



**Staff Report Item 10**

**TO:** East Bay Community Energy Board of Directors

**FROM:** Inder Khalsa, EBCE General Counsel

**SUBJECT:** Resolution Electing to Become Subject to the Uniform Public Construction Cost Accounting Act; Ordinance Establishing Informal Bidding Procedures (Action Item)

**DATE:** April 22, 2020

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**Recommendation**

- A. Adopt a Resolution of the Board of Directors of the East Bay Community Energy Authority Electing to Become Subject to the Uniform Public Construction Cost Accounting Act; and
- B. Adopt Urgency Ordinance EBCE O-2020-1 and read by title only: AN URGENCY ORDINANCE OF THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY ESTABLISHING INFORMAL BIDDING PROCEDURES UNDER THE UNIFORM PUBLIC CONSTRUCTION COST ACCOUNTING ACT

**Background and Discussion**

To facilitate upcoming construction projects that may be subject to the public contract code, staff recommends that the Board adopt the attached resolution and urgency ordinance in order to become subject to the Uniform Public Construction Cost Accounting Act (UPCCAA; Public Contract Code § 22000 - 22045) and establish informal bidding procedures.

It is common practice for JPAs to follow the procurement policies of the designated agency in their JPA Agreement. EBCE is subject to the same restrictions upon the manner of exercising power possessed by the City of Emeryville, including the rules governing contracting by local municipalities set forth in PCC § 20160 - 20174.

The PCC includes very specific criteria that must be followed when advertising for and awarding public projects valued at over \$5,000 (known as formal bidding procedures). These requirements are very formal and often times cumbersome. They provide virtually no flexibility in obtaining quotes for and expeditiously implementing smaller public projects, such as those repairs and/or improvements valued over \$5,000 but less than \$60,000. To address this, the Legislature established the UPCCAA in 1983 to provide alternative bidding procedures with higher dollar thresholds that would account for escalating construction costs over time.

Currently, under the UPCCAA, any work that meets the definition of a public project and is valued at \$45,000 or less may be:

- Performed by the employees of a public agency by force account.
- By negotiated contract. This means EBCE can obtain spot quotes rather than developing detailed plans and specifications for small repairs and renovations, which can result in additional financial savings and rapid implementation.
- By purchase order. EBCE can simply select someone through an on-call service and issue a purchase order for routine work that falls within the definition of public project.

Public projects valued between \$60,000 and \$200,000 may be let to contract using informal bidding procedures set forth in the UPCCAA, while public projects valued at greater than \$200,000 must still be formally bid under PCC guidelines. UPCCAA procedures also:

- Prohibit splitting projects into smaller projects to evade provisions of the code;
- Establish notice and advertising requirements for informal bidding of public projects; and
- Establish criteria for the rejection of bids.

To utilize the alternative, streamlined bidding/award procedures allowed under the UPCCAA, EBCE must (1) adopt a resolution electing to become subject to the UPCCAA and notify the State Controller of that election, and (2) adopt an ordinance enacting the informal bidding requirements set forth in the UPCCAA. The value of this streamlined process has increased as EBCE and Alameda County confront the challenges posed by the national health crisis related to the COVID-19 pandemic.

Staff estimates that by adopting the proposed resolution, EBCE public projects will be implemented significantly faster than under the EBCE's current bidding procedures. Moreover, the current COVID-19 public health crisis underscores the urgent need for a reliable and more resilient electric utility. Consequently, staff recommends adopting the proposed urgency ordinance, which will go into effect immediately.

**Attachments:**

- A. Resolution of the Board of Directors of the East Bay Community Energy Authority Electing to Become Subject to the Uniform Public Construction Cost Accounting Act; and
- B. Urgency Ordinance EBCE O-2020-1 Establishing Informal Bidding Procedures

**RESOLUTION EBCE R-2020-\_\_**

**A RESOLUTION OF THE BOARD OF DIRECTORS  
OF THE EAST BAY COMMUNITY ENERGY AUTHORITY ELECTING  
TO BECOME SUBJECT TO THE UNIFORM PUBLIC CONSTRUCTION  
COST ACCOUNTING ACT**

**WHEREAS**, the EBCE Joint Powers Agreement provides that the power of East Bay Community Energy Authority (“EBCE”) is subject to the same restrictions upon the manner of exercising power possessed by the City of Emeryville; and

**WHEREAS**, pursuant to the Uniform Public Construction Cost Accounting Act, California Public Contract Code Section 22000 *et seq* (“the Act”), the Uniform Construction Cost Accounting Commission, in conjunction with the State Controller, has established uniform public construction cost accounting procedures for implementation by local public agencies electing to be governed by the provisions of the Act in performing or contracting for construction of public projects; and

**WHEREAS**, the Board of Directors has determined that it is in the best interests of EBCE to be subject to the provisions of the Act. The benefits to EBCE include, but are not limited to, availability of alternate bidding procedures allowing EBCE to perform work costing up to and including \$60,000, as may be revised, by force account, and to let contracts by informal procedures for public projects costing up to and including \$200,000, as may be revised, or more under specified circumstances; and

**WHEREAS**, California Public Contract Code Section 22030 provides that any public agency that wishes to avail itself of the alternative procedures for bidding and contracting for public projects must elect, by resolution, to become subject to the uniform construction cost accounting procedures set forth in the Public Contract Code and must notify the State Controller of its election; and

**WHEREAS**, California Public Contract Code Section 22034 requires each public agency that elects to become subject to the uniform construction cost accounting procedures to enact an informal bidding ordinance that complies with the requirements set forth in Section 22034; and

**WHEREAS**, all legal prerequisites to the adoption of this Resolution have occurred.

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

**SECTION 1.** The Board of Directors finds that all of the facts set forth in the foregoing Recitals are true and correct.

**SECTION 2.** Pursuant to the authority set forth in the Uniform Public Construction Cost Accounting Act, California Public Contract Code Section 22000, *et seq.*, EBCE

hereby elects to be subject to the uniform public construction cost accounting procedures set forth in the Uniform Public Construction Cost Accounting Act and to the policies and procedures manual and cost accounting review procedures established thereunder, as each may be amended from time to time.

**SECTION 3.** The Secretary shall notify the State Controller of EBCE's election pursuant to Section 2, above. The Chair shall sign, and the Secretary shall certify to the adoption of this Resolution. This Resolution shall take effect and be in full force immediately.

**ADOPTED AND APPROVED this 22<sup>nd</sup> day of April, 2020.**

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Dan Kalb, Chair

**ATTEST:**

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Stephanie Cabrera, Clerk of the Board

**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:

NOES:

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Nick Chaset, Chief Executive  
Officer

ATTEST:

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Stephanie Cabrera, Clerk of the Board

APPROVED AS TO FORM

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Inder Khalsa, City Attorney