



Staff Report Item 4

To:	Ava Community Energy Authority Executive Committee
From:	John Perkins, Deputy General Counsel
Subject:	Updating Ava's Administrative Procurement Policy to reflect requirements leveraged by Ava's member municipalities.
Date:	April 1, 2026

Summary/Recommendation

Staff recommends adopting the updates to Ava's Administrative Procurement Policy and its Consulting Services Agreement template set forth in the accompanying presentation in order to align with contracting priorities modeled by member cities Oakland and Berkeley, *however at this time the item is informational and no action is required.*

Financial Impact

Though these proposed changes create the possibility of fiscal impact due to operational encumbrances and vendor selection, such financial impact is speculative.

Analysis and Context

This Staff Report proposes tailored updates to Ava's Administrative Procurement Policy as well as Ava's Consulting Services Agreement template to respond to the concerns that arose at the November 2025 meeting of the Ava Board of Directors that a proposed vendor "had contracts with the U.S. Immigrations and Customs Enforcement (ICE) agency".

Ava Staff and attorneys reviewed the steps that all 18 member municipalities had taken and now propose a practicable approach to mitigate concerns without unduly encumbering the operations or competitiveness of the agency.

Ava proposes the following to align with its member municipalities and address the concerns raised in November:

1. Add a section to its Administrative Procurement Policy prohibiting new or renewed contracts with any counterparty that provides Data Brokerage or Extreme Vetting services to ICE.
2. Maintain exceptions similar to those of Oakland and Berkeley for broadly available goods and services.
3. Include boilerplate language in its contracts where the counterparty represents and warrants that it does not provide the prohibited services.

Attachments

- A. Draft: Administrative Procurement Policy
- B. Draft: Consulting Services Agreement (template)
- C. Presentation: Proposed Updates to Ava's Administrative Procurement Policy



Administrative Procurement Policy

Policy Number 1.12

October 22, 2025

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I. Background and Purpose

It is in the interest of Ava Community Energy (“Ava”) to establish procurement practices for high-quality materials, finished goods, and services that balance the following:

- facilitating efficient business operations;
- providing fair compensation and local workforce opportunities; and
- maximizing value for cost

whenever possible within a framework of competitive offerings.



II. Policy Compliance Steps for Ava Staff: 3 Steps

Staff shall follow the steps below to comply with this policy:

1. Collect [required documentation](#) (page 2).
2. Match the transaction to its [transaction type\(s\)](#) (page 3).
3. Complete the [transaction requirements](#) for the transaction type (page 9).

NOTE: Any manager may apply additional requirements at their discretion provided those requirements are communicated to the Relationship Manager and the Legal team.

The 3 steps in this section represent the full scope of responsibility for Staff serving as Relationship Managers coordinating transactions. Other requirements, such as assigning a signatory and collecting approvals, are the responsibility of the Legal team.

Required Documentation

Staff shall collect the following information prior to entering into a procurement transaction:

- Taxpayer identity documentation.
 - W-9 for a US-based vendor.
 - W-8BEN for an international vendor.
- The full name and email address of the principal vendor contact.
- The full address of the vendor's place of business (either headquarters or the regional office most relevant to the transaction).

Transaction Types

Review each transaction type below to determine which types apply to your purchase.

Ava categorizes transactions into the types below in order to apply an appropriate balance of safeguards and latitude to each purchase type. Ava recognizes the following types of transactions:

1. [Power procurement](#)
2. [Combination](#)
3. [Micro-purchase](#)
4. [Mission-critical products and services](#)
5. [Exigent or emergency](#)
6. [Routine administrative](#)
7. [Sole source](#)
8. [Cooperative Purchasing](#)
9. [Regulated](#)
10. [Professional services](#)
11. [General products and services](#)



Power procurement

Power procurement transactions are those that transact for power resources, such as energy, renewable energy credits (RECs), or resource availability (RA). Power procurement transactions are not governed by this policy.

Power procurement transaction requirements

Power procurement transactions may only be executed under the management of Ava's Power Resources team and in accordance with Ava's [Energy Risk Management Policy](#).

Combination

A combination transaction is a transaction that spans more than one of the categories below.

Combination transaction requirements

For a purchase that meets the criteria for more than one type of transaction, the Relationship Manager must meet the requirements for all transaction types.

For instance, a transaction for a [micro-purchase](#) that uses federal funds (making it a [regulated](#) transaction) must meet both [Universal requirements \(page 9\)](#) and [Compliance requirements \(page 11\)](#).

Micro-purchase

A transaction qualifies as a micro-purchase if it meets all of the following criteria:

Price:	The total price (or not-to-exceed price) does not exceed \$10,000.
Subject matter:	The purchase is exclusively for one or both of the following: <ul style="list-style-type: none"> ● Physical goods. ● Services that <i>exclude</i> construction or installation services, or related services such as mechanical designs or building plans.
Governance:	The transaction does <u>not</u> involve any of the following: <ul style="list-style-type: none"> ● A written agreement. ● A purchase document (e.g. order form) <i>containing legal terms</i>. ● A purchase document with a link or other reference <i>to legal terms</i>.
Non-recurring:	The transaction may not commit Ava to a series of purchases, though Ava may reserve the right to make subsequent purchases in accordance with this policy.

Micro-purchases transaction requirements

Staff shall complete the following:



- [Universal requirements \(page 9\)](#)

NOTE: Staff shall submit the related purchase document to Ava’s Legal team to route for signature. Ava’s Legal team shall maintain a process for all documents that require signature.

Mission-critical products and services

Transactions for products and services that are, for all practical purposes, essential to Ava’s day-to-day operations qualify as purchases of mission-critical products and services.

Ava categorizes these transactions separately because they regularly raise considerations that require individualized attention and do not fit effectively into a one-size-fits-all strategy for purchasing. Mission-critical products and services can include essential technology infrastructure, commercial real estate procurement, billing/payment services, and customer service.

Ava evaluates whether a transaction qualifies as mission-critical on a case-by-case basis. To confirm whether a transaction is mission critical, Staff shall seek approval from either:

- The CEO; or
- Both the Functional Lead of your department and either the Legal Director or the General Counsel.

Considerations for whether a transaction is mission critical include the following:

- The extent to which Ava’s essential operations are dependent upon the product or service.
- The difficulty level of finding and transitioning to an alternative supplier that meets Ava’s requirements.
- The degree of financial and/or reputational harm Ava would face in the event of an outage or other material instance of unavailability.

To request that a product or service be considered mission critical, take the following steps:

1. Draft a request to management (email preferred) to label the product/service as mission critical, setting forth in detail:
 - a. Why the product/service is essential to core operations, compliance, or safety;
 - b. Why the product/service has no practicable substitutes or work-arounds; and
 - c. What severe financial, reputational, or legal harm Ava would face from the failure/unavailability of the product/service.
2. Review the proposal with your Functional Lead.
3. Deliver the proposal to the CEO and/or General Counsel/Legal Director for approval.

Mission-critical products and services transaction requirements

Staff shall complete the following:

- [Universal requirements \(page 9\)](#)
- [Contracting requirements \(page 10\)](#)



- [Board Approval \(over \\$250,000\) \(page 12\)](#)

Exigent or emergency

Exigent transactions are those (1) that a reasonable person would find must be executed without delay, and (2) where no intentional action or inaction by Ava Staff materially contributed to the urgency, for instance:

- Hiring a plumber to fix a leak.
- Abating a pest infestation or addressing a health hazard.
- Remediating compromised access to a facility.
- Finding a replacement for a vendor that became unavailable due to a reasonably unforeseeable circumstance.

Any Ava personnel of Job Level 11 (such as Director) or higher, or the General Counsel, may designate a transaction as an exigent transaction.

