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City and County of San Francisco – Hetch Hetchy Power & CleanPowerSF Request for Offers Resource Adequacy Supplies December 5, 2022

Background

The San Francisco Public Utilities Commission (SFPUC) - Power Enterprise is a department of the City and County of San Francisco (CCSF). The SFPUC operates Hetch Hetchy Power, a full-service retail utility, and CleanPowerSF, San Francisco’s Community Choice Aggregation Program, serving commercial and residential customers in the City and County of San Francisco. The SFPUC is a member of the WSPP under the name City and County of San Francisco (CCSF).

The SFPUC issues this Request for Offers (RFO) to purchase Resource Adequacy (RA) supplies delivered in 2023-2026 for **two counterparties**: 1) Hetch Hetchy Power (CCSF); and 2) CleanPowerSF (CPSF).

The SFPUC is seeking the following Resource Adequacy products:

Counterparty	Product	Area	Minimum Volume (MW)	Delivery Start	Delivery End	Term
CPSF and CCSF to Purchase	System RA (Generic or Flexible)	North and/or South System	1 MW	3/1/2023	12/31/2027	Monthly or multiple month offers
CPSF and CCSF to Purchase	Local RA (PG&E TAC) and Flexible RA	Any Local Area	1 MW	3/1/2023	12/31/2027	Monthly or multiple month offers
CPSF to Purchase	Intertie RA	Intertie RA (Merchant, Mead, IID, Summit, NOB, COB, COTPISO)	1 MW	3/1/2023	12/31/2023	Monthly or multiple month offers
CPSF to Sell	Import Allocation Rights (COB, NOB, PV)	IAR (Merchant, Mead, IID, Summit, NOB, COB, COTPISO)	1 MW	3/1/2023	12/31/2023	Monthly or multiple month offers

Proposal Timing

RFO Issued	December 5, 2022
Bids Due	12:00 PM PPT, December 8, 2022; Bids may be accepted after this deadline, at the Buyer’s

	discretion, until Buyer's needs fulfilled
Notification of Award	December 8, 2022

Please submit bids to powerpurchasing@sfgwater.org by **12:00 PM PPT on December 8, 2022**. **Bids will be evaluated on an ongoing basis and respondents are encouraged to submit bids early.**

On or before December 8th, the SFPUC will notify shortlisted sellers of their accepted offers to commence contract negotiations.

Responses are due by the deadline stated above. However, we may continue to accept and review bids submitted after the deadline.

How to Respond

- Preference will be given to entities that are a WSPP member or have an existing Master Agreement in place with either counterparty.
- Provide information summarizing your specific bid(s) by completing Exhibit A.
- Attach any additional information relevant to your bid.
- SFPUC Origination and Power Supply staff will respond with an email to confirm your bid has been received.
- **Responses and/or questions should be addressed to: powerpurchasing@sfgwater.org**

REQUIRED WSPP AGREEMENT AMENDMENTS

A. General WSPP Amendments.

1. Payment

- (a) After Seller has delivered the Contract Quantity in accordance with this Confirmation and issued its invoice, Purchaser shall pay for the Product as provided in Article 9 of the WSPP Agreement, except that under Section 9.4 of the WSPP Agreement, in case any portion of any bill is in dispute, then only the undisputed portion of the bill shall be paid when due. The disputed portion of the bill shall be adjusted or paid upon final resolution of the dispute.
- (b) Section 28.1 of the WSPP Agreement is applicable and the Parties shall net monthly payments in accordance with Exhibit A of the WSPP. Both Parties intend for the netting provisions of Exhibit A to the WSPP Agreement to be effective on the Confirmation Effective Date.
- (c) Notwithstanding any other provision of this Agreement, Buyer shall not be deemed to be in default of this Agreement and no interest shall be assessed if an invoice under this Agreement cannot be processed by Buyer due to Seller's failure to comply with all applicable City requirements for City contractors, including but not limited to certification of vendors under Chapter 12 of the San Francisco Administrative Code, payment of business license fees or taxes, insurance requirements, registration in the City's vendor payment processing system, or any other current or future City requirement for vendor payment processing. Seller understands and acknowledges that vendor certifications may include annual renewals and additional certification requirements may apply to assignees or changes in ownership or control of Seller.

