



Staff Report Item 16

TO: East Bay Community Energy Board of Directors

FROM: Supria Ranade, Director of Power Resources

SUBJECT: Alameda County Local Clean Energy Projects Request for Proposals

DATE: January 17, 2018

Recommendation

Receive update, provide feedback on EBCE's planned Local Clean Energy Project Request for Proposals

Background

East Bay Community Energy (EBCE) is requesting board approval for soliciting competitive proposals for the sale and purchase of renewable and carbon free energy. For the purposes of the RFP, carbon free generation facilities. carbon free means any energy source, except for nuclear-powered generation assets, that is considered by the State of California to have zero Greenhouse Gas emissions in accordance with the Cap and Trade Regulations. For the purposes of the RFP, renewable energy generation facility must meet the California Energy Commission's definition as a Portfolio Content Category 1 Eligible Renewable Resource ("PCC1"). The goal of this RFP is for EBCE to each enter into one or more long-term Power Purchase and Sale Agreements (PPAs) to secure up to 150,000 MWh per year of energy, combined, from renewable and carbon free generation facilities. Through this RFP, EBCE seeks to purchase carbon free energy to meet a portion of its electric energy needs in 2019 and subsequent years, for terms of 5-20 years. EBCE is seeking to buy cost effective, carbon free energy pursuant to its Implementation Plan and California's energy and environmental objectives. EBCE's goal is to purchase electricity and attributes from eligible carbon free, PCC1 resources through this RFP starting as early as 2019 to:

- Support long-term low and stable operating costs; and
- Increase the renewable and carbon free energy content of its wholesale electricity portfolio

- Local workforce benefits to recognize the value of workers in existing jobs that support the energy infrastructure of Alameda County and Northern California, including guidance related to:
 - Stable and Skilled Workforce and Local Workforce Development
 - Opportunities for Disadvantaged Workers
 - Local Union Jobs

FISCAL IMPACT

EBCE will select projects based on a defined set of criteria with minimal rate impacts to EBCE customers.

ATTACHMENTS

- A. EBCE RFP Protocol



DRAFT

East Bay Community Energy
Request for Proposals
Alameda County Sited Clean Energy
Issuance Date: February 12, 2018
Response Deadline: March 9, 2018



Purpose

East Bay Community Energy (“EBCE”) is soliciting competitive proposals for the sale and purchase of clean energy consistent with the terms and provisions in this Request for Proposals (“RFP”).

Background and Objectives

EBCE is a Joint Powers Authority formed on December 1, 2016 pursuant to California Government Code §§ 6500 et. seq. by 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. 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.

The goal of this RFP is for EBCE to identify and enter into one or more long-term Power Purchase and Sale Agreements (PPAs) to secure up to 150,000 MWh per year of energy and associated attributes, sourced from carbon free generation facilities. For the purposes of the RFP, carbon free generation facilities means any energy sources, except for nuclear-powered generation assets, that are considered by the State of California to have zero Greenhouse Gas emissions in accordance with the Cap and Trade Regulations, and generation facilities that meet the standards required, pursuant to the California Energy Commission’s definitions, to be an eligible Portfolio Content Category 1 Eligible Renewable Resource (“PCC1”).

Currently, the Northern California Power Agency (“NCPA”), acting as EBCE’s scheduling coordinator (“SC”) will schedule the output purchased by EBCE into the California Independent System Operation (“CAISO”) system. Any transmission services required to deliver the contracted output to the applicable Point of Delivery on the CAISO transmission system shall be acquired and arranged for by the supplier, and delivery of the output to EBCE’s load (the PG&E Default Load Aggregation Point, or “DLAP”) shall be settled financially in the CAISO markets.

