



## **Request for Proposals**

**For**

## **Energy Prepayment Counsel**

**Response Deadline:** May 3, 2024 by 3:00PM PDT

# San Diego Community Power

## Request for Proposals Energy Prepayment Counsel

### **INTRODUCTION**

San Diego Community Power (“SDCP”) is the default electricity provider for the Cities of Chula Vista, Encinitas, Imperial Beach, La Mesa, National City, and San Diego and the County of San Diego which serves the unincorporated area (collectively, “member agencies”). SDCP’s Joint Powers Agreement (“JPA”) is the first in California with the objective to achieve and sustain 100 percent renewable energy availability and usage by 2035, which is in advance of current State targets. SDCP began service in 2021 and completed enrolling customers in 2023. This enrollment covered approximately 960,000 customer accounts. For more information, please visit SDCP’s website at [www.sdcommunitypower.org](http://www.sdcommunitypower.org). Proposers shall review SDCP’s Procurement Policy<sup>1</sup> and Inclusive and Sustainable Workforce Policy<sup>2</sup> to ensure compliance when drafting proposals.

### **SDCP FINANCIAL PERFORMANCE**

SDCP recorded an estimated \$891.28 million in net operating revenues in FY 2022-23 and projects \$1,292.5 million in net operating revenues in FY 2023-24. As of February 29, 2024, total SDCP cash reserves were \$383.3 million and total available liquidity (including lines of credit) was \$533.3 million. SDCP has already met its 90-days cash on hand reserve target identified in SDCP’s Financial Reserves Policy<sup>3</sup> and plans to achieve its strategic-plan goal of 180-days cash on hand by October 2025.

### **PURPOSE OF REQUEST**

SDCP is interested in exploring an energy prepayment transaction. Through this RFP, SDCP is seeking bond, tax and/or disclosure counsel to provide assistance in meeting our legal responsibilities, assistance with federal securities law and disclosure documents and/or assistance with respect to tax law among other similar services for the prepayment transaction on existing Power Purchase Agreements (“PPAs”). To help SDCP’s evaluation efforts, please identify how your firm is qualified to provide outside counsel support that addresses the primary desire of SDCP to prepay existing PPAs. SDCP intends to use this solicitation to establish a short list of Proposers to invite for interviews. Proposers are free to respond in the format most convenient (e.g., Word, PowerPoint or a combination thereof), but thoroughly addresses the questions below.

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<sup>1</sup> [https://sdcommunitypower.org/wp-content/uploads/2022/08/SDCP-Procurement-Policy\\_Adopted\\_2022.07.28.pdf](https://sdcommunitypower.org/wp-content/uploads/2022/08/SDCP-Procurement-Policy_Adopted_2022.07.28.pdf)

<sup>2</sup> [https://sdcommunitypower.org/wp-content/uploads/2022/02/SDCP\\_ISWF-Policy.pdf](https://sdcommunitypower.org/wp-content/uploads/2022/02/SDCP_ISWF-Policy.pdf)

<sup>3</sup> <https://sdcommunitypower.org/wp-content/uploads/2022/08/Financial-Reserves-Policy-Revision-2022-Final-c1-1.pdf>

## **PROPOSAL REQUIREMENTS**

### A. Contemplated Services

Provide an overview of the contemplated services your firm could provide to SDCP for an energy prepayment transaction (bond and/or tax and/or disclosure counsel) and explain all conflicts for your firm serving in any combination of these roles, if applicable. Please provide confirmation in your proposal response if your firm is able to serve as prepay/issuer's counsel.

### B. Proposed Team

Please list the dedicated team members and their respective roles in the proposed prepayment transaction and availability to formally engage with SDCP, assuming a formal kick-off of June 5, 2024.

Additionally, please confirm that the proposed team has the ability to provide legal services in California.

### C. Prepay Experience

1. How many executed prepay transactions has this team worked on to date?
2. Please also discuss (at a high-level) any energy/electricity prepay transactions your team has advised/worked on to date.
3. How many prepay transactions is your team formally engaged on currently?

### D. CCA Experience

Provide any specific experience your team has had working with CCAs.

### E. Prepay Components

Discuss any components of an energy prepay transaction that SDCP should be particularly cognizant of in the selection of and negotiation with a financial counterparty.

### F. Proposed Fees

Confirm your proposed fees for a prepay transaction with SDCP. Proposals may include the following fee structures:

- a. Fixed Fee or Deliverables Based
- b. Time and Materials
- c. Please note if you have a preferred structure (fixed vs. hourly) and if offered on a contingent basis.