- (d) Notwithstanding any provision to the contrary in Section 9.2 of the Master Agreement, payments shall be due within thirty (30) days after receipt of the invoice. Any amount not paid by the Due Date shall be subject to a late payment penalty equal to a daily rate of \$5.50 per \$100,000.00 ("Late Payment Fee") for a maximum period of one hundred and eighty (180) calendar days after such payment is due.
2. Default and Termination
- (a) Section 22.1 is modified by inserting the following new text at the end of the Section:
- "(f) the failure of the Defaulting Party to pay its debts generally as they become due or the Defaulting Party's admission in a writing that is unable to generally pay its debts as they become due;
- (g) the institution, by the Defaulting Party, of a general assignment for the benefit of its creditors; or
- (h) the application for, consent to, or acquiescence to, by the Defaulting Party, the appointment of a receiver, custodian, trustee, liquidator, or similar official for all or a substantial portion of its assets."
- (b) Section 22.2(b) is amended by inserting "and is continuing" after "Event of Default occurs" in the first line and deleting the entire second sentence.
- (c) Section 22.3(c) is amended by deleting the third sentence in its entirety and replacing it with the following: "Notwithstanding anything to the contrary in the WSPP Agreement, if the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs after any set-off as set forth in Section 22.3(d) of the WSPP Agreement, the Termination Payment shall be zero dollars (\$0)."
- (d) Section 22.3(e) is deleted in its entirety and replaced with "[Reserved]".
3. Governing Law. Section 24 of the WSPP Agreement is deleted in its entirety and replaced with the following:
- "This Agreement and any Transaction shall be governed by and construed, enforced and performed in accordance with the laws of the State of California, without regard to principles of conflicts of law."
4. Collateral. Notwithstanding any provision in the WSPP Agreement to the contrary, including Section 27, neither Party shall be required to post collateral or other security for this Transaction.
5. Confidentiality. Notwithstanding Section 30.1 of the WSPP Agreement,
- (a) The Parties may disclose information as necessary to its officers, employees, agents, consultants, and contractors as necessary for the performance of its obligations under this Agreement and as necessary to comply with any applicable law, regulation, rule, requirement, request, or order of a governmental body with jurisdiction, including the California ISO. In addition, Purchaser may disclose information as necessary to any subsequent buyer.
- (b) The Parties acknowledge that this Transaction, and all records related to its formation or performance, are subject to the California Public Records Act, (California Government Code section 6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67) and that either Party may be required to make public this Confirmation (which may be partially redacted by a Party) in connection with the process of seeking approval from its board or commission for the execution of this Confirmation. Each Party acknowledges that the other Party may submit information to it that the other Party considers confidential, proprietary, or trade secret information pursuant to 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).
- (c) If a Party ("Disclosing Party") contends that any information submitted to the other Party ("Receiving Party") contains the Disclosing Party's proprietary and confidential information which is falls within one or more California Public Records Act exemptions, the Disclosing Party shall clearly mark such information "Proprietary and Confidential" and identify the specific lines containing such information. Upon request or demand of any third person or entity not a party to this Confirmation ("Requestor") pursuant to the California Public Records Act for production, inspection and/or copying of this Confirmation or any information designated by the Disclosing Party as confidential, the Receiving Party as soon as

practical shall notify the Disclosing Party that such request has been made, by telephone call, letter sent via electronic mail, and/or by overnight carrier to the address, or email address listed at the end of this Confirmation. The Disclosing Party 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 Receiving Party. If the Disclosing Party takes no such action within ten (10) days, after receiving the foregoing notice from the Receiving Party, the Disclosing Party agrees that the Disclosing Party may comply with the Requestor's demand and is not required to defend against it. Notwithstanding the foregoing, Purchaser may release confidential information without notice to or over the objection of Seller if Purchaser's legal counsel advises Purchaser that Purchaser is required by law to release such confidential information.

6. **Dispute Resolution.**

- (a) Section 22.3(f) of the WSPP Agreement is deleted in its entirety and replaced with the following:

"If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, and provided that the Defaulting Party has paid the undisputed part of the Termination Payment to the Non-Defaulting Party as provided under Section 22.3(c), and that any amounts disputed by the Defaulting Party are disputed in good faith, then the Defaulting Party may submit the calculation issue to Dispute Resolution pursuant to Section 34."

- (b) Subsections 34.1 and 34.2 of the WSPP Agreement are hereby deleted and replaced with the following:

"34.1 INFORMAL DISPUTE RESOLUTION

In the event of any dispute arising under this Transaction, within ten (10) days following the receipt of a written notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute. If the Parties are unable to resolve a dispute arising hereunder within thirty (30) days after receipt of such notice, then either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Transaction."

"34.2 EXCLUSIVE JURISDICTION

Each Party submits to the exclusive jurisdiction of the state or federal courts located in San Francisco, California, for any action or proceeding relating to this agreement or any Transaction, and expressly waives any objection it may have to such jurisdiction or the convenience of such forum."

- (c) The second sentence of Section 34.3 is deleted in its entirety.

- (d) The phrase "arbitration or mediation" is hereby deleted from the first line of Section 34.4 and replaced with "dispute resolution".

- (e) Exhibit D is deleted in its entirety.

7. Section 37 is amended by inserting the following in the beginning of the section: "On the date of entering into this Confirmation,".

