



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Lori Mitchell

SUBJECT: See Below

DATE: April 21, 2025

Approved

Date:

4/25/25

COUNCIL DISTRICT: Citywide

SUBJECT: San José Clean Energy Power Workforce and Environmental Stewardship Project Selection Criteria

RECOMMENDATION

Accept the staff report on San José Clean Energy Power Workforce and Environmental Stewardship Project Selection Criteria.

SUMMARY AND OUTCOME

Accepting the staff report on the San José Clean Energy (SJCE) Power Workforce and Environmental Stewardship Project Selection Criteria will support having Energy Department (Department) staff apply the criteria during evaluation of long-term agreements (10 years or more) for power products that provide for construction or substantial modification of facilities, along with other criteria such as economic value, viability of projects to meet their stated operational capabilities and online dates, developer competence and track record, project fit into SJCE's Integrated Resource Plan, and role of the project in supporting SJCE's goal to be carbon neutral by 2030.

BACKGROUND

On February 13, 2024, City Council directed staff to conduct an analysis of considering four labor-related points in the evaluation of future clean energy project agreements and to present the analysis to the City Council. These points were:

1. The project shall comply with California prevailing wage provisions applicable to public works projects, including but not limited to the Labor Code¹ sections pertaining to employment of apprentices on public works projects.
2. All construction work that falls within an apprenticeship occupation in the building and construction trades shall be performed by a skilled and trained workforce in accordance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code.
3. Work done under a multi-craft project labor agreement shall be deemed to meet the requirements of payment of prevailing wages and use of apprentices and shall supersede the skilled and trained workforce requirement.
4. For projects that do not implement a multi-craft project labor agreement, developer shall submit monthly reports to the agency showing compliance with payment of prevailing wages, compliance with skilled and trained workforce requirements and to document employment of apprentices.

Department staff assessed project selection criteria adopted or under review by other Community Choice Aggregators (CCAs) and prepared an initial list of potential criteria. In August of 2024, Department staff had a series of meetings with twelve stakeholder organizations to discuss an initial framework for the criteria and better understand their priorities. Staff also met with interested Councilmembers to discuss the framework and stakeholder outreach. Department staff reached out to labor representatives who have been working with other CCAs on project selection criteria and their partners, focusing on environmental stewardship and community engagement.

Based on these efforts, Department staff developed draft SJCE Power Workforce and Environmental Stewardship Project Selection Criteria. In February, Department staff circulated this draft to stakeholders and to suppliers who have contracted to sell power products on a long-term basis to the Department. Staff invited written feedback and held a subsequent meeting with the stakeholders to review and discuss their comments. Additionally, Department staff presented the proposed criteria to the Climate Advisory Commission on March 13, 2025. The Climate Advisory Commission encouraged Department staff to review and consider written comments by stakeholders, and to keep the criteria simple and implementable.

Based on this further feedback, in coordination with the City Attorney's Office, Department staff prepared final recommended SJCE Workforce and Environmental Stewardship Project Selection Criteria, see Attachment. The criteria address workforce and workforce development, environmental stewardship, project location, community engagement, and reporting.

¹ Section 1777.5 of the California Labor Code: https://www.dir.ca.gov/DAS/DAS_MeetingAgenda/2019/July/2019-7-Labor-Code-1777.5.pdf.

On April 3, 2025, the City Manager's Risk Oversight Committee recommended that the Department submit to City Council for acceptance a staff report on the SJCE Power Workforce and Environmental Stewardship Project Selection Criteria.

ANALYSIS

Department staff recommend criteria that:

- Address the feedback of stakeholders and Councilmembers who directed Department staff to undertake the work;
- Are generally consistent with the criteria of other CCAs, particularly Silicon Valley Clean Energy, in order to provide for consistency within Santa Clara County;
- Respect the legal limitations associated with National Labor Relations Act²;
- Are not overly restrictive such that the Department cannot achieve key regulatory requirements given market conditions;
- Do not adversely impact the Energy Department's ability to manage portfolio risk(s) and costs;
- Comprise a reasonable effort to make progress in this direction while allowing for development based on implementation experience;
- Are clear and implementable.

