Board Decision
Amend Contract Execution Policy to Clarify Authority for Contracts that Exceed $500,000 in the Aggregate

February 9, 2011

Summary

Amend the board policy on contract execution authority to require reporting on instances in which a contractor receives more than $500,000 in Energy Trust funding per year under separate contracts, and confirm that the executive director has authority to sign all contracts involving $500,000 or less.

Background

- Board approval is required for any Energy Trust contract, incentive or program cap over $500,000.
- Several programs use a competitive process to organize a pool of contractors with diverse expertise who can be assigned to help particular firms save energy. Examples include allied technical assistance contractors, who do site studies, and industrial initiatives that help firms save energy in operations. Energy Trust signs no-dollar umbrella contracts with these contractors.
- When a program participant signs an incentive form to participate in one of these initiatives, Energy Trust assigns a contractor to work with the customer, and issues a work order committing to pay the contractor a certain sum.
- Staff identified this as an issue during last Fall's budget process: does the current policy adequately cover situations in which Energy Trust pays more than $500,000 to a contractor under two or more contracts that are individually under $500,000.
- Since then, the Policy Committee has discussed policy amendments clarifying that the executive director has contract signature authority in these situations, and should report instances in which contractor payments cumulatively exceed $500,000.

Discussion

- The Committee did not wish to restrict the executive director's authority to sign contracts under $500,000. The committee proposed language confirming this authority (see Attachment 1).
- The Committee did think it appropriate for a board committee to receive after-the-fact reports on instances in which payments to a contractor under smaller contracts exceed $500,000 in the aggregate.
- The Committee explored several reporting options:
    - Could reports cover multi-year periods? The Committee concluded that reporting by calendar year is adequate. Energy Trust data systems can provide automated reports on payments over a calendar year, but not over several years.
    - Should the reports go to a Committee or the board? The Committee concluded that reporting to a Committee would be more consistent with the board's policy on confidential information.
    - Which Committee should the receive reports? The Committee volunteered to receive reports because it had most familiarity with the underlying policy issues.

Recommendation

Amend the board policy on contract execution authority as shown in Attachment 1, to require reporting on instances in which a contractor receives more than $500,000 in Energy Trust funding per year under separate contracts, and confirm that the executive director has authority to sign all contracts involving $500,000 or less.

RESOLUTION #575

AMENDING CONTRACT EXECUTION POLICY

WHEREAS:

1. **Board approval is required for any Energy Trust contract, incentive or program cap over $500,000.**
2. **During development of the 2011 budget, staff asked if the current board policy authorizing the executive director to sign contracts involving less than $500,000 adequately covers situations in which Energy Trust pays more than $500,000 to a contractor under two or more contracts that are individually under $500,000.**
3. **The Board's Policy Committee has discussed the current policy and proposes amendments clarifying that the executive director should report instances in which contractor payments cumulatively exceed $500,000, while confirming the executive director's authority to sign contracts involving less than $500,000.**

It is therefore RESOLVED that the Board of Directors of Energy Trust of Oregon, Inc.:

Amends the board policy on contract execution authority as shown in Attachment 1, to require reporting on instances in which a contractor receives more than $500,000 in Energy Trust funding per year under separate contracts, and confirm that the executive director has authority to sign all contracts involving $500,000 or less.

Moved by: Seconded by:

Vote: In favor: Abstained:

Opposed: [list name(s) and, if requested, reason for "no" vote]

5.05.009-P Contract Execution and Oversight Policy

History

History			
Source	Date	Action/Notes	Next Review Date
Board Decision	September 8, 2004		September 2007
Board Decision	October 3, 2007	Amended (R449)	October 2010
Board Decision	February 13, 2008	Amended (R465)	February 2011

***Purpose**: The Energy Trust Board of Directors has delegated to the Executive Director authority to execute all contracts on behalf of the organization consistent with the bylaws, PUC grant agreement and governing law. This policy regulates the implementation of this authority.*

Policy:

1. All contracts shall be consistent with the bylaws, PUC grant agreement and governing law.
2. The Energy Trust legal department shall review as to form all contracts before submitting them to the Executive Director.
3. Contracts over the amount of $500,000:
   - No contract will be executed unless the Board of Directors has first reviewed and approved its basic terms.
   - When it approves basic contract terms, the Board may instruct the Executive Director to bring a final contract back to the Board for review and approval before the contract is executed.
   - The Executive Director shall not execute contract amendments that make major changes in contract terms (e.g., more than 10% change in funds obligated, more than 20% change in energy saved or produced, time by which savings will be achieved) unless the Board of Directors has first reviewed and approved the basic terms of the change.
4. Contracts under $500,000: The Executive Director or, if the Executive Director is unavailable, the General Counsel or corporate officer designated by the Executive Director, is authorized to execute contracts involving less than $500,000 without Board review or approval of basic terms. This authority includes instances in which two or more contracts involving less than $500,000 with a single contractor exceed $500,000 in the aggregate.
5. For programs managed directly by Energy Trust staff, incentive agreements that involve less than $500,000, and are processed in accordance with standardized program forms and procedures that have been reviewed by the legal department may be approved by the relevant department director or management-level staff designated by the department director. This authority includes instances in which multiple incentive payments to a participant or contractor, processed in accordance with standardized program forms and procedures, exceed $500,000 in the aggregate.

6. Not less often than annually, staff shall report to the [Policy/Finance] Committee all instances in which Energy Trust has paid more than $500,000 to an individual contractor in a given calendar year.
7. Staff and in-house contractor employment agreements: The Executive Director or, if the Executive Director is unavailable, the General Counsel or corporate officer designated by the Executive Director, may execute staff and in-house contractor employment agreements without Board review or approval of basic terms.
8. Contracts not involving a dollar expenditure may be signed by the relevant director or his/her designated manager(s).
9. The Executive Director shall maintain contract records required for an independent audit.