



**Staff Report Item 11**

**TO:** East Bay Community Energy Board of Directors  
**FROM:** Leah S. Goldberg, General Counsel  
**SUBJECT:** Amended and Restated Administrative Procurement Policy  
**DATE:** July 18, 2018

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**Recommendation**

Adopt a resolution to approve the Amended and Restated Administrative Procurement Policy (the “Policy”).

**Background and Discussion**

On January 17, 2018, the Board approved an Administrative Procurement Policy that 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.

Since the Administrative Procurement Policy was first adopted, East Bay Community Energy (“EBCE”) has launched service to commercial and municipal 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 professional services agreements and vendor contracts.

**Analysis**

Competitive bidding provides a number of benefits. It allows the purchaser to compare prices and obtain the best services at the lowest costs. Therefore, the Amended and Restated Administrative Procurement Policy provides for competitive solicitations for goods or services in excess of \$100,000 in value. For contracts valued between \$50,000 and \$100,000, staff will be obligated to solicit informal written proposals from at least three providers. For contracts valued between \$10,000 and \$50,000, staff will be required to solicit informal verbal proposals from at least three providers. The exceptions to the competitive bidding requirements include the ability to sole-source for unique goods and services subject to the

limitations in the Policy, purchasing goods and services valued at less than \$10,000, purchasing goods and services from another governmental entity, renting or leasing equipment, or in the case of an emergency. Splitting purchases into more than one purchase in order to avoid the competitive solicitation requirements is prohibited by the Policy.

The Policy prohibits EBCE staff from accepting any gifts that may influence or induce EBCE to conduct business with a certain entity. The Policy does not require EBCE to accept the lowest responsible bidder, unless otherwise required by State law. The Policy also states that all contracts must be approved as to form and content by the General Counsel, or his/her designee, prior to execution by an EBCE authorized signatory. And all contracts, with the exception of those that may be subject to the attorney-client privilege or some other legal privilege, are public records subject to the Public Records Act.

The Policy delegates authority to execute professional services agreements and vendor contracts to the following individuals providing that all new contracts must be reported at the next scheduled Board meeting and that the total compensation in the contract is consistent with the EBCE budget:

1. The CEO is authorized to enter into contracts of \$100,000 or less without Board approval;
2. The Chief Operating Officer (“COO”) is authorized to enter into contracts of \$25,000 or less without Board or CEO approval;
3. The General Counsel is authorized to enter into contracts of \$50,000 or less without Board approval;
4. Any Senior Director or Vice President is authorized to sign agreements for \$10,000 or less without Board approval; and,
5. Any Director is authorized to sign agreements for up to \$5,000 without Board approval.

The Policy further 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, provided that all agreements have been reviewed and approved by the General Counsel. All signatories, with the exception of the CEO, are only authorized to execute contracts related to their office or area of expertise.

The Policy provides for bid evaluation criteria that are identical to the criteria set out in the original Administrative Procurement Policy.

In the power procurement area, the 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 provided that all contracts are either master power purchase agreements that the Board has already approved or that such contracts are consistent with the Risk Management Policy. There is no dollar limit on the CEO’s authorization for power procurement agreements in this Policy provided that the contract is consistent with the EBCE Risk Management Policy. The COO is limited to contracts with the term of less than two years in duration and \$10 million in total compensation, and the Director of Power Resources is authorized enter into contracts with the term of one year or less and \$2 million or less in total compensation. The COO and the Director of Power Procurement together (with dual signatures on the contract) can enter into power purchase contracts up to the CEO's limit as specified in the Risk Management Policy. All power purchase contracts must be approved as to form and content by the General Counsel or his/her designee.

### **Fiscal Impact**

The Policy provides that prior to signing any professional services agreement or vendor contract, the individual signing shall ensure that adequate funds have been budgeted and appropriated by the Board and that such funds are available and unencumbered sufficient to pay the expense of the contract. Therefore, there should be no additional fiscal impact.

### **CEQA**

Not a project

### **Attachments**

- Resolution
- Amended and Restated Administrative Procurement Policy