Emergency transactions are those that are directly related to or in response to extraordinary circumstances, such as:

- 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.
- An immediate need to prepare for national or local defense.
- A breakdown in infrastructure or an essential service which requires the immediate purchase of supplies or contractual services to protect public health, safety, or property.
- The declaration of an emergency or disaster by a valid public authority.

Only Ava's CEO or General Counsel may designate a transaction as an emergency transaction.

Exigent or emergency transaction requirements

Staff shall complete the following:

- [Universal requirements \(page 9\)](#)
- [Contracting requirements \(page 10\)](#)

Routine administrative

Routine administrative transactions must meet all of the following criteria:

Price (or not-to-exceed price):	Not in excess of \$35,000.
Subject matter:	Routine administrative transactions are limited to the following areas of goods and services: 1. Food services, including restaurants and catering.



	<ol style="list-style-type: none"> 2. Team-building and employee-appreciation events. 3. Travel, including flights and hotel accommodations. 4. Office supplies, representing consumable items regularly used in an office environment.
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Transactions for restaurants and other food-service providers, such as caterers, as well as hospitality providers such as hotels are highly regulated in the United States and most other jurisdictions. Additionally, spend on such services tends to be intermittent and of a low dollar spend compared to other materials and services. Team building services tend to be unique or limited in terms of options, and of a low spend compared to other services. For these reasons, this policy grants Ava Staff broad leeway in transactions of this type.

Routine administrative transaction requirements

Staff shall complete the following:

- [Universal requirements \(page 9\)](#)
- [Contracting requirements \(page 10\)](#)

Sole source

A sole-source transaction is one where 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 Ava or the item or service is unique and available only from a sole source. It 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.

Only the CEO, CCO, General Counsel, or functional lead of the relevant department may designate a purchase as sole-source.

Sole source transaction requirements

Staff shall complete the following:

- [Universal requirements \(page 9\)](#)
- [Contracting requirements \(page 10\)](#)
- [Board Approval \(over \\$250,000\) \(page 12\)](#)



Cooperative purchasing

Cooperative purchasing transactions as those where either (1) Ava is purchasing from another government agency; or (2) Ava is adopting an agreement all or largely identical to one negotiated by another government agency where that agreement has undergone that agency's procurement process and such process is not in conflict with California law.

Cooperative purchasing transaction requirements

Staff shall complete the following:

- [Universal requirements \(page 9\)](#)
- [Contracting requirements \(page 10\)](#)
- [Board Approval \(over \\$250,000\) \(page 12\)](#)

Regulated

Regulated transactions are those that are subject to additional requirements due to applicable law, regulation, or other valid governing authority. A transaction is regulated for the purposes of this policy if it meets either of the following criteria:

- The transaction is for installation, construction, or construction-related services for an amount in excess of \$1,000.
- Ava will pay for the transaction in whole or in part with any amount of federal funds (e.g. funds received from a federal grant).

Regulated transaction requirements

Staff shall complete the following:

- [Universal requirements \(page 9\)](#)
- [Contracting requirements \(page 10\)](#)
- [Solicitation requirements \(page 10\)](#)
- [Compliance requirements \(page 11\)](#)
- [Board Approval \(over \\$250,000\) \(page 12\)](#)

Professional services

Professional services are those that require a government license or certification, including but not limited to the following:

- legal services,
- licensed contractor services (for a dollar value less than or equal to \$1,000 after which threshold the transaction is [Regulated](#), as set forth above),
- audit services, and
- engineering services.

Providers of these services possess a high degree of specialized skill or expertise, not always adaptable to competitive bidding.



Professional services transaction requirements

Staff shall complete the following:

- [Universal requirements \(page 9\)](#)
- [Contracting requirements \(page 10\)](#)
- [Board Approval \(over \\$250,000\) \(page 12\)](#)

General products and services

A transaction that does not meet the criteria, in whole or in part, of any of the categories above is a transaction for general products and services, for instance the procurement of cleaning services or the purchase of office furniture. The majority of Ava's purchase transactions qualify under this category.

General products and services transaction requirements

Staff shall complete the following:

- [Universal requirements \(page 9\)](#)
- [Contracting requirements \(page 10\)](#)
- [Solicitation requirements \(page 10\)](#)
- [Board Approval \(over \\$250,000\) \(](#)

Transaction Requirements

The requirements below apply based on the transaction type, as detailed above.

Universal requirements

Staff shall:

- Confirm whether Ava will use federal funds to pay for the purchase in whole or in part. (**NOTE:** if such funds will be used, the transaction qualifies as [Regulated](#).)
- Undertake reasonable due diligence to procure satisfactory goods or services at an appropriate price under the circumstances.
- Confirm that the purchase represents an appropriately complete scope (see [Multiple Transactions with a Counterparty](#), below) and open a ticket with Ava's Legal team if you have any questions:
 - Confirm that no transaction has been divided into multiple purchases to avoid approval thresholds.
 - Confirm that no transaction has been segmented to avoid regulatory requirements.
 - Confirm whether the transaction would increase the total spend with the vendor for the current fiscal year over the board-approval threshold.
- Confirm compliance with Ava's [Conflicts of Interest Code](#).



- Confirm that Ava has budgeted for the first fiscal year (or remainder of the fiscal year, if applicable) of the transaction.
- Confirm that the term of the transaction does not exceed 5 years or that any extension of an existing engagement does not extend the term beyond 5 years.
- **Open a ticket with Legal to process the transaction and include the [Required Documentation](#) plus any related documentation if applicable.**

Multiple Transactions with a Counterparty

When analyzing whether multiple transactions with the same counterparty should be collectively subject to a procurement threshold or evaluated individually, Staff must consider the substance and timing of the transactions, their relationship to one another, and whether they reflect a single underlying procurement need.

Only the **Functional Lead** of the relevant group, the **CEO**, the **CCO**, or the **General Counsel** has the authority to determine whether multiple purchases with the same counterparty qualify as distinct transactions or one transaction. If you are unsure whether multiple transactions must be aggregated for the purpose of complying with this Policy, escalate to your Functional Lead.

If the transactions are closely related in purpose, scope, or timing—such as purchases of similar goods or services made within a short period—they may constitute a deliberate or de facto division of a larger procurement and should be aggregated to determine whether the applicable threshold is met.

If the transactions serve distinct purposes, arise from separate and independently justified needs, and occur over a more extended timeframe, it may be appropriate to evaluate them individually. The goal is to prevent circumvention of procurement requirements while allowing legitimate, unrelated transactions to proceed without undue aggregation.

Contracting requirements

Include in the Legal ticket the following information:

- A summary of the transaction that sets forth what you intend to purchase and why, even if it seems obvious.
- Any related deadline(s) and the source of the deadline.
- Any approvals, if applicable (e.g. confirming a [mission-critical](#) purchase or [exigent](#) purchase, or [sole source](#) purchase).
- Any related documentation, such as an order form.

The Relationship Manager must engage Ava's Legal team to execute a governing agreement. It is the responsibility of Ava's Legal team to execute the agreement in accordance with Ava's [Contracting Operations](#).



Solicitation requirements

Solicitation requirements apply only to transactions that commit (or are conservatively estimated to commit) to an amount greater than \$10,000 during one fiscal year.

Illustrative scenarios:

- A two-year contract that commits Ava to \$6,000 in the first year and \$6,000 in the second year does not implicate this requirement.
- A two-year contract that commits Ava to \$6,000 in the first year and \$12,000 in the second year must meet solicitation requirements.
- A one-year contract for a time-and-materials transaction with an uncertain cost that reasonably could exceed \$10,000 in one year must meet solicitation requirements.

If the transaction will or reasonably may exceed the value below, the Relationship Manager must meet the associated requirements (unless a transaction satisfies one of the [solicitation exceptions](#) below).

