



## Staff Report Item 9

**TO:** Ava Community Energy Authority

**FROM:** Howard Chang, Chief Operating Officer

**SUBJECT:** Amend Administrative Procurement Policy

**DATE:** December 20, 2023

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### **Recommendation**

Adopt a Resolution to amend the Administrative Procurement Policy.

### **Background and Discussion**

On February 7, 2018, the Board of Directors approved a Resolution adopting an Administrative Procurement Policy. The policy was most recently amended and restated on June 21, 2023. Staff worked with General Counsel to make necessary and appropriate changes to the policy.

This Amendment clarifies the following:

- Memorializes the name change to Ava Community Energy throughout the document,
- Amends Section IX removing references to signing authority related to Power Purchase Agreements, as this is governed by a separate Policy, the Risk Management Policy, and
- Includes additional language on competitive bidding and prevailing wages related to Public Works Projects in two sections.

### **Fiscal Impact**

There is no anticipated fiscal impact associated with these amendments.

**Committee Recommendation**

Ava's Energy Risk Oversight Committee approved staff proposed transaction authorities for power in August 2023. The Administrative Procurement Policy needs to be amended to ensure consistency.

**Attachments**

- A. Resolution to Amend the Administrative Procurement Policy
- B. Amended and Restated Procurement Policy (with redline changes from previous version)
- C. Amended and Restated Procurement Policy (Clean)

**RESOLUTION NO. R-2023-XX**  
**A RESOLUTION OF THE BOARD OF DIRECTORS**  
**OF THE AVA COMMUNITY ENERGY AUTHORITY TO ADOPT AN AMENDED AND**  
**RESTATED ADMINISTRATIVE PROCUREMENT POLICY 1.10**

**WHEREAS** The Ava Community Energy Authority (“Ava”) was formed as a community choice aggregation agency (“CCA”) on December 1, 2016, Under the Joint Exercise of Power Act, California Government Code sections 6500 *et seq.*, among the County of Alameda, and the Cities of Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Piedmont, Oakland, San Leandro, and Union City to study, promote, develop, conduct, operate, and manage energy-related climate change programs in all of the member jurisdictions. The cities of Newark and Pleasanton, located in Alameda County, along with the City of Tracy, located in San Joaquin County, were added as members of Ava and parties to the JPA in March of 2020. The city of Stockton, located in San Joaquin County was added as a member of Ava and party to the JPA in September of 2022. The city of Lathrop, located in San Joaquin County, was added as a member to Ava and party to the JPA in October of 2023. On October 24, 2023, the Authority legally adopted the name Ava Community Energy Authority, where it had previously used the name East Bay Community Energy Authority since its inception.

**WHEREAS** Ava seeks to amend various sections of the Administrative Procurement Policy;

**WHEREAS** on February 7, 2018, the Board approved an Administrative Procurement Policy. On March 18, 2022, the Board approved an Amended and Restated Administrative Procurement Policy 1.8. On June 21, 2023, the Board approved an Amended and Restated Administrative Procurement Policy 1.9; and

**WHEREAS** it would be useful to make certain clarifications and adjustments in order to continue to facilitate efficient business operations.

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

Section 1. The Board hereby adopts the Eighth Amended and Restated Administrative Procurement Policy, attached as Exhibit A and listed as Policy # 1.10, which makes clarifications regarding: the correct name of the Authority, removes references to signing authority related to Power Purchase Agreements, as this is governed by a separate Policy, the Risk Management Policy and includes additional language in Section VIII related to prevailing wages and prevailing wages thresholds.

ADOPTED AND APPROVED this 20<sup>th</sup> day of December, 2023.

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Elisa Márquez, Chair

ATTEST:

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Adrian Bankhead, Clerk of the Board



SEVENTH-EIGHTH AMENDED AND RESTATED ADMINISTRATIVE PROCUREMENT POLICY

Policy Number 1.109

~~June 21, 2023~~ December 20, 2023

Agenda Item #8

Resolution Number ~~R-2023-30~~

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I. PURPOSE

It is in the interest of East Bay-Ava Community Energy (“EBCEAva”) to establish administrative procurement practices that facilitate efficient business operations and provide fair compensation and local workforce opportunities whenever possible within a framework of high quality, competitive service offerings.

II. TYPES OF CONTRACTS

1. Contracts for Goods and Non-Professional Services. As used in this policy, “General Contractual Services” means:
  - 1.1. Any and all supplies, articles, equipment, or personal property furnished to or used by an organizational unit of EBCEAva; and
  - 1.2. Most types of services, excluding professional services as defined below, under which the contractor provides services which are required by EBCEAva, but not furnished by the EBCEAva’s own employees.
2. Contracts for Professional Services. As used in this policy, “Professional Services” means:
  - 2.1. The services of attorneys, physicians, architects, engineers, consultants, auditors, or other individuals or organizations possessing a high degree of professional, unique specialized technical skill or expertise, not always adaptable to competitive bidding. Professional Services are not considered General Contractual Services for the purpose of these procurement procedures.
3. Power Procurement Contracts
  - 3.1. Contracts for energy (also known as Power Purchase Agreements or PPAs) or energy related products ~~shall be subject to the requirements and signing authorities set out in Section IX of this are addressed in the Risk Management Policy/Power Procurement Purchase Agreement Policy/Policy.~~
4. All Contracts

