



East Bay Community Energy / San José Clean Energy  
2022 Long-Term Resource  
Request for Offers

Protocol date: March 7, 2022

Issuance Date: February 17th, 2022

Final Response Deadline: March 21st, 2022, at 5:00 PM PT

## Table of Contents

<b>1. Overview</b>	2
a. Purpose	2
b. Background	2
c. Objectives	2
d. Schedule	3
e. RFO Process	4
f. Supplier Diversity	5
g. Disclaimers for Rejecting Offers and/or Terminating this RFO	5
<b>2. RFO Goals</b>	5
<b>3. Eligibility</b>	5
a. Project Viability Requirements	5
b. Participation in Other Procurement	7
c. Participation in Future Solicitations	7
<b>4. Evaluation Criteria</b>	7
a. Energy, including Shaped offerings	8
b. Renewable Portfolio Standard	8
c. Resource Adequacy	8
d. Ancillary Services	8
e. Location	8
f. Environmental Stewardship	9
g. Supply Chain Responsibility	9
h. Seller Concentration	9
<b>5. Guidelines for Offer Development</b>	9
a. Price	9
b. Compliant Submission Specifications	10
c. Required Standard Offers and Encouraged Variations	11
d. Collateral Requirements	14
<b>6. Required Information</b>	14
a. Submission Overview	14
b. Required Forms	14
<b>7. Communications</b>	16
<b>8. Respondent Representations</b>	17
<b>9. Termination of RFO-Related Matters</b>	17
<b>10. Attachments</b>	18

Deleted: 13

Deleted: 16

Deleted: 17

## 1. Overview

### a. Purpose

East Bay Community Energy (EBCE) and 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 Request for Offers (RFO).

### 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.

EBCE's audited financial statements for 2018-2020 are available for review and can be found in the RFO Materials section of the EBCE RFO webpage ([www.ebce.org/2020-rfo](http://www.ebce.org/2020-rfo)).

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 for 2017-2020 are available for review and can be found in the Resources section of the SJCE webpage (<https://sanjosecleanenergy.org/key-documents/>)

### c. Objectives

EBCE and SJCE are issuing this 2022 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 Renewable Portfolio Standard (RPS) and Integrated Resource Plan (IRP) obligations under SB 350, SB 100 and the CPUC 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; (4) High capacity factor, no on-site emission RPS energy; (5) Stand-alone energy storage; and/or (6) Zero emitting capacity resources. 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 to the extent they provide incremental capacity eligible under the CPUC's Mid-Term Reliability Requirements. Projects must begin deliveries no later than June 1, 2025 to qualify

for this RFO; projects that fit the “high capacity factor, no on-site emissions” criteria may begin deliveries by June 1, 2026. EBCE has a preference for deliveries beginning by August 1<sup>st</sup>, 2023. 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 generating and/or storage capacity from the same project, they will determine the allocation of capacity between themselves and intend to work together on negotiating a PPA. 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 EBCE/SJCE will attempt to notify RFO Respondents of any schedule changes via email. Any changes will also be reflected on the RFO webpage ([www.ebce.org/2022-rfo](http://www.ebce.org/2022-rfo)). Neither EBCE nor SJCE bears liability or responsibility to any Respondent for any change in the schedule or for failing to provide notice of any change.

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

Date /Time	Event
Ongoing	Respondents may register online to receive notices regarding the RFO.
February 17, 2022	EBCE/SJCE issue RFO.
February 25, 2022, no later than 2pm	Deadline to submit questions for Respondent Webinar.
March 3, 2022, 11am	Respondent Webinar for RFO.
March 11, 2022, no later than 2pm	Final deadline to submit questions.
March 16, 2022	EBCE/SJCE to post Q&A document, inclusive of <u>all</u> questions in by Feb. 14
March 17, 2022, no later than 2pm	Final deadline to submit Notice of Intent to Offer.
March 21, 2022, no later than 5pm	Offers due. Offers must be submitted via Dropbox, including all required files and related information.
<u>March 28, 2022, no later than 12pm</u>	<u>Offers for Demand Response are due. Offers must be submitted via Dropbox.</u>
April 20, 2022	EBCE/SJCE identify shortlisted Respondents and Offers.
May 4, 2022	Shortlisted Respondents required to sign exclusivity agreement and post shortlist deposit.
May 20, 2022	Comprehensive redlines of term sheet; review of PPA due for shortlisted Respondents.
June - September 2022	Negotiations
October - November 2022	Contract approvals by EBCE & SJCE Board of Directors.

