[Purchase and Sale of Electricity and Related Products and Services for CleanPowerSF - San Francisco Public Utilities Commission]

Ordinance conditionally authorizing the San Francisco Public Utilities Commission (SFPUC) to enter into one or more agreements requiring expenditures of $10,000,000 or more for electric power and related products and services to launch the City's community choice aggregation program, CleanPowerSF, and authorizing the General Manager of the SFPUC to deviate from certain otherwise applicable requirements of City law in such agreements.

NOTE: Unchanged Code text and uncodified text are in plain Arial font. Additions to Codes are in single-underline italics Times New Roman font. Deletions to Codes are in strikethrough italics Times New Roman font. Board amendment additions are in double-underlined Arial font. Board amendment deletions are in strikethrough Arial font. Asterisks (*** *) indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Findings.

San Francisco Community Choice Aggregation Program

(a) State law allows cities and counties to develop Community Choice Aggregation (CCA) programs, through which local governments may choose to supply electricity to serve the needs of participating customers within their jurisdictions while the existing utility continues to provide services such as customer billing, transmission and distribution.

(b) For many years, the City has considered developing a CCA program to allow San Francisco residents and businesses the option to receive cleaner, more sustainable electricity at rates comparable to the incumbent utility. See Board of Supervisors (BOS) Ordinance Nos. 86-04, 147-07, 232-09, 45-10, 200-12 and 78-14; and BOS Resolution Nos. 348-12, and 331-13.
(c) The Public Utilities Commission (SFPUC) has developed a CCA program called CleanPowerSF. On May 12, 2015, in SFPUC Resolution 15-0112, on file with the Clerk of the Supervisors in File No. 151123, the SFPUC approved initial not-to-exceed rates and a rate-setting methodology for CleanPowerSF.

(d) In May 2015, the City enacted Ordinance No. 75-15. Ordinance No. 75-15 authorized the General Manager of the SFPUC to use certain pro forma contracts, such as the Western System Power Pool (WSPP) agreement and the Edison Electric Institute (EEI) agreement to purchase electricity and authorized the General Manager to deviate from certain requirements under City law in such contracts. That ordinance also authorized the SFPUC within specified parameters to approve agreements with terms in excess of 10 years or requiring expenditures of $10,000,000 or more, for renewable and greenhouse-gas-free energy supplies from facilities in California.

SFPUC Competitive Processes for Power and Related Products to Launch CleanPowerSF, Short Listing of Bidders and Approval of Contract Negotiations

(e) On August 11, 2015, the SFPUC issued a Request for Offers (RFO) for power supplies to launch CleanPowerSF. The RFO requested bids for energy to support the first phase of CleanPowerSF that would initially be 30 to 50 megawatts (MW).

(f) The RFO sought proposals for three types of products: firmed and shaped renewable and conventional energy with a term of three to five years (Bid Option 1); firmed and shaped or as available renewable energy with a term of one to 25 years (Bid Option 2); and resource adequacy capacity (RA Capacity).

(g) The SFPUC received six bids from respondents offering Bid Option 1 products; 52 bids from respondents offering Bid Option 2 products; and six bids from respondents offering RA Capacity. SFPUC staff reviewed the bids to ensure their compliance with the
minimum bid requirements, and an evaluation team reviewed the bids against the RFO evaluation criteria.

(h) The evaluation team recommended the following respondents for further consideration and negotiations:

1. for Bid Option 1 products: Calpine Energy Services; L.P.; Constellation; and Morgan Stanley;
2. for Bid Option 2 products: Calpine Energy Services, L.P.; E.ON; EDF Renewable Development, LLC; First Solar; FTP Power LLC; dba Sustainable Power Group (sPower); Iberdrola Renewables; Republic Services of Sonoma County, Inc.; 8minutenergy; Centaurus Renewable Energy LLC/Clenera, LLC; and
3. (3) for RA Capacity: Calpine Energy Service, L.P.; Constellation; and EWP Renewable Development Corporation.

(i) On October 27, 2015, in SFPUC Resolution 15-0222, on file with the Clerk of the Board of Supervisors in File No. 151123, the SFPUC approved the pool of qualified respondents recommended by the evaluation team, authorized the General Manager to negotiate energy supply contracts with one or more of the respondents, and authorized the General Manager to execute energy supply contracts with one or more of the qualified respondents subject to specified conditions. The SFPUC authorized the General Manager to submit the contracts to the Board of Supervisors for its review, if required.

(j) SFPUC Resolution 15-0222 imposed the following conditions, among others:

1. contract pricing must be consistent with the rate setting priorities set forth in SFPUC Resolution 15-0112;
2. contractors must maintain an investment grade credit rating, or provide equivalent credit support during the duration of the contract;
3. contracts for Bid Option 1 products may not exceed five years;
contracts for Bid Option 2 products may not exceed 25 years;
(5) contracts for RA Capacity may not exceed five years; and
(6) the total cost of all CleanPowerSF energy supply contracts entered into pursuant to SFPUC Resolution 15-0222 may not exceed $365 million a year.

