE, respectively, will calculate the market value of energy deliveries based on the hourly generation profile of the Offer, initial energy delivery date, delivery term of the transaction, and delivery location.

Congestion cost will be calculated based on the hourly generation profile of the Offer, initial energy delivery date, delivery term of the transaction, and delivery location.

Storage tolling Offers will be evaluated based on forecast arbitrage value at the delivery location.

b. Renewable Portfolio Standard

EBCE and SJCE, respectively, will determine the value of the project's Renewable Energy Credits (RECs) over the contract term based on projections for future REC pricing.

c. Resource Adequacy

The value of Resource Adequacy will be determined based on the projected monthly qualifying capacity of the project. Resources with Full Capacity Deliverability Status from the CAISO will be attributed the full capacity value. Energy-only Offers will be assumed to have zero qualifying capacity.

d. Ancillary Services

Ancillary Services (A/S) value will be assessed based on the A/S capability of the Offer. Offers that provide the ability to schedule A/S and receive market revenues will include that value stream as an incremental benefit, not double counted with the value of energy.

Qualitative Evaluation Criteria include:

e. Location

EBCE has a preference for projects within its service territory. Capacity close to EBCE load is likely to have more value to EBCE's portfolio even when market forward prices indicate energy delivered from farther away has greater market value. Further, resources sited within the service territory contribute to jobs, tax base, and other drivers of positive economic impact for EBCE customers. EBCE also has a preference for resources sited in locations that will contribute to CAISO grid reliability and/or the mitigation of local criteria pollutants. SJCE will consider these attributes particularly to choose between otherwise similar Offers.

f. Environmental Stewardship

EBCE and SJCE, respectively, are 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. EBCE and SJCE, respectively, will prioritize projects that are considered multi-benefit renewable energy and projects located in areas zoned for renewable energy development. EBCE and SJCE, respectively, de-prioritize projects located in high-conflict areas.

g. Supply Chain Responsibility

EBCE contracts with small and local businesses to the maximum extent possible. EBCE may consider status as a small business enterprise (SBE) – i.e., registered as a small business with a state or federal agency – in the Offer review and evaluation process.

For more information on SBE status, please visit the Governor's Office of Business and Economic Development (www.business.ca.gov), Employment Development Department (www.edd.ca.gov), or U.S. Small Business Administration (www.sba.gov).

EBCE and SJCE add a premium for local businesses and a premium for small businesses during scoring. See Attachment H – SJCE Request for Local and Small Business Preference.

h. Seller Concentration

EBCE and SJCE, respectively, will not limit the number of Offers submitted by Respondents, in their individual capacity; however, EBCE and SJCE, respectively, may cap the amount awarded to any Respondents to ensure that the market remains competitive and mitigate risks associated with over-reliance on a single supplier.

5. Guidelines for Offer Development

a. Price

Respondents must submit Offers with their best and final price using the respective product tabs in the Offer Forms contained in Attachments C. The price must be stated using the format applicable to the specific product being offered.

Product	Pricing Format
As-Available RPS Product	\$ / MWh
As-Available RPS Product plus Energy Storage	\$ / MWh for RPS + \$ / kW-month (+ optional variable price) for energy storage component
Shaped Clean/RPS Energy	\$ / MWh for “bundled” energy, RECs and any associated RA
Stand-Alone Energy Storage Toll	\$ / kW-month + \$ / MWh Variable O&M

The price submitted for an Offer must include the following: (1) all awards, subsidies, tax credits applicable to the Project; (2) any costs incurred by the Respondent including any interconnection costs; (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; and (4) all other benefits the Respondent expects to apply.

SJCE will not consider Offers that include price escalation.

b. Compliant Submission Specifications

All Offers must meet the following specifications in order 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	One of the four products described in this solicitation.
Location	Within or outside of California, with deliverability to the CAISO grid. Include approximate latitude and longitude of the project site.
Term	Terms may be offered for 10-20 years as variations in addition to the required Standard Offer(s) for any product.
Price	Prices must be offered at the project Pnode for all products other than Indexed Energy plus RPS Attributes.

