



**RCA
CITY OF AUSTIN
RECOMMENDATION FOR COUNCIL ACTION**

**AGENDA ITEM NO.: 2
AGENDA DATE: Thu 05/27/2004
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SUBJECT: Approve a resolution adopting revised purchasing procedures for the City's municipally-owned electric utility, Austin Energy, in accordance with provisions of the electric utility restructuring legislation (Senate Bill 7) enacted into law by the 76th Session of the Texas Legislature.

AMOUNT & SOURCE OF FUNDING: N/A

FISCAL NOTE: There is no unanticipated fiscal impact. A fiscal note is not required.

REQUESTING Austin Energy
DEPARTMENT:

**DIRECTOR'S
AUTHORIZATION:** Juan Garza

FOR MORE INFORMATION CONTACT: Carole Martindale, Purchasing Manager/ 322-6155

PRIOR COUNCIL ACTION: Changes to Austin Energy purchasing procedures, March 30, 2000.

BOARD AND COMMISSION ACTION: Recommended by the Electric Utility Commission.

PURCHASING: N/A

MBE / WBE: N/A

Senate Bill 7 provides municipally-owned electric utilities an exemption from the purchasing requirements of Chapter 252 of the Local Government Code if the municipally-owned electric utility's governing body adopts substitute purchasing procedures. On March 30, 2000, the Council adopted a Resolution establishing such purchasing procedures. The proposed Resolution will revise these purchasing procedures by: (1) changing the threshold for advertising a solicitation from \$15,000 to the then-current amount established by Chapter 252 of the Local Government Code (currently \$25,000); (2) changing the threshold amount for non-competitive procurements from \$5,000 to one-half of the Chapter 252 threshold amount (currently \$12,500); and (3) permitting Austin Energy to enter into interlocal contracts for amounts less than the City Council expenditure approval threshold without City Council approval.

The purchasing procedures established by this Resolution will serve the public purpose of protecting and enhancing the competitive position of Austin Energy. Further, these purchasing procedures will benefit the customers and ratepayers of Austin Energy by providing that all purchases by Austin Energy of equipment, supplies, materials, and services shall continue to be made in a manner that: (1) conforms with all applicable state and city procurement laws and the City Charter; (2) is beneficial and cost-effective; and (3) is fair and equitable to suppliers and service providers.

This Resolution will greatly increase the flexibility and efficiency of the procurement process for Austin Energy. City Council will continue to review and approve the contracts as required by the City Charter.

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RESOLUTION NO. _____

WHEREAS, Senate Bill 7 enacted into law by the 76th Session of the Texas Legislature and signed by the Governor on June 18, 1999, with an effective date of September 1, 1999, amends Chapter 252 of the Local Government Code to exempt from the requirements of such Chapter expenditures made by a municipally owned electric utility for any purchases made by the municipally owned electric utility in accordance with procurement procedures adopted by a resolution of its governing body that sets out the public purpose to be achieved by those procedures; and

WHEREAS, the City of Austin, Texas a home-rule municipal corporation in the State of Texas, owns and operates a municipal electric utility, Austin Energy; and

WHEREAS, the Austin City Council, as the governing body of Austin Energy, adopted a Resolution establishing purchasing procedures for Austin Energy for the public purpose of protecting and enhancing the competitive position of Austin Energy on March 30, 2000; and

WHEREAS, the Austin City Council desires to adopt this Resolution replacing the March 30, 2000 Resolution in its entirety in order to modify such purchasing procedures for Austin Energy; and

WHEREAS, the Austin City Council further finds that these purchasing procedures will benefit the public purpose, the citizens of Austin, and the customers and ratepayers of Austin Energy by providing for Austin Energy purchases to conform with all applicable state procurement laws as well as the City Charter and this Resolution while assuring that procurements are both beneficial and cost-effective for Austin Energy and its customers and fair and equitable to suppliers; and

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WHEREAS, Senate Bill 7 enacted into law by the 76th Session of the Texas Legislature and with an effective date of September 1, 1999, amends Subsection (d), Section 791.011 of the Government Code to authorize the governing body of a municipally owned electric utility to establish procedures for the municipally owned electric utility to enter into interlocal contracts that do not exceed \$100,000 without requiring the approval of the governing body; and

WHEREAS, the Austin City Council desires to adopt this Resolution to authorize and establish procedures for Austin Energy to enter into interlocal *contracts without City Council approval provided that the annual expenditure of funds by Austin Energy under such interlocal contract does not exceed the threshold City Council expenditure approval amount established by the City Charter*;

NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

1. General Policy-- All purchases by Austin Energy of equipment, supplies, materials, and services shall be made in a manner that: (1) conforms with the substance of all applicable state procurement laws, the City Charter, all applicable City Ordinances, and this Resolution; (2) is beneficial and cost-effective for Austin Energy and its customers; and (3) is fair and equitable to suppliers and service providers.