(k) SFPUC Resolution 15-0222 also provides:
(1) The SFPUC intends to review the expected costs of CCA service and consider authorizing the General Manager to finalize the schedule of rates and charges for the initial offering, prior to commencement of the opt-out process;
(2) The contracts will not be effective until the SFPUC has reviewed the CleanPowerSF business plan and risk assessment and adopted business practice policies for CleanPowerSF;
(3) The General Manager will report to the SFPUC on the final schedule of rates and charges for the initial offering, prior to commencement of the opt-out process; and
(4) Before making any future decisions to construct or cause the construction of specific renewable energy projects subject to the California Environmental Quality Act (CEQA), the SFPUC will consider any environmental review documents prepared by the City or another lead agency in compliance with CEQA and, if it approves such projects, the SFPUC will make or adopt any required CEQA findings as part of such approval actions.

(l) If the City defaults or elects to terminate an agreement, the SFPUC may be required to make termination payments under Bid Option 1 product contracts, and such termination payments could be in the tens of millions of dollars.

(m) In order to secure this potential exposure the SFPUC issued a request for proposals in August 2015 to obtain an irrevocable letter of credit to secure such termination payments.
(n) After a review of responsive proposals from qualified commercial banks the SFPUC determined to negotiate the terms of a letter of credit with JPMorgan Chase Bank, National Association.

Need for Further Contracting Authority for Bid Option 1 Products.

(o) Based on its review of the competitive process responses and program needs, the SFPUC in its expert judgment has determined that in order to obtain the best service for the best price, it may require the ability to enter into contracts for Bid Option 1 products and related letters of credit that exceed $10,000,000.

Section 2. Authorizations.

(a) Pursuant to its authority under Charter Section 9.118, the Board of Supervisors hereby authorizes the General Manager to (i) enter into no more than one agreements per bidder for Bid Option 1 products with one or more of the three bidders specified in SFPUC Resolution 15-0222 (Calpine Energy Services, L.P., Constellation, and Morgan Stanley), requiring expenditures of $10,000,000 or more, including amendments to such contracts with an impact of greater than $500,000, provided that the total aggregate cost of any such agreement(s) authorized by this Section 2(a) may not exceed $30 million a year.

(b) Pursuant to its authority under Charter Section 9.118, the Board of Supervisors hereby authorizes the General Manager to and (ii) enter into one or more credit agreements with JPMorgan Chase Bank for one or more letters of credit to secure termination payments under any contract for Bid Option 1 products, in either case requiring expenditures of $10,000,000 or more, including amendments to such contracts with an impact of greater than $500,000, provided that the total aggregate value of such letter(s) of credit authorized by this Section 2(b) may not exceed $40 million.

(b)(c) The Board of Supervisors hereby extends to contracts authorized pursuant to Section 2(a)(i) above the authorization to use pro forma contracts set forth in Section 2(c) of
Ordinance No. 75-15, and the waivers of required City Contracting Provisions set forth in Section 2(d) of Ordinance No. 75-15.

(e)(d) The authorization in Section 2(a)(i) and authorization and waivers in Section 2(2b) above apply only to contracts authorized by SFPUC Resolution 15-0222 that meet all of the requirements set forth in SFPUC Resolution 15-0222. The authorization in Section 2(2a)(ii) applies only for letters of credit to secure termination payments in contracts authorized by SFPUC Resolution 15-0222 that meet all of the requirements set forth in SFPUC Resolution 15-0222.

(d)(e) The authorizations in Sections 2(a) and 2(b) and the authorization and waivers in Section 2(2b) are subject to all other requirements of Ordinance No. 75-15.

(e)(f) The cost of procurement contracts entered into under Section 2 shall be subject to the Charter budget and fiscal provisions.

(g) The SFPUC shall submit annual reports to the Board of Supervisors that include annual program costs, the rates charged by the SFPUC to CleanPowerSF customers to recover the costs, and a comparison of those CleanPowerSF rates to PG&E rates.

(h) This Ordinance adds to but does not otherwise modify the authority granted in Ordinance No. 75-15.

Section 3. Effective Date.

This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.
APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By:
JEANNE M. SOLE
Deputy City Attorney
File Number: 151123  Date Passed: December 08, 2015

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November 18, 2015 Budget and Finance Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

November 18, 2015 Budget and Finance Committee - RECOMMENDED AS AMENDED

December 01, 2015 Board of Supervisors - PASSED, ON FIRST READING
Ayes: 11 - Avalos, Breed, Campos, Christensen, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

December 08, 2015 Board of Supervisors - FINALLY PASSED
Ayes: 11 - Avalos, Breed, Campos, Cohen, Farrell, Kim, Mar, Tang, Wiener, Yee and Peskin

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 12/8/2015 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Mayor

Date Approved

12/11/15