Note: EBCE will fast track projects with 2023 COD 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 EBCE/SJCE.*

**Webinar:** EBCE/SJCE will hold a Respondent Webinar on March 3<sup>rd</sup>, 2022, at 11:00 AM PT to review key information in this protocol related to the solicitation and form agreement terms. Questions submitted by February 25<sup>th</sup>, 2022, will be answered if time allows. All interested parties may register for the webinar with this link: [https://us02web.zoom.us/webinar/register/WN\\_ZOKILPPmTfypnDGb5ALGiQ](https://us02web.zoom.us/webinar/register/WN_ZOKILPPmTfypnDGb5ALGiQ). The information to register for the webinar will also be available on the RFO 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 [2022-RFO@ebce.org](mailto:2022-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 March 17<sup>th</sup>, 2022; 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 March 21<sup>st</sup>, 2022. Offers must include all documents described in **Section 6: Required Information**.

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

Following shortlisting, EBCE/SJCE will engage in limited negotiations with counterparties as relevant to the Offer(s). The final selection of Offers for execution will be evaluated against each other, considering reasonableness and desirability of commercial terms reached by both parties through the negotiations process, and the impact of the Offer on EBCE's and SJCE's portfolio as a whole.

**Presentation to Board/Council:** 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 unless San José City Council has already authorized the Director of Community Energy or her designee to negotiate and execute such contracts. Confidential market sensitive terms such as price and quantity, will be redacted for public review.

**Execution of Contracts:** EBCE and SJCE will seek to execute contracts following Board or Council, as relevant, approval of proposed transactions. In the event that the Board/Council requires additional information related to any transaction, those transactions will be held and their execution will 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 and California Public Utilities Commission policy objectives, Respondents that execute a PPA with 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 procurement decisions; providing such information in an Offer will not impact the selection process or good standing of executed PPAs.

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

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

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

This RFO does not constitute an offer to buy and creates no obligation to execute any PPA or enter into any transaction as a result of the RFO. EBCE and SJCE retain the right, each at its sole discretion, to reject any Offers on the grounds that it does not conform with the terms and conditions of the RFO and reserve the right to request additional information at any time during the solicitation process.

EBCE and SJCE retain the right to: (1) modify this RFO and/or its form Term Sheets and/or form PPAs as they deem appropriate to implement the RFO, comply with applicable laws, or best meet the organizations' evolving understanding of their 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 will be liable in any way by reason of such withdrawal, rejection, suspension, delay, or termination to any RFO Respondent, whether submitting an Offer or not.

## 2. RFO Goals

EBCE and SJCE seek transactions that will commence delivery in calendar years 2023, 2024, or 2025; EBCE having a preference for projects that begin delivery earlier within this window. EBCE and SJCE also seek high capacity factor, zero on-site emissions projects that will commence deliveries in 2026. Offers can be for new facilities or capacity expansions to existing resources. All energy must be deliverable to CAISO, but projects may be within or outside 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 the Offer Form(s). Some of this information must be provided in a written narrative 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 retain the right to request documentation at any time to verify project details or status.

i. Generating & Storage Resources

New generation facilities and capacity expansions to existing resources are eligible to participate. 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.<sup>1</sup>
2. All resources must 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).<sup>2</sup>
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.
6. Capacity expansions to existing resources may participate provided that only the new capacity is offered and the capacity expanded resource may begin delivery under a contract to EBCE or SJCE no later than June 1, 2025 (or June 1, 2026 for produce 6 only).

ii. Interconnection

**New Resources**

Respondents submitting Offers for new resources must have, at the minimum, a completed and returned Phase I Impact Study (or equivalent) at the time of Offer submittal.

