

SAN DIEGO REGIONAL COMMUNITY CHOICE ENERGY AUTHORITY

Staff Report – Item 7

To: SDRCCEA Board of Directors

From: Cody Hooven, SDRCCEA Interim Executive Officer
Director/Chief Sustainability Officer, City of San Diego

Subject: Approval of Legal Service Engagement for General Counsel

Date: November 21, 2019

Recommendation

Approve a 13-month agreement with Best Best & Krieger (BB&K) to provide General Counsel legal services commencing December 1, 2019 through December 31, 2020.

Background

The San Diego Regional Community Choice Energy Authority (Authority) requires that the Authority's Board of Directors appoint a General Counsel for the Authority, who shall be responsible for providing legal advice to the Board and overseeing all legal work for the Authority, pursuant to Section 5.6 of the JPA Agreement. This role is essential and timing is urgent due to the many start up functions that require legal support, ranging from Brown Act advice to contract review and development of policies and procedures for a new organization.

Discussion and Analysis

At its October 31, 2019 Board meeting, the SDRCCEA Board discussed the need to retain legal support as soon as possible. An ad hoc committee made up of Board members Padilla and Montgomery was created to support the Interim Executive Officer in this effort. In speaking with these Board members, the approach to directly solicit proposals from firms in order to execute an agreement and secure General Counsel support as soon as possible was agreed upon.

Staff requested proposals/letters of engagement from several firms with relevant experience, all but one of whom were unavailable due to capacity or potential conflicts of interest. Ultimately, Best Best & Krieger (BB&K) responded with both availability and the expertise needed to provide general counsel legal services for SDRCCEA. BB&K has extensive experience with municipal/public agency clients as well as experience with Community Choice Energy programs in California. Please see attachment A of this staff report for BB&K's letter of engagement which includes a description of the firm's and assigned attorney's relevant qualifications.

Under the Legal Services Agreement, BB&K will serve as general counsel to the Authority. BB&K will not provide energy or regulatory law advice unless requested in writing by the interim Executive Officer since we anticipate those functions will or may be filled by other specialized attorneys. BB&K's role will be to provide legal oversight in establishing the organizational structure and necessary contractual relationships to launch SDRCCEA's CCA program. The attached Legal Services Agreement provides that BB&K shall provide, on a 13-month basis, the general legal services typically required by a joint powers authority in addition to legal services related more specifically to the operation of a community choice aggregation program. The Agreement will expire on December 31, 2020, unless terminated earlier or extended by the Board of Directors. Under the Agreement, legal services shall include the following:

Advice and preparation of documents in connection with the start up of operations for the Authority including but not limited to the following:

- Prepare any required legal filings with County or state agencies that may be required by law.
- Prepare a conflict of interest code and operating rules and regulations as desired by the Board
- Attendance at the monthly Board of Directors ("Board") meetings and any special meetings and workshops as required by the Chief Executive Officer or Chair of the Board
- Brown Act, Conflict of Interest and Public Records Act advice and representation
- Preparation and/or review of consultant and vendor contracts
- Advice and preparation of documents related to personnel matters
- Advice to the Chief Executive Officer and designated staff on administrative and operational matters
- Research and advice on operational/pubic agency legal questions asked by the Board, Chief Executive Officer and designated staff
- Advice and assistance on other legal matters as may be assigned by the Chief Executive Officer

The firm's billable rates are described in the attached agreement and provides that total fees shall not exceed \$120,000 for the contract term without the prior approval of the Chief Executive Officer or Board of Directors. This amount is consistent with the Implementation Budget approved by the Board in October. BB&K further understands and agrees to "work at risk" for three months, deferring compensation until February 2020, at which time SDRCCEA will have its working capital in place.

Attachment A: BB&K Letter of Engagement