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- 4.2. No [EBCEAva](#) employee, official, or director shall split purchases into more than one purchase in order to avoid the procurement requirements in this policy. Splitting purchases does not allow for a competitive marketplace, increases administrative workflow, and may create ethical issues.
- 4.3. No [EBCEAva](#) employee, officer, or Director shall accept, directly or indirectly, any gift, rebate, money or anything else of value from any person or entity if such gift, rebate, money or anything of value is intended, or appears, to reward or be an inducement for conducting business, placing orders with, or otherwise using the employee's position to secure an agreement with [EBCEAva](#).
- 4.4. Prior to signing any agreement for General Contractual Services or Professional Services, the individual signing shall ensure all of the following:
- 4.4.1. The contract compensation has been budgeted for in the current [EBCEAva](#) budget;
- 4.4.2. That adequate funds have been appropriated by the Board;
- 4.4.3. That such funds are unexpended and unencumbered sufficient to pay the expense of the contract; and
- 4.4.4. That any agreement for General Contractual Services or Professional Services for an amount of \$5,000 or more in one calendar year has been approved as to form and content by the General Counsel or his/her designee, except when the CEO, COO, CIO, or designee may, in his or her discretion, authorize the execution of standard form consumer agreements, where [EBCEAva](#) is in a similar position as other consumers in the market, related to widely marketed products and where the vendor has stated they are not open to negotiation, including, but not limited to, credit card agreements, and standard consumer license agreements for widely marketed software such as Microsoft Office, or other similar agreements.
- 4.5. [EBCEAva](#) shall report on all new contracts, regardless of scope or contract value, at each Board meeting, except non-disclosure agreements, ~~and~~ personnel contracts, and Power Purchase Agreements. Unless subject to the attorney client privilege or some other legal protection, as a public agency, [EBCEAva](#) shall release all public records, including contracts, as required by the Public Records Act.
- 4.6. Agreements with existing vendors may be amended and/or extended to allow for the continuation of services for no more than a total term of five (5) years. Such amendments/extensions are subject to the applicable signing authority identified in Tables 1-4 based on the total dollar amount of the agreement.
- 4.7. The CEO may suspend the requirements of Section III (General Contractual Services Procurement) or Section V (Professional Services Procurement) for any agreement. Furthermore, the COO may suspend the requirements of Section III or Section V for any agreement they would otherwise have the authority to sign. However, all agreements for which the required procurement procedures have been suspended pursuant to this Section II. 4.7 must be approved by the Chair and Vice Chair of the Board of Directors and must comply with signing authority restrictions identified in Section III, Table 2, and Section V, Table 4.

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5. Promotional Items and Bulk Purchases

5.1. The purchase of office supplies, promotional items, and similarly low risk goods bought in bulk online or otherwise are subject to the relevant procurement methods identified in Section III, but do not require a Consulting Services Agreement or other agreement.

45.1.1 For the purpose of defining “office supplies” as it relates to procurement, the meaning is understood to be “a consumable item/product used regularly in an office environment to perform departmental personnel’s daily work assignments.” Office Supplies to include but are not limited to: Pens, Pencils, Markers, Note Pads, Composition/Theme Books, Post-It-Notes, Paper (other than for copier,), Index Cards, Labels, File Folders, File Organizers, Envelopes, Staplers, Scissors, Tape, Pushpins, Binders, Binder Index Systems, Paper Clips, Rubber bands, and Computer Hardware (excluding any software or subscription services)..

6. Combined Services and Purchases.

6.1. Where an agreement combines services with the purchase of supplies as defined in Section 5 above, the expenditure related to purchase of supplies shall be calculated separately from the expenditure related to the services provided for the purpose of determining approval authority under this Policy.



## GENERAL CONTRACTUAL SERVICES PROCUREMENT

### 1. Procurement Method

1.1. Table 1 indicates the appropriate procurement method for the purchase of General Contractual Services of certain dollar amounts.

~~4.4.1.2.~~ Where applicable, California state law requirements for competitive bidding or public works contracting shall be followed. Such requirements may include, but are not limited to competitive bidding or informal requirements for public works construction projects and prevailing wages requirements. ~~(For~~

~~4.2.1.3.~~ Nothing in this section prohibits the use of a more stringent procurement method than the one indicated by Table 1. At his or her discretion, the CEO may direct that an agreement for General Contractual Services is awarded through the Formal Bidding Procedures described herein.

**Table 1**

| PROCUREMENT METHOD                                    | DOLLAR AMOUNT per FISCAL YEAR | ADDITIONAL REQUIREMENTS  |
|---|-------------------------------|--|
| Formal Bidding Procedure                              | > \$100,000                   | RFP/RFQ  |
| Solicit 3 written quotes; may be in electronic format | \$50,000 - \$100,000          | Quotes must include provider's name, address, phone number, professional license number, if applicable                                 |
| Solicit 3 verbal quotes                               | \$10,000 - \$49,999.99        | Staff shall note quotes by including the providers' name, address, phone number and amount of the verbal proposal in EBCEAva's records |
| No solicitation necessary                             | < \$10,000                    | Seek the lowest price for the highest quality  |
| Purchase Order Can Be Used                            | <\$5,000                      | * A contract is not required for the purchase of goods or low-risk off-site services under \$5,000                                     |

### 2. Signing Authority

2.1. Table 2 indicates the appropriate signing authority for the purchase of General Contractual Services of certain dollar amounts.

2.2. Nothing in this section prohibits EBCEAva staff from seeking approval of a more senior signing authority than is permitted by this policy.

**Table 2**

| SIGNING AUTHORITY                            | DOLLAR AMOUNT per FISCAL YEAR | CONTRACT TYPE   |
|--|-------------------------------|---|
| Board Approval                               | > \$100,000                   | All contracts   |
| Chief Executive Officer, or his/her designee | \$0 - \$100,000               | All contracts   |
| General Counsel                              | \$0-\$50,000                  | All contracts related to the activities or functions of the Office of the General Counsel |