Through this RFP, EBCE seeks to purchase carbon free energy to meet a portion of its electric energy needs in 2019 and subsequent years, for terms of 5-20 years. EBCE is seeking to purchase cost effective, carbon free energy pursuant to its Implementation Plan and California’s energy and environmental objectives. EBCE’s goal is to purchase electricity and attributes from eligible carbon free, PCC1 resources through this RFP starting as early as 2019 to:

- Support long-term low and stable operating costs; and
- Increase the carbon free energy content of its wholesale electricity portfolio

This RFP will only consider projects that are physically located within the geographic boundaries of Alameda County, California.

EBCE seeks proposals that best meet the objectives stated herein, as well as other criteria specified below.

Evaluation/RFP Assistance



EBCE and NCPA will be conducting the RFP process and potential contract negotiations with successful Bidders who respond to this RFP. EBCE may at times authorize NCPA to represent it during the RFP process. EBCE will notify Bidders in writing when such authorization has been granted or withdrawn.

Products

EBCE is seeking proposals for the sale and purchase of carbon free energy per the following terms:

| | |
|---|--|
| <p align="center">Product</p> | <p>The Product includes all the following:</p> <ul style="list-style-type: none"> • As-available, unit contingent electric energy delivered via CAISO Day-ahead and Real-time scheduling procedures • Environmental attributes/Renewable Energy Credits • Capacity attributes (e.g., Resource Adequacy Capacity) • Ancillary services, and any other attributes similar to or associated with the foregoing that may be defined by the CAISO or other entities in the future. <p>Note: Proposals where the Bidder retails some of the Product attributes described herein for multi-use service applications or other uses will be considered if economically advantageous to EBCE. Bidders should clearly outline the value proposition to EBCE if an alternative product definition is proposed.</p> |
| <p>Project Location</p> | <p>Alameda County (California).</p> |
| <p>Eligible Energy Resources</p> | <p>Projects must qualify as an eligible renewable resource as such is defined in PUC 399.12 and implemented by the California Energy Commission (“CEC”) pursuant to its RPS Eligibility Guidebook. Bidders must describe how the resource will qualify and meet the Portfolio Content Category One (“PCC1”) requirements. Note: Specifications for PCC1 are described in PUC 399.16, California Public Utilities Commission Decision 11-12-052, and other applicable statutes, regulations, and regulatory orders.</p> |
| <p>Delivery Point (Settlement Point)</p> | <p>Bidders must include at least two pricing options for each bid, with one pricing proposal for each of the following Delivery Points: (1) Project Point of Delivery at the CAISO grid (i.e., Pnode), and (2) the PG&E Default Load Aggregation Point (i.e., PG&E DLAP).</p> |
| <p>Installed Capacity</p> | <p>Minimum two (2) MW.</p> |
| <p>Annual Generation Offered Volume</p> | <p>Between 2,000 – 250,000 MWh in the first contract year. Bidders are encouraged to submit offers for a range of capacities and generation volumes to support EBCE’s portfolio optimization.</p> |
| <p>Delivery Start Date</p> | <p>Between December 2018 – December 2020</p> |
| <p>Delivery Term</p> | <p>Minimum of 5 years, up to 25 years</p> |
| <p>Local Workforce Requirement</p> | <p>Proposals that include project development and/or maintenance activities that are completed by and/or utilize labor and other workforce resources sourced from Alameda County, California are preferred</p> |



Additional Services Proposals

EBCE appreciates that Bidders may be able to offer alternate pricing, structures, products, complementary services, or terms that may increase the attractiveness of a Bidder's proposal but differ from the terms described in the previous section of this RFP, or in the Term Sheet attached hereto as Exhibit C. In particular, EBCE is interested in proposals that address the following market risks:

1. Exposure to varied market conditions (e.g., negative market prices, constrained market events caused by ramping, etc.)
2. Mismatch between the renewable generation's delivery shape and EBCE's load profile (representative 8760 data is attached hereto as Exhibit E)
3. Uncertainty of intermittent product deliveries
4. Potential expansion of CAISO to a regional market

EBCE embraces creativity and encourages Bidders to present additional services or product offerings to mitigate these and any other risks to enhance the standard Product described above (including the potential ability for the project site to accommodate additional renewable capacity and/or co-located storage at a future date). Proposing unique contract provisions to address these risks is also welcome.

