




## MEMORANDUM

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To: BOARD OF DIRECTORS  
WESTERN CLIMATE INITIATIVE, INC.

From: CHRIS DELFINO 

Date: MARCH 13, 2020

Re: **DRAFT PROCURMENT POLICY AMENDMENTS**

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In conjunction with the review and proposed revisions to the Bylaws, Greg Tamblyn and I also took the opportunity to review the Procurement Policy (“**Policy**”) to see if corresponding changes should be made to the Policy.

Attached as Exhibit A is a draft of the revised Policy (“**Draft Policy**”) with our recommended changes. The purpose of this memo is to explain why these changes are being recommended to the Board for its consideration. All article references in this memo correspond to the same article in the attached Draft Policy. Capitalized terms used in this memo but not defined here shall have the same meaning as in the Draft Policy.

### **Article I. Purpose of Procurement Policy**

There is no legal requirement that a Delaware nonprofit tax-exempt corporation have a procurement policy. However, it is to the benefit of the corporation that it have a procurement policy to help ensure that the assets of the corporation are most efficiently utilized in the acquisition of goods and services.

The changes made to Article I of the Draft Policy were to clarify that the provisions in Article I is to establish the goals and purposes of the Policy. As currently draft in the Policy, certain provisions of Article I read as a mandate or a strict obligation on the part of WCI, Inc. rather than establishing goals. For example, the current Policy states, “To obtain the best value for the Corporation, the procurement process shall ensure open and effective opportunities for competition”. I do not believe WCI, Inc. can “ensure” its procurement process is open and effective opportunities for competition. The Draft Policy revises this sentence to read, “ To obtain the best value for the Corporation, it is the goal of the procurement process to provide for open and effective opportunities for competition.”

A paragraph was added to the end of Article I of the Draft Policy to make it clear that the Policy is intended only for internal use by the corporation. The Policy does not provide any benefits or rights to any third party. This provision was added to prohibit any potential vendor or contractor

who was not the successful bidder in a procurement form challenging an award on the grounds WCI, Inc. did not adhere to the terms of the Policy.

**Article II. Definition of a Contract and Procurement**

I believe the definition of a Contract in the current Policy is unnecessarily complex. The definition of a Contract in the Draft Policy was simplified though the scope of what is a Contract under the Policy was not changed.

**Article III. Role of the Corporation Board of Directors (the Board) in Procurement**

Changes to Article III in the Draft Policy were largely technical non-substantive changes. It is noted in the Draft Policy in section (D) that WCI, Inc. has not yet established a procurement manual. The Board and Executive Director should discuss whether a procurement manual, in addition to the Policy, is necessary.

**Old Article IV. Authority and Approval**

This article was deleted in its entirety from the Draft Policy as I believe it is not necessary and creates ambiguity. The purpose of the Policy is for the Board to delegate its authority to approve contracts. It is not clear to me what the language is intending when it states the Board has final authority for all procurement and contract.

**New Article IV. Competitive Procurements**

The Draft Policy delegates to the Executive Director and the Corporate Officers the authority to approve contracts the value of the contract is up to \$1,000,000 provided the funding for such contract or amendment to a contract has been provided for in the Corporation's approved budget. The previous threshold for Executive Director approval was \$50,000.

The delegation of authority to the Executive Committee to approve contracts from \$50,000 to \$250,000 was deleted and was replaced by the Executive Committee being delegated authority to approve all contracts above \$1,000,000.

**Old Article V. Legal Counsel Review**

This article was just moved to the end of the Draft Policy as Article VI.

**New Article V. The Use of Non-Competitive Procurement Processes**

Article V in the Draft Policy states the competitive procurement procedures set forth in the Policy must be used for all contracts except for those contracts that meet the criteria listed in subsections (A) through (H). The exception list in the Draft Policy simplifies and clarifies exceptions list that is in the current Policy.

Western Climate Initiative, Inc.