	<p>Respondents are encouraged to also submit Offers at the following settlement points:</p> <ul style="list-style-type: none"> • PGE Default Load Aggregation Point (DLAP) • CAISO liquid trading hub (e.g., SP15, NP15, ZP26, etc.)
Installed Capacity (MW)	<p>Nameplate capacity no less than 5 MW and no greater than 500 MW. Paired/hybrid resources may have a total nameplate capacity in excess of 500 MW.</p> <p>All projects with storage should include the option to extend storage duration during the contract term.</p> <p>Please note the CCAs may be interested in “splitting” projects into smaller separately metered assets that combine to the resource’s total nameplate.</p>
Expected Commercial Operation Date (COD)	On or prior to June 1, 2030.
Scheduling Coordinator	<p>EBCE and SJCE, respectively, shall be the CAISO Scheduling Coordinator (SC).</p> <p>Exception: for shaped clean/RPS energy offers, Respondents shall be SC. In addition, on a case-by-case basis, it may be more appropriate for the Respondents to be the SC.</p>
Ownership	All projects will be owned by the Respondent, with the respective CCA contracting the output of the resource for the duration of the term.
Number of Offers	An “Offer” or “Offers” refers to the submission of all required information and details of any additional variations for <u>one product from one project site</u> . In addition to the required Standard Offers defined in Section 5.c of this RFO, Respondents may submit alternative configurations, durations, or pricing schemes. Respondents are not limited in either the number of Offers they may submit or the number of variations they may submit for any one Offer.

c. Required Standard Offers and Encouraged Variations

All Offers must comply with the Standard Offer requirements outlined below. An Offer for any one product must contain all required Standard Offers for that product.

EBCE and SJCE, respectively, encourage the submission of variations in Offers. Specific variation components of interest are noted for each product. Variations are optional though encouraged. Variations may include any combination of non-standard components to demonstrate project configurations that the Respondent believes drive particular value.

Product 1: As-Available RPS Product		
Eligible Resources: Stand-alone PCC1-eligible generating resources; this may include: solar, wind, geothermal, small hydro or ocean (thermal, wave, or current)		
Required Standard Offers	1	<u>Term:</u> 10 years <u>Pricing Structure:</u> At project Pnode, fixed price <u>Capacity:</u> 5-500 MW RPS Nameplate
	2	<u>Term:</u> 10 years <u>Pricing Structure:</u> At project Pnode, 2% annual escalation eligible for offers to EBCE only <u>Capacity:</u> 5-500 MW RPS Nameplate
Encouraged Variations	*	<u>Term:</u> Minimum 10 years <u>Pricing Structure:</u> Also priced at Hub (NP15 or PG&E DLAP) <u>Capacity:</u> Varying sizes (Preference for 50-150MW size)

Product 2: As-Available RPS plus Energy Storage		
Eligible Resources: PCC1-eligible generating resources with co-located energy storage. Storage may be any commercially viable technology with 2-hr, 4-hr, or 4-hr+ duration capabilities.		
Required Products: CCA to receive all project attributes including RA, energy arbitrage, A/S.		
Required Standard Offers	1	<u>Term:</u> 10 years <u>Pricing Structure:</u> At project Pnode, fixed price <u>RPS Capacity:</u> 5-500 MW RPS Nameplate <u>Storage Capacity:</u> >=40% of RPS, at least 4-hr Duration, AC-Connected <u>Storage Parameters:</u> <u>able to perform a minimum of 365 cycles per year</u>
	2	<u>Term:</u> 10 years <u>Pricing Structure:</u> At project Pnode, 2% annual escalation eligible for offers to EBCE only <u>RPS Capacity:</u> 5-500 MW RPS Nameplate <u>Storage Capacity:</u> >=40% of RPS, at least 4-hr Duration, AC-Connected <u>Storage Parameters:</u> <u>able to perform a minimum of 365 cycles per year</u>