Notice of Intent to Bid

By Monday February 26, 2017 at 5:00 PM Pacific Time ("PT"), Bidders shall return a completed Notice of Intent to Bid Form ("NOI"), which is attached hereto as Exhibit A, via email to rfp@ebce.org. The subject line of the email shall be: "EBCE Local Energy RFP NOI."

Webinar

EBCE and NCPA will conduct a webinar to present the RFP protocol, as well as answer some or all of Bidder questions, at EBCE's discretion. Instructions for joining the Webinar will be provided to all Bidders who submit the NOI by the NOI deadline. Webinar attendance is encouraged but not required. The Webinar is scheduled for Wednesday February 28th, 2018 at XXXX.

Bidder Questions

To promote accuracy and consistency of information provided to all participants, Bidders are encouraged to submit questions in writing to EBCE. Questions will only be accepted via email submitted to rfp@ebce.org, and the subject line of the email shall be "EBCE Local Energy RFP Question." The deadline for submitting questions is Friday March 2, 2018 at 5:00 PM PT. Bidders are encouraged to submit questions as soon as possible, so that some or all of the questions may be addressed during the Webinar.

EBCE will provide a written response to the questions submitted via email by Wednesday March 7, 2017, to all Bidders who provided a complete NOI. EBCE reserves the right to combine similar questions, rephrase questions, or decline to answer questions, at its sole discretion.

RFP Schedule

The table below summarizes the RFP schedule, with details of each event provided further below. The RFP schedule is subject to change at EBCE's discretion, and such change(s) will be announced by email to all Bidders who provide a complete NOI by the NOI deadline.



| Event | Date |
|---|------------------------------|
| Issuance of RFP | Monday, February 12, 2018 |
| Deadline to submit Notice of Intent to Bid Form | Monday, February 26, 2018 |
| Bidder Webinar | Wednesday, February 28, 2018 |
| Deadline to submit questions | Friday, March 2, 2018 |
| Responses to questions provided | Wednesday, March 7, 2018 |
| Proposals Due to EBCE | Friday, March 9, 2018 |
| Notification of final shortlisted Bidders | Friday, March 16, 2018 |
| PPA negotiations | March, 2018 |
| Final contract approval | April, 2018 |
| Execution of PPA | May 2018 |

Issuance of RFP

EBCE posted this RFP at www.ebce.org and is issuing this RFP to potential Bidders by email. EBCE reserves the right to distribute this RFP to additional prospective Bidders after the Issuance Date at its sole discretion. Such late distribution will not affect the remainder of the RFP schedule outlined herein.

Proposal Submittal

Bidders must deliver their RFP response via email to rfp@ebce.org by the deadline listed above. The subject line of the email shall be: "EBCE Local Energy RFP Response." Proposals must provide all of the information requested in this RFP. In addition, each proposal must include a signed attestation by an authorized signatory of the Bidder that the Bidder has not and will not engage in collusion with other Bidders or other unlawful or unfair business practices in connection with this RFP. EBCE reserves the right to contact any Bidders to clarify submitted proposals. EBCE will consider all complete proposals submitted by the deadline listed above. Incomplete proposals may be accepted, supplemented, or disqualified at EBCE's sole discretion. Bidder will promptly notify EBCE of any material change in circumstances that may affect the Bidder's ability to fulfill the terms of its proposal at any time from proposal submission until the earliest of execution of a definitive agreement, EBCE's rejection of the proposal, or Bidder's withdrawal of the proposal.

EBCE shall not be responsible for any costs incurred by Bidder to prepare, submit, negotiate, contract, or participate in this RFP process.

