local power
4281 Piedmont Avenue Oakland, CA 94611 510 451 1727

Local Agency Formation Commission
City and County of San Francisco
Community Choice Aggregation
Implementation Plan
Recommendations - Charter Authority
July 29, 2005

Amendments to CCA Implementation Plan Referred to the Board of Supervisors on May 13, 2005

Add Governance and Implementing Entity Details

Insert into Chapter III, Section 1.0 "Legal Authority"

1.0 Analysis of applicable local and state law and charter authorities regarding SF CCA Program

While the City and County maintains an interest in potential formation of a municipal utility at a future date, and wishes to preserve this option, the San Francisco Community Choice program (SFCCA) employs a non-utility approach that clearly delineates between energy supplier and San Francisco consumer. Accordingly, Ordinance 86-04 and the Implementation Plan allocate roles and activities related to energy supply and development to an Electric Service Provider (ESP) rather than the SFPUC, while maintaining CCA governance at the Board of Supervisors and Mayor rather than any agency of the City and County.

The SF CCA is not a utility. While the LAFCO maintains the long-term goal of municipalization and is achieving the public power goal of building a massive citywide solar and conservation public works project, the CCA program is not a municipalization, but a form of customer choice in which every ratepayer is given ample opportunity to opt-out, but otherwise chooses through the public process under which the Electric Service Provider will be chosen by the Board of Supervisors.

The definition of the CCA program depends on how it is undertaken - its actual operational and governance structure, which is governed by state law (AB117), local law (ordinance 86-04 and resolution 757-04), and local charter authority (Charter Section 9.107.8).

AB117 itself provides significant consumer protection; PG&E retains obligation to serve ratepayers so lights stay on no matter what; but the SFCCA adds even greater protection. As in Ohio and Massachusetts, the SFCCA specifically solicits an Electric Service Provider (ESP) to provide the new service to San Francisco ratepayers. Furthermore, the ESP will be required to post a corporate bond or demonstrate insurance so that ratepayers are held harmless under a worst case scenario in which they are returned to PG&E. The ESP will also be required to assume substantial Resource Adequacy responsibilities required of Load Serving Entities by the CPUC, protecting the City and County from associated risks.

SF CCA also protects against H Bond risk. While the City's investment in 360 MW of new capacity will entail a degree of risk, this is mitigated by the use of a revenue bond rather than a general obligation bond, using the H Bond Authority approved by San Francisco voters in November, 2001. Additional risk reduction is obtained through the surety provided by an ESP in the form of insurance, a bond, or a letter of credit from its holding company or other financial backing, as is standard procedure for this type of construction project.

Insert Charter Authority Details

Rename Chapter II, Section 1.1 "San Francisco Charter Authorities" and insert the following:

Charter Section 9.107.8 ("The H Bond Authority," Ammiano, 2001) authorizes the Board of Supervisors to provide for the issuance of revenue bonds, issuing them without further voter approval to finance or refinance the acquisition, construction, installation, equipping, improvement or rehabilitation of equipment or facilities for renewable energy and energy conservation. The H Bond Authority was placed on the November, 2001 ballot and was subsequently approved by San Francisco voters. The CCA program will be the first use of H Bonds by the City and County since voter approval, and will finance 31 MW of photovoltaics installations throughout San Francisco alongside 72 MW of other distributed generation, 107 MW of conservation facilities, and a 150 MW wind farm, installed over a three-year period.

The H Bond Authority is distinct from Charter Section 9.107.6 which authorizes the Board to issue revenue bonds "for the purpose of the reconstruction or replacement of existing water

facilities or electric power facilities or combinations of water and electric power facilities under the jurisdiction of the Public Utilities Commission, when authorized by resolution adopted by a three-fourths affirmative vote of all members of the Board of Supervisors."

This is also distinct from Charter Section 9.107.5 which authorizes the Board to issue revenues "for the proposes of assisting private parties and not-for-profit entities in the financing and refinancing of the acquisition, construction, reconstruction or equipping of any improvement for industrial, manufacturing, research and development, commercial and energy uses or other facilities and activities incidental thereto, provided the bonds are not secured or payable from any monies of the City and County or its commissions."

Finally, the CCA program is consistent with Charter Section 8B.121.(a) which says that "the Public Utilities Commission shall have exclusive charge of the construction, management, supervision, maintenance, extension, expansion, operation, use and control of all water, clean water and energy supplies and utilities of the City as well as the real, personal and financial assets, that are under the Commission's jurisdiction or assigned to the Commission under Section 4.132," because the assets developed by the CCA program shall eventually become SFPUC-managed assets.