Product 3: Firm or Shaped RPS Product		
Eligible Resources: New stand-alone PCC1-eligible generating resources, likely paired with energy storage		
Required Standard Offers	1	<u>Term:</u> 10 years <u>Pricing Structure:</u> At project Pnode, fixed price <u>Capacity:</u> n/a <u>Hourly Delivery:</u> Seller to propose
	2	<u>Term:</u> 10 years <u>Pricing Structure:</u> At project Pnode, no escalation <u>Capacity:</u> n/a

		<u>Hourly Delivery</u> : please refer to Buyer’s proposals in Offer form
<i>Encouraged Variations</i>	*	<u>Term</u> : Minimum 10 years <u>Pricing Structure</u> : Also priced at Hub (NP15 or PG&E DLAP) <u>Capacity</u> : n/a

Product 4: Stand-Alone Energy Storage Toll		
Eligible Resources: Storage may be any commercially viable technology with 2-hr, 4-hr, or 4-hr+ duration capabilities. Required Products: CCA will control the dispatch and receive all project attributes including RA, energy arbitrage, A/S.		
Required Standard Offers	1	<u>Term</u> : 10 years <u>Pricing Structure</u> : At Pnode, fixed capacity price <u>Capacity</u> : 10 - 200 MW Nameplate, 4 hr duration requirement, capacity degrades along pre-defined schedule (Seller to specify degradation schedule in Offer Form) <u>Storage Parameters</u> : 365 cycles per year
	2	<u>Term</u> : 10 years <u>Pricing Structure</u> : At Pnode, low fixed capacity price with <u>high</u> variable O&M cost. (Seller should attempt to recover maximum cost through VOM.) <u>Capacity</u> : 10 - 200 MW Nameplate, 4 hr duration requirement <u>Storage Parameters</u> : Seller to identify any cycle limitations
<i>Encouraged Variations</i>	*	<u>Term</u> : Minimum 10 years <u>Pricing Structure</u> : At Pnode, fixed capacity price with variable O&M cost <u>Capacity</u> : 50 – 100 MW Nameplate, any duration

d. Collateral Requirements

The collateral requirements associated with each product are described below.

Product	Project Development Security or Pre-Delivery Term Security	Delivery Term Performance Security
All Products	\$125/kW of Contract Capacity	\$105/kW of Contract Capacity

6. Required Information

a. Submission Overview

All information submittals related to this RFO must be made via the Respondent’s unique Dropbox submission folder; in order to receive a Dropbox folder, Respondents must submit an NOI (Attachment A).

b. Required Documents for Offers

The following documents must be completed and submitted to constitute a complete Offer to this solicitation. Offers of different products have unique form submittal requirements; please refer to the matrix below to determine which documents are required to be submitted with each Offer. The relevant documents are included as Attachments to this solicitation and noted below.

1. **Participation Agreement** (Attachment B)
 - Respondents must have a duly authorized officer of the Respondent entity execute the agreement. **Only one Participation Agreement is required per Respondent.**
 - *Note: The Participation Agreement covers all requested information, including Respondent attestation to the truthfulness of project details. Submitting a falsified Participation Agreement will result in forfeiture of shortlist deposit or other collateral and elimination from the RFO.*
 - File Format: PDF
 - File Name: RFO Participation Agreement_RespondentCompanyName
2. **Completed Offer Form** (Attachment C)
 - Respondents must provide all applicable information requested in the Offer Form tabs for the product(s) offered at each unique site. In the event that multiple sites are offered, a unique Offer Form must be completed for each site.
 - Products 1-4 require Offer Form 1.
 - File Format: Microsoft Excel
 - File Name: Offer Form #_ RespondentCompanyName_SiteName
3. **Offer Supplement** (Attachment D)
 - Please provide all applicable information requested in the Offer Supplement template found in Attachment D. **Only one Offer Supplement PDF is required per Respondent.**
 - File Format: PDF
 - File Name: Offer Supplement_RespondentCompanyName
4. **Redlined Term Sheet** (Attachments E.1 - E.4)
 - Please include a redline of the Term Sheet(s) relevant to your Offer(s) in “tracked changes” format. Please note: the CCAs have provided a copy of the full proforma for reference only. Redlines are only required to the applicable Term Sheet.
 - Redlines should reflect all necessary changes that Respondent requires 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” or similar are not sufficiently detailed and will not be considered a necessary change for Respondent. EBCE and SJCE, respectively, will prioritize negotiations with Respondent that adapt their Offer to existing contract terms and conditions and limit requested changes to the pro forma contracts. Only upon shortlisting will Respondents be requested to mark-up pro forma agreements.
 - File Format: Word
 - File Name: TermSheetName_RespondentCopmanyName_Redlines
5. **Interconnection Studies** (if applicable)
 - Most recent interconnection study results (Phase I or II)