Bidder Shortlist

EBCE intends to select a shortlist of proposals for further due diligence and potential Bidder interviews. After such due diligence and evaluation, successful candidate Bidder(s) will be determined with which to enter into contract negotiations.

Contract Negotiation and Execution

A Bidder that successfully moves through the due diligence process will enter PPA negotiations with EBCE. EBCE may seek commercial advice from NCPA or another party during this RFP process. Additionally, EBCE may at times authorize NCPA or another party to represent it in due diligence activities, or during negotiations and will notify Bidders when such authority has been granted or withdrawn.

EBCE will be required to obtain approval of the EBCE Board of Directors prior to execution of any negotiated PPA. Until a definitive agreement is negotiated, approved by EBCE, and signed and delivered, no party shall have any legal obligations, expressed or implied, or arising in any other way.



Proposal Requirements

All proposals must be submitted by the deadlines listed in the RFP schedule included herein.

EBCE desires to contract with renewable energy projects that can most economically and reliably serve its energy needs. All proposals must include the following sections:

1. Executive Summary
2. Developer Background
3. Proposed Transaction
4. Pricing
5. Project Overview
 - i. Site Control
 - ii. Description of Energy Resource
 - iii. Development Plan
 - iv. Interconnection and Deliverability Status
 - v. Permitting Status and Other Environmental Requirements
 - vi. Financing
 - vii. Local Workforce Development
 - viii. Construction & Equipment
 - ix. Operations and Maintenance

Each of these sections and the content sought is described below.

1. Executive Summary

Bidder shall (i) provide a high-level overview of each proposal (no longer than one page), and (ii) populate the "Bidder Information Template," attached hereto as Exhibit B.

2. Developer Background

Bidder shall describe its experience developing, building, financing, and operating renewable energy projects of similar size and technology to that being proposed. Please summarize the Bidder's portfolio of projects in operation, under contract, under construction and in late stage development, highlighting those facilities located in the state hosting the proposed project. Additionally, Bidder shall detail its corporate finance structure, credit rating and access to capital.

3. Proposed Transaction

The Bidder shall describe the proposed transaction. At a minimum, Bidder must provide a base offer that conforms to the terms and conditions specified in the Term Sheet, attached hereto as Exhibit C. Bidder may also



propose alternative terms that result in a more attractive opportunity to EBCE. Bidder should clearly identify any elements of bid variants that are mutually exclusive.

4. Pricing

Prices and costs must be “all in” and include (i) all costs to deliver energy to the specified Delivery Point and RECs via the Western Renewable Energy Generation Information System (“WREGIS”) (or any successor system) during the entire contract term, and (ii) all costs required by law and any relevant CAISO market rules and other regulations. EBCE shall not be responsible for any costs or fees associated with the delivery of the product other than the specified power purchase price.

All Bidders must provide, for each project, two pricing options as part of a successful Bid. The two pricing options are: i) Delivery Point at the project Pnode (i.e. the CAISO pricing node assigned to the generator), and ii) Delivery Point at the PG&E Default Load Aggregation Point. Bidder may optionally include pricing for other Delivery Point locations for EBCE’s consideration (in its discretion), but pricing must include a separate price for both of the foregoing Delivery Points.

If the proposal involves a price that escalates or de-escalates over time, the escalation or de-escalation rate must be explicitly stated. EBCE prefers certain pricing (i.e. non-index based) though not necessarily flat pricing, and encourages Bidders to provide a price schedule for the duration of the PPA term to clearly define the annual contract price.

Bidders are encouraged to optionally include a pre-payment pricing structure but in all cases, must also provide pricing without a pre-payment pricing structure.

5. Project Overview

Site Control

Bidder shall detail the type of site control (i.e. option to lease, lease, option to purchase, ownership) and the current status of such site control (i.e. complete or the percentage of needed land currently contracted and expected timing for full site control). If the site is leased, describe the remaining term of the lease and any material conditions related to the lease. Additionally, please comment on the status of site control for the interconnection path.