# Procurement Policy and Procedures

Adopted: January 12, 2012

Proposed Amendment: March 23, 2020

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## REVISION HISTORY

Date	Revised By	Description
January 12, 2012	Board of Directors	Procurements Policy adopted
October 12, 2017	Board of Directors	Amendments to the text to describe the process to inform Participating Jurisdictions of the finalists for procurement award and to require Board approval to enter into a contract with a finalist that is ineligible to participate in procurements in a Participating Jurisdictions, and amendment to approval thresholds and authority for competitive procurements.
March 23, 2020	Board of Directors	Amendments to the text to clarify 1) the purpose of the policy, 2) the definition of a contract and procurement, 3) the role of the Board in procurement, 4) the authority to approve contracts, and 4) the guidelines for non-competitive procurements.

# WESTERN CLIMATE INITIATIVE, INC

## Procurement Policy

### Table of Contents

I. Purpose of Procurement Policy (“Policy”) .....	4
II. Definition of a Contract and Procurement .....	5
III. Role of the Corporation Board of Directors (the Board) in Procurement.....	5
IV. Competitive Procurements .....	6
V. The Use of Non-Competitive Procurement Processes .....	7
VI. Legal Counsel Review .....	8

## **I. Purpose of Procurement Policy (“Policy”)**

WCI, Inc. (the “Corporation”) must procure goods and services to carry out the purposes for which the Corporation was formed. It is the policy of the Corporation that procurement procedures be implemented to obtain best value for money expended for the Corporation, including providing the flexibility needed to obtain goods and services in a timely manner. Best value will be obtained by selecting vendors that offer the best combination of factors, such as (but not limited to) price, life-cycle costs, delivery capabilities, quality, past performance, financial stability, ease of ordering, and payment terms. Procurements must also comply with all requirements specified in funding agreements entered into by the Corporation.

To obtain the best value for the Corporation, it is the goal of the procurement process to provide for open and effective opportunities for competition, including but not limited to the following:

- A. Conduct procurement in a transparent and fair manner.
- B. Provide equal access and timely and accurate procurement information to potential suppliers prior to and during the procurement process.
- C. Make procurement documents and related materials electronically and publicly available in a timely manner, with sufficient time prior to a bid or proposal due date, taking into consideration the complexity of the procurement and the Corporation’s resources.
- D. Ensure all bid documents contain the necessary information for proposers to prepare a bid.
- E. Ensure that procurement is conducted in a geographically neutral manner.
- F. Provide flexibility to ensure goods and services are obtained in a timely manner.

To maintain the ability to obtain best value, the Corporation will use its best efforts to provide a stable procurement environment that is attractive to potential suppliers, including but not limited to the following:

- A. Promote fiscal responsibility in contracting and procurement.
- B. Actively work with suppliers to obtain best value and appropriate standards of price competitiveness, quality, responsiveness, and innovation.

To further support obtaining best value and providing a stable procurement environment, the Corporation will use best efforts to include in the procurement evaluation process the following when applicable and taking into consideration the Corporation’s resources:

- A. Defining administrative bidding requirements that are clear and fair, and applying the requirements consistently to all bidders.
- B. Tailoring technical evaluation criteria and scoring methods to each procurement to obtain best value for the Corporation.
- C. Comprising the evaluation team with personnel that have the requisite expertise to evaluate the proposals effectively.
- D. Ensuring that the evaluation process is free of conflicts of interest.
- E. For all procurements over \$5,000, the Corporation will notify the Participating Jurisdictions of the finalists for the procurement award and seek the Participating Jurisdictions' input on any experience or knowledge the Participating Jurisdictions may have with respect to the finalists. Board approval is required to enter into a contract with any finalist that is ineligible to participate in public procurements in a Participating Jurisdiction.

This Policy is solely intended to govern the internal operations of the Corporation and provide guidance to the Corporation's Board, officers, employees and agents in its procurement activities. This Policy is not intended to provide any benefits or rights to any third party including, without limitation, any participants in the Corporation's procurement or any vendors or contractors of the Corporation.

## **II. Definition of a Contract and Procurement**

### **Contract**

For the purposes of this Policy, a contract is a legally binding agreement between the Corporation and an unrelated third party for the Corporation's acquisition of goods and/or services from the third party.

### **Procurement**

For the purposes of this Policy, procurement is defined as the process for entering into a contract, including contracts entered into through a competitive or non-competitive process. Competitive procurements include a solicitation and evaluation process. Invitation for Bid (IFB) and Request for Proposal (RFP) are types of competitive procurement solicitations.