- *Note: If project receives Phase II report or any reassessment/update during the RFO evaluation process, Respondent must update EBCE and/or SJCE and provide report.*
 - Documentation that the project has obtained FCDS, PCDS, or is in the process of obtaining that deliverability. Evidence may be provided in one of these forms:
 - An executed Interconnection Agreement or Amendment to an Interconnection Agreement that reflects the deliverability status;
 - A completed deliverability assessment in the annual process that indicates the project is deliverable pursuant to the CAISO Tariff;
 - Documentation that the project has received deliverability through the CAISO’s Deliverability for Distribution pursuant to the CAISO Tariff; or
 - Application for FCDS or PCDS and previously submitted CAISO TPD Affidavit indicating to which Allocation Group the project is applying.
 - File Format: Word or PDF
 - File Name: *DocumentName_RespondentCompanyName_SiteName*

6. Site Map (if applicable)

- Respondents must provide a high-resolution map showing the site location and key project facilities. The map should show the project boundary and generation-tie route from the project to the first point of interconnection with the electric grid. More detailed site plans or site designs are accepted but not required.
- File Format: Option between (1) PDF, (2) Google kml/kmz, (3) ESRI geodatabase (mdb or gdb), (4) shapefile with a file extension .shp plus at least the three supporting files (.shx, .dbf, .sbn).
- File Name: *Site Map_RespondentCompanyName_SiteName*

7. Local/small business preference

- Qualified Respondents wishing to claim local/small business status should complete Attachment H – SJCE Request for Local and Small Business Preference; EBCE will perform this evaluation using information collected through Attachment H as well as the Offer Form. Please review requirements and do not submit this form unless your company qualifies.

Product	Required Documents
All Products	<input type="checkbox"/> Participation Agreement <input type="checkbox"/> Completed Offer Form <input type="checkbox"/> Offer Supplement <input type="checkbox"/> Redlined Term Sheet <input type="checkbox"/> Interconnection Studies <input type="checkbox"/> Site Map

c. Required Documents at Shortlisting

The following items will be required within 10 business days of the shortlist announcement by EBCE and SJCE, respectively:

- a. Exclusivity Agreement and Shortlist Deposit**
- b. Confirmation that Seller has reviewed the applicable offtake agreement**
- c. 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, 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:

- 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

The CCAs are using a solicitation website developed by EBCE where Respondents may register for notifications, register for the Respondent Webinar, and 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@ebce.org. EBCE and SJCE, respectively, will not respond to any material questions submitted after the final question deadline of April 19, 2023. All answers will be compiled into a document and posted to the RFO website by April 24, 2023. EBCE and SJCE, respectively, reserve 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 EBCE and 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 EBCE and SJCE's consideration of the proposals:

1. Respondent agrees that EBCE and SJCE, respectively, are 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 EBCE or 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 EBCE and SJCE, respectively, reserve 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, and can choose to suspend this RFO or issue a new RFO that would supersede and replace this RFO.
5. Respondent warrants that it has no employees in its employ who in any capacity have a position at EBCE or SJCE that enable them to influence the selection of a Respondent or any competing RFO, nor does Respondent have in its employ any member of EBCE's or SJCE's governing board, including any regular director, alternating director, any city councilmember, or mayor (collectively "CCA Director") or employee who is the spouse or economic dependent of such an EBCE or SJCE employee. A list of current EBCE directors can be found on the EBCE's website (<https://ebce.org/who-we-are/>). The list of current SJCE mayor and city councilmembers can be found at <https://www.sanjoseca.gov/your-government/departments-offices/mayor-and-city-council>. This list may be updated from time to time.
6. Respondent's submission complies with all applicable laws.
7. 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.
8. Respondent acknowledges and accepts that neither EBCE nor SJCE intends to provide collateral or performance security in connection with any Agreement.

9. Termination of RFO-Related Matters

EBCE and SJCE, respectively, reserve the right at any time, in their 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, neither EBCE nor SJCE will reimburse Respondents for any expenses incurred in relation to the RFO.

10. Attachments

The following Attachments are hosted on the RFO webpage and hereby made part of this RFO.

- EBCE-SJCE 2023 Long-Term Resource RFO Protocol
- Attachment A: Notice of Intent to Offer
- Attachment B: RFO Participation Agreement
- Attachment C: Offer Form 1
- Attachment D: Offer Supplement Requirements
- Attachment E.1: Term Sheet RPS (Product 1)
- Attachment E.2: Term Sheet RPS+Energy Storage (Product 2)

- Attachment E.3: Term Sheet Clean Energy Hedge (Product 3)
- Attachment E.4: Term Sheet Stand-Alone Storage (Product 4)
- Attachment F: Exclusivity Agreement
- Attachment G.1: EBCE Form of Letter of Credit
- Attachment G.2: SJCE Form of Letter of Credit
- Attachment H: SJCE Request for Local and Small Business Preference

11. Protest

If an unsuccessful Respondent 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 and for EBCE to COO, Howard Chang 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 addresses for submitting protests are set forth below:

Attention: Lori Mitchell, Director
City of San José, Department of Community Energy
200 East Santa Clara Street
San José, CA 95113

Attention: Howard Chang, COO
East Bay Community Energy
1999 Harrison St, Suite 800
Oakland, CA 94612

Please submit electronic versions of any protest to Lori Mitchell at protestSJCE@sanjosecleanenergy.org and to Howard Chang at hchang@ebce.org.

12. Interpretation

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

Should there be a need to clarify the contents of this RFO or any of its attachments, including the Term Sheets attached to this RFO, requests for clarification may be sent via e-mail at RFO@ebce.org, to the attention of the procurement contacts designated in Section 7: Communications. Requests for clarification received after the deadline provided in Section 1.e: Schedule will not be considered.

If there are any discrepancies between the RFO and any Term Sheets (Attachments E.1-E.5), the Term Sheets and associated full Agreements will govern.

13. Grounds for Disqualification (for SJCE only)

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 of San José officers or employees, including officers and employees of SJCE.
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 of San José agreement, including any agreement with SJCE.

14. Code Adherence and Policies

Respondent shall agree to abide by all laws, rules and regulations of the United States, the State of California, the County of Santa Clara, the County of Alameda, unincorporated Alameda County, and the cities of Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Newark, Oakland, Piedmont, Pleasanton, San José, San Leandro, Tracy, and Union City.

For SJCE only, 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 executed by SJCE pursuant to this RFO are subject to the Appropriation of Funds, Designated Fund, and Limited Obligations provisions set forth in the Term Sheets attached to this RFO. 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 SJCE or East Bay Community Energy in substantial conformity with the selected proposal, as mutually modified during negotiations with each CCA. Each CCA 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 the following has occurred:

- For SJCE, 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.
- For East Bay Community Energy, it is approved by the East Bay Community Energy Board of Directors and executed by an authorized representative of East Bay Community Energy.

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 each CCA.