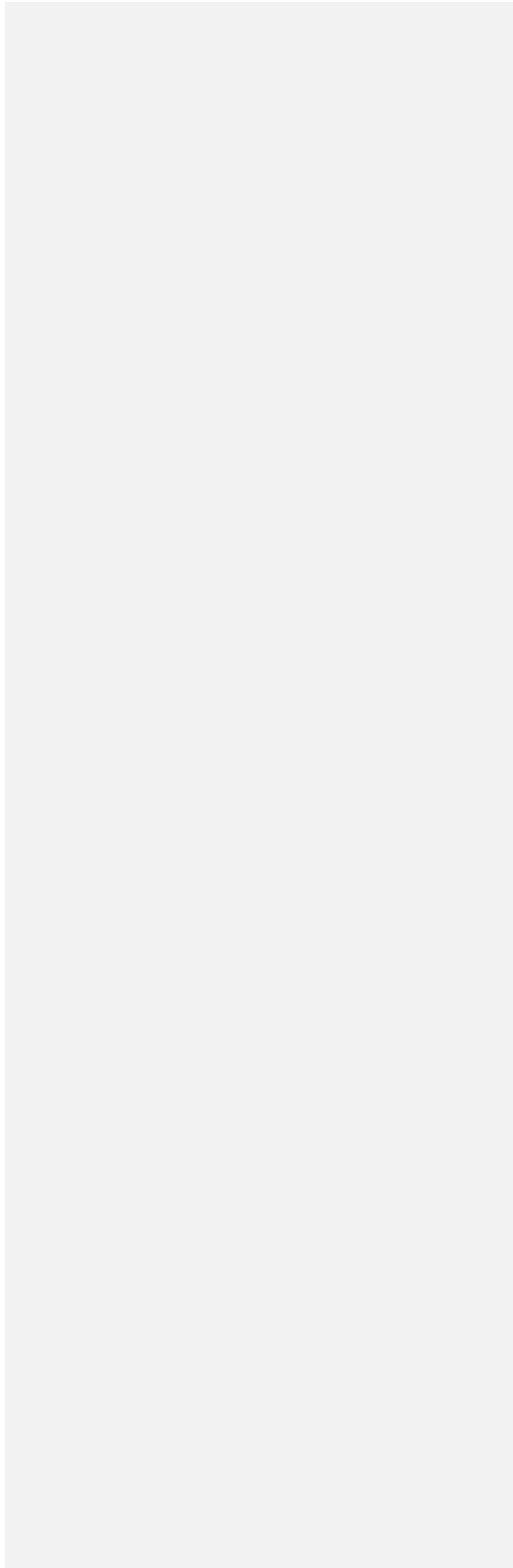


Community  
Energy

Chief Operating Officer

\$0-\$25,000

All contracts related to the activities or functions of the Office of the COO





|                                   |              |   |
|-----------------------------------|--------------|---|
| Chief Information Officer         | \$0-\$15,000 | All contracts related to the activities or functions of the Office of the Chief Information Officer                       |
| Senior Director or Vice President | \$0-\$10,000 | All contracts whose object or purpose is related to the activities or functions of that Senior Director or Vice President |
| Director                          | \$0-\$5,000  | All contracts whose object or purpose is related to the activities or functions of that Director                          |

### III. FORMAL RFP/RFQ PROCEDURES

Except as otherwise specifically directed in writing by the CEO, agreements for the purchase of General Contractual Services for a total amount that exceeds \$100,000 per fiscal year shall be procured as follows:

1. Formal RFP/RFQ Invitations. Invitations to participate in the Request for Proposal/Request for Qualifications (RFP/RFQ) process shall include a general description of the supplies or services sought by [EBCEAva](#), and shall specify the time, place and date for opening responses.
2. Evaluation. Proposals received through a competitive solicitation shall be subject to a set of criteria and a scoring system, reviewed and evaluated by relevant [EBCEAva](#) staff and an evaluation committee selected by the relevant staff, CEO, COO or General Counsel, or at the discretion of the Board, members of a designated Board subcommittee.
3. Selected Respondent. "Selected Respondent" as used in this policy shall mean that respondent who best responds in price, quality, service, fitness, or capacity to the particular requirements of [EBCEAva](#). Price alone shall not be the determining factor but shall be considered along with other factors, including but not limited to the following:
  - 3.1. [EBCEAva](#) seeks to support companies and contractors that reflect its values and has identified four vendor/contractor categories that shall be given special consideration during bid evaluation and selection. In competitive solicitations, these categories shall receive bonus percentages/points ranging from 2.5% - 5% for a maximum bonus total of 12.5% in a bid scoring process:
    - 3.1.1 Businesses within Service Territory: [EBCEAva](#) desires to support business within its service territory. Businesses with office(s) located in [EBCEAva](#)'s service territory and businesses that have at least 25% of their workforce who reside in [EBCEAva](#)'s service territory shall receive a bonus equal to 5% or 5 points out of a 100-point scoring system in competitive solicitations.
    - 3.1.2 Union Labor: [EBCEAva](#) desires to support the use of union labor where possible. [EBCEAva](#) shall make its best effort to work with unionized contractors and subcontractors in the provision of goods and services to [EBCEAva](#). Businesses who use union labor and/or unionized contractors shall receive a bonus equal to 2.5% or 2.5 points out of a 100-point scoring system in competitive solicitations.
    - 3.1.3 Disabled Veteran Business Enterprises: [EBCEAva](#) desires to support Disabled Veteran Business Enterprises (DVBEs). Businesses that are registered with the California Department of General Services as a DVBE shall receive a bonus equal to 2.5% or 2.5 points out of a 100-point scoring system in competitive solicitations.



3.1.4 Disadvantaged Communities: EBCEAva desires to support businesses located in a Disadvantaged Community (DAC) as identified by the California Environmental Protection Agency’s (CalEPA) CalEnviroScreen Tool. Businesses with a primary office (i.e. where work is primarily conducted for EBCEAva) located in a DAC, as determined by the latest version of the Tool at the time, shall receive a bonus equal to 2.5% or 2.5 points out of a 100-point scoring system in competitive solicitations.

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3.2. EBCEAva is committed to the highest standards of responsible behavior and integrity in all of its business relationships. EBCEAva will consider a company’s business practices, environmental track record, and commitment to fair employment practices and compensation in its procurement decisions.

3.3. Award of Contract. EBCEAva shall award the contract to purchase goods or services to the Selected Respondent, unless such an award would be prohibited by California law.

IV. PROFESSIONAL SERVICES PROCUREMENT

1. Procurement Method

- 1.1. Table 3 indicates the appropriate procurement method for the purchase of Professional Services of certain dollar amounts.
- 1.2. Nothing in this section prohibits the use of a more stringent procurement method than the one indicated by Table 3. At his or her discretion, the CEO may direct that an agreement for Professional Services is awarded through the Formal Bidding Procedures described herein.

**Table 3**

| PROCUREMENT METHOD                                    | DOLLAR AMOUNT per FISCAL YEAR | ADDITIONAL REQUIREMENTS  |
|---|-------------------------------|--|
| Solicit 3 written quotes; may be in electronic format | \$50,000 and above            | Proposal must include provider’s name, address, phone number, professional license number, if applicable                               |
| Solicit 3 verbal quotes                               | \$10,000 - \$49,999.99        | Staff shall note quotes by including the providers’ name, address, phone number and amount of the verbal proposal in EBCEAva’s records |
| No solicitation is necessary                          | \$0 - \$10,000                | Seek the lowest price for the highest quality  |

2. Signing Authority

- 2.1. Table 4 indicates the appropriate signing authority for an agreement for Professional Services of certain dollar amounts.
- 2.2. Nothing in this section prohibits EBCEAva staff from seeking approval of a more senior signing authority than is permitted by this policy.