Threshold	Requirement
>\$100,000	<ul style="list-style-type: none"> • Conduct an RFQ if the purchase is exclusively for goods (including software products provided the transaction does not also include implementation or consulting services.) • Conduct an RFP if the purchase materially includes services.
>\$50,000	Solicit three (3) written quotes.
>\$10,000	Solicit three (3) written or verbal quotes.

Solicitation exception

A Relationship Manager does not need to meet solicitation requirements in situations where all of the following are true:

1. Ava has previously transacted with a vendor; and
2. Ava selected that vendor after meeting solicitation requirements; and
3. The date of the previous transaction was less than five (5) years ago; and
4. Ava intends to transact with the vendor for an amount that will not exceed \$35,000.

Illustrative scenario:

- In 2023, Ava solicited quotes for movers for a transaction of \$12,000. Based on the quotes, Ava selected Moving, Inc. In 2024, Ava reaches out to Moving, Inc. for a second



engagement and receives a quote for \$10,500. Ava may transact with Moving, Inc. without soliciting additional quotes.

Mid-negotiation changes

Where Ava has begun negotiations with a vendor in the good faith belief that a transaction would fall below a threshold set forth in the table above, and in the course of negotiations the price rises above a threshold, Ava may continue with the transaction provided that the price increase is less than or equal to fifteen percent (15%) of the original expectation. If the price increase exceeds that amount, the Relationship Manager must satisfy the requirements applicable to the new threshold.

Compliance requirements

The Relationship Manager must meet and confer with Ava's Legal team to alert the team to the proposed transaction and develop a compliance plan.

Board Approval

A contract for a committed spend of greater than \$250,000 in one fiscal year requires the approval of the Board of Directors in the form of a signed resolution or such other form as the Board may authorize from time to time.

Board Approval: Amendments, Recurrences, and Multiple Transactions

- Where: (1) a transaction changes, amends, or otherwise alters a previous transaction; and (2) that previous transaction did not meet the threshold for Board approval; and (3) the new transaction in combination with the previous transaction exceeds \$250,000; and (4) the dollar value of the new transaction alone is less than or equal to fifteen percent (15%) of the previous transaction, then no additional Board approval is required - but any addition in excess of fifteen percent (15%) requires Board approval.
- Where: (1) a contract spans multiple contract years; and (2) the aggregate committed spend is greater than \$250,000; but (3) the spend does not exceed \$250,000 in any one fiscal year, Board approval is not required.
- Where: (1) Ava conducts one or more transactions with a vendor for the same or similar products or services in the same fiscal year, the total of which does not exceed \$250,000; and (2) Ava intends to conduct a subsequent transaction with the same vendor in the same fiscal year for the same or similar products or services; and (3) the total of the foregoing transactions will or is likely to exceed \$250,000, then the subsequent transaction requires the approval of the Board.
- Where: (1) Ava has conducted a transaction with a vendor for an amount in excess of \$250,000 with the approval of the Board; and (2) Ava intends to conduct a subsequent transaction with the same vendor for the same or similar services (or amend an existing agreement to increase spend) in the same fiscal year, no additional Board approval is required.



III. Formal RFP/RFQ Procedures

Except for categories of purchases exempt from RFP/RFQ procedures or as otherwise specifically directed in writing by the CEO, agreements for the purchase of [General products and services](#) for a total amount that exceeds \$100,000 per fiscal year shall be procured as follows:

- 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.
- Evaluation. Proposals received through a competitive solicitation shall be subject to evaluation by relevant Ava Staff and such additional personnel as the CEO may direct at their discretion. Such evaluation shall take into consideration factors that Ava Staff determines are material to the prospective transaction as well as (a) whether the applicant maintains a principal place of business within Ava's service territory; (b) whether and to what extent the applicant employs union labor; (c) whether the applicant is a Disabled Veteran Business Enterprise registered with the California Department of General Services; and (d) whether the applicant maintains a principal place of business in a Disadvantaged Community (DAC) as identified by the California Environmental Protection Agency's (CalEPA) CalEnviroScreen Tool. To the extent a project is materially related to energy offtake, Ava Staff shall take into consideration the priorities of the [Ava Community Energy Workforce and Environmental Justice Project Selection Criteria](#) or such successor criteria as it may develop.

IV. Contracting Operations

- Except as otherwise noted here, any transaction for an amount in excess of \$35,000 shall require approval as to form, as evidenced by a contract signature or equivalent indicator, by an authorized Ava attorney. The General Counsel shall always qualify as an authorized attorney, and may designate other attorneys at their discretion.
 - Where such a signature or indicator is not practicable (for instance, in an electronic form contract), Ava may execute the agreement without approval as to form upon written approval by Level 14 (SVP) personnel or above.
 - For transactions governed by standard form agreements where negotiation is generally unavailable in the market (e.g. credit card agreements, software license agreements, utilities agreements), Ava may execute the agreement without approval as to form upon approval by the CEO or CCO.
 - Any agreement executed on an Ava template with no changes to legal terms and no additional legal terms, as verified by Ava's legal team, does not require a signature for approval as to form.
- 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.
- Ava's legal team shall not execute, extend, or renew any agreement for a term in excess of five (5) years without the approval of the General Counsel.
- Ava's Legal team is responsible for maintaining compliance with applicable law and



regulation, including but not limited to the Uniform Public Construction Cost Accounting Act and the California Labor Code.

- Ava's Legal team shall provide continuing instruction to Relationship Managers regarding best practices for statements of work and other purchasing documents to develop clear, functional, and minimally ambiguous purchase requirements.
- Ava's Legal team shall maintain and refine procedures for tracking compliance with this Policy, such as capturing necessary approvals. Such processes shall be available to Staff, and the Legal team shall provide periodic training sessions to all of Staff.

Signing Authority for Expenditures

Dollar threshold	Authorized signatory
Up to \$10,000	Job Level 11 (Director) or above.
Up to \$35,000	Job Level 12 (Senior Director) or above.
Up to \$100,000	Job Level 13 (Vice President) or above, or the General Counsel.
Up to \$150,000	Job Level 14 (Senior Vice President or Chief Officer) or above, or the General Counsel.
Up to \$250,000	CEO or their delegate.
Greater than \$250,000	CEO or their delegate or the General Counsel following the approval of the Board of Directors.

Signing Authority for incremental additional purchases or amendments

Where: (1) a transaction changes, amends, or otherwise alters a previous transaction; and (2) the new transaction in combination with the previous transaction exceeds the signing authority of the original signatory; and (3) the dollar value of the new transaction is less than or equal to fifteen percent (15%) of the previous transaction, the original signatory may sign - but any addition in excess of fifteen percent (15%) requires the next level of signature authority.

Where an amendment makes a non-monetary change to an existing agreement (e.g. extending the term without changing the price), the amendment must be signed by a member of Staff with the same or greater signing authority as the original signatory.

Signing Authority for non-purchase documents

The following signing authorities shall apply, after review and approval of the agreements by the General Counsel or their designee, except where in conflict with the Joint Powers Agreement or applicable law:



- Non-Disclosure Agreements – Job Level 11 (Director) and above.
- Banking and Treasury Administration – CEO; CFO; or Treasurer.
- All other documents - Job Level 13 (Vice President) and above.

Signing Authority delegation

Any manager at Ava who has signing authority may delegate their signing authority to a direct report, a peer, or the General Counsel by providing notice via email to legal@avaenergy.org or by completing a Legal ticket with this information and by providing an expiration date not later than thirty (30) days following the date of delegation.

Prohibition on Contracting

Ava shall seek to not enter into a new contract or amend or extend an existing contract with any Provider of Data Brokerage or Extreme Vetting services to ICE. Ava's Legal team shall maintain contract language in Ava's contract templates for this purpose. All public works, construction bids, requests for qualifications, requests for proposals, or any other solicitation issued by Ava shall include notice of the prohibition under this policy.