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 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 contract start under any agreement executed with EBCE or SJCE. No documentation required to be submitted, though it may be requested.

**Energy-Only Products**

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

**Products Including Resource Adequacy**

---

<sup>1</sup> California Public Utilities Code:

[https://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=PUC&division=1.&title=&part=1.&chapter=2.3.&article=16](https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=PUC&division=1.&title=&part=1.&chapter=2.3.&article=16).

<sup>2</sup> CPUC D.21-06-035 <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M389/K603/389603637.PDF>

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 12, 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 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 attest they have secured site control for the entire delivery term of their Offer(s). 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/SJCE's sole discretion.

iv. [Commencement of Commercial Operation Date](#)

The project must be able to begin commercial operation and/or begin deliveries under the contract no later than June 1, 2025. Only projects offered for Product 4, "High Capacity Factor, No On-Site Emissions RPS Energy", may have an anticipated commercial operation of June 1, 2026.

b. [Participation in Other Procurement](#)

Respondents in this solicitation 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 EBCE and SJCE for the generating and/or storage capacity shortlisted by each CCA.

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 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 (25%)

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

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

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, (49.5%)

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

Local Business Enterprise: 5%

Small Business Enterprise: 5%

Deleted: labor and workforce development

#### Quantitative Evaluation Criteria include:

##### a. Energy including Shaped offerings & Storage Tolling offers

EBCE and SJCE 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 hour 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 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 projects.

**f. Environmental Stewardship**

EBCE and SJCE 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 will prioritize projects that are considered multi-benefit renewable energy and projects located in areas zoned for renewable energy development. EBCE and SJCE 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](http://www.business.ca.gov)), Employment Development Department ([www.edd.ca.gov](http://www.edd.ca.gov)), or U.S. Small Business Administration ([www.sba.gov](http://www.sba.gov)).

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

**h. Seller Concentration**

EBCE and SJCE will not limit the number of Offers submitted by a single Respondent; however EBCE or SJCE may cap the amount awarded to any Respondent in this RFO 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.1 and C.2. 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
High Capacity Factor, No On-Site Emissions RPS Resources	\$ / MWh
Stand-Alone Energy Storage Toll	\$ / kW-month + \$ / MWh Variable O&M

Zero Emitting Capacity Resources	\$ / MWh or \$ / MWh + \$ / kW-month or \$ / kW-month (only)
----------------------------------	--

The price submitted for an Offer must include (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.

<b>Products</b>	One of the six products described in this solicitation.
<b>Location</b>	Within or outside of California, with deliverability to the CAISO grid. Include approximate latitude and longitude of the project site.
<b>Term</b>	Terms may be offered for 10-20 years as variations in addition to the required Standard Offer(s) for any product.
<b>Price</b>	Prices must be offered at the project Pnode for all products other than Indexed Energy plus RPS Attributes.  Respondents are encouraged to also submit Offers at the following settlement points: <ul style="list-style-type: none"> <li>• PGE Default Load Aggregation Point (DLAP)</li> <li>• CAISO liquid trading hub (e.g. SP15, NP15, ZP26, etc.)</li> </ul>
<b>Installed Capacity (MW)</b>	Nameplate capacity no less than 5 MW and no greater than 150 MW. Paired/hybrid resources may have a total nameplate capacity in excess of 150 MW.  All projects with storage should include the option to extend storage duration during the contract term.
<b>Expected Commercial Operation Date (COD)</b>	On or prior to June 1, 2025. High Capacity Factor, No On-Site Emissions RPS Resources are eligible for June 1, 2026 COD.
<b>Scheduling Coordinator</b>	The buyer shall be the SC. Exception: for Shaped Clean/RPS Energy offers, Seller shall be SC. In addition, on a case-by-case basis, it may be more appropriate for the Seller to be the SC.