## G. References

Please provide three (3) references of prepay issuers that SDCP can contact in the evaluation process, using the tables provided at the end of this document.

## H. Executed Affirmation regarding Compensation

Please provide a filled out and signed copy of the Affirmation Regarding Compensation form, which is provided at the end of this document.

## **SUBMISSION REQUIREMENTS**

Proposals should be emailed on or before May 3, 2024 at 3:00 PDT to:

Eric Washington [ewashington@sdcommunitypower.org](mailto:ewashington@sdcommunitypower.org)

Tim Manglicmot [tmanglicmot@sdcommunitypower.org](mailto:tmanglicmot@sdcommunitypower.org)

Mike Berwanger [berwangerm@pfm.com](mailto:berwangerm@pfm.com)

Jim Carbone [carbonej@pfm.com](mailto:carbonej@pfm.com)

Faisal Alif [aliff@pfm.com](mailto:aliff@pfm.com)

## **REQUEST FOR PROPOSALS TIMELINE**

### **CALENDAR OF EVENTS**

	<b>Action</b>	<b>Date</b>
1.	Issuance of RFP	April 19, 2024
2.	Deadline to Submit Proposals	May 3, 2024
3.	Evaluation of Proposals	Week of May 6, 2024
4.	Interviews	Week of May 13, 2024
5.	Estimated Notice of Intent to Award	May 22, 2024
6.	Protest Period	May 22, 2024 – May 28, 2024
7.	Award of Contract	May 29, 2024

## **RESERVATION OF RIGHTS**

This Request for Proposals is a solicitation for proposals only and is not intended as an offer to enter into a contract or as a promise to engage in any formal competitive bidding or negotiations. SDCP may, at its sole discretion, accept or reject any or all proposals submitted in response to this Request for Proposals. In addition, SDCP may, at its sole discretion, elect to proceed with contract negotiations for only some of the services included in the Proposal. SDCP further reserves the right to cancel this Request for Proposals at any time prior to contract award without obligation in any manner for proposal preparation, interview, fee negotiation or other marketing costs associated with this Request for Proposals. SDCP also reserves the right to waive minor errors and

omissions or inconsequential disparities in proposals, request additional information or revisions to offers and to negotiate with any or all Proposers. SDCP shall not be liable for any costs incurred by the Proposer in connection with the preparation and submission of any proposal. SDCP has the right to amend the Request for Proposals, in whole or in part, by written addendum, at any time. SDCP is responsible only for that which is expressly stated in the solicitation document and any authorized written addenda. Such addendum shall be made available to each person or organization that SDCP records indicate has received this Request for Proposals. Should such addendum require additional information not previously requested, failure to address the requirements of such addendum may result in the proposal being found non-responsive and not being considered, as determined in the sole discretion of SDCP. SDCP is not responsible for and shall not be bound by any representations otherwise made by any individual acting or purporting to act on its behalf prior to an award of contract by SDCP. SDCP has the right to reissue the Request for Proposals at a future date.

## **PROTESTS**

A Proposer may protest a contract award if the Proposer believes that the award was inconsistent with SDCP's Procurement Policy or this RFP is not in compliance with applicable law. A protest must be filed in writing and submitted to [cstephens@sdcommunitypower.org](mailto:cstephens@sdcommunitypower.org) within five (5) business days after receipt of notification of the contract award. Any protest submitted after 5:00 PM of the fifth business day after notification of the contract award will be rejected by SDCP as invalid and the Proposer's failure to timely file a protest will waive the Proposer's right to protest the contract award. The Proposer's protest must include supporting documentation, legal authorities in support of the grounds for the protest and the name, mailing address and telephone number of the person representing the Proposer for purposes of the protest. Any matters not set forth in the protest shall be deemed waived.

## **CONFIDENTIALITY AND PUBLIC RECORDS**

Proposals submitted in response to this RFP shall become the exclusive property of SDCP. SDCP is subject to the California Public Records Act ("CPRA"). The proposal will become a matter of public record when contract negotiations are complete and when an agreement is executed by SDCP. Exceptions to disclosure may be available to those parts or portions of proposals that are justifiably and reasonably exempted under the CPRA, such as trade secrets. If a Proposer desires to exclude a portion of its proposal from disclosure under the CPRA, the Proposer must prominently mark it "confidential" and state the specific provision in the California Public Records Act that provides the exemption as well as the factual basis for claiming the exemption. A blanket statement of confidentiality or the marking of each page of the proposal as confidential shall not be deemed sufficient notice of a CPRA exemption. A Proposer who indiscriminately and without justification identifies most or all of its proposal as exempt from disclosure or submits a redacted copy may be deemed non-responsive. If a request is made for information marked "Confidential," SDCP will provide Proposers who submitted the

information with reasonable notice to seek protection from disclosure by a court of competent jurisdiction.