Exceptions

Notwithstanding the foregoing, this policy shall not apply to contracts with a Provider of Data Brokerage or Extreme Vetting services that provides the following categories of goods or services to ICE:

1. Widely available consumer products, including but not limited to food, beverages, office supplies, household goods, and other commodities sold in the general commercial market.
2. Broadly available commercial products or services that are offered to the general public or to a wide class of customers on similar terms, including standardized cloud or software offerings, telecommunications, payment processing, or other commodity services, provided the services or goods are not customized by the contractor for ICE for Data Brokerage and/or Extreme Vetting.

Additionally, this prohibition shall not apply where (A) no qualified vendor is available who meets this requirement; (B) the purchase qualifies as exigent or emergency as defined above; (C) application of the prohibition results in substantial cost differences; or (D) the relevant vendor has ended its contractual relationship with ICE. This Prohibition on Contracting expires on December 31, 2028.



V. Implementation of Policy Updates

Ava Staff may update this policy upon the approval of the CEO and General Counsel, with the exception of changes to dollar-value thresholds. Any such updates shall be reported to the Board within forty-five (45) days.

Any changes to dollar value thresholds herein require the approval of the Board of Directors.

VI. Definitions and Topics

1. Data Brokerage - "Data Brokerage" means (A) the collection of information, including information about consumers, from multiple sources for the purpose of reselling that information to private-sector businesses and government agencies; and (B) the aggregation of data that was collected for another purpose from that for which it is ultimately used.
2. Extreme Vetting - "Extreme Vetting" means data-mining, threat modeling, predictive risk analysis, or other similar service.
- ~~1-3.~~ Functional Lead - at Ava, a Functional Lead is a department head responsible for a dedicated function.
4. ICE - "ICE" means the United States Immigration and Customs Enforcement, and any subdivision thereof.
5. Provider - "Provider" means a natural person or legal entity offering goods and/or services, as well as (i) any third party with the lawful right or effective ability to direct that natural person or legal entity and (ii) any organization, subsidiary, affiliate, or division under operating control of such person or entity. Government entities and employees are expressly excluded from this definition.
- ~~2-6.~~ PO - See "Purchase Order," below.
- ~~3-7.~~ Purchase Order - A purchase order (PO) is a formal document issued by a buyer to a vendor to authorize a purchase. It originates from the buyer's procurement system and specifies items, quantities, and prices. POs serve as a binding agreement and help track and control spending within approved budgets. A PO is always issued by the buyer to formally request goods or services from a seller. In response, the seller may issue an invoice, sales order, or order confirmation. As of the publication of this policy, Ava only leverages purchase orders in the rare event that they are required by a vendor. For the most part, a purchase order is not a contract, does not supersede a contract, and may not be used in place of a contract.
- ~~4-8.~~ Relationship Manager - at Ava, the Relationship Manager is the member of Staff principally responsible for managing the business engagement related to a contract with a vendor.
- ~~5-9.~~ Request for Proposal - A Request for Proposals (RFP) is a formal solicitation issued by a buyer to seek competitive proposals for goods or services. It outlines needs



and evaluation criteria. Vendors respond with detailed proposals, enabling the buyer to assess qualifications and select the best-value offer.

6.10. Request for Quotation - A Request for Quotation (RFQ) is a procurement document issued by a buyer to solicit price quotes for specific goods or simple services. Originating from the buyer's purchasing department, RFQs are used when specifications are clear and selection is based primarily on price rather than qualitative factors.

7.11. RFP - see "Request for Proposal," above.

8.12. RFQ - see "Request for Quote," above.

[Month] [Year] Consulting Services Agreement

Ava Community Energy Authority ("Ava")	Signature:	
	By:	
	Date:	
	Approval as to Form:	
	Address:	1999 Harrison Street, Suite 2300 Oakland, CA 94612
	Ava Notice Emails:	legal@avaenergy.org with a cc to: [Ava representative email]
	Relationship Manager:	[Ava representative]
[Counterparty] ("Consultant")	Signature:	
	By:	
	Date:	
	Notice Attn:	[Counterparty representative]
	Phone:	
	Notice Address:	
	Notice Email(s):	
Effective Date		
Expiration Date		
Not To Exceed ("NTE")		
Summary		

~~June-February 2025-2026~~ template.

This Consulting Services Agreement (the "Agreement") is made by and between Ava Community Energy Authority, a joint powers authority formed under the laws of the State of California ("Ava"), and the counterparty set forth above ("Consultant") as of the Effective Date. Ava and Consultant are herein referred to as "Parties" or individually as a "Party."

1. Recitals

- 1.1. Ava Recitals. Ava is an independent joint powers authority duly organized under the provisions of the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) with the power to conduct its business and enter into agreements.
- 1.2. Consultant Recitals. Consultant possesses the skill, experience, ability, background, certification and knowledge to complete the Work described in Section 3 of this Agreement pursuant to the terms and conditions described herein.

NOW THEREFORE, for good and valuable consideration, the amount and sufficiency of which is hereby acknowledged, the Parties to this Agreement, agree as follows:

2. Term. The term of this Agreement begins as of the Effective Date of this Agreement ends as of the Expiration Date, unless terminated earlier pursuant to Section 8 (Termination).
3. Scope of Work/Compliance with Laws and Regulations.
 - 3.1. Work. Consultant agrees to perform the scope of work (the "Work") in Exhibit A in accordance with the schedule in Exhibit B.
 - 3.2. Requirements. Consultant represents and warrants that it has the skill and expertise to perform the Work. Consultant agrees to obtain any and all necessary licenses, approvals or permits necessary to perform the Work. Consultant further represents and warrants that, to the best of the Consultant's knowledge upon reasonable diligence, the Consultant has not provided Data Brokerage or Extreme Vetting services to the United States Immigration and Customs Authority since January 2025. Consultant agrees not to provide such services during the Term of the Agreement. For the purposes of this provision, (i) "Data Brokerage" means (A) the collection of information, including information about consumers, from multiple sources for the purpose of reselling that information to private-sector businesses and government agencies; and (B) the aggregation of data that was collected for another purpose from that for which it is ultimately used; and (ii) "Extreme Vetting" means data-mining, threat modeling, predictive risk analysis, or other similar service.
 - 3.3. Legal Compliance. Consultant and its contractors, consultants, sub-suppliers, affiliates, agents and any other person or entity with whom the Consultant contracts in furtherance of this Agreement (collectively "Subconsultants") must comply with all federal, state and local laws and regulations in performing the Work under this Agreement. Without limiting the foregoing, if work required to be performed by the Consultant is a "public work" as defined in California Labor Code Section 1720, then pursuant to the provisions of Labor Code Sections 1725.5 and 1771, the Consultant shall be registered with the Department of Industrial Relations ("DIR"), and will pay and require subcontractors to pay the general prevailing rate of per diem wages and the general rate for holiday and overtime work in this locality for each craft, classification, or type of worker needed to perform this Agreement, as established by the DIR. As of the execution of this Agreement, these rates may be obtained at: <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Consultant shall provide a copy of prevailing wage rates to any staff, contractor and/or Subconsultant hired by Consultant for this Agreement and shall pay the adopted prevailing wage rates as a minimum. Consultant shall comply with the provisions of Sections 1773.8, 1775, 1776, 1777.5, 1777.6, and 1813 of the Labor Code. Pursuant to the provisions of 1775 of the Labor Code, Consultant shall forfeit to Ava, as a penalty, the sum of \$200.00 for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, is paid less than the applicable prevailing wage rates for any work done under this Agreement, by them or by any subcontractor under them, in violation of the provisions of the Agreement.
4. Consultant Staffing. Exhibit C contains a list of Consultant's principal and all team members. Consultant will not change or substitute the principal or any team members or add additional team members without consultation with Ava.
5. Subconsultants.
 - 5.1. Approved Subconsultants. Consultant agrees to use only those Subconsultants listed on Exhibit D. Consultant shall notify Ava within a reasonable period of time of any changes, additions, or removals of a Subconsultant.