Table 4

| SIGNING AUTHORITY                            | DOLLAR AMOUNT per Fiscal Year | CONTRACT TYPE   |
|--|-------------------------------|---|
| Board Approval                               | > \$100,000                   | All contracts   |
| Chief Executive Officer, or his/her designee | \$0 - \$100,000               | All contracts   |
| General Counsel                              | \$0-\$50,000                  | All contracts related to the activities or functions of the Office of the General Counsel                                 |
| Chief Operating Officer                      | \$0-\$25,000                  | All contracts related to the activities or functions of the Office of the COO   |
| Chief Information Officer                    | \$0-\$15,000                  | All contracts related to the activities or functions of the Office of the Chief Information Officer                       |
| Senior Director or Vice President            | \$0-\$10,000                  | All contracts whose object or purpose is related to the activities or functions of that Senior Director or Vice President |
| Director                                     | \$0-\$5,000                   | All contracts whose object or purpose is related to the activities or functions of that Director                          |

#### V. SOLE SOURCE PROCUREMENT

1. Under some circumstances, [EBCEAva](#) competitive solicitation requirements may be dispensed with when the goods or services are only available from one source either because the brand or trade name article, goods, or product or proprietary service is the only one which will properly meet the needs of the [EBCEAva](#) or the item or service is unique and available only from a sole source.
2. Sole source purchasing, whereby the procurement methods identified in Tables 1-4 are not required, is authorized when the goods or services contemplated are only able to be performed by a sole provider, such as the holder of an exclusive patent or franchise, for the purchase of unique or innovative goods or services including but not limited to computer software and technology, or for purchases of goods or services when there is a demonstrated need for compatibility with an existing item or service used by [EBCEAva](#).
3. A sole source may be designated when it is apparent that a needed product or service is uniquely available from the source, or for all practical purposes, it is justifiably in the best interest of [EBCEAva](#).
4. The following factors are not sufficient to justify a sole source procurement:
  - 4.1. Personal preference for product or vendor
  - 4.2. Cost
  - 4.3. Vendor performance
  - 4.4. Local service (this may be considered an award factor in competitive bidding)
  - 4.5. Features that exceed the minimum requirements for the goods or services



## VI. EMERGENCY PROCUREMENT

1. In the event of an emergency, the CEO may suspend the normal purchasing and procurement requirements for goods and services related to abatement of the impacts or effects of the emergency.
2. An emergency is deemed to exist in the following circumstances:
  - 2.1. There is an unexpected occurrence requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services, including the provision of energy or power to ~~EBCE~~Ava customers; or
  - 2.2. There is immediate need to prepare for national or local defense; or
  - 2.3. There is a breakdown in infrastructure or an essential service which requires the immediate purchase of supplies or contractual services to protect the public health, or safety or property; or
  - 2.4. A local emergency or disaster has been declared.

## VII. COOPERATIVE PURCHASING

1. The procurement methods identified in Table 1 -4 shall not be required when the contract for goods or services will be provided by another governmental agency.
2. ~~EBCE~~Consistent with state law, Ava may adopt another governmental agency's agreement with a contractor ("Piggyback Agreement") as its own without adhering to the procurement methods identified in Table 1-4 if that Piggyback Agreement is the product of the respective governmental agency's formal competitive solicitation process, provided that that agency's procurement is not in conflict with California law.

## VIII. PUBLIC PROJECTS

1. Uniform Public Construction Cost Accounting Act. ~~EBCE~~Ava adheres to the alternative bidding procedures provided by the Uniform Public Construction Cost Accounting Act, California Public Contract Code section 22000 et seq. (UPCCAA) Public projects (as defined in Section 22002 of the California Public Contract Code) that do not exceed the dollar limits in Section 22032(b) of the Public Contract Code (as such limits currently exist or may subsequently be amended), may be let to contract by informal procedures as set forth in the UPCCAA.
- ~~4.2.~~ Contracts for construction, alteration, demolition, installation, repair work, or maintenance exceeding \$1,000 in value shall require contractor compliance with Labor Code Section 1720, including the requirement that a contractor pay prevailing wages. Note: Contracts for installation of furniture or equipment onto the premises (such as installation of cubicles or hanging of monitors or screens) in excess of this amount require the payment of prevailing wages.-
- ~~2.3.~~ At the time of the adoption of this Policy, the UPCCAA applied to the following types of projects:
  - ~~2.4.3.1.~~ Public projects include construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility. This includes painting or repainting of any publicly owned, leased, or operated facility.

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2.2.3.2 Public projects up to \$60,000<sup>1</sup> may be performed by [EBCEAva](#) employees, by negotiated contract, or by purchase order pursuant to the UPCCAA.

2.3.3.3 Public projects up to \$200,000<sup>2</sup> may be contracted using informal procedures as set forth in the UPCCAA.

3.4 Pre-Qualified List. A list of contractors may be developed and maintained in accordance with the provisions of Section 22034 of the Public Contract Code and criteria promulgated from time to time by the California Uniform Construction Cost Accounting Commission (CUCCAC).

4.5 Notice.

4.4.5.1 Where a public project is to be performed, a notice inviting informal bids shall be mailed, faxed, or emailed not less than ten (10) days before bids are due to all contractors for the category of work to be bid as shown on the Pre-Qualified list developed in accordance with this Section IV, and to all construction trade journals as specified by the CUCCAC 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 department soliciting bids, provided, however; if there is no list of qualified contractors maintained by [EBCEAva](#) for the particular category of work to be performed, the notice inviting bids shall be sent only to the construction trade journals specified by the CUCCAC.

4.2.5.2 The notice inviting informal bids shall describe the project in general terms and how to obtain more detailed information about the project and state the time and place for the submission of bids.

5.6 Award of Contract. The CEO and his or her designee is authorized to award public project contracts, subject to the signing authority permitted by Table 5. Nothing in this section prohibits [EBCEAva](#) staff from seeking approval of a more senior signing authority than is permitted by this policy.

