



Staff Report Item 3

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: March 18, 2020

Recommendation

- A. Adopt Resolution electing to become subject to the Uniform Public Construction Cost Accounting Act for all public projects as defined in Public Contracting Code § 22002(c); and
- B. Introduce Ordinance and read by title only: AN 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 a more streamlined procurement process for upcoming public projects, staff recommends that the Board adopt the attached resolution and 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. In addition to Emeryville, member jurisdictions including Fremont, Livermore, and Dublin have all adopted the UPCCAA.

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 \$60,000 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 addition 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.

Staff estimates that by adopting the proposed resolution and ordinance, renovation of the EBCE offices will be implemented significantly faster than under the EBCE's current bidding procedures.

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
- B. Ordinance 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 18th day of March, 2020.

Dan Kalb, Chair

ATTEST:

Stephanie Cabrera, Clerk of the Board

ORDINANCE EBCE O-2020 _____

AN 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

THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY
AUTHORITY DOES ORDAIN AS FOLLOWS:

SECTION 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.

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

SECTION 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:

1. 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.
2. 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.

SECTION 4. Award of Contracts. The Chief Executive Officer is hereby authorized to award informal contracts that do not exceed \$100,000 pursuant to this Ordinance. All contracts in excess of \$100,000 and up to \$200,000 which are let pursuant to this Ordinance must be submitted to the Board of Directors for approval.

SECTION 5. Notice and Effect. This Ordinance shall take effect and be in force thirty (30) days from the date of its passage, and before the expiration of fifteen

(15)

days after its passage, it or a summary of it, shall be published once, with the names of the members of the Board of Directors voting for and against the same in the Inter-City Express, a newspaper of general circulation published and circulated in the County of Alameda.

APPROVED and ADOPTED this 18th day of March, 2020.

Dan Kalb, Chair

ATTEST:

Stephanie Cabrera, Clerk of the Board