Minimum Requirement: 100% site control for project site and interconnection path 18 months prior to the proposed commercial operation date (“COD”) of the project.

Description of Energy Resource

Provide a fully completed 8,760 Generation Profile Template as an Excel file (attached hereto as Exhibit D), as well a description of how such profile was generated and the data that was used to generate the profile.

Development Plan

Bidder shall detail a credible plan to achieve the proposed COD. Please provide a schedule of key milestones and their expected achievement date, including a guaranteed COD.

Interconnection and Deliverability Status

Each proposal must describe the interconnection and deliverability status of the project, including, for projects interconnecting within the CAISO, whether the project requested Full Capacity Deliverability Status, the status of any deliverability allocation to the project, and identification of the Local Capacity Area applicable to the project



(if any). No studies or interconnection agreements need to be submitted with the proposal, but this section should describe (as applicable): (i) the project's status in the interconnection process, (ii) the results of any studies performed during the interconnection process (or applicable studies conducted by consultants), including the expected timing and costs of interconnection for the project if no interconnection agreement has been executed, and, if applicable, (iii) the terms of any interconnection agreements, including timing and costs of interconnection for the project. Preference will be given to projects with more certain paths to interconnection with regard to timing and costs. In addition, the project's progress in the interconnection process must support the proposed COD. If a Bidder is shortlisted, additional documentation may be required. Bidders are encouraged to include third-party congestion and curtailment analysis as well.

Minimum Requirement: Must have submitted an application with the applicable entity for the interconnection agreement for the specific project.

Permitting Status and Other Environmental Requirements

Bidder shall describe all of the studies and permits required for construction and operation (e.g. Conditional Use Permit, Notice of Determination, Environmental Impact Report, etc.), the status of each and the expected timing for obtaining any outstanding permits. Preference will be given to projects with more certain paths to final permitting with regard to timing. In addition, the project's progress in the permitting process must support the proposed COD.

Minimum Requirement: Must have commenced the process of obtaining the applicable key discretionary permit for the project.

Financing

Detail the financial capability of the company to meet its obligations under the proposed PPA, including the planned approach for financing project development and construction. Identify the entity that will be the project's long-term controlling owner.

Local Workforce Development

Proposals shall describe how Bidder may utilize local workforce resource and labor, suppliers and/or other services specific to Alameda County, California during the development and operational phases of the projects.

Construction & Equipment

Describe and confirm the Bidder's ability to procure Engineering, Procurement, & Construction services to support its proposal. For a Bidder proposing wind energy projects, please comment on your ability to qualify the project for the federal Production Tax Credit.

Operations and Maintenance

Bidder shall describe plans for long-term ownership, operation and maintenance of the project, including how Bidder plans to schedule energy deliveries under the proposed PPA. Bidder shall state whether the proposal assumes that EBCE will provide SC Services (per the Term Sheet) or that they, or a third-party, shall provide such SC Services. If the Bidder's proposal includes a unique scheduling arrangement in order to provide an economically advantageous deal structure to EBCE, then the Bidder shall clearly outline the roles and responsibilities of the Bidder and EBCE.



Evaluation of Proposals

EBCE may procure renewable energy and additional services from those Bidders whose proposals, in EBCE's sole judgement, represent the greatest value to EBCE when compared with other available options.

EBCE will, in its sole discretion, evaluate each complete proposal submitted by the RFP deadline to determine which proposals are likely to provide the greatest overall value to EBCE. EBCE will perform an initial screening to identify and eliminate any proposal that is nonresponsive to this RFP, does not meet the minimum requirements set forth in this RFP, is clearly not economically competitive with other proposals, or is submitted by a respondent that lacks appropriate creditworthiness, sufficient financial resources, or qualifications to provide dependable and reliable service.