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

17. Public Nature of Proposal Material

All material submitted in response to this RFO to EBCE and SJCE, respectively, including responses to this RFO, will become the exclusive property of the CCAs retained by the CCAs pursuant to any applicable state laws and each CCA's respective record retention schedule. Additionally, all material submitted in response to this RFO will become public records under the California Public Records Act (California Government Code section 7920 et seq.) (Public Records Act). All material Respondent submits to the CCAs is subject to disclosure under the Public Records Act. There are very limited and narrow exceptions to this disclosure requirement.

The CCAs acknowledge that the Respondent or any other party may submit information that the Respondent or 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 Public Records Act (Confidential Information).

To the extent possible, Respondents should **NOT** include Confidential Information in any Offer as it may be disclosed to the public, if requested by any member of the public. If Respondent must include

Confidential Information in its Offer that Respondent believe is exempt from disclosure under the Public Records Act, Respondent's Offer containing Confidential Information must: (1) clearly mark the specific Confidential Information as "Confidential," "Trade Secret," or "Proprietary;" (2) state the specific provision in the Public Records Act that provides the exemption; and (3) provide the factual basis for claiming the exemption in each specific instance.

For SJCE only, in the event Respondent claims such an exemption, Respondent must include a redacted version of its Offer and state in the Offer the following: "[Insert Respondent Name] shall indemnify the City of San José (City) and the City's officers, employees, and agents and hold them harmless from any claim or liability and defend against any action brought against the City for the City's refusal to disclose trade secrets or other proprietary or confidential information contained in [insert Respondent Name]'s solicitation response to any person making a request. This indemnification obligation shall be through the term of the City's records retention schedule, which is four (4) years after the date of award or cancellation of this solicitation for non-awarded vendors and five (5) years after contract termination for awarded vendors."

Respondent should not over-designate material as confidential. Over-designation would include stamping or marking entire pages or series of pages as confidential that clearly contain information that is not confidential, trade secret, or proprietary. 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 Respondent as Confidential Information, the CCAs 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 the CCAs.

Failure to meet the requirements set forth in this section of the RFO shall constitute a waiver of Respondent's right to assert exemption from disclosure.

Any material that contains language purporting to render all or significant portions of the Offer as Confidential Information or that fails to provide the exemption information required above will be considered a public record in its entirety.

Although the Public Records Act recognizes that certain Confidential Information may be protected from disclosure, SJCE may not be able to establish that the Confidential Information is a trade secret or otherwise proprietary.

The CCAs do not intend to disclose any part of any Offer before it announces a recommendation for award to the extent that the public interest served in such nondisclosure is greater than the public interest served in disclosing such information.

If required by any law, statute, ordinance, a court, governmental authority, or agency having jurisdiction over the CCAs, including the Public Records Act, the CCAs, respectively, may release Confidential Information, or a portion thereof, as required by the applicable law, statute, ordinance, decision, order, or regulation. In the event the CCAs are required to release Confidential Information, they 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. Notwithstanding any of the foregoing, Respondent acknowledges and agrees that

material, information, and documentation provided in connection with this RFO, including Confidential Information, may be subject to the Public Records Act, and the CCAs, respectively, shall incur no liability arising out of any disclosure of such information or documentation provided in connection with this RFO, including Confidential Information, that is subject to public disclosure under the Public Records Act.

18. Disclaimer

EBCE and SJCE, respectively, reserve the sole and absolute 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, the CCAs reserve the right, at their sole discretion, to not enter into any transaction at the conclusion of this RFO. The CCAs, respectively, shall not be obligated to respond to any proposal submitted, nor be legally bound in any manner by submission of the proposal. The CCAs reserve the right to modify the terms and conditions of this RFO at any time based on changing needs and market feedback. The CCAs, respectively, also reserve the right to rescind this RFO at any time prior to either CCA's execution of a binding agreement. Notwithstanding anything to the contrary, no proposal, bid, offer, or proposed transaction (however described) shall be binding upon the CCAs except pursuant to a written agreement signed by the authorized representative of each CCA and the Respondent. The CCAs, respectively, will not be liable at any time for any costs the prospective supplier may incur in preparing or submitting its response to this RFO.