**Table 5**

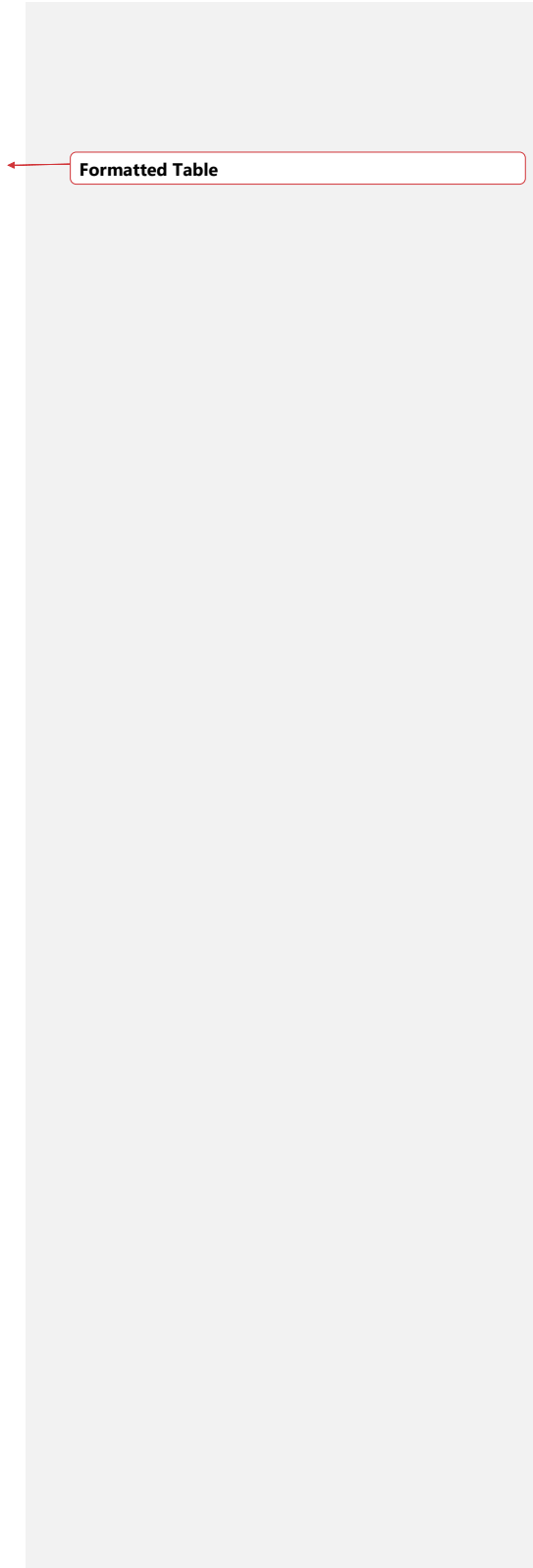
| SIGNING AUTHORITY  | DOLLAR AMOUNT<br>per fiscal year |
|--|----------------------------------|
| Executive Committee of the Board of Directors or Board of Directors Approval | > \$100,000                      |
| Chief Executive Officer, or his/her designee                                 | \$0 - \$100,000                  |
| General Counsel  | \$0-\$50,000                     |
| Chief Operating Officer  | \$0-\$25,000                     |
| Senior Director or Vice President  | \$0-\$10,000                     |

<sup>1</sup> As may be amended from time to time. Current dollar amount should be confirmed. See [https://www.sco.ca.gov/ard\\_cuccac.html](https://www.sco.ca.gov/ard_cuccac.html).

<sup>2</sup> As may be amended from time to time. Current dollar amount should be confirmed. See [https://www.sco.ca.gov/ard\\_cuccac.html](https://www.sco.ca.gov/ard_cuccac.html)



|          |             |
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| Director | \$0-\$5,000 |
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IX. PROCUREMENT OF POWER

~~EBCEAva must secure sufficient power resources and energy attributes to serve its customers, comply with State law and meet EBCEAva's and its member agencies' goals. The Procurement of Power will be governed by Ava's Risk Management Policy. The Board shall approve the form of all master power purchase agreements. The signing authority in Section 4 shall not apply to power and energy attribute procurement. The following EBCE staff shall be authorized to enter into power purchase agreements and other agreements to secure power and energy attributes providing such agreements are in substantially the same form as the Board approved master power purchase agreements, and that all transactions and agreements are in strict compliance with EBCE's Risk Management Policy:~~

1.

- ~~4.1. The CEO is authorized to enter into agreements in accordance to the approved Risk Management Policy.~~
- ~~4.2. The COO is authorized to enter into agreements in accordance to the approved Risk Management Policy, provided that transactions shall not be over two years in duration and \$10,000,000 in total compensation.~~
- ~~4.3. The Director of Power Resources is authorized to enter into agreements in accordance to the approved Risk Management Policy, provided that transactions shall not be over one year in duration and not be over \$2,000,000 in compensation.~~
- ~~4.4. With dual signatures, the COO and Director of Power Resources are authorized to enter into agreements with equivalent authority as the CEO in accordance with the approved Risk Management Policy.~~

X. MISCELLANEOUS

- 1. The following signing authorities shall apply, after review and approval of the named agreements by the General Counsel, or his/her designee, except where in conflict with the Joint Powers Agreement, state, or federal law:
  - 1.1. Non-Disclosure Agreements – Director level and above,
  - 1.2. Banking and Treasury Administration – COO level and above, and
  - 1.3. Release of Liability and Indemnification – Director level and above

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EIGHTH AMENDED AND RESTATED ADMINISTRATIVE PROCUREMENT POLICY

Policy Number 1.10

December 20, 2023

Agenda Item #

Resolution Number #

I. PURPOSE

It is in the interest of Ava Community Energy (“Ava”) to establish administrative procurement practices that facilitate efficient business operations and provide fair compensation and local workforce opportunities whenever possible within a framework of high quality, competitive service offerings.