<b>Ownership</b>	All projects will be owned by the Respondent, with the CCA contracting the output of the resource for the duration of the term.
<b>Number of Offers</b>	An “Offer” refers to the submission of all required information and details of any additional variations for <u>one product from one site</u> . In addition to the required Standard Offer(s) outlined in <b>Section 5.c</b> , 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 encourage variations to be submitted in addition. 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.

<b>Product 1: As-Available RPS Product</b>	
<b>Eligible Resources:</b> New or extension to an existing 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> 5-150 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> 5-150 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 50-100MW size)

<b>Product 2: As-Available RPS plus Energy Storage</b>	
<b>Eligible Resources:</b> New or incremental capacity to an existing 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.	
<b>Required Products:</b> 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> 5-150 MW RPS Nameplate <u>Storage Capacity:</u> >=40% of RPS, at least 4-hr Duration, AC-Connected
	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> 5-150 MW RPS Nameplate <u>Storage Capacity:</u> >=40% of RPS, at least 4-hr Duration, AC-Connected
--	--

Product 3: Firm or Shaped RPS Product	
<b>Eligible Resources:</b> New stand-alone PCC1-eligible generating resources, likely paired with energy storage	
Required Standard Offers	<b>1</b> <u>Term:</u> 10 years <u>Pricing Structure:</u> At project Npode, fixed price <u>Capacity:</u> n/a <u>Hourly Delivery:</u> Seller to propose
	<b>2</b> <u>Term:</u> 10 years <u>Pricing Structure:</u> At project Npode, no escalation <u>Capacity:</u> n/a <u>Hourly Delivery:</u> please refer to Buyer’s proposals in Offer form
Encouraged Variations	<b>*</b> <u>Term:</u> Minimum 10 years <u>Pricing Structure:</u> Also priced at Hub (NP15 or PG&E DLAP) <u>Capacity:</u> <u>n/a</u>

**Deleted:** Varying sizes (Preference for 50-100MW size)

Product 4: High Capacity Factor, No On-Site Emissions RPS Energy	
<b>Eligible Resources:</b> New stand-alone PCC1-eligible generating resources; this may include: geothermal or biomass. Resources may achieve commercial operation by June1, 2026 with <i>limited</i> ability to extend commercial operation until June 1, 2028 as a result of supply chain or other permitted delays.	
Required Standard Offers	<b>1</b> <u>Term:</u> 10 years <u>Pricing Structure:</u> At project Npode, fixed price <u>Capacity:</u> 25 – 50 MW RPS Nameplate <u>Capacity Factor:</u> minimum of 80%
	<b>2</b> <u>Term:</u> 10 years <u>Pricing Structure:</u> At project Npode, fixed price <u>Capacity:</u> 40 MW RPS Nameplate <u>Capacity Factor:</u> minimum of 80%
	<b>3</b> <u>Term:</u> 10 years <u>Pricing Structure:</u> At project Npode, fixed price <u>Capacity:</u> 65 – 90 MW RPS Nameplate <u>Capacity Factor:</u> minimum of 80%
Encouraged Variations	<b>*</b> <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 50-100MW size) <u>Capacity Factor:</u> minimum of 80%

Product 5: Stand-Alone Energy Storage Toll	
<b>Eligible Resources:</b> Storage may be any commercially viable technology with 2-hr, 4-hr, or 4-hr+ duration capabilities.	
<b>Required Products:</b> CCA will control the dispatch and receive all project attributes including RA, energy arbitrage, A/S.	