## **III. Role of the Corporation Board of Directors (the Board) in Procurement**

The policies for procuring goods and services by the Corporation are governed by the Board. Part of the Board's responsibilities are to provide monitoring and oversight for procurement activities.

Responsibilities include:

- A. Ensure that necessary funds are identified and secured to fulfill the Corporation’s contractual obligations prior to initiating procurements or entering into contracts, for example, based on approved Corporation budgets, through commitments from jurisdictions, or other expectations of funding and expenditures.
- B. Take all reasonable measures to ensure procurement policies and practices are adhered to and continuously improved.
- C. Monitor monetary activities so that funds are appropriately expended.
- D. Prepare a procurement manual to establish standard operating procedures for procurement and contract management.

#### IV. Competitive Procurements

The Board retains the authority to approve all procurement and contracts except: (a) as may be set forth in the Bylaws; (b) as set forth immediately below in this Article V, and (c) as set forth in Article VI (Non-Competitive Procurements).

<b>Approval Threshold</b>	<b>Authority to Approve</b>	<b>Authority to Sign Contracts</b>
All contracts (and any amendments to contracts) the value of which is up to and including \$1,000,000 and the funding for such contractor or amendment has been provided for the Corporation’s approved budget	Delegated to the Corporation Executive Director, Chair, Vice President, Secretary or Treasurer (each acting individually or jointly)	Delegated to the Corporation Executive Director, Chair, Vice President, Secretary or Treasurer (each acting individually or jointly)
All contracts (and any amendments to contracts) greater than \$1,000,000	Approval of the Executive Committee or the Board of Directors	Delegated to Corporation Executive Director, Chair, Vice President, Secretary or Treasurer (each acting individually or jointly)
All thresholds are in U.S. dollars. Each contract and amendment shall be valued independently for purposes of determining the threshold amount provided that contracts and amendments may not be separated or segregated for the purpose of trying to come under a threshold amount for approval processes.		



## **V. The Use of Non-Competitive Procurement Processes**

Consistent with the goal of obtaining best value, competitive procurement processes will be used to the maximum extent practicable and except as provided in this Article V. Board approval is required for approval of any procurement or contract that does not comply with the terms and conditions set forth in this Policy.

The competitive procurement procedures set forth above in this Policy are not required for contracts that meet the following criteria (“Noncompetitive Contracts”).

- A. Contracts for goods and services under \$50,000.
- B. Contracts where only one supplier is able to meet the requirements of a procurement to ensure compatibility with existing products, to recognize exclusive rights, such as exclusive licenses, copyright and patent rights, or to maintain specialized products that must be maintained by the manufacturer or its representatives. Compatibility with existing products may not be allowed if the reason for compatibility is the result of one or more previous non-competitive procurements.
- C. Contracts for legal defense, legal advice, or legal services and the contracts for any professional services or experts recommended by the legal counsel as necessary for the legal counsel to provide its services to the Corporation.
- D. Contracts for conference or meeting facilities, including room accommodations for conference attendees, not to exceed \$50,000.
- E. Proprietary subscriptions, proprietary publications and/or technical manuals regardless of media format. This includes access to pre-existing proprietary research data through a non-IT services contract.
- F. Contracts which, if not immediately entered into, would materially harm the Corporation or materially impair the Corporation’s ability to provide support services to its Participating Jurisdictions or to continue the operations of the Corporation.
- G. Contract amendments.
- H. Other procurements and contracts as determined by the Board in its sole discretion.

Non-competitive Contracts for which the value is over \$1,000,000 or the funding for which is not included in the current Corporation budget must have prior board approval. All other Noncompetitive Contracts may be approved and signed by the Executive Director, Chair, Vice President, Secretary or Treasurer (each acting individually or jointly).

## **VI. Legal Counsel Review**

Consistent with the goals of obtaining best value for the Corporation and providing a stable procurement environment, the Corporation will avail itself of appropriate and effective risk management strategies related to procurement and contracts.

Procurements, including solicitations and contracts, will be reviewed by the Corporation's legal counsel, unless otherwise directed by the Board.