II. TYPES OF CONTRACTS

1. Contracts for Goods and Non-Professional Services. As used in this policy, “General Contractual Services” means:
  - 1.1. Any and all supplies, articles, equipment, or personal property furnished to or used by an organizational unit of Ava; and
  - 1.2. Most types of services, excluding professional services as defined below, under which the contractor provides services which are required by Ava, but not furnished by the Ava’s own employees.
2. Contracts for Professional Services. As used in this policy, “Professional Services” means:
  - 2.1. The services of attorneys, physicians, architects, engineers, consultants, auditors, or other individuals or organizations possessing a high degree of professional, unique specialized technical skill or expertise, not always adaptable to competitive bidding. Professional Services are not considered General Contractual Services for the purpose of these procurement procedures.
3. Power Procurement Contracts
  - 3.1. Contracts for energy (also known as Power Purchase Agreements or PPAs) or energy related products are addressed in the Risk Management Policy.
4. All Contracts
  - 4.1. When procuring goods and services utilizing federal funds (e.g. grant funds), Ava shall comply with all federal project requirements and Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. (See 2 CFR § 200)



- 4.2. No Ava employee, official, or director shall split purchases into more than one purchase in order to avoid the procurement requirements in this policy. Splitting purchases does not allow for a competitive marketplace, increases administrative workflow, and may create ethical issues.
- 4.3. No Ava employee, officer, or Director shall accept, directly or indirectly, any gift, rebate, money or anything else of value from any person or entity if such gift, rebate, money or anything of value is intended, or appears, to reward or be an inducement for conducting business, placing orders with, or otherwise using the employee's position to secure an agreement with Ava.
- 4.4. Prior to signing any agreement for General Contractual Services or Professional Services, the individual signing shall ensure all of the following:
  - 4.4.1. The contract compensation has been budgeted for in the current Ava budget;
  - 4.4.2. That adequate funds have been appropriated by the Board;
  - 4.4.3. That such funds are unexpended and unencumbered sufficient to pay the expense of the contract; and
  - 4.4.4. That any agreement for General Contractual Services or Professional Services for an amount of \$5,000 or more in one calendar year has been approved as to form and content by the General Counsel or his/her designee, except when the CEO, COO, CIO, or designee may, in his or her discretion, authorize the execution of standard form consumer agreements, where Ava is in a similar position as other consumers in the market, related to widely marketed products and where the vendor has stated they are not open to negotiation, including, but not limited to, credit card agreements, and standard consumer license agreements for widely marketed software such as Microsoft Office, or other similar agreements.
- 4.5. Ava shall report on all new contracts, regardless of scope or contract value, at each Board meeting, except non-disclosure agreements, personnel contracts, and Power Purchase Agreements. Unless subject to the attorney client privilege or some other legal protection, as a public agency, Ava shall release all public records, including contracts, as required by the Public Records Act.
- 4.6. Agreements with existing vendors may be amended and/or extended to allow for the continuation of services for no more than a total term of five (5) years. Such amendments/extensions are subject to the applicable signing authority identified in Tables 1-4 based on the total dollar amount of the agreement.
- 4.7. The CEO may suspend the requirements of Section III (General Contractual Services Procurement) or Section V (Professional Services Procurement) for any agreement. Furthermore, the COO may suspend the requirements of Section III or Section V for any agreement they would otherwise have the authority to sign. However, all agreements for which the required procurement procedures have been suspended pursuant to this Section II. 4.7 must be approved by the Chair and Vice Chair of the Board of Directors and must comply with signing authority restrictions identified in Section III, Table 2, and Section V, Table 4.



5. Promotional Items and Bulk Purchases

- 5.1. The purchase of office supplies, promotional items, and similarly low risk goods bought in bulk online or otherwise are subject to the relevant procurement methods identified in Section III, but do not require a Consulting Services Agreement or other agreement.

4.1.1 For the purpose of defining “office supplies” as it relates to procurement, the meaning is understood to be “a consumable item/product used regularly in an office environment to perform departmental personnel’s daily work assignments.” Office Supplies to include but are not limited to: Pens, Pencils, Markers, Note Pads, Composition/Theme Books, Post-It-Notes, Paper (other than for copier.), Index Cards, Labels, File Folders, File Organizers, Envelopes, Staplers, Scissors, Tape, Pushpins, Binders, Binder Index Systems, Paper Clips, Rubber bands, and Computer Hardware (excluding any software or subscription services)..

6. Combined Services and Purchases.

- 6.1. Where an agreement combines services with the purchase of supplies as defined in Section 5 above, the expenditure related to purchase of supplies shall be calculated separately from the expenditure related to the services provided for the purpose of determining approval authority under this Policy.



## GENERAL CONTRACTUAL SERVICES PROCUREMENT

### 1. Procurement Method

- 1.1. Table 1 indicates the appropriate procurement method for the purchase of General Contractual Services of certain dollar amounts.
- 1.2. Where applicable, California state law requirements for competitive bidding or public works contracting shall be followed. Such requirements may include, but are not limited to competitive bidding or informal requirements for public works construction projects and prevailing wages requirements.
- 1.3. Nothing in this section prohibits the use of a more stringent procurement method than the one indicated by Table 1. At his or her discretion, the CEO may direct that an agreement for General Contractual Services is awarded through the Formal Bidding Procedures described herein.

**Table 1**

| PROCUREMENT METHOD                                    | DOLLAR AMOUNT per FISCAL YEAR | ADDITIONAL REQUIREMENTS  |
|---|-------------------------------|--|
| Formal Bidding Procedure                              | > \$100,000                   | RFP/RFQ  |
| Solicit 3 written quotes; may be in electronic format | \$50,000 - \$100,000          | Quotes must include provider's name, address, phone number, professional license number, if applicable                             |
| Solicit 3 verbal quotes                               | \$10,000 - \$49,999.99        | Staff shall note quotes by including the providers' name, address, phone number and amount of the verbal proposal in Ava's records |
| No solicitation necessary                             | < \$10,000                    | Seek the lowest price for the highest quality  |
| Purchase Order Can Be Used                            | <\$5,000                      | * A contract is not required for the purchase of goods or low-risk off-site services under \$5,000                                 |

### 2. Signing Authority

- 2.1. Table 2 indicates the appropriate signing authority for the purchase of General Contractual Services of certain dollar amounts.
- 2.2. Nothing in this section prohibits Ava staff from seeking approval of a more senior signing authority than is permitted by this policy.