<b>Note: Long Duration Storage Offers only may achieve COD by June 21, 2023. All other Storage offers must achieve COD by June 1, 2025.</b>	
Required Standard Offers	1 <u>Term:</u> 10 years <u>Pricing Structure:</u> At Pnode, fixed capacity price with variable O&M cost <u>Capacity:</u> 10 - <del>40</del> MW Nameplate, 8-hr duration <u>Storage Parameters:</u> 365 cycles per year
	2 <u>Term:</u> 10 years <u>Pricing Structure:</u> At Pnode, fixed capacity price with variable O&M cost <u>Capacity:</u> 50-55 MW Nameplate, 8-hr duration <u>Storage Parameters:</u> 365 cycles per year
Encouraged Variations	* <u>Term:</u> <i>Minimum 10 years</i> <u>Pricing Structure:</u> At Pnode, fixed capacity price with variable O&M cost <u>Capacity:</u> 50 – 100 MW Nameplate, 8-hr duration or greater
	* <u>Term:</u> Minimum 10 years <u>Pricing Structure:</u> At Pnode, fixed capacity price with variable O&M cost <u>Duration:</u> 4-hr duration or greater
<u>Other Permitted Variations</u>	<u>Offers for RA only Storage or RA with Financial components (e.g. a top 4/bottom 4 spread) are permitted, however any financial products must be backed by a physical resource to comply with CCA Risk Management Standards.</u>

Formatted: Font: Bold

Deleted: 3

Formatted: No underline

Formatted: No underline

<b>Product 6: Zero-Emitting Capacity Resources</b>	
<b>Eligible Resources:</b> Emission-free generation resources, emissions-free generation paired with storage, or demand response.	
<b>Required Products:</b> Must be available every day from 5pm to 10pm (hours ending 17 through 22) Pacific Time. Must also be able to deliver at least 5 MWh of energy for every 1MW of incremental capacity. Must be online by 2025.	
Required Standard Offers	1 <u>Term:</u> 10 years <u>Pricing Structure:</u> At project Pnode, fixed price <u>RPS Capacity:</u> 5-150 MW RPS Nameplate <u>Storage Capacity:</u> 5-100MW, 5-hr Duration <u>Storage Parameters:</u> 365 cycles per year
	2 <u>Term:</u> 10 years <u>Pricing Structure:</u> At Pnode, fixed capacity price with variable O&M cost <u>Capacity:</u> 5-100 MW, 5-hr duration <u>Storage Parameters:</u> 400 cycles per year
Encouraged Variations	* <u>Resource Type:</u> Demand Response <u>Term:</u> Minimum 10 years <u>Capacity:</u> Minimum 5 MW

#### 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)

- Respondent 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 (Attachments C.1, C.2)

- Please 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 1-5 require Offer Form 1. Product 6 requires Offer Form 2.
- 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.

- 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 will prioritize negotiations with Respondent that adapt their Offer to existing contract terms and conditions and limit requested changes to CCA pro forma contracts. Only upon shortlisting will Respondents be requested to mark-up form PPAs.
- **File Format:** Word
- **File Name:** *TermSheetName\_RespondentCompany Name\_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/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** (SJCE only, and only if qualified)

- Qualified Respondents wishing to claim local/small business status should complete Form X - SJCE Request for Local and Small Business Preference. 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

- a. **Exclusivity Agreement and Shortlist Deposit**
- b. **Redlined Term Sheet and 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:**

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

**If privately held or governmentally owned:**

- o Management’s Discussion & Analysis (if available)
- o Report of Independent Accountants (if available)
- o Financial Statements, including:
  - Balance Sheet
  - Income Statement
  - Statement of Cash Flows
  - Statement of Stockholder’s Equity (privately held only)
- o 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 [2022-RFO@ebce.org](mailto:2022-RFO@ebce.org). EBCE and SJCE will not respond to any material questions submitted after the final question deadline of March 11, 2022. All answers will be compiled into a document and posted to the RFO website by March 16, 2022. EBCE and SJCE 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 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 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 EBCE or SJCE Director, including any Regular or Alternating Directors (collectively "CCA Director") or EBCE or SJCE 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 Councilmembers can be found at <https://www.sanjoseca.gov/your-government/departments/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 PPA.

