



Consent Item 8

TO: East Bay Community Energy Board of Directors
FROM: Howard Chang, Chief Operating Officer
SUBJECT: Changes to Amendment to Administrative Procurement Policy
DATE: November 20, 2019

Recommendation

Adopt a Resolution to amend the Administrative Procurement Policy. The amendments are meant to clarify procurement requirements, provide additional signing authority to the CEO, permit contracts under \$5,000 to be paid by purchase order without being Approved As To Form by General Counsel, and permit the extension of agreements with existing vendors to be amended for no more than a total term of up to five (5) years while still being subject to applicable signing authority.

Background and Discussion

On February 7, 2018, the Board of Directors approved a Resolution adopting an Administrative Procurement Policy. The policy was most recently amended and restated on March 20, 2019. Staff worked with General Counsel to make necessary and appropriate changes to the policy.

This Amendment clarifies the following:

1. procurement requirements for goods, non-professional services, and professional services
2. procurement requirements for Public Projects pursuant to the Uniform Public Construction Cost Accounting Act.

This Amendment allows the following:

1. CEO authorized to suspend procurement requirements for agreements with approval of the Chair and Vice Chair of the Board of Directors
2. Agreements under the total amount of \$5,000 per fiscal year to be paid via purchase order without approval as to form by General Counsel
3. Agreements with existing vendors may be amended to allow for a continuation of services for no more than a total term of up to five (5) years while still being subject to applicable signing authority.

Fiscal Impact

By allowing agreements under \$5,000 to be paid via purchase order, and no longer require these items to be approved as to form by General Counsel, EBCE will require less staff hours each month to be spent preparing and administering low risk contracts, and will also require less hours each month of their General Counsel, whose services are billed hourly.

Attachments

- A. Resolution to Amend the Administrative Procurement Policy
- B. Amended and Restated Procurement Policy

RESOLUTION NO. __

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY TO ADOPT A THIRD AMENDED AND RESTATED ADMINISTRATIVE PROCUREMENT POLICY

THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY DOES HEREBY FIND, RESOLVE AND ORDER AS FOLLOWS:

Section 1. The East Bay Community Energy Authority (“EBCE”) was formed on December 1, 2016, under the Joint Exercise of Power Act, California Government Code sections 6500 *et seq.*, among the County of Alameda, and the Cities of Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Piedmont, Oakland, San Leandro, and Union City to study, promote, develop, conduct, operate, and manage energy and energy-related climate change programs in all of the member jurisdictions.

Section 2. It is in the interest of East Bay Community Energy Authority (“EBCE”) to establish administrative procurement practices that facilitate efficient business operations and provide fair compensation and local workforce opportunities whenever possible within a framework of high quality, competitive service offerings.

Section 3. On February 7, 2018, the Board approved an Administrative Procurement Policy. On March 20, 2019 the Board approved the Second Amended and Restated Administrative Procurement Policy.

Section 4. EBCE has increased in size and focus, thus increasing the volume and variety of purchases that need to be made to support operations and maintain services to EBCE customers and business partners. Therefore, the Board hereby rescinds its authorization and approval of the Second Amended and Restated Administrative Procurement Policy adopted on March 20, 2019.

Section 5. The Board hereby adopts the Third Amended and Restated Administrative Procurement Policy as attached Exhibit A and as listed as Policy # 1.5. The policy shall 1) make distinctions in procurement requirements for professional and general services; 2) grant additional authority of the CEO; 4) permit contracts under \$5,000 to be paid by purchase order and no longer be required to be Approved as to Form by General Counsel; and 5) allow for a continuation of services for no more than a total term of up to five (5) years, for agreements with existing vendors, subject to the current applicable signing authority.

ADOPTED AND APPROVED this 20th day November 2019.

Dan Kalb, Chair

ATTEST:

Stephanie Cabrera, Clerk of the Board



THIRD AMENDED AND RESTATED ADMINISTRATIVE PROCUREMENT POLICY

Policy Number 1.5

November 20, 2019

Consent Item # 8

I. PURPOSE

It is in the interest of East Bay Community Energy ("EBCE") to establish administrative procurement practices that facilitate efficient business operations and provide fair compensation and local workforce opportunities whenever possible within a framework of high quality, competitive service offerings.

II. TYPES OF CONTRACTS

1. **Contracts for Goods and Non-Professional Services.** As used in this policy, "General Contractual Services" means:

- 1.1. Any and all supplies, articles, equipment, or personal property furnished to or used by an organizational unit of EBCE; and
- 1.2. Most types of services, excluding professional services as defined below, under which the contractor provides services which are required by EBCE, but not furnished by the EBCE's own employees.

2. **Professional Services.** As used in this policy, "Professional Services" means:

- 2.1. The services of attorneys, physicians, architects, engineers, consultants, auditors, or other individuals or organizations possessing a high degree of professional, unique specialized technical skill or expertise, not always adaptable to competitive bidding. Professional Services are not considered General Contractual Services for the purpose of these procurement procedures.

3. **Power Procurement.**

- 3.1. Contracts for energy (also known as Power Purchase Agreements or PPAs) or energy related products shall be subject to the requirements and signing authorities set out in Section IX of this Policy.

4. **All Contracts**

- 4.1. When procuring goods and services utilizing federal funds (e.g. grant funds), EBCE shall comply with all federal project requirements and Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. (See 2 CFR § 200)

- 4.2. No EBCE employee, official, or director shall split purchases into more than one purchase in order to avoid the procurement requirements in this policy. Splitting purchases does not allow for a competitive marketplace, increases administrative workflow, and may create ethical issues.
- 4.3. No EBCE employee, officer, or Director shall accept, directly or indirectly, any gift, rebate, money or anything else of value from any person or entity if such gift, rebate, money or anything of value is intended to reward or be an inducement for conducting business, placing orders with, or otherwise using the employee's position to secure an agreement with EBCE.
- 4.4. Prior to signing any agreement for General Contractual Services or Professional Services, the individual signing shall ensure all of the following:
 - 4.4.1. The contract compensation has been budgeted for in the current EBCE budget;
 - 4.4.2. That adequate funds have been appropriated by the Board;
 - 4.4.3. That such funds are unexpended and unencumbered sufficient to pay the expense of the contract; and
 - 4.4.4. That any agreement for General Contractual Services or Professional Services for an amount of \$5,000 or more in one calendar year has been approved as to form and content by the General Counsel or his/her designee.
- 4.5. EBCE shall report on all new contracts, regardless of scope or contract value, at each Board meeting. Unless subject to the attorney client privilege or some other legal protection, as a public agency, EBCE shall release all public records, including contracts, as required by the Public Records Act.
- 4.6. Agreements with existing vendors may be amended and/or extended to allow for the continuation of services for no more than a total term of five (5) years. Such amendments/extensions are subject to the applicable signing authority identified in Tables 1-4 based on the total dollar amount of the agreement.
- 4.7. The CEO may suspend the requirements of Section III (General Contractual Services Procurement) or Section V (Professional Services Procurement) for any agreement, subject to the approval of the Chair and Vice Chair of the Board of Directors.

III. GENERAL CONTRACTUAL SERVICES PROCUREMENT**1. Procurement Method**

1.1. Table 1 indicates the appropriate procurement method for the purchase of General Contractual Services of certain dollar amounts.

1.2. Nothing in this section prohibits the use of a more stringent procurement method than the one indicated by Table 1. At his or her discretion, the CEO may direct that an agreement for General Contractual Services is awarded through the Formal Bidding Procedures described herein.

Table 1

| PROCUREMENT METHOD | DOLLAR AMOUNT per FISCAL YEAR | ADDITIONAL REQUIREMENTS |
|---|--------------------------------------|---|
| Formal Bidding Procedure | > \$100,000 | RFP/RFQ |
| Solicit 3 written quotes; may be in electronic format | \$50,000 - \$100,000 | Quotes must include provider's name, address, phone number, professional license number, if applicable |
| Solicit 3 verbal quotes | \$10,000 - \$49,999.99 | Staff shall note quotes by including the providers' name, address, phone number and amount of the verbal proposal in EBCE's records |
| No solicitation necessary | < \$10,000 | Seek the lowest price for the highest quality |
| Purchase Order Can Be Used | <\$5,000 | Contracts for goods or low-risk off-site services only |

2. Signing Authority

2.1. Table 2 indicates the appropriate signing authority for the purchase of General Contractual Services of certain dollar amounts.

2.2. Nothing in this section prohibits EBCE staff from seeking approval of a more senior signing authority than is permitted by this policy.

Table 2

| SIGNING AUTHORITY | DOLLAR AMOUNT | CONTRACT TYPE |
|--|----------------------|----------------------|
| Board Approval | > \$100,000 | All contracts |
| Chief Executive Officer, or his/her designee | \$0 - \$100,000 | All contracts |

| | | |
|-----------------------------------|--------------|---|
| General Counsel | \$0-\$50,000 | All contracts related to the activities or functions of the Office of the General Counsel |
| Chief Operating Officer | \$0-\$25,000 | All contracts related to the activities or functions of the Office of the COO |
| Senior Director or Vice President | \$0-\$10,000 | All contracts whose object or purpose is related to the activities or functions of that Senior Director or Vice President |
| Director | \$0-\$5,000 | All contracts whose object or purpose is related to the activities or functions of that Director |

IV. FORMAL BIDDING PROCEDURES

Except as otherwise specifically directed in writing by the CEO, agreements for the purchase of General Contractual Services for a total amount that exceeds \$100,000 per fiscal year shall be procured as follows:

1. **Formal Bid Invitations.** Invitations to participate in the Request for Proposal/Request for Qualifications process shall include a general description of the supplies or services sought by EBCE, and shall specify the time, place and date for opening bids.
2. **Evaluation.** Bids and proposals received through a competitive solicitation shall be subject to a set of criteria and a scoring system, reviewed and evaluated by relevant EBCE staff and an evaluation committee selected by the relevant staff, CEO, COO or General Counsel, or at the discretion of the Board, members of a designated Board subcommittee.
3. **Lowest Responsible Bidder.** "Lowest responsible bidder" as used in this policy shall mean that bidder who best responds in price, quality, service, fitness, or capacity to the particular requirements of EBCE. Price alone shall not be the determining factor but shall be considered along with other factors, including but not limited to the following:
 - 3.1. EBCE seeks to support companies and contractors that reflect its values, and has identified three vendor/contractor categories that shall be given special consideration during bid evaluation and selection. In competitive solicitations, these categories shall receive bonus percentages/points ranging from 2.5% - 5% for a maximum bonus total of 10% in a bid scoring process.

- 3.2. EBCE desires to support Alameda County businesses where possible. Businesses with office(s) located in Alameda County and include at least 25% Alameda County residents under their employment shall receive a bonus equal to 5% or 5 points out of a 100-point scoring system in competitive solicitations.
 - 3.3. EBCE desires to support the use of union labor where possible. EBCE shall make its best effort to work with unionized contractors and subcontractors in the provision of goods and services to EBCE. Businesses who use union labor and/or unionized contractors shall receive a bonus equal to 2.5% or 2.5 points out of a 100-point scoring system in competitive solicitations.
 - 3.4. EBCE desires to support diversity among its contractors and vendors by working with women, minority, disabled veteran, and lesbian, gay, bisexual, and transgender-owned businesses. Businesses owned and operated by a person representing one or more of these categories shall receive a bonus equal to 2.5% or 2.5 points out of a 100-point scoring system in competitive solicitations.
 - 3.5. EBCE is committed to the highest standards of responsible behavior and integrity in all of its business relationships. EBCE will consider a company’s business practices, environmental track record, and commitment to fair employment practices and compensation in its procurement decisions.
4. **Award of Contract.** EBCE shall award the contract to purchase goods or services to the lowest responsible bidder, unless such an award would be prohibited by California law.

V. PROFESSIONAL SERVICES PROCUREMENT

1. Procurement Method

- 1.1. Table 3 indicates the appropriate procurement method for the purchase of Professional Services of certain dollar amounts.
- 1.2. Nothing in this section prohibits the use of a more stringent procurement method than the one indicated by Table 3. At his or her discretion, the CEO may direct that an agreement for Professional Services is awarded through the Formal Bidding Procedures described herein.

Table 3

| PROCUREMENT METHOD | DOLLAR AMOUNT per FISCAL YEAR | ADDITIONAL REQUIREMENTS |
|--------------------|-------------------------------|-------------------------|
|--------------------|-------------------------------|-------------------------|

| | | |
|---|------------------------|---|
| Solicit 3 written quotes; may be in electronic format | \$50,000 and above | Proposal must include provider's name, address, phone number, professional license number, if applicable |
| Solicit 3 verbal quotes | \$10,000 - \$49,999.99 | Staff shall note quotes by including the providers' name, address, phone number and amount of the verbal proposal in EBCE's records |
| No solicitation is necessary | \$0 - \$10,000 | Seek the lowest price for the highest quality |

2. Signing Authority

2.1. Table 4 indicates the appropriate signing authority for an agreement for Professional Services of certain dollar amounts.

2.2. Nothing in this section prohibits EBCE staff from seeking approval of a more senior signing authority than is permitted by this policy.

Table 4

| SIGNING AUTHORITY | DOLLAR AMOUNT | CONTRACT TYPE |
|--|---------------------------------|---|
| Board Approval | > \$100,000 per fiscal year | All contracts |
| Chief Executive Officer, or his/her designee | \$0 - \$100,000 per fiscal year | All contracts |
| General Counsel | \$0-\$50,000 per fiscal year | All contracts related to the activities or functions of the Office of the General Counsel |
| Chief Operating Officer | \$0-\$25,000 per fiscal year | All contracts related to the activities or functions of the Office of the COO |
| Senior Director or Vice President | \$0-\$10,000 per fiscal year | All contracts whose object or purpose is related to the activities or functions of that Senior Director or Vice President |
| Director | \$0-\$5,000 per fiscal year | All contracts whose object or purpose is related to the activities or functions of that Director |

VI. SOLE SOURCE PROCURMENT

- Under some circumstances, EBCE competitive solicitation requirements may be dispensed with when the goods or services are only available from one source either because the brand or trade

name article, goods, or product or proprietary service is the only one which will properly meet the needs of the EBCE or the item or service is unique and available only from a sole source.

2. Sole source purchasing, whereby the procurement methods identified in Tables 1-4 are not required, is authorized when the goods or services contemplated are only able to be performed by a sole provider, such as the holder of an exclusive patent or franchise, for the purchase of unique or innovative goods or services including but not limited to computer software and technology, or for purchases of goods or services when there is a demonstrated need for compatibility with an existing item or service used by EBCE.
3. A sole source may be designated when it is apparent that a needed product or service is uniquely available from the source, or for all practical purposes, it is justifiably in the best interest of EBCE.
4. The following factors **are not sufficient** to justify a sole source procurement:
 - 4.1. Personal preference for product or vendor
 - 4.2. Cost
 - 4.3. Vendor performance
 - 4.4. Local service (this may be considered an award factor in competitive bidding)
 - 4.5. Features that exceed the minimum requirements for the goods or services
 - 4.6. Explanation for the actual need and basic use for the equipment, unless the information relates to a request for unique factors

VI. EMERGENCY PROCUREMENT

1. In the event of an emergency, the CEO may suspend the normal purchasing and procurement requirements for goods and services related to abatement of the impacts or effects of the emergency.
2. An emergency is deemed to exist in the following circumstances:
 - 2.1. There is an unexpected occurrence requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services, including the provision of energy or power to EBCE customers; or
 - 2.2. There is immediate need to prepare for national or local defense; or
 - 2.3. There is a breakdown in infrastructure or an essential service which requires the immediate purchase of supplies or contractual services to protect the public health, or safety or property; or
 - 2.4. A local emergency or disaster has been declared.

VII. COOPERATIVE PURCHASING

1. The procurement methods identified in Table 1 -4 shall not be required when the contract for goods or services will be provided by another governmental agency.
2. EBCE may adopt another governmental agency's agreement with a contractor ("Piggyback Agreement") as its own without adhering to the procurement methods identified in Table 1-4 if that Piggyback Agreement is the product of the respective governmental agency's formal competitive solicitation process, provided that that agency's procurement is not in conflict with California law.

VIII. PUBLIC PROJECTS

1. **Uniform Public Construction Cost Accounting Act.** Upon adoption, EBCE will adhere to the alternative bidding procedures provided by the Uniform Public Construction Cost Accounting Act, California Public Contract Code section 22000 et seq. (UPCCAA) Public projects (as defined in Section 22002 of the California Public Contract Code) that do not exceed the dollar limits in Section 22032(b) of the Public Contract Code (as such limits currently exist or may subsequently be amended), may be let to contract by informal procedures as set forth in the UPCCAA.
2. At the time of the adoption of this Policy, the UPCCAA applied to the following types of projects:
 - 2.1. Public projects include construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility. This includes painting or repainting of any publicly owned, leased, or operated facility.
 - 2.2. Public projects up to \$60,000 may be performed by EBCE employees, by negotiated contract, or by purchase order pursuant to the UPCCAA.
 - 2.3. Public projects up to \$200,000 may be contracted using informal procedures as set forth in the UPCCAA.
3. **Pre-Qualified List.** A list of contractors may be developed and maintained in accordance with the provisions of Section 22034 of the Public Contract Code and criteria promulgated from time to time by the California Uniform Construction Cost Accounting Commission (CUCCAC).
4. **Notice.**
 - 4.1. Where a public project is to be performed, a notice inviting informal bids shall be mailed, faxed, or emailed not less than ten (10) days before bids are due to all contractors for the category of work to be bid as shown on the Pre-Qualified list developed in accordance with this Section IV, and to all construction trade journals as specified by the CUCCAC in accordance with Section

22036 of the Public Contract Code. Additional contractors and/or construction trade journals may be notified at the discretion of the department soliciting bids, provided, however; if there is no list of qualified contractors maintained by EBCE for the particular category of work to be performed, the notice inviting bids shall be sent only to the construction trade journals specified by the CUCCAC.

- 4.2. The notice inviting informal bids shall describe the project in general terms and how to obtain more detailed information about the project and state the time and place for the submission of bids.
5. **Award of Contract.** The CEO and his or her designee is authorized to award public project contracts let under these procedures.

IX. PROCUREMENT OF POWER

1. EBCE must secure sufficient power resources and energy attributes to serve its customers, comply with State law and meet EBCE's and its member agencies' goals. The Board shall approve the form of all master power purchase agreements. The signing authority in Section 4 shall not apply to power and energy attribute procurement. The following EBCE staff shall be authorized to enter into power purchase agreements and other agreements to secure power and energy attributes providing such agreements are in substantially the same form as the Board-approved master power purchase agreements, and that all transactions and agreements are in strict compliance with EBCE's Risk Management Policy:
 - 1.1. The CEO is authorized to enter into agreements in accordance to the approved Risk Management Policy.
 - 1.2. The COO is authorized to enter into agreements in accordance to the approved Risk Management Policy provided that transactions shall not be over two years in duration and \$10,000,000 in total compensation.
 - 1.3. The Director of Power Resources is authorized to enter into agreements in accordance to the approved Risk Management Policy provided that transactions shall not be over one year in duration and not be over \$2,000,000 in compensation.
 - 1.4. With dual signatures, the COO and Director of Power Resources are authorized to enter into agreements with equivalent authority as the CEO in accordance with the approved Risk Management Policy.

X. MISCELLANEOUS

1. The following signing authorities shall apply, after review and approval of the named agreements by the General Counsel, or his/her designee, except where in conflict with the Joint Powers Agreement, state or federal law:
 - 1.1. Non-Disclosure Agreements – Director level and above
 - 1.2. Banking and Treasury Administration – COO level and above
 - 1.3. Release of Liability and Indemnification – Director level and above