Section 8B.121(a) does not say that no entity other than the SFPUC may provide energy supplies to San Franciscans. Indeed, the vigorous participation of San Francisco business in Direct Access contracts with ESPs proves that the Charter does not mean this. Othewise, it would follow that all customers now taking Direct Access service are violating the Charter, which they are not. California statute on Direct Access allows two forms of aggregation - one based on opt-in, the other (CCA) based on opt out - both the same paragraph of the Public Utilities Code:

> "SEC. 3. Section 366 of the Public Utilities Code is amended to read:
> 366. (a) The commission shall take actions as needed to facilitate direct transactions between electricity suppliers and end-use customers. Customers shall be entitled to aggregate their electrical loads on a voluntary basis, provided that each customer does so by a positive written declaration. If no positive declaration is made by a customer, that customer shall continue to be served by the existing electrical

> corporation or its successor in interest, except aggregation by community choice aggregators, accomplished pursuant to Section 366.2." (PUC Section 366(a))

Nor does Section 8B.121(a) mean that the SFPUC must directly implement all energy generation in San Francisco. Otherwise it would imply not only that the SFDOE's solar and efficiency programs violate the Charter, but also that any and all customer-owned or third-party owned Distributed Generation in San Francisco, including solar photovoltaics, is in violation of the Charter. Clearly this is not the meaning of the charter.

The Charter's clarification that the Public Utilities Commission has exclusive control of water, clean water and power assets owned or maintained by the City and County of San Francisco is adequately answered by the fact that the PUC will manage all facilities financed by tax exempt H Bonds after the ESP's contract terminates.

Add Details to CCA Ordinance

Insert the following into the end of Chapter III, Section 1.3

The CCA Ordinance ("Energy Independence Ordinance," Ordinance 86-04, Ammiano) requires the City and County's Implementation Plan and Request for Proposals (RFP) to conform to a regime under which the City and County is not creating a utility, but is directly contracting with an Electric Service Provider under indexed or fixed rates.

Under the Ordinance, ESPs are required respondents to the City and County's CCA RFP:

> "Within 9 months of the effective date of this ordinance, provided the Board of Supervisors has adopted a CCA Implementation Plan pursuant to Section 3, the Departments shall submit to the Board of Supervisors for review and approval a Draft Request for Proposals (RFP) for Community Choice Aggregation (CCA) program for San Francisco for use by Electric Service Providers in submitting proposals to implement the City's adopted Implementation Plan." (P.8, lines 1-6).

The Ordinance's repeated ESP requirement specifically refers to a section of AB117 that describes CCA-ESP negotiation:

> "The RFP shall solicit bids from Electric Service Providers pursuant to Section 366.2(c) of the Public Utilities Code" (p.8, lines 19-20).

The Ordinance also establishes a portfolio-based rate design requirement for qualifying ESP bids, requiring ESPs to offer structured rates that reflect all portfolio costs, including costs associated with the 360 MW rollout:

> "The RFP shall require that bids by prospective Electric Service Providers shall include a proposed rate design, with all costs and profits associated with providing the various components of its proposed service package, including the costs of designing, building, operating and maintaining all renewable energy, conservation and energy efficiency installations, as well as any capital, insurance and other costs associated with fulfilling the commitments made in its bid, to be reflected in a per kilowatt hour rate schedule that is comparable to PG&E's rate schedule and consistent with the resource portfolio requirements and rate-setting mechanisms contained in the City's adopted Implementation Plan" (p.8, lines 21-25 and p. 9, lines 1-3).

The Ordinance requires that the ESP hold ratepayers harmless from a worst-case scenario through posting of a bond or demonstration of insurance to cover any costs of an involuntary return of ratepayers to PG&E:

> "The RFP shall require that qualifying Electric Service Providers post a bond or demonstrate insurance to cover the cost of reentry fees in the event that customers are involuntarily returned to service provided by PG&E, pursuant to Section 394.25(e) of the Public Utilities Code, and shall bid an insured electricity rate schedule, similar in structure to that appearing on monthly PG&E bills, which conforms to the city's ratesetting mechanim as adopted in its Implementation Plan, pursuant to 366.2 (c)(3) of the Public Utilities Code" (p.9, lines 4-9).

The Ordinance specified the use of Section 9.107.8 of the Charter (H Bonds) for financing the CCA project, not other charter sections concerning the SFPUC or other departments:

> "Bidders responding to the City's RFP may have recourse to the use of Proposition H bonds to finance renewable energy and conservation projects that meet the requirements of the city's Implementation Plan, and may include in their bids a proposed schedule for the board to authorize the issuance of Proposition H bonds, as well as a bond-repayment schedule to repay its proposed renewable energy and conservation facilities, based on anticipated revenues collected from monthly electric bills through a proposed rate design and other eligible funding sources, in order to meet the City's energy resource portfolio requirements and rate-setting mechanism as outlined in this ordinance and elaborated by the Draft Implementation Plan"(p. 9, lines 13-21).