Once it is determined that a proposal has met the requirements of the RFP, it will be evaluated based on (i) how closely the proposed transaction meets EBCE's goals and requirements described in the "Background and Objectives" section of this RFP, (ii) the economics and potential risks of the transaction, and (iii) the reasonableness and credibility of the proposals with regard to project development and the proposed transaction.

As part of this review process, EBCE shall perform quantitative assessments of each proposal and subsequently rank them based on the costs and benefits to EBCE, and the certainty of such costs and benefits. EBCE shall also evaluate each proposal qualitatively. All proposals will be evaluated based on factors that include, but are not limited to: proposal term, technology, energy source, location, delivery point, timeline, environmental benefits as well as the Bidder's experience, public credit rating, financial stability, extent of off-balance sheet financing, product price and terms, delivery, service levels, and other relevant criteria. Evaluations will be based on information provided during the RFP process, possible oral interviews with the Bidder, email requests, information already known by EBCE or its advisors, and other publicly available information.

EBCE retains the right, at its sole discretion, to reject any proposal for any reason at any time, and reserves the right to request information from any Bidder regarding their proposal at any time during the process. EBCE also retains the right at any time, at its sole discretion, to: (a) change the evaluation criteria for any reason; (b) terminate further participation in this process by any Bidder; (c) negotiate with any Bidder to maximize EBCE value and accept or reject any definitive agreement; and/or (d) modify, suspend or terminate this RFP as it deems appropriate in its sole discretion at any time. EBCE has the right to take the above-stated actions with respect to any or all proposals, all without notice and without assigning any reasons and without liability to EBCE or anyone acting on EBCE's behalf. EBCE will not be liable in any way, by reason of such withdrawal, rejection, suspension, termination or any other action described in this paragraph to any Bidder, whether the Bidder submits a bid or not.

All determinations made by EBCE with respect to any Bidder or its proposal(s), including the determinations described in this RFP, shall be made by EBCE in its sole discretion and without liability. These determinations will be final and are not subject to review. NCPA may assist EBCE in the evaluation of Bidders' proposals.

No Guarantee of Offer or Agreement

This RFP does not constitute an offer from EBCE to buy and creates no obligation to execute any agreement as a consequence of this RFP. Under no circumstances shall EBCE be bound by the terms of any Bidder's proposal nor any subsequent agreement until EBCE has obtained all necessary approvals of its management and the EBCE Board of Directors and all the conditions precedent, if any, set forth in a fully executed agreement have been satisfied or waived.



EBCE reserves the right in its sole discretion to: (i) select multiple Bidders or no Bidders at all, or (ii) negotiate one or more agreements on a bilateral basis outside the terms of this RFP. EBCE shall not be liable to any Bidder submitting a proposal in response to this RFP.

Each Bidder's costs for developing its proposals, including all RFP review, bid preparation and submittal costs, are entirely the responsibility of the applicable Bidder, and EBCE shall not have any responsibility or liability for such costs. EBCE is not responsible for returning any materials submitted by a Bidder as part of its proposal.

No Conflicts

Bidder agrees that to its knowledge no 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 Bidder, 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.

Prevailing Wages

It is EBCE's intent that wages paid for all work performed as a result of any and all contracts executed as part of this RFP meet or exceed prevailing wages as described in this section. Therefore, all executed contracts resulting from this RFP shall include prevailing wage provisions mandating that all workers employed on or in support of the project(s) by the Bidder or through subcontractors as a result of the contract execution be paid not less than the prevailing rate of wages for the appropriate craft, classification, type of worker and locality as determined by the Director of the State Department of Industrial Relations in accordance with Division 2, Part 7, Chapter 1 of the California Labor Code, or as set out in the wage determination of the U.S. Secretary of Labor, whichever is higher. Nothing herein shall require EBCE, the Bidder, the Bidders' contractors, or subcontractors to comply with, or assume liability or obligations created by other inapplicable provisions of the California Labor Code.