These criteria are only one aspect of project evaluation. Other aspects include economic value, viability of projects to meet their stated operational capabilities and online dates, developer competence and track record, project fit into SJCE's Integrated Resource Plan, regulatory requirements, and role of the project in supporting SJCE's goal to be carbon neutral by 2030. Department staff recommends that the relative weight of scoring criteria be established by staff on a case-by-case basis at the time a solicitation is issued and set forth in the solicitation documents. This way, the Department can vary in weight depending on market and regulatory conditions and portfolio requirements. The Department will describe project evaluation results at the time it seeks City Council approval of each project.

The categories of the selection criteria include:

- **Workforce and Workforce Development:** Prioritize projects that utilize a multi-trade project labor agreement. Additional credit is available for projects that establish goals to hire Santa Clara County residents, residents of the areas where the project is located, and workforce pipeline participants.
- **Location:** Prioritize projects located in California and connected to the California Independent System Operator grid.

² NLRA or the Act; 29 U.S.C. §§ 151-169

- **Environmental Stewardship:** Prioritize projects that avoid sensitive habitats for endangered plants, animals, or other environmentally sensitive areas and commit to a Habitat Conservation Plan when applicable.
- **Community Engagement:** Prioritize projects that commit to defined financial investment in low-income and environmental justice communities and describe developer plans for meaningful community engagement.
- **Reporting:** The Department will report on selection criteria scoring, to the SJCE Risk Oversight Committee and City Council, at the time it seeks approval for long-term projects. The Department will also ask contracted projects to report on performance against the criteria within 90 days of the commercial operation date.

The following is a summary of criteria categories found in the criteria of other CCAs that are not included in the selection criteria and an explanation of the staff recommendation.

- **Programs (e.g., building electrification):** The Department's will present a separate workforce programs workforce development update to City Council later this year and recommends that this policy focus on power procurement.
- **Public Works:** Criteria related to projects built, owned, and operated by City, including local projects, are subject to existing City Public Works requirements.
- **Small and Local Business:** These are addressed by a separate City policy and already applied in the scoring process.
- **Innovation:** The Department can seek innovative technologies through solicitation specifications as needed.

Stakeholder feedback

- **Workforce and Workforce Development:** Stakeholders are generally supportive. They are strongly in favor of giving priority to projects that enter into project labor agreements.
 - Stakeholders sought broad application of apprenticeship requirements that the Department proposes to apply only to California projects, as developers in other states may not have the knowledge or ability to apply these in other states.
- **Location:** Stakeholders are generally supportive. They strongly favor giving priority to projects in California, given California's strong labor and environmental laws.
- **Environmental Stewardship:** Stakeholders are generally supportive. Stakeholders agree that the highest priority should be given to projects that avoid environmental impact and second priority to projects that commit to mitigating their environmental impact. The Department adopted the request by stakeholders that projects located at a site within a Habitat Conservation Plan area be required to comply with the requirements of the plan.

- **Community Engagement:** Stakeholders are generally supportive of Department staff giving first priority to projects that describe investments in low income and environmental justice communities. Stakeholders have expressed a desire for ongoing community engagement throughout the entire project life cycle. Department staff agree that engagement is important; however, seek to score projects on plans through the permitting and construction phases, as plans for project lifecycle engagement would be very speculative.
- **Reporting:** Stakeholders are generally supportive.

EVALUATION AND FOLLOW-UP

No additional follow-up is expected at this time.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office and the City Manager's Budget Office.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the May 13, 2025 City Council meeting.

Department staff engaged with stakeholders in the labor, environmental and environmental justice communities, including stakeholders recommended by Councilmembers, and suppliers with long-term agreements with San José.

COMMISSION RECOMMENDATION AND INPUT

On March 13, 2025, the Climate Advisory Commission discussed this item and accepted staff's update on the SJCE Project Workforce and Environmental Stewardship Project Selection Criteria. The Climate Advisory Commission encouraged Department staff to consider proposed changes to the criteria submitted to the Climate Advisory Committee via a public letter. Department staff have considered these proposed changes and accepted those it considered appropriate in the criteria attached to this report.

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CEQA

Not a Project, File No. PP17-009. Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City action.