**Table 2**

| SIGNING AUTHORITY                            | DOLLAR AMOUNT per FISCAL YEAR | CONTRACT TYPE   |
|--|-------------------------------|---|
| Board Approval                               | > \$100,000                   | All contracts   |
| Chief Executive Officer, or his/her designee | \$0 - \$100,000               | All contracts   |
| General Counsel                              | \$0-\$50,000                  | All contracts related to the activities or functions of the Office of the General Counsel |



|                         |              |   |
|-------------------------|--------------|---|
| Chief Operating Officer | \$0-\$25,000 | All contracts related to the activities or functions of the Office of the COO |
|-------------------------|--------------|---|



|                                   |              |   |
|-----------------------------------|--------------|---|
| Chief Information Officer         | \$0-\$15,000 | All contracts related to the activities or functions of the Office of the Chief Information Officer                       |
| Senior Director or Vice President | \$0-\$10,000 | All contracts whose object or purpose is related to the activities or functions of that Senior Director or Vice President |
| Director                          | \$0-\$5,000  | All contracts whose object or purpose is related to the activities or functions of that Director                          |

### III. FORMAL RFP/RFQ PROCEDURES

Except as otherwise specifically directed in writing by the CEO, agreements for the purchase of General Contractual Services for a total amount that exceeds \$100,000 per fiscal year shall be procured as follows:

1. **Formal RFP/RFQ Invitations.** Invitations to participate in the Request for Proposal/Request for Qualifications (RFP/RFQ) process shall include a general description of the supplies or services sought by Ava, and shall specify the time, place and date for opening responses.
2. **Evaluation.** Proposals received through a competitive solicitation shall be subject to a set of criteria and a scoring system, reviewed and evaluated by relevant Ava staff and an evaluation committee selected by the relevant staff, CEO, COO or General Counsel, or at the discretion of the Board, members of a designated Board subcommittee.
3. **Selected Respondent.** "Selected Respondent" as used in this policy shall mean that respondent who best responds in price, quality, service, fitness, or capacity to the particular requirements of Ava. Price alone shall not be the determining factor but shall be considered along with other factors, including but not limited to the following:
  - 3.1. Ava seeks to support companies and contractors that reflect its values and has identified four vendor/contractor categories that shall be given special consideration during bid evaluation and selection. In competitive solicitations, these categories shall receive bonus percentages/points ranging from 2.5% - 5% for a maximum bonus total of 12.5% in a bid scoring process:
    - 3.1.1 **Businesses within Service Territory:** Ava desires to support business within its service territory. Businesses with office(s) located in Ava's service territory and businesses that have at least 25% of their workforce who reside in Ava's service territory shall receive a bonus equal to 5% or 5 points out of a 100-point scoring system in competitive solicitations.
    - 3.1.2 **Union Labor:** Ava desires to support the use of union labor where possible. Ava shall make its best effort to work with unionized contractors and subcontractors in the provision of goods and services to Ava. Businesses who use union labor and/or unionized contractors shall receive a bonus equal to 2.5% or 2.5 points out of a 100-point scoring system in competitive solicitations.
    - 3.1.3 **Disabled Veteran Business Enterprises:** Ava desires to support Disabled Veteran Business Enterprises (DVBEs). Businesses that are registered with the California Department of General Services as a DVBE shall receive a bonus equal to 2.5% or 2.5 points out of a 100-point scoring system in competitive solicitations.



3.1.4 Disadvantaged Communities: Ava desires to support businesses located in a Disadvantaged Community (DAC) as identified by the California Environmental Protection Agency's (CalEPA) CalEnviroScreen Tool. Businesses with a primary office (i.e. where work is primarily conducted for Ava) located in a DAC, as determined by the latest version of the Tool at the time, shall receive a bonus equal to 2.5% or 2.5 points out of a 100-point scoring system in competitive solicitations.

- 3.2. Ava is committed to the highest standards of responsible behavior and integrity in all of its business relationships. Ava will consider a company's business practices, environmental track record, and commitment to fair employment practices and compensation in its procurement decisions.
- 3.3. Award of Contract. Ava shall award the contract to purchase goods or services to the Selected Respondent, unless such an award would be prohibited by California law.

#### IV. PROFESSIONAL SERVICES PROCUREMENT

##### 1. Procurement Method

- 1.1. Table 3 indicates the appropriate procurement method for the purchase of Professional Services of certain dollar amounts.
- 1.2. Nothing in this section prohibits the use of a more stringent procurement method than the one indicated by Table 3. At his or her discretion, the CEO may direct that an agreement for Professional Services is awarded through the Formal Bidding Procedures described herein.

**Table 3**

| PROCUREMENT METHOD                                    | DOLLAR AMOUNT per FISCAL YEAR | ADDITIONAL REQUIREMENTS  |
|---|-------------------------------|--|
| Solicit 3 written quotes; may be in electronic format | \$50,000 and above            | Proposal must include provider's name, address, phone number, professional license number, if applicable                           |
| Solicit 3 verbal quotes                               | \$10,000 - \$49,999.99        | Staff shall note quotes by including the providers' name, address, phone number and amount of the verbal proposal in Ava's records |
| No solicitation is necessary                          | \$0 - \$10,000                | Seek the lowest price for the highest quality  |

##### 2. Signing Authority

- 2.1. Table 4 indicates the appropriate signing authority for an agreement for Professional Services of certain dollar amounts.
- 2.2. Nothing in this section prohibits Ava staff from seeking approval of a more senior signing authority than is permitted by this policy.

**Table 4**

| SIGNING AUTHORITY                            | DOLLAR AMOUNT per Fiscal Year | CONTRACT TYPE   |
|--|-------------------------------|---|
| Board Approval                               | > \$100,000                   | All contracts   |
| Chief Executive Officer, or his/her designee | \$0 - \$100,000               | All contracts   |
| General Counsel                              | \$0-\$50,000                  | All contracts related to the activities or functions of the Office of the General Counsel                                 |
| Chief Operating Officer                      | \$0-\$25,000                  | All contracts related to the activities or functions of the Office of the COO   |
| Chief Information Officer                    | \$0-\$15,000                  | All contracts related to the activities or functions of the Office of the Chief Information Officer                       |
| Senior Director or Vice President            | \$0-\$10,000                  | All contracts whose object or purpose is related to the activities or functions of that Senior Director or Vice President |
| Director                                     | \$0-\$5,000                   | All contracts whose object or purpose is related to the activities or functions of that Director                          |

