

ORDINANCE NO. O-2020-1

**AN URGENCY ORDINANCE OF THE BOARD OF DIRECTORS OF THE
EAST BAY COMMUNITY ENERGY AUTHORITY ADOPTING THE
UNIFORM PUBLIC CONSTRUCTION COST ACCOUNTING ACT
(PUBLIC CONTRACT CODE SECTION 22000 ET SEQ.)**

WHEREAS, on January 30, 2020, the World Health Organization Director-General declared the novel coronavirus (COVID-19) outbreak a public health emergency of international concern; and

WHEREAS, on March 4, 2020, the Governor of the State of California declared a state of emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the state prepare for broader spread of COVID-19; and

WHEREAS, on March 10, 2020, the Board of Supervisors of the County of Alameda passed a Resolution Ratifying the Declaration of Local Health Emergency; and

WHEREAS, on March 13, 2020, the President of the United States of America declared a national emergency and announced that the federal government would make emergency funding available to assist state and local governments to prevent the spread of and otherwise address the effects of COVID-19; and

WHEREAS, on March 31, 2020, the Health Officer of the County of Alameda issued an Order (“March 31, 2020 Order”), superseding a March 16, 2020 Order, which directs all individuals living in the county to continue to shelter in place in their home and also provides additional guidance regarding essential business activities; and

WHEREAS, the Health Officer’s March 31, 2020 permits individuals to leave their homes to conduct essential business, which includes construction of projects immediately necessary to the maintenance, operation, or repair of essential infrastructure; and

WHEREAS, the March 31, 2020 Order defines “essential infrastructure” to include utilities, such as water, sewer, gas, and electrical; and

WHEREAS, the East Bay Community Energy Authority (“Authority”) was established for the purposes of securing electrical energy supply for customers in participating jurisdictions, addressing climate change by reducing energy related greenhouse gases emissions with development and use of a variety of renewable energy sources, including local solar and wind energy production, as well as other reasons; and

WHEREAS, the Authority is committed to providing its customers with low carbon, cost-effective electricity that integrates innovative energy services and maximizes local benefits through the development of local green energy projects, jobs, and investment opportunities; and

WHEREAS, given the national, state, and local effects of the COVID-19 pandemic, the Authority needs to promote a stable and reliable electric utility system that can consistently provide energy to its customers during this time; and

WHEREAS, the Authority is also subject to the California Public Utilities Commission's February 29, 2016 Order Instituting Rulemaking to Develop an Electricity Integrated Resource Planning Framework and to Coordinate and Refine Long-Term Procurement Planning Requirements ("CPUC Order"), which identifies the Authority as a load-serving entity with a responsibility to procure a certain amount of capacity; and

WHEREAS, in order to further the Authority's founding purposes, to comply with the CPUC Order, and to promote the health and safety of its customers, the Authority must carry out planned construction projects that contribute to a more resilient electric utility and local economic development; and

WHEREAS, the Uniform Public Construction Cost Accounting Act (Public Contracting Code section 22000 et seq.) ("UPCCAA") establishes a uniform cost accounting standard for public project construction work contracted by local public agencies; and

WHEREAS, the UPCCAA provides alternative procedures for selection of contractors to perform public project construction, including less-formal procedures designed to reduce costs, expedite the awards process, improve efficiencies, and simplify administration of smaller public projects; and

WHEREAS, pursuant to Public Contract Code section 22034, each public agency that elects to take advantage of the streamlined process under the UPCCAA must enact an informal bidding ordinance; and

WHEREAS, Government Code section 36937(b) authorizes legislative bodies to adopt an urgency ordinance, effective immediately, for the immediate preservation of public peace, health, or safety; and

WHEREAS, in the interest of protecting the public peace, health, and safety, it is essential for the Authority to provide reliable energy for its customers by adopting the UPCCAA so that it can carry out its essential business more efficiently during this local emergency and thereafter; and

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY HEREBY ORDAINS AS FOLLOWS:

Section 1. Findings. The Board of Directors finds that each fact set forth in the preceding recitals is true and correct and incorporated by reference.

Section 2. Urgency. The Board of Directors finds that the COVID-19 pandemic requires the Authority to provide reliable energy to its customers, as more fully described in the recitals of this Ordinance. The Board of Directors further finds that, unless this Ordinance is effective and its regulations are immediately put in place, the public health, safety, and welfare will be at risk.

Therefore, the immediate preservation of the public health, safety, and welfare requires that this Ordinance be enacted as an urgency ordinance pursuant to Government Code section 36937(b) and that it take effect immediately upon adoption pursuant to Government Code section 36934, and its urgency is hereby declared.

Section 3. Adopted Ordinance. The Board of Directors of the East Bay Community Energy does adopt the following informal bidding procedures which shall take effect immediately:

1. Informal Bid Procedures. Public projects, as defined by the Act and in accordance with the limits listed in Section 22032(b) of the Public Contract Code, may be let to contract by informal procedures as set forth in Section 22032, et seq., of the Public Contract Code.

2. Contractors List. The Authority shall comply with the requirements of Public Contract Code Section 22034.

3. Notice Inviting Informal Bids. Where a public project is to be performed which is subject to the provisions of this Ordinance, a notice inviting informal bids shall be circulated using one or both of the following alternatives:

a. Notices inviting informal bids may be mailed, faxed, or emailed to all contractors for the category of work to be bid, as shown on the list of qualified contractors maintained pursuant to Public Contract Code Section 22034. If the product or service is proprietary in nature such that it can be obtained only from a certain contractor or contractors, the notice inviting informal bids may be sent exclusively to such contractor or contractors.

b. Notices inviting informal bids may be mailed to all construction trade journals as specified by the California Uniform Construction Cost Accounting Commission 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 Chief Executive Officer or his or her designee.

4. Award of Contracts. Executive Committee of the Board of Directors are hereby authorized to award informal contracts pursuant to this Ordinance.

Section 4. Uncodified. This Ordinance shall not be codified.

Section 5. Severability. If any provision of this Ordinance is held invalid by a court of competent jurisdiction, such provision shall be considered a separate, distinct and independent provision and such holding shall not affect the validity and enforceability of the other provisions of this Ordinance.

Section 6. Effective Date. Based upon the findings in Section 2 of this Ordinance, this Ordinance shall take effect immediately upon its adoption by a minimum four-fifths of the Board of Directors present.

Section 7. Certification. The Clerk of the Board shall certify to the adoption of this Ordinance, and the Clerk of the Board shall cause this Ordinance or a summary thereof to be published as required by law. The Clerk of the Board is directed to widely publicize the adoption of this Ordinance.

PASSED AND ADOPTED by the Board of Directors of the East Bay Community Energy Authority on this 22nd day of April, 2020, by the following vote:

AYES: Directors: Haggerty, Pilch, Arreguin, Hernandez, Bacon, Mendall, Munro
Hannon, Rood, Pentin, Hernandez, Arriola, Patino, Martinez and Kalb

NOES: None

DocuSigned by:
Nick Chaset

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Nick Chaset, Chief Executive
Officer

ATTEST:

DocuSigned by:
Stephanie Cabrera

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Stephanie Cabrera, Clerk of the Board

APPROVED AS TO FORM

DocuSigned by:
Inder Khalsa

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Inder Khalsa, City Attorney