## 9. Termination of RFO-Related Matters

EBCE and SJCE 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 2022 Long-Term Resource RFO Protocol
- Attachment A: Notice of Intent to Offer
- Attachment B: RFO Participation Agreement
- Attachment C.1: Offer Form 1
- Attachment C.2: Offer Form 2 (Demand Response Only)
- Attachment D: Offer Supplement Requirements
- Attachment E.1: Term Sheet RPS (Product 1, 4, 6)
- 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 5)
- Attachment E.5: Term Sheet Demand Response (Product 6)
- 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 proposer wants to dispute an award or award recommendation, a protest must be submitted in writing for SJCE to the Director of Community Energy, Lori Mitchell 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 is:

Attention: Lori Mitchell, Director  
City of San José, Department of Community Energy  
200 East Santa Clara Street, 14th Floor  
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](mailto:protestSJCE@sanjosecleanenergy.org) and to Howard Chang at [hchang@ebce.org](mailto:hchang@ebce.org).

## 12. Interpretation

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

Should there be a need to clarify this RFO or any of its attachments, including but not limited to the Term Sheet, requests for clarification may be sent via e-mail at 2022-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 the Term Sheets (Attachments E.1-E.5), the Term Sheet would apply.

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

### 14. Code Adherence and Policies

RFO Bidder shall agree to abide by all laws, rules and regulations of the United States, State of California, Santa Clara County, Alameda County, 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 entered into by SJCE pursuant to this solicitation are subject to the Appropriation of Funds, Designated Fund, and Limited Obligations provisions set forth in the Term Sheets. 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. Attachments E.1-E.5, the Term Sheets for Power Purchase Agreements, outline the SJCE/EBCE's standard terms and conditions as part of the agreement between each CCA and the successful Respondent. 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 correspondence with EBCE/SJCE including responses to this solicitation will become the exclusive property of the CCAs and will become public records under the California Public Records Act (Cal. Government Code section 6250 et seq.) All documents that you send to the CCAs will be subject to disclosure if requested by a member of the public. There are a very limited number of narrow exceptions to this disclosure requirement.

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

Therefore, any proposal which contains language purporting to render all or significant portions of their proposal “Confidential”, “Trade Secret” or “Proprietary”, or fails to provide the exemption information required as described below will be considered a public record in its entirety subject to the procedures described below. Do not mark your entire proposal as “confidential”.

The CCAs will not disclose any part of any proposal before it announces a recommendation for award, on the ground that there is a substantial public interest in not disclosing proposals during the evaluation process. After the announcement of a recommended award, all proposals received in response to this RFO will be subject to public disclosure.

In order to designate information as confidential, the Respondent must clearly stamp and identify the specific portion of the material designated with the word “Confidential” and provide a citation to the California Public Records Act that supports keeping the information confidential. Respondent should not over-designate material as confidential. Over-designation would include stamping entire pages or series of pages as confidential that clearly contain information that is not confidential. Upon request or demand of any third person or entity not a party to this Agreement (“Requestor”) for production, inspection and/or copying of information designated by Respondent as confidential information (such designated information, the “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. If the Respondent takes no such action after receiving the foregoing notice from the CCAs, the CCAs shall be permitted to comply with the Requestor’s demand and is not required to defend against it.

If required by any law, statute, ordinance, a court, Governmental Authority or agency having jurisdiction over the CCAs, including the California Public Records Act, the CCAs 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.

## 18. Disclaimer

EBCE/SJCE reserve the sole and discretionary right to (i) reject any offers received in response to this RFO for any reason, and (ii) accept any offers received after the deadline for submittals as indicated herein. Additionally, the CCAs reserve the right, at their sole discretion, to not enter into any transaction at the conclusion of this RFO. The CCAs 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 also reserve the right to rescind this RFO at any time prior to the CCAs’ 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 will not be liable at any time for any costs the prospective supplier may incur in preparing or submitting its response to this RFO.