SDCP shall not, in any way, be liable or responsible for any resulting disclosure of any such record or any parts thereof pursuant to the CPRA or otherwise by law.

## **CONFLICTS OF INTEREST**

California Community Choice Aggregators (CCAs) are governed by the Political Reform Act, Government Code Section 1090, Government Code Section 84308 and other requirements governing conflicts of interest, campaign contributions and gifts. Proposers are required to review all applicable conflict of interest laws. In addition, SDCP has adopted policies governing procurement. Proposers are advised to review all policies, including the Procurement Policy.<sup>4</sup>

Proposers may not contact or receive information outside of this RFP process. If it is discovered that the Proposer contacted and received information from SDCP in a manner outside the process identified in this solicitation, SDCP may, in its sole discretion, disqualify the proposal from further consideration.

All contact regarding this RFP or any matter relating thereto must be made in writing and submitted to: Mike Berwanger [berwangerm@pfm.com](mailto:berwangerm@pfm.com).

## **REPORTING OF SUPPLIER DIVERSITY INFORMATION**

Public Utilities Code Section 366.2(m) requires certain CCAs, including SDCP, to annually submit to the California Public Utility Commission (“CPUC”): (1) a detailed and verifiable plan for increasing procurement from small, local and diverse business enterprises; and (2) a report regarding its procurement from women, minority, disabled veteran, persons with disabilities and LGBT business enterprises.

General Order (GO) 156, adopted by the CPUC, requires certain California public utilities to engage in outreach activities and meet specific procurement goals from women, minority, disabled veteran, persons with disabilities and LGBT business enterprises. Qualified businesses become GO 156 certified through the CPUC and are then added to the GO 156 Supplier Clearinghouse database.<sup>5</sup>

Except as otherwise expressly provided under this Policy and/or required by applicable state or federal law or funding requirements (including, without limitation, any grant or loan conditions), SDCP shall not use any demographic information received from potential vendors in any way as part of its decision-making or selection process. Rather, SDCP will use such information solely for compliance with its reporting obligations to the CPUC and evaluation of SDCP’s outreach and other activities consistent with applicable law. Pursuant to Article I, Section 31 of the California Constitution, SDCP shall not

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<sup>4</sup> <https://sdcommunitypower.org/resources/key-documents/>

<sup>5</sup> <http://www.thesupplierclearinghouse.com>

discriminate against or give preferential treatment to any individual or group on the basis of race, sex, color, ethnicity or national origin except as otherwise allowed therein.

**NON-DISCRIMINATION**

SDCP will not discriminate and will require its contractors to not discriminate on the basis of race, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age or disability in the solicitation, selection, hiring or treatment of contractors, subcontractors, vendors or suppliers. The successful Proposer shall provide equal opportunity for subcontractors to participate in subcontracting opportunities.

**Affirmation Regarding  
Compensation**

By signing this form, I affirm the following regarding any and all compensation to be paid to Consultant for the services set forth in the Request for Proposals for Energy Prepayment Counsel and any subsequent agreement for the services made by the Parties:

- 1. Any and all compensation paid to Consultant for the Services shall be paid on a contingency basis, and no compensation shall be payable to Consultant until after the services are completed and proceeds from the bond issuance are disbursed.
  
- 2. SDCP reserves the right to terminate the services prior to bond issuance. In the event that the services are terminated, Consultant may not be entitled to any compensation.
  
- 3. Consultant shall track any requested compensation with sufficient detail and in a manner that may be audited by SDCP.
  
- 4. Any and all proceeds disbursed as a result of bond issuance resulting from the services, less any compensation paid to Consultant, are the sole property of SDCP.

By signing this affirmation form, I attest that I am authorized to sign this form on behalf of

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Representative Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Title



## CURRENT REFERENCES

Respondent Firm Name: \_\_\_\_\_

Company Name:	Contact Person:
Address:	Telephone Number:
City, State, Zip:	E-mail Address:
Services Provided / Date(s) of Service:	

Company Name:	Contact Person:
Address:	Telephone Number:
City, State, Zip:	E-mail Address:
Services Provided / Date(s) of Service:	

Company Name:	Contact Person:
Address:	Telephone Number:
City, State, Zip:	E-mail Address:
Services Provided / Date(s) of Service:	