5.2. Subconsultant Compliance. Consultant agrees to require all Subconsultants to comply with the terms of this Agreement, including without limitation, the public works requirements in Section 3.3, the insurance obligations under Section 9, the confidentiality requirements under Section 11, and the requirement to indemnify Ava as provided in Section 12.

6. Invoicing and Payment.

6.1. Time and Materials. If the Work under this Agreement is to be performed on a time and materials basis, Consultant must submit invoices to Ava on a monthly basis, complete with the name of the individual that conducted the Work, the time spent, and a brief description of the tasks performed during that time. If requested by Ava, Consultant must include the contract number provided by Ava and the total compensation remaining on the Agreement on each monthly invoice. Notification to Ava should be provided once the contract budget has been used up by 80% (including invoiced work and work that may not have been invoiced yet) the amount of which is set forth in Exhibit E. Invoices must be submitted to Ava by the 20th of the month following the month in which Consultant performed the Work.

6.2. Milestone. If the Work under this Agreement is to be performed on a task or project basis, the Consultant will submit an invoice within thirty (30) days of completing the project to the satisfaction of Ava for full payment, unless other arrangements have been made.

6.3. Markups. Ava will not agree to pay any markups on Subconsultant services or supplies unless such markups are included in Exhibit E, Compensation/Budget and such markups were included in Consultant's bid, if applicable.

6.4. Payment Processing. The following are conditions on Ava's obligation to process any payments under this Agreement:

6.4.1. If the Consultant is a U.S. based person or entity, the Consultant must provide to Ava a properly completed Internal Revenue Service Form W-9 before Ava will process payment. If the Consultant is a U.S based person or entity but has neither a permanent place of business in California nor is registered with the California Secretary of State to do business in California, the Consultant must provide Ava with a properly completed California Franchise Tax Board form related to nonresident withholding of California source income before Ava will process payment.

6.4.2. If the Consultant is not a U.S. based person or entity, the Consultant must provide Ava with the applicable Internal Revenue Service form related to its foreign status and a California Franchise Tax Board form related to nonresident withholding before Ava will process payment.

6.5. Payment. Ava agrees to pay undisputed invoices within forty-five (45) days of receipt. Invoices may be sent to Ava by U.S. mail or electronic mail to AP@avaenergy.org. Invoices will be deemed received on the next business day following the date of receipt via electronic mail or three days after receipt via U.S. mail. Notwithstanding anything to the contrary in this Agreement or any related document, Ava shall have no obligation to remit payment for fees in excess of the NTE.

6.6. Members. Ava, as a joint powers authority, is a separate public entity from its constituent members and will be solely responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Consultant acknowledges that it will have no rights and agrees not to make any claims, take any actions or assert any remedies against any of Ava's constituent members in connection with this Agreement.

7. Records Retention and Ownership of Work Product.

7.1. Records. The Consultant must retain all ledgers, books of accounts, invoices, vouchers, cancelled checks, background materials, or other records relating to its performance under this Agreement for a period of three (3) years following termination of this Agreement.

7.2. Ownership. Ava owns all rights, including without limitation, all licenses, copyrights, service marks and patents, in and to all Work Product(s), whether written or electronic, without restriction or limitation upon their use and immediately when and as created by the Consultant, any Subconsultants, or any other person engaged directly or indirectly by the Consultant to perform under this Agreement. "Work Product(s)" means all writings, reports, drawings, plans, data, video, media, photographs, renderings,

plans, software, models, and other similar documents and materials developed or created by Consultant or its Subconsultants on behalf of or for use by Ava under this Agreement. All Work Product(s) will be considered "works made for hire," and together with any and all intellectual property rights arising from their creation will be and remain the property of Ava without restriction or limitation upon their use, duplication or dissemination by Ava. Consultant agrees not to obtain or attempt to obtain copyright protection in its own name for any Work Product.

8. Termination.

- 8.1. Upon Notice. Ava may terminate this Agreement for any reason by giving Consultant written notice. The termination notice may set the date of termination, but if no such date is given, termination is effective seven (7) days following the date of the written notice.
- 8.2. For Breach. Ava may terminate this Agreement immediately upon written notice for any material breach of this Agreement by Consultant or any of its Subconsultants. If Ava terminates this Agreement for cause and obtains the same services from another consultant at a greater cost, the Consultant is responsible for such excess costs in addition to any other remedies available to Ava.
- 8.3. Completion Option. Upon termination for any reason, Ava has the option of requiring the Consultant to complete work up to the date of termination or to cease work immediately. Ava has the further option to require Consultant to provide Ava any finished or unfinished Work or Work Product prepared by the Consultant up to the date of termination.
- 8.4. Payment. Ava will pay Consultant the reasonable value of services satisfactorily rendered by the Consultant to Ava up to the date of written notice of termination. If Ava authorizes Consultant to continue performing the Work through the date of termination, Ava will pay Consultant the reasonable value of services satisfactorily rendered up through the date of termination, providing such services are in compliance with the Compensation/Budget in Exhibit E.
- 8.5. Return of Work Product. Upon termination of this Agreement, and at no cost to Ava, Consultant, its Subconsultants and anyone working for Ava under control of Consultant must return all Work Product to Ava and cooperate with any subsequent consultant during any transition. Consultant may only retain copies of the Work Product by express written permission of Ava.

9. Insurance

- 9.1. Proof of Insurance. Consultant must procure, maintain and comply with the insurance requirements in Exhibit F throughout the full term of this Agreement. Consultant must provide proof of insurance either in the form of a certificate of insurance or, if requested by Ava, a copy of the insurance policy, prior to performing any work under this Agreement.
- 9.2. Ongoing Coverage. Consultant agrees to stay in compliance with the insurance coverage requirements during the term of this Agreement. Consultant must give Ava ten (10) days written notice and obtain Ava's written approval prior to making any modifications that would reduce its insurance coverage.
- 9.3. Subconsultant Coverage. Consultant must either include Subconsultants under its insurance policies or require each Subconsultant to comply with the insurance obligations in Exhibit F.

10. No Discrimination or Conflict of Interest

- 10.1. Non-Discrimination. Consultant represents and warrants, on behalf of itself and its Subconsultants, that it has not and will not discriminate against anyone based on his/her age, color religion, sex, sexual orientation, disability, race, national origin, or any other protected category under state or federal law.
- 10.2. Conflict of Interest. Consultant represents and warrants, on behalf of itself and its Subconsultants, that it is familiar with local, state and federal conflict of interest laws, that in entering into this Agreement it is not violating any of the conflict of interest laws, that it will avoid any conflicts of interest during the term of this Agreement, and that it will notify Ava immediately if it identifies any conflicts of interest Consultant understands that violations of this Section 10 could result in immediate termination of this Agreement and disgorgement of compensation.

11. Confidentiality

- 11.1. **Non-Disclosure.** Except as authorized by Ava or as otherwise required by law, Consultant shall not disclose to any third party any draft or final Work Product, discussions or written correspondence between Consultant and its Subconsultants or discussions or written correspondence between Consultant and Ava staff. In the event Consultant receives a request from any third party requesting disclosure of any Work Product, discussions, communications or any other information Consultant is prohibited from disclosing, Consultant will immediately notify Ava and wait for direction from Ava before disclosing the information.
- 11.2. **Third Parties.** For the purposes of this Section 11, “third party” refers to any person or group other than Ava staff and Board members. For example, “third parties” include community groups, Board advisory groups, other governmental agencies, other consultants or members of the community.
- 11.3. **Confidentiality Survival.** This Section 11 will survive the expiration or termination of this Agreement.
- 11.4. **Public Records Act.** **The Parties understand and agree that (1) this Consulting Services Agreement is subject to public disclosure under the California Public Records Act (“CPRA”); (2) a request pursuant to the CPRA may obligate Ava to disclose this Agreement, in whole or in part, to the requestor; and (3) Consultant is solely responsible for the inclusion of any information herein that Consultant may consider sensitive and should not include sensitive information within this Agreement.**

12. Indemnity

- 12.1. **General Indemnity.** Except with regard to any matter involving professional negligence, Consultant agrees, at its sole cost and expense, to indemnify, defend with counsel reasonably approved by Ava, and protect and hold harmless Ava, its officers, directors, employees, agents, attorneys, designated volunteers, successors and assigns, and those Ava agents serving as independent contractors in the role of Ava staff (collectively “Ava Indemnitees”) from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, penalties, judgements, liens and losses of whatever nature (“Claims”) that arise, directly or indirectly, in whole or in part, out of or are in any way related to Consultant’s or Subconsultant’s performance or failure to perform the Work under this Agreement, regardless of whether the Consultant or its Subconsultants acted or failed to act intentionally, willfully, recklessly or negligently. Consultant agrees that its indemnity and defense obligations include all costs and expenses, including all attorney fees, expert fees, mediation, arbitration, or court costs in connection with the defense. Consultant further agrees to indemnify, defend, protect and hold harmless Indemnitees from and against any breach of this Agreement and any infringement of patent rights, trade secret, trade name, copyright, trademark, service mark or any other proprietary right of any person(s) caused by Ava’s use of any services, Work Product or other items provided by Consultant or its Subconsultants under this Agreement.
- 12.2. **Professional Negligence.** With regard to any matter involving professional negligence, Consultant agrees, at its sole cost and expense, to indemnify, defend with counsel reasonably approved by Ava, and protect and hold harmless the Ava Indemnitees from and against any and all Claims to the extent arising out of or resulting from Consultant’s or Subconsultant’s negligence, recklessness, or willful misconduct. In no event shall the cost to defend charged to Consultant exceed the Consultant’s proportionate percentage of fault.
- 12.3. **Exceptions.** Consultant’s obligations in Subsections 12.1 and 12.2 do not apply to the extent any Claim results from the negligence or willful misconduct of the Ava Indemnitees.
- 12.4. **Indemnitees.** Except as limited by Subsection 12.2, Consultant’s obligation to defend Ava applies to the maximum extent allowed by law and includes defending Indemnitees as set forth in California Civil Code sections 2778 and 2782.8.
- 12.5. **Insurance.** The Consultant’s obligations under Section 12 apply regardless of the existence or amount of insurance the Consultant carries or has made available to Ava.

12.6. Indemnification Survival. The Parties agree that this Section 12 survives the expiration or earlier termination of the Agreement.

13. Consultant is an Independent Contractor

13.1. Relationship of the Parties. Consultant and its Subconsultant(s) are and at all times will be independent contractors. Consultant has complete control over its operations and employees and is not an agent or employee of Ava and must not represent or act as Ava's agent or employee. Consultant agrees, on behalf of itself and its employees and Subconsultants, that it does not have any rights to retirement benefits or other benefits accruing to Ava employees, and expressly waives any claim it may have to any such rights.

13.2. Relationship of Subconsultants. As an independent contractor, Consultant has complete control over its Subconsultants. Subject to the requirements of Section 5 of this Agreement, Consultant is solely responsible for selecting, managing and compensating its Subconsultants, and for ensuring they comply with this Agreement.

14. Miscellaneous Terms and Conditions

14.1. Ava Authority. The Chief Executive Officer or his/her designee is authorized to take all actions under this Agreement, including without limitation, amendments that fall within the Chief Executive Officer's signing authority, termination or modification of terms.

14.2. Waiver. Waiver by either party of any one or more conditions, Sections, provisions or performance of this Agreement will not be a waiver of any other provision; nor will failure to enforce a provision or Section in one instance waive the right to enforce such provision or Section in the future. In no event will payment by Ava to Consultant constitute or be construed as a waiver by Ava of any breach or default of this Agreement, nor will such payment prejudice any of Ava's other rights or remedies.

14.3. Governing Law. Consultant and Ava agree that this Agreement will be interpreted under the laws of the State of California.

14.4. Venue. Any litigation resulting from this Agreement will be filed and resolved by a state court in Alameda County, California, or if appropriate, the federal courts in the Northern District of California located in San Francisco.

14.5. Audit Rights. All records or documents required to be kept pursuant to this Agreement must be made available for audit at no cost to Ava, at any time during regular business hours, upon written request by Ava. Copies of such records or documents shall be provided to Ava at Ava's offices unless an alternative location is mutually agreed upon.

14.6. Recitals and Exhibits. The Recitals in Section 1 above are intentionally made a part of this Agreement. All Exhibits and any other documents incorporated by reference are a part of this Agreement.

14.7. Notices. Notices to Ava shall be effective upon delivery to all email addresses in Ava Notice Emails, above. Any notices required to be given to Contractor under this Agreement must be made in writing and may be delivered a) personally, in which case they are effective upon receipt; b) by U.S. Mail, in which case they are effective three (3) days following deposit in the U.S. Mail, unless accompanied by a return receipt in which case, they are effective upon the date on the receipt; or c) by electronic mail, in which case they are effective upon confirmation of receipt, and if no confirmation of receipt, they are effective one day after transmission. All notices to Contractor must be sent to the Notice Address or Notice Email(s).

14.8. Assignment. Except to the extent this Agreement authorizes Consultant to use Subconsultants, Consultant will not assign any part of this Agreement without Ava's prior written consent. Ava, at its sole discretion, may void this Agreement if a violation of this provision occurs.

14.9. Integrated Agreement. The Recitals, this Agreement and the Exhibits attached to this Agreement contain the complete understanding between Ava and Consultant and supersedes any

prior or contemporaneous negotiations, representations, agreements, understandings and statements, written or oral respecting the Work up through the Effective Date of this Agreement.

- 14.10. Amendments. Any and all amendments or modifications to this Agreement must be made in writing and signed by each Party before such amendment will be effective.
- 14.11. Government Claims Act. Nothing in this Agreement waives the requirements to comply with the California Government Claims Act (Government Code Section 810 et seq.), where applicable.
- 14.12. Severability. If a court of competent jurisdiction holds any Section or part of this Agreement to be invalid or unenforceable for any reason and the Work can still be performed, the Parties agree to sever the invalid or unenforceable Section from this Agreement and that all remaining Sections or parts of this Agreement will continue to be enforceable.
- 14.13. Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together will constitute one and the same instrument and each of which will be deemed an original.
- 14.14. No Party Deemed Drafter. This Agreement will be considered for all purposes as prepared through the joint efforts of the Parties and will not be construed against one Party or the other as a result of the preparation, substitution, submission, or other event of negotiation, drafting or execution hereof.
- 14.15. Supplier Diversity. Ava is required to report to the California Public Utilities Commission ("CPUC") on their diverse suppliers, as defined by CPUC General Order 156. Consistent with the California Public Utilities Code and California Public Utilities Commission policy objectives, Consultant agrees to document and provide information to Ava regarding Consultant's status and any engagement of women, minority, disabled veteran, persons with disabilities, and LGBT owned business enterprises in its completion of the Work under this Agreement. Specifically, Consultant agrees to complete Ava's Supplier Diversity questionnaire, which may be updated or revised during the term of the Agreement, and otherwise reasonably cooperate with Ava to provide the information described above. Consultant shall provide such information in the timeframe requested by Ava and in no event later than January 31 of the year following the Effective Date of this Agreement.

LIST OF EXHIBITS

EXHIBIT A: SCOPE OF WORK

EXHIBIT B: SCHEDULE

EXHIBIT C: CONSULTANT STAFFING

EXHIBIT D: SUBCONSULTANTS

EXHIBIT E: COMPENSATION/BUDGET

EXHIBIT F: INSURANCE REQUIREMENTS

Exhibit A

SCOPE OF WORK

[Draft Scope of Work here and remove italicized language below when finalizing]

A Scope of work should aim to be as concise as possible while ensuring all necessary details of the services are captured. A good Scope should include:

- Summary of Services
- Purpose and Objectives of Services (This could be in narrative form and provide the general purpose of the services)

And may include:

- Definitions of any Critical Terms (Any definitions, clarifications could be included here)
- List of any Supplemental Documents (If there is a lengthy document that does not make sense to copy and paste into the Scope of Work it could be referenced here)
- Tasks and Deliverables
 - o List each task (and any related subtasks)
 - o List required updates/reports on progress
 - o List deliverable for each task
 - o List schedule/due date for each task and for each deliverable
 - o List any other milestone dates
- Exclusions/Exceptions and Additional Services (If there is anything that is specifically excluded from the Scope of Work that can be listed here. If there are additional services or costs (such as new services or travel costs), we can list the proposed costs and the process for selecting them here)
- Any Other Conditions (If there is something unique to the project that does not fit into the other categories).

Additional Services:

Consultant will not provide additional services outside of the services identified in Exhibit A, unless it obtains advance written authorization from the project manager or lead Ava representative prior to commencement of any additional services.

Exhibit B

SCHEDULE

[Schedule - can be detailed or as simple as "As directed by Ava."]

Exhibit C

CONSULTANT STAFFING

[Include names of all team members who will be providing Ava services.]

Exhibit D

SUBCONSULTANTS

[If subconsultants are authorized in advance, they should be listed here, otherwise it can state either of these: "Subconsultants are not authorized under this Agreement." or "Subconsultants must be authorized in advance, in writing by Ava."]

Exhibit E

COMPENSATION/BUDGET

[If the compensation is hourly, a table of hourly rates by title should be included. If fixed fee, describe what amounts are to be paid based on what milestones]

For the purposes of Section 6.1 (Time and Materials), 80% of the total compensation under this agreement (see NTE on page 1) is [\$\$\$]

Exhibit F

INSURANCE REQUIREMENTS

A. Minimum Scope and Limits of Insurance. Consultant must procure, and at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

- 1) Commercial General Liability Insurance with a minimum limit of One Million Dollars (\$1,000,000.00) per occurrence for bodily injury, personal injury and property damage and a general aggregate limit of Two Million Dollars (\$2,000,000.00) per project or location. If Consultant is a limited liability company, the commercial general liability coverage must be amended so that Consultant and its managers, affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.
- 2) Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with a combined single limit of One Million Dollars (\$1,000,000.00) per accident for bodily injury and property damage.
- 3) Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance with a minimum limit of One Million Dollars (\$1,000,000.00) per accident for bodily injury or disease. If Consultant has no employees while performing the Work under this Agreement, workers' compensation policy is not required, but Consultant must execute a declaration that it has no employees.
- 4) Professional Liability/Errors & Omissions Insurance with minimum limits of Two Million Dollars (\$2,000,000.00) per claim and in aggregate.

B. Acceptability of Insurers. The insurance policies required under this Exhibit F must be issued by an insurer admitted to write insurance in the State of California with a rating of A:VII or better in the latest edition of the A.M. Best Insurance Rating Guide.

C. Additional Insured/Additional Named Insured. The automobile liability policies must contain an endorsement naming Ava, its officers, employees, agents and volunteers as additional insureds. The commercial general liability policy must contain an endorsement naming Ava, its officers, employees, agents and volunteers as additional named insureds.

D. Primary and Non-Contributing. The insurance policies required under this Agreement must apply on a primary non-contributing basis in relation to any other insurance or self-insurance available to Ava. Any insurance or self-insurance maintained by Ava, its officers, employees, agents or volunteers, will be in excess of Consultant's insurance and will not contribute with it.

E. Consultant's Waiver of Subrogation. The insurance policies required under this Agreement will not prohibit Consultant and Consultant's employees, agents or Subconsultants from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against Ava.

F. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by Ava. At Ava's option, Consultant must either reduce or eliminate the deductibles or self-insured retentions with respect to Ava, or Consultant must procure a bond guaranteeing payment of losses and expenses.

G. Cancellations or Modifications to Coverage. Consultant agrees not to cancel any insurance coverage during the term of this Agreement. Consultant further agrees not to reduce or otherwise modify the insurance policies required by this Agreement during the term of this Agreement, without the prior written approval of Ava. The commercial general and automobile liability policies required under this Agreement must be endorsed to state that should the issuing insurer cancel the policy before the expiration date, the issuing insurer will endeavor to mail thirty (30) days' prior written notice to Ava. If any insurance policy required under Agreement is canceled or reduced in coverage or limits, Consultant must, within two (2) business days of notice from the insurer, phone and notify Ava via electronic mail and certified mail, return receipt requested, of the cancellation of or reductions to any policy.

- H. **Ava Remedy for Noncompliance.** If Consultant does not maintain the policies of insurance required under this Agreement in full force and effect during the term of this Agreement, or in the event any of Consultant's policies do not comply with the requirements of this Exhibit F, Ava may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, Ava may, but has no duty to, take out the necessary insurance and pay, at Consultant's expense, the premium thereon. Consultant must promptly reimburse Ava for any premium paid by Ava or Ava, in its sole discretion, may withhold amounts sufficient to pay the premiums from payments due to Consultant.
- I. **Evidence of Insurance.** Prior to the performance of the Work under this Agreement, Consultant must furnish Ava with a certificate or certificates of insurance and all original endorsements evidencing and effecting the coverages required under this Agreement. The endorsements are subject to Ava's approval. Ava may request, and Consultant must provide complete, certified copies of all required insurance policies to Ava. Consultant must maintain current endorsements on file with Ava. Consultant must provide proof to Ava that insurance policies expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Consultant must furnish such proof at least two (2) weeks prior to the expiration of the coverages.
- J. **Indemnity Requirements not Limiting.** Procurement of insurance by Consultant will not be construed as a limitation of Consultant's liability or as full performance of Consultant's duty to indemnify Ava under Section 12 of this Agreement.
- K. **Subconsultant Insurance Requirements.** Consultant's insurance coverage must include its Subconsultants or Consultant must require each of its Subconsultants that perform Work under this Agreement to maintain insurance coverage that meets all the requirements of this Exhibit F.

Proposed Updates to Ava's Administrative Procurement Policy



Background:

- Context & Considerations
- Oakland & Berkeley's Approaches
- Ava's Proposed Approach



Context & Considerations

The content of this presentation addresses the concern that arose at the November 2025 meeting of the Ava Board of Directors that a proposed vendor “had contracts with the U.S. Immigrations and Customs Enforcement (ICE) agency”.

- The issue raised centered primarily on the concerning aggressive activity of ICE under the current administration
- No requirements or restrictions related to ICE were contained in the RFP that Ava had issued, which is standard in Ava’s RFP process to date.
- In response to the concerns, Ava Staff undertook to understand how member municipalities had addressed this issue (if at all) and to propose a practicable approach to mitigate concerns, while not overly encumbering the operations or competitiveness of Ava.



Context & Considerations, cont'd.

Research and Analysis:

- Ava's outside counsel conducted a comprehensive review of Ava's 18 member jurisdictions to understand how each has approached this issue.
- The research found that two member jurisdictions, Berkeley and Oakland, have addressed this issue directly in their procurement policies, as detailed below.
- Ava continues to monitor the responses of other member jurisdictions.

Distinguishing Ava's role and mandate:

- Where our member cities and counties have broad authority and a broad array of responsibilities as municipalities, Ava's specific mission is far more narrowly focused around providing clean, affordable, and reliable energy to its member jurisdictions.
- As noted below, member cities and counties are able to leverage their status as Sanctuary Cities, a status implicitly unavailable to Ava.



Context & Considerations, cont'd.

Considerations:

- Responding appropriately and proportionately to public input.
- Maintaining Ava's ability to efficiently and cost effectively contract with skilled service providers to most effectively and rapidly further the agency's priorities around clean, affordable, and reliable energy.



Oakland & Berkeley's Approaches

- **Berkeley** prohibits contracting with any person or entity that provides an Immigration Authority with any "Data Broker" or "Extreme Vetting" services.
 - "Immigration Authority" means any person or agency engaging in efforts to investigate, enforce, or assist in the investigation or enforcement of federal immigration law against natural persons.
 - "Data Broker" means one who engages in (A) the collection of information, including information about consumers, from multiple sources for the purpose of reselling that information to private-sector businesses and government agencies; and (B) the aggregation of data that was collected for another purpose from that for which it is ultimately used.
 - "Extreme Vetting" means data-mining, threat modeling, predictive risk analysis, or other similar service.
 - Berkeley expressly excludes computer-network health and performance tools and cybersecurity technologies and systems from its definition.



Oakland & Berkeley's Approaches, cont'd.

- **Oakland** prohibits contracting with any person or entity that provides the United States Immigration and Customs Enforcement (ICE), United States Customs and Border Protection (CBP), or Department of Health and Human Services Office of Refugee Resettlement (HHS/ORR) with any “Data Broker”, “Extreme Vetting”, or “Detention Facilities” services.
 - “Data Broker” - same as Berkeley.
 - “Extreme Vetting” - same as Berkeley.
 - “Detention facilities” means any private party that provides operational support to a facility intended or used for immigration detention purposes.



Oakland & Berkeley's Approaches, cont'd.

- Both cities require contractors to certify that they do not provide such services to immigration authorities.
- Both cities leverage their status as Sanctuary Cities as the basis for their prohibitions by issuing and amending Sanctuary City ordinances and related certifications.
- Flexibility:
 - Both cities use the terms "Data Broker" and "Extreme Vetting" to allow staff to efficiently search databases and narrowly tailor the prohibitions so that routine or incidental commercial relationships with ICE (e.g., commodity sales) are not unintentionally barred.
 - Both cities allow waivers when "no reasonable alternative exists."
 - Oakland also provides four explicit exemptions: no other vendors available; emergency response needs; substantial cost differences; or vendors that have ended relationships with ICE/CBP.



Ava's Proposed Approach

- Ava seeks to not enter into contracts with any person or entity that provides the United States Immigration and Customs Enforcement (ICE) with Data Brokerage or Extreme Vetting services.
- Ava intends to implement this approach as follows:
 - Add a section to its Administrative Procurement Policy prohibiting new or renewed contracts with any counterparty that provides Data Brokerage or Extreme Vetting services to ICE.
 - Maintain exceptions similar to those of Oakland and Berkeley for broadly available goods and services.
 - Include boilerplate language in its contracts where the counterparty represents and warrants that it does not provide the prohibited services.
- These proposed changes have been reviewed with an ad hoc committee of the board of 7 members



The Proposed Implementation: What & Why



What (1 of 3) - Procurement Policy

Why

Prohibition on Contracting

Ava shall seek to not enter into a new contract or amend or extend an existing contract with any Provider of Data Brokerage or Extreme Vetting services to ICE. Ava's Legal team shall maintain contract language in Ava's contract templates for this purpose. All public works, construction bids, requests for qualifications, requests for proposals, or any other solicitation issued by Ava shall include notice of the prohibition under this policy.

Exceptions

Notwithstanding the foregoing, this policy shall not apply to contracts with a Provider of Data Brokerage or Extreme Vetting services that provides the following categories of goods or services to ICE:

1. Widely available consumer products, including but not limited to food, beverages, office supplies, household goods, and other commodities sold in the general commercial market.
2. Broadly available commercial products or services that are offered to the general public or to a wide class of customers on similar terms, including standardized cloud or software offerings, telecommunications, payment processing, or other commodity services, provided the services or goods are not customized by the contractor for ICE for Data Brokerage and/or Extreme Vetting.

Additionally, this prohibition shall not apply where (A) no qualified vendor is available who meets this requirement; (B) the purchase qualifies as exigent or emergency as defined above; (C) application of the prohibition results in substantial cost differences; or (D) the relevant vendor has ended its contractual relationship with ICE. This Prohibition on Contracting expires on December 31, 2028.

This is an addition to the Contracting Operations section of the Procurement Policy setting forth Ava's position on contracting with providers of data collection to ICE.

- The addition notes that language reflecting this position will be maintained in both Ava's contract templates and RFP template.
- The addition includes two common exceptions that are necessary so the policy is not impracticable.
- The burden is on the vendor to represent that it is compliant, not on Staff to verify. Non-compliance qualifies as breach.

What (2 of 3) - Procurement Policy

Why

VI. Definitions and Topics

1. Data Brokerage - "Data Brokerage" means (A) the collection of information, including information about consumers, from multiple sources for the purpose of reselling that information to private-sector businesses and government agencies; and (B) the aggregation of data that was collected for another purpose from that for which it is ultimately used.
2. Extreme Vetting - "Extreme Vetting" means data-mining, threat modeling, predictive risk analysis, or other similar service.
4. Functional Lead - at Ava, a Functional Lead is a department head responsible for a dedicated function.
5. ICE - "ICE" means the United States Immigration and Customs Enforcement, and any subdivision thereof.
6. Provider - "Provider" means a natural person or legal entity offering goods and/or services, as well as (i) any third party with the lawful right or effective ability to direct that natural person or legal entity and (ii) any organization, subsidiary, affiliate, or division under operating control of such person or entity. Government entities and employees are expressly excluded from this definition.
7. PO - See "Purchase Order," below.

Adds definitions pertinent to Ava's position, above.

What (3 of 3) - CSA

Why

3.2 Requirements.- Consultant represents and warrants that it has the skill and expertise to perform the Work.- Consultant agrees to obtain any and all necessary licenses, approvals or permits necessary to perform the Work. Consultant further represents and warrants that, to the best of the Consultant's knowledge upon reasonable diligence, the Consultant has not provided Data Brokerage or Extreme Vetting services to the United States Immigration and Customs Authority since January 2025. Consultant agrees not to provide such services during the Term of the Agreement. For the purposes of this provision, (i) "Data Brokerage" means (A) the collection of information, including information about consumers, from multiple sources for the purpose of reselling that information to private-sector businesses and government agencies; and (B) the aggregation of data that was collected for another purpose from that for which it is ultimately used; and (ii) "Extreme Vetting" means data-mining, threat modeling, predictive risk analysis, or other similar service.

Provides language prohibiting engagements with such providers.

NOTE: As a reminder, this provision and the updates to the Procurement Policy apply only to goods and services other than power resources procurement.

Conclusion & Next Steps

- 1) Seeking feedback on the recommended approach and a committee recommendation to bring to the board

- 2) Timing and next steps for Ava board engagement
 - a) To be brought forth to the April board meeting for approval
 - b) Ava staff continues to work on the customer programs roadmap to mitigate delays caused by the vendor selection process