Non-Discrimination

It is the policy of EBCE to ensure that Bidders who contract with the District do not discriminate or give a preference in the award of subcontracts on the basis of race, national origin, color, ethnicity, or gender.

Small Business Participation

Although there are no small business goals related to this RFP, it is the policy of EBCE to encourage Bidders to utilize small businesses to the maximum extent possible and ensure adherence to EBCE's non-discrimination policy for subcontracting described above. Bidder shall, as part of its Proposal(s) in the Bidder Information Worksheet for each Project, describe the subcontracting activity to small businesses, including subcontracting activity to disabled-veteran-owned, minority-owned and women-owned businesses, and may optionally describe Bidder's subcontracting programs or activity in separate additional documentation included with the Proposal. Contracts executed as a result of this RFP will include a reporting requirement on the percentage of procurement spend with small businesses for subcontracted work during the project construction phase, if applicable.

Confidentiality

Bidder acknowledges that EBCE is a public agency subject to the disclosure requirements of the California Public Records Act, Cal. Gov. Code § 6250 et seq. ("CPRA"). If documents or information submitted to EBCE contain Bidder's proprietary and confidential information and Bidder claims that such information falls within one or more CPRA exemptions, Bidder must clearly mark such information "CONFIDENTIAL AND PROPRIETARY" and identify the specific lines containing such information (the "Confidential Information") and the CPRA exemption



applicable to such information. Except for disclosures to EBCE’s directors, officers, employees, agents, representatives or advisors (including financial advisors, attorneys and accountants), EBCE shall disclose such Confidential Information to third parties only to the extent that such disclosure is required by California law (including, without limitation, the California Constitution, the CPRA and the Brown Act) as set forth in this Section.

In the event of a third party request for EBCE to disclose such Confidential Information, EBCE shall make reasonable efforts to provide notice to Bidder prior to disclosure. If Bidder contends that any Confidential Information is exempt from the CPRA and wishes to prevent disclosure, Bidder shall obtain a protective order, injunctive relief or other appropriate remedy from a court of law in Alameda County, California, before EBCE’s deadline for responding to the CPRA request. If Bidder fails to obtain such remedy prior to EBCE’s deadline for responding to the CPRA request, Bidder agrees that EBCE may disclose the requested Confidential Information. Bidder further agrees that EBCE shall have no liability to Bidder arising out of any disclosure by EBCE of any Confidential Information before Bidder has timely obtained an order, injunctive relief or other appropriate remedy to prevent EBCE from making the requested third party disclosure.

Governing Law

This RFP shall be governed by and construed in accordance with the laws of the State of California.

General Provisions

EBCE will not be liable for any technical malfunction during communication transit. EBCE will only consider questions, Notices of Intent to Bid Forms, proposals, or other communications to be timely and complete if they are received electronically at RenewableRFP@EBCE.gov not later than the relevant deadline. Bidders may request confirmation of receipt of communications and materials, and EBCE will attempt to accommodate reasonable requests, but assumes no obligation or associated liability related to such accommodation.

Those Bidders who submit proposals agree to do so without legal recourse against EBCE, its Board, managers, agents, or contractors for rejection of their proposal(s) or for failure to execute an agreement for any reason. EBCE shall not be liable to any Bidder or party at law or in equity for any reason whatsoever for any acts or omissions arising out of or in connection with this RFP. By submitting its proposal(s), each Bidder waives any right to challenge any valuation by EBCE of any proposal of any Bidder or any determination of EBCE to select or reject any proposal of any Bidder or take any action contemplated by this RFP, any other decision of EBCE contemplated by this RFP or any resulting agreement related to a selected proposal. Each Bidder, in submitting its proposal(s), irrevocably agrees and acknowledges that it is making its proposal(s) subject to and in agreement with the terms of this RFP.

Exhibits

- A. Notice of Intent to Bid Form
- B. Bidder Information Template
- C. Term Sheet
- D. Generation Profile Template
- E. EBCE Representative Load Shape Data