**V. SOLE SOURCE PROCUREMENT**

1. Under some circumstances, Ava competitive solicitation requirements may be dispensed with when the goods or services are only available from one source either because the brand or trade name article, goods, or product or proprietary service is the only one which will properly meet the needs of the Ava or the item or service is unique and available only from a sole source.
2. Sole source purchasing, whereby the procurement methods identified in Tables 1-4 are not required, is authorized when the goods or services contemplated are only able to be performed by a sole provider, such as the holder of an exclusive patent or franchise, for the purchase of unique or innovative goods or services including but not limited to computer software and technology, or for purchases of goods or services when there is a demonstrated need for compatibility with an existing item or service used by Ava.
3. A sole source may be designated when it is apparent that a needed product or service is uniquely available from the source, or for all practical purposes, it is justifiably in the best interest of Ava.
4. The following factors are not sufficient to justify a sole source procurement:
  - 4.1. Personal preference for product or vendor
  - 4.2. Cost
  - 4.3. Vendor performance
  - 4.4. Local service (this may be considered an award factor in competitive bidding)
  - 4.5. Features that exceed the minimum requirements for the goods or services





## VI. EMERGENCY PROCUREMENT

1. In the event of an emergency, the CEO may suspend the normal purchasing and procurement requirements for goods and services related to abatement of the impacts or effects of the emergency.
2. An emergency is deemed to exist in the following circumstances:
  - 2.1. There is an unexpected occurrence requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services, including the provision of energy or power to Ava customers; or
  - 2.2. There is immediate need to prepare for national or local defense; or
  - 2.3. There is a breakdown in infrastructure or an essential service which requires the immediate purchase of supplies or contractual services to protect the public health, or safety or property; or
  - 2.4. A local emergency or disaster has been declared.

## VII. COOPERATIVE PURCHASING

1. The procurement methods identified in Table 1 -4 shall not be required when the contract for goods or services will be provided by another governmental agency.
2. Consistent with state law, Ava may adopt another governmental agency's agreement with a contractor ("Piggyback Agreement") as its own without adhering to the procurement methods identified in Table 1-4 if that Piggyback Agreement is the product of the respective governmental agency's formal competitive solicitation process, provided that that agency's procurement is not in conflict with California law.

## VIII. PUBLIC PROJECTS

1. Uniform Public Construction Cost Accounting Act. Ava adheres to the alternative bidding procedures provided by the Uniform Public Construction Cost Accounting Act, California Public Contract Code section 22000 et seq. (UPCCAA) Public projects (as defined in Section 22002 of the California Public Contract Code) that do not exceed the dollar limits in Section 22032(b) of the Public Contract Code (as such limits currently exist or may subsequently be amended), may be let to contract by informal procedures as set forth in the UPCCAA.
2. Contracts for construction, alteration, demolition, installation, repair work, or maintenance exceeding \$1,000 in value shall require contractor compliance with Labor Code Section 1720, including the requirement that a contractor pay prevailing wages. Note: Contracts for installation of furniture or equipment onto the premises (such as installation of cubicles or hanging of monitors or screens) in excess of this amount require the payment of prevailing wages.
3. At the time of the adoption of this Policy, the UPCCAA applied to the following types of projects:
  - 3.1. Public projects include construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility. This includes painting or repainting of any publicly owned, leased, or operated facility.



- 3.2. Public projects up to \$60,000<sup>1</sup> may be performed by Ava employees, by negotiated contract, or by purchase order pursuant to the UPCCAA.
- 3.3. Public projects up to \$200,000<sup>2</sup> may be contracted using informal procedures as set forth in the UPCCAA.
4. Pre-Qualified List. A list of contractors may be developed and maintained in accordance with the provisions of Section 22034 of the Public Contract Code and criteria promulgated from time to time by the California Uniform Construction Cost Accounting Commission (CUCCAC).
5. Notice.
- 5.1. Where a public project is to be performed, a notice inviting informal bids shall be mailed, faxed, or emailed not less than ten (10) days before bids are due to all contractors for the category of work to be bid as shown on the Pre-Qualified list developed in accordance with this Section IV, and to all construction trade journals as specified by the CUCCAC 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 department soliciting bids, provided, however; if there is no list of qualified contractors maintained by Ava for the particular category of work to be performed, the notice inviting bids shall be sent only to the construction trade journals specified by the CUCCAC.
- 5.2. The notice inviting informal bids shall describe the project in general terms and how to obtain more detailed information about the project and state the time and place for the submission of bids.
6. Award of Contract. The CEO and his or her designee is authorized to award public project contracts, subject to the signing authority permitted by Table 5. Nothing in this section prohibits Ava staff from seeking approval of a more senior signing authority than is permitted by this policy.

**Table 5**

| SIGNING AUTHORITY  | DOLLAR AMOUNT<br>per fiscal year |
|--|----------------------------------|
| Executive Committee of the Board of Directors or Board of Directors Approval | > \$100,000                      |
| Chief Executive Officer, or his/her designee                                 | \$0 - \$100,000                  |
| General Counsel  | \$0-\$50,000                     |
| Chief Operating Officer  | \$0-\$25,000                     |
| Senior Director or Vice President  | \$0-\$10,000                     |

<sup>1</sup> As may be amended from time to time. Current dollar amount should be confirmed. See [https://www.sco.ca.gov/ard\\_cuccac.html](https://www.sco.ca.gov/ard_cuccac.html).

<sup>2</sup> As may be amended from time to time. Current dollar amount should be confirmed. See [https://www.sco.ca.gov/ard\\_cuccac.html](https://www.sco.ca.gov/ard_cuccac.html)



|          |             |
|----------|-------------|
| Director | \$0-\$5,000 |
|----------|-------------|



IX. PROCUREMENT OF POWER

1. Ava must secure sufficient power resources and energy attributes to serve its customers, comply with State law and meet Ava's and its member agencies' goals. The Procurement of Power will be governed by Ava's Risk Management Policy.

X. MISCELLANEOUS

1. The following signing authorities shall apply, after review and approval of the named agreements by the General Counsel, or his/her designee, except where in conflict with the Joint Powers Agreement, state, or federal law:
  - 1.1. Non-Disclosure Agreements – Director level and above,
  - 1.2. Banking and Treasury Administration – COO level and above, and
  - 1.3. Release of Liability and Indemnification – Director level and above