Add Details on State Law Creating Community Choice: AB117

Insert the following at the end of Chapter III, Section 1.2;

The California Community Choice law (AB117, Migden, 2002), following AB9xx and AB48x of 2001, and all other state CCA laws in the US, is a form of Direct Access, not municipalization. As such it requires the use of an Electric Service Provider to provide service to CCA customers, and requires the City Council or Board of Supervisors, not any agency of a municipality or county, to govern the CCA program.

AB117 defines CCAs as a form of Direct Access – a means by which ratepayers may aggregate to negotiate with ESPs, not as any form of municipal utility:

> "SEC. 3. Section 366 of the Public Utilities Code is amended to read:
> 366. (a) The commission shall take actions as needed to facilitate *direct transactions between electricity suppliers and end-use customers*. Customers shall be entitled to aggregate their electrical loads on a voluntary basis, provided that each customer does so by a positive written declaration. If no positive declaration is made by a customer, that customer shall continue to be served by the existing electrical corporation or its successor in interest, *except aggregation by community choice aggregators*, accomplished pursuant to Section 366.2."

As a form of Direct Access, CCA has a structure that is distinct from utilities in that the supplier of energy services and the CCA, which is defined as a group of ratepayers, have completely different standing under the law. The Legislative Counsel's Bill Summary of AB117 clearly delineates CCA from an ESP:

> "(3) Existing law defines ''electric service provider'' as an entity that offers electrical service to residential and small commercial customers, but not including an electrical corporation and requires these providers to register with the commission.
> This bill would instead define ''electric service provider'' as an entity that offers electrical service to customers within the service territory of an electrical corporation, but not including an electrical corporation or a person employing cogeneration technology or producing electricity from other than conventional power sources, for its own use or the use of its tenants or an adjacent property and not for sale or transmission to others."

AB117 is clear that ESPs and CCAs are distinct entities with completely different obligations and responsibilities, as well as totally different status under CPUC regulations:

> "218.3. ''Electric service provider'' means an entity that offers electrical service to customers within the service territory of an electrical corporation, as defined in Section 218, but does not include an entity that offers electrical service solely to service customer load consistent with subdivision (b) of Section 218, and does not include an electrical corporation, as defined in Section 218, or a public agency that offers electrical service to residential and small commercial customers within its jurisdiction, or within the service territory of a local publicly owned electric utility. ''Electric service provider'' includes the unregulated affiliates and subsidiaries of an electrical corporation, as defined in Section 218."

AB117 defines the ESP specifically as the third-party supplier of services to a CCA, which is prohibited from being a utility, whether municipal or investor-owned:

> "SEC. 6. Section 394 of the Public Utilities Code is amended to read:
> 394. (a) As used in this section, ''electric service provider'' means an entity that offers electrical service to customers within the service territory of an electrical corporation, but does not include an electrical corporation, as defined in Section 218, does not include an entity that offers electrical service solely to serve customer load consistent with subdivision (b) of Section 218, and *does not include a public agency that offers electrical service to residential and small commercial customers within its jurisdiction, or within the service territory of a local publicly owned electric utility.* ''Electric service provider'' includes the unregulated affiliates and subsidiaries of an electrical corporation, as defined in Section 218."

In contrast, AB117 clarifies that a CCA must be *the governing board of a municipality or county:*

> "SEC. 2. Section 331.1 is added to the Public Utilities Code, to read:
> 331.1. For purposes of this chapter, ''community choice aggregator'' means any of the following entities, if that entity is not within the jurisdiction of a local publicly owned electric utility that provided electrical service as of January 1, 2003:
> (a) Any city, county, or city and county whose governing board elects to combine the loads of its residents, businesses, and municipal facilities in a communitywide electricity buyers' program.

Thus, a subsidiary entity such as the SFPUC cannot be a CCA; the City Council or Board of Supervisors has the exclusive powers of a CCA, alone possessing the authorities and rights vested by the statute. AB117 also requires that CCAs must approve contracts by ordinance, which only the Board can adopt:

> "A city, county, or city and county that elects to implement a community choice aggregation program within its jurisdiction pursuant to this chapter shall do so by ordinance."
> (PUC Section 366.2(c)(10(A)).

The distinction between CCA and ESP is writ large throughout AB117, and is reflected in a careful policing of ESPs as for-profit suppliers, in stark contrast to a clear devolution of public authority and trust to CCAs as non-profit organizations of ratepayers acting through their local government. In PUC Section 394(b) the legislature subjected ESPs to reporting requirements appropriate for market participants that might defraud customers or commit other criminal acts. Section 394(b