PUBLIC SUBSIDY REPORTING

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

/s/

Lori Mitchell
Director of Energy

For questions, please contact Paul Innamorato, Deputy Director of Power Resources, at Paul.Innamorato@sanjoseca.gov or 408-535-4891.

ATTACHMENT - San José Clean Energy Power Workforce and Environmental Stewardship Project Selection Criteria

Attachment

San José Clean Energy Power Workforce and Environmental Stewardship Project Selection Criteria

The City of San José's Energy Department operates the San José Clean Energy (SJCE) a community choice aggregator program. Through this program the City buys power products pursuant to Power Offtake Agreements. Staff issues competitive solicitations, and, when authorized, undertakes related bilateral outreach.

Staff selects projects based on economic value, viability of projects to meet their stated operational capabilities and online dates, developer competence and track record, project fit into SJCE's Integrated Resource Plan, and role of the project in meeting the Energy Department's climate goals.

This document describes additional scoring and selection criteria considered when evaluating long-term Power Offtake Agreements involving construction of new or substantial modification of existing facilities. These Power Workforce and Environmental Stewardship Project Selection Criteria are not individually conclusive for project selections but give additional scoring preference when compared to projects that do not include any of their elements.

I. DEFINITIONS

- a. **Community Worker:** A qualified worker who resides within daily commuting distance from the project site (e.g., no more than forty miles away or an average commute time of no more than an hour each way).
- b. **Habitat Conservation Plan:** A habitat conservation plan is a document that meets federal Endangered Species Act requirements and enables local agencies to allow projects and activities to occur in endangered species' habitats. In exchange, those projects and activities must incorporate habitat conservation plan-prescribed measures to avoid, minimize, or compensate for adverse effects on natural communities and endangered species.
- c. **Journey person:** A worker who:
 - i. Is an experienced worker in the trade who is fully qualified, as opposed to a trainee, and is able to perform the trade without supervision, per California Code of Regulations Title 16 Division 8 Section 825, or
 - ii. Has graduated from a California state-approved apprenticeship program for the applicable occupation; or
 - iii. Has at least as many hours of on-the-job experience in an applicable occupation as would be required to graduate from an apprenticeship program for the applicable occupation that is approved by the California Division of Apprenticeship Standards; or

- iv. For projects outside California, has graduated from a registered apprentice program under the National Apprenticeship Program, as defined in Title 29 of the Code of Federal Regulations Section 29.5.
- d. **Local Resident:** An individual who is domiciled, as defined by Section 349(b) of the California Election Code, as it may be amended, within Santa Clara County for at least seven calendar days before commencing work.
- e. **Multi-trade Project Labor Agreement:** A multi-employer, multi-union pre-hire agreement designed to systematize labor relations at a construction site.
- f. **Power Offtake Agreement:** An agreement that provides for construction or substantial modification of in-front-of-the-meter power facilities, where San José's participation in the project is limited to receiving power products. This includes power purchase agreements, storage service agreements, resource adequacy only agreements, or other power agreements involving construction labor, where San José does not develop, construct, or own the facility. This criteria applies to long-term Power Offtake agreements with a delivery term of ten years or longer.
- g. **Skilled and Trained Workforce:** A workforce in which all workers performing work in apprenticeship occupations in the building and construction trades are:
 - i. Journeypersons, or
 - ii. Apprentices registered in an apprentice program approved by the chief of the Division of Apprenticeship Standards, as defined in Chapter 2.9 of Part 1 of Division 2 of the California Public Contracts Code, or
 - iii. For projects outside California, apprentices registered in a registered apprentice program under the National Apprenticeship Program, as defined in Title 29 of the Code of Federal Regulations Part 29.
- h. **Workforce Pipeline Participant:** An individual who is a participant in a workforce pipeline program which:
 - i. Partners with a structured, Multi-Craft Core Curriculum (MC3)-certified construction careers training and placement program or programs that recruits, supports, and places workers in skilled construction trades; and
 - ii. Creates opportunities for certified MC3 graduates to enter Registered Apprenticeship Programs and/or obtain work hours needed to successfully complete their apprenticeship.