8. Section 41 "Witness" shall become Section 42 and the following "Standard of Review" Section shall be substituted in its place:

Absent the agreement of all Parties to the proposed change, the standard of review for changes to any section of this Agreement (including all Transactions and/or Confirmations) specifying the rate(s) or other material economic terms and conditions agreed to by the Parties herein, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

B. Purchaser Standard Terms

1. Designated Fund [**CleanPowerSF only**].

- (a) **Auto-Appropriating Designated Fund.** Buyer's payment obligations under this Confirmation shall be paid from a SFPUC designated fund that will automatically appropriate CleanPowerSF revenues on an annual basis without further action and which shall be used solely for CleanPowerSF costs and expenses, including the Buyer's obligations under this Confirmation. Buyer agrees to set CleanPowerSF's rates and charges that are sufficient to maintain revenues necessary to pay all of Buyer's payment obligations under its contracts for the purchase of energy or energy related products for CleanPowerSF. Buyer shall provide Seller with reasonable access to account balance information with respect to the CleanPowerSF designated fund at all times during the Delivery Period.
 - (b) **Limited Obligations.** Buyer's payment obligations under this Confirmation are special limited obligations of CleanPowerSF payable solely from the revenues of CleanPowerSF. Buyer's payment obligations under this Confirmation are not a charge upon the revenues or general fund of the SFPUC or the City and County of San Francisco or upon any non-CleanPowerSF moneys or other property of the SFPUC or the City and County of San Francisco.
2. **Guaranteed Maximum Cost.**
 - (a) **Controller Certification.** Buyer's obligations hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of Buyer are not authorized to request, and Buyer is not required to reimburse Seller for, commodities or services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of the Buyer are not authorized to offer or promise, nor is Buyer required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.
 - (b) **Biannual Budget Process.** For each City and County of San Francisco biannual budget cycle during the term of this Confirmation, Buyer agrees to take all necessary action to include the maximum amount of its annual payment obligations under this Confirmation in its budget submitted to the City and County of San Francisco's Board of Supervisors for each year of that budget cycle.
3. **Compliance with Laws.** Each Party shall keep itself fully informed of all applicable federal, state, and local laws in any manner affecting the performance of its obligations under this Confirmation, and must at all times materially comply with such applicable laws as they may be amended from time to time.
4. **Prohibition on Political Activity with City Funds.** In performing any services required under this Agreement, Seller shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure in San Francisco.
5. **Nondiscrimination Requirements.**
 - (a) **Non-discrimination in Contracts.** Seller shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Seller shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Seller is subject to the enforcement and penalty provisions in Chapters 12B and 12C.
 - (b) **Non-discrimination in the Provision of Employee Benefits.** San Francisco Administrative Code 12B.2. Seller does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.
6. **Submitting False Claims.** Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to

- have submitted a false claim to the City if the contractor or subcontractor: (1) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (2) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (3) conspires to defraud the City by getting a false claim allowed or paid by the City; (4) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (5) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.
7. Consideration of Salary History. Seller shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." Seller is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property.
 8. Consideration of Criminal History in Hiring and Employment Decisions. Seller agrees to comply fully with and be bound by all of the provisions of Chapter 12T, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code, including the remedies provided, and implementing regulations, as may be amended from time to time. The requirements of Chapter 12T shall only apply to Seller's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.
 9. Conflict of Interest. By executing this Agreement, Seller certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 et seq.), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 et seq.), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.
 10. Campaign Contributions. By executing this Agreement, Seller acknowledges its obligations under Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Seller's board of directors; Seller's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Seller; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Seller. Seller shall inform the relevant persons of the limitation on contributions imposed by Section 1.126.

C. Miscellaneous

1. Counterparts. This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on electronic, or scanned signatures as originals under this Confirmation. Delivery of an executed signature page of this Confirmation by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.
2. Entire Agreement; No Oral Agreements or Modifications. This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Transaction may be confirmed only through a Documentary Writing executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a Documentary Writing executed by both Parties.

Post-Response Negotiations

SFPUC reserves the right to enter into discussions with respondent to gain clarity on its bid, or to suggest a partial amendment to the offer.

Disclaimer and Confidentiality

SFPUC reserves the right, without qualification and in its sole discretion, to reject any or all offers, accept multiple bids, and to terminate this request for bid in whole or in part at any time. Without limiting the foregoing, SFPUC further reserves the right in its sole discretion, to decline to enter into any agreement with any counterparty for any reason.

It is not SFPUC's intent to publicly disclose individual respondent proprietary information obtained in response to this request. This request is intended to provide information for SFPUC to select a bid to purchase energy, it should NOT be construed as a commitment by SFPUC to enter into a contractual agreement, nor will SFPUC pay for information solicited.