2. Solicitation Type-- The Austin Energy Purchasing Manager will determine the type of solicitation to be used in a procurement, taking into account both the fundamental requirements of fairness in selecting parties to contract with Austin Energy as well as the competitive needs of Austin Energy. Normally, an Invitation for Bid will be used for standard commodity purchases

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and a Request for Proposal will be used for procurement of services and for custom built and/or technical equipment, including, but not limited to, equipment that is related to the generation, transmission, distribution, or metering of electricity. Procurement of professional services and public works construction not governed by Chapter 252 of the Local Government Code will not be affected by this section. Procurements that meet the requirements of critical business need as set forth in Section 7 below may follow the procedures established therein.

3. Advertising Requirement-- As a general rule, any solicitation estimated to be in excess of the then-current formal bidding threshold amount for municipal purchasing established by Chapter 252 of the Local Government Code (or such successor statute as may be enacted from time to time) will be advertised for a minimum of one (1) week on the internet, or by such other means, including newspaper publication, as is determined necessary to reach a wide and diverse number of potential bidders or proposers. However, if the Austin Energy Purchasing Manager determines and provides a written justification that there is a business need, a solicitation may be advertised for a lesser period of time or in a different fashion.

4. Bids and Proposals-- The general business practice will be for all responses to solicitations to be submitted by mail, courier, electronically or by telefax. Electronic signatures will be acceptable. However, this practice may be waived at the discretion of the Austin Energy Purchasing Manager, if there is

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a business need, to either permit telephone responses or to require sealed responses.

5. Non-Competitive Award-- Purchases of less than one-half of the amount of the then-current formal bidding threshold for municipal purchasing established by Chapter 252 of the Local Government Code (or such successor statute as may be enacted from time to time) may be made without competition at the discretion of the Austin Energy Purchasing Manager.

6. Contract Modifications-- Contracts may be increased by any amount that is determined to be reasonable and necessary by the General Manager of Austin Energy or his designee. City Council approval of change orders will continue to be necessary if either the amount of the modification itself, or the entire contract amount due to the modification, exceeds the threshold approval amount established by the City Charter. Modifications in excess of 50% of the original contract amount shall require a written justification. Contracts entered into pursuant to Section 5 above cannot be modified to an amount exceeding the then-current threshold amount established by Section 5.

7. Critical Business Need-- The procedures set forth in the above sections may be changed or modified by the General Manager or his designee on a case-by-case basis as necessary in order to meet a critical business need of Austin Energy. In these situations, the threshold approval amount established

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by the City Charter will be followed. Circumstances which could give rise to a finding of critical business need include:

- (a) emergency situation, including procurements necessary to protect the public health or safety of in response to a public calamity;
- (b) a procurement necessary because of unforeseen damage to public equipment, machinery, or other property;
- (c) a procurement for personal, professional, or planning services;
- (d) a purchase of land or interests in land;
- (e) a procurement of items that are available from only one source; and
- (f) any procurement necessary to protect the competitive interests or position of Austin Energy.

Once it has been determined that a procurement is necessary to meet a critical business need of Austin Energy, the Purchasing Manager will manage the procurement so as to assure that it expeditiously meets the critical business need of Austin Energy while providing competition to the extent possible and maintaining a fair process.

8. Interlocal Contracts-- Upon a determination by the General Manager or his designee that entering into an interlocal contract as provided for in Chapter 791 of the Government Code is in the best interests of Austin Energy, the Austin Energy purchasing manager may enter into such an interlocal contract without City Council approval provided that the annual expenditure of funds by Austin Energy under such interlocal contract does not

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exceed the lesser of the current threshold City Council expenditure approval amount established by the City Charter.

ADOPTED: , 2004 **ATTEST:** _____
Shirley A. Brown
City Clerk

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Electric Utility Commission
April 19, 2004
Meeting

Approve a resolution adopting revised purchasing procedures for the City's municipally-owned electric utility, Austin Energy, in accordance with provisions of the electric utility restructuring legislation (Senate Bill 7) enacted into law by the 76th Session of the Texas Legislature.

Motion by: Fath

Seconded by: Fernandez

Ayes: Fath, Fernandez, LeGette, Sarma, Shaw, and Skeith

Nays: NONE

Abstaining: NONE

Off the dais: NONE

Absent: Owens

The motion passed on a 6 – 0 vote.