II. **Workforce and Environmental Stewardship and Project Selection Criteria**

- a. Workforce and Workforce Development
 - i. *First priority:*

- 1. Projects that commit to a multi-trade Project Labor Agreement.

ii. *Second priority:*

1. Projects that commit to utilization of prevailing hourly wage and benefit rates:
 - a. As determined by the California Department of Industrial Relations for California projects.
 - b. As determined by local state or federal standards, whichever is higher, for out-of-state projects.
2. Projects that commit to providing an attestation of the following as part of its conditions precedent to declaring commercial operations:
 - a. For projects in California, compliance with all applicable provisions of the California Labor Code, including Sections 2810.5 and 226(a).
 - b. Verification that contractors and subcontractors hired on the project do not have any unpaid wage theft judgment(s) entered against them, or any contractor or subcontractor who has an unpaid wage theft judgment entered against them has provided proof demonstrating the judgment was satisfied before being hired onto the project.
 - c. A statement that contractors and subcontractors providing labor to the project were obligated to provide written notice to project construction employees of the employers' pay practices and wage statements.
 - d. For projects in California, a statement that contractors and subcontractors providing labor to the project used apprentices at the same ratio of apprentice hours to journeyman hours as required for public works projects under Section 1777.5 of the California Labor Code.
 - e. A statement that all construction work was performed by a Skilled and Trained Workforce, as defined above.

iii. *Additional credit:*

1. Projects that in their proposal set forth a goal to use a defined percentage of Local Residents with increasing credit provided for a higher percentage goal.
2. Projects that in their proposal set forth a goal to use a defined percentage of Community Workers with increasing credit provided for a higher percentage goal.

3. Projects that in their proposal set forth a goal to use a defined percentage of Workforce Pipeline Participants with increasing credit provided for a higher percentage goal.

b. Location

- i. *First priority:* Projects that are located in the state of California and interconnect with the CAISO.
- ii. *Second priority:* Projects that interconnect with the CAISO.

c. Environmental Stewardship

- i. *First priority:* Projects that avoid sensitive habitats for endangered plant or animal species or other environmentally sensitive areas, and Projects located in an area covered by a Habitat Conservation Plan, should commit to compliance with the applicable Habitat Conservation Plan.
- ii. *Second priority:* Projects for which the developer and local land use authority establish an enforceable development agreement or similar document that provide for mitigation measures to reduce impacts on sensitive habitat, species, or environmentally sensitive areas. In the case of projects that are in earlier stages of the permitting process, Projects that have assessed likely impacts to sensitive habitat or environmentally sensitive areas, with additional credit to Projects that have identified and committed to potential mitigation measures. Projects located in an area covered by a Habitat Conservation Plan, should commit to compliance with the applicable Habitat Conservation Plan.

d. Community Engagement

- i. *First priority:* Projects that commit to defined financial investments in low-income and environmental justice communities and describe in their offer their plans for meaningful engagement with local communities throughout the permitting and construction processes in order to identify, effectively communicate, and address benefits and impacts.
- ii. *Second priority:* Projects that describe in their offer their plans for meaningful engagement with local communities throughout the permitting and construction processes to identify, effectively communicate and address benefits and impacts.

III. **PROCUREMENT IN COOPERATION WITH OTHER PARTIES**

In cases where the Energy DepartmentED has an opportunity to procure in cooperation with other entities, such as with California Community Power (CC Power), the Energy Department will seek to apply these criteria when determining whether to participate in specific projects.

IV. REPORTING

Staff will assess and select project proposals in accordance with its standard evaluation criteria and these workforce and environmental stewardship selection criteria and report the results of such assessment in connection with memorandums seeking any final project approval(s) from the Risk Oversight Committee and City Council. Additionally, staff will request project developers submit a report to staff on how the project performed against the criteria within ninety days after the Commercial Operation Date.

V. RESERVATION OF AUTHORITY TO WAIVE PROJECT SELECTION METHODOLOGY

Staff may waive this criteria, or any portion thereof, to:

- a. Address an emergency situation that jeopardizes the safety or feasibility of a project.
- b. Comply with a California State or Federal executive or regulatory order.
- c. React to unforeseen market changes where implementing this methodology would result in unduly elevated SJCE customer rates.

IV. REVIEW

Changes to these criteria shall be reviewed and approved by the City Manager or designee, subsequent to review and recommendation by the Risk Oversight Committee.