



Staff Report Item 13

TO: East Bay Community Energy Board of Directors
FROM: Annie Henderson, Vice President, Marketing & Account Services
SUBJECT: Second Amended and Restated Administrative Procurement Policy
DATE: March 20, 2019

Recommendation

Adopt a resolution to approve the Second Amended and Restated Administrative Procurement Policy.

Background and Discussion

On January 17, 2018, the Board approved an Administrative Procurement Policy that (1) delegated certain authority to the Chief Executive Officer (“CEO”) to enter into professional service agreements and vendor contracts; (2) authorized the award of professional service agreements; (3) mandated issuance of Request for Proposals (“RFPs”) for non-professional service contracts; (4) contained criteria for evaluation of bids and proposals, namely preferences for local and union labor and ethical vendor standards; and (5) contained reporting obligations and provided for public access to contracts.

On July 18, 2018, the Administrative Procurement Policy was amended and restated by approval of the Board. Amendments included:

- Provides for competitive solicitations for goods or services in excess of \$100,000 in value, informal written proposal from at least three providers for contracts valued between \$50,000 and \$100,000, and informal verbal proposals from at least three providers for contracts valued between \$10,000 and \$50,000. Certain limited exceptions were also approved.
- Prohibits staff from accepting certain gifts, does not require acceptance of lowest responsible bidder, requires contracts be approved as to form and content by General Counsel, and certain contracts are subject to Public Records Act.
- Delegation of authority to execute professional services agreements and vendor contracts
- Authorizes any Director-level or above executive staff member to sign Nondisclosure Agreements and the COO-level or above to sign Banking and Treasury Administration Documents
- Provides for bid evaluation criteria that are identical to the criteria set out in the original Administrative Procurement Policy

- Provides authority to the CEO, the COO and the Director of Power Resources to enter into agreements for the purchase of power and energy attributes

Since the Administrative Procurement Policy was first adopted, East Bay Community Energy (“EBCE”) has launched service to commercial, municipal, and residential customers, the staff has increased in size and is continuing to increase in size, and the workload and scope of activities have likewise increased, necessitating a more detailed Administrative Procurement Policy containing additional authorization to enter into vendor contracts.

Analysis

EBCE conducts extensive outreach activities through participation in community events. In the course of scheduling outreach events, we are occasionally presented with an application that requests that the EBCE release liability. Below is example language that we could encounter in EBCE’s role as a “Vendor”:

- *Vendor agrees to indemnify, defend, with counsel selected by City, and hold harmless the Released Parties from any and all claims, demands, actions, judgments, damages, liabilities, and costs of any kind, including attorneys’ fees, (collectively “Liabilities”) arising out of or in any manner related to Vendor’s participation in the Event, except to the extent that such Liabilities are caused by the sole negligence or willful misconduct of the Released Parties.*
- *The person signing this Agreement represents and warrants that he or she is duly authorized and has the legal capacity to execute and deliver this Agreement on the behalf of the Vendor.*

The current policy does not grant authority to any staff for release of liability. Staff proposes a revision to section 4h to include the third authorization as follows:

- h. In addition, the following authorities shall apply, after review and approval of such Agreements by the General Counsel, or his/her designee and except where in conflict with the Joint Powers Agreement, state or federal law:
 - i. Non-Disclosure Agreements - Director level and above;
 - ii. Banking and Treasury Administration - COO level and above; and,
 - iii. Release of Liability and Indemnification - Director level and above.

Fiscal Impact

There should be no additional fiscal impact.

CEQA

Not a project

Attachments

- Resolution
- Second Amended and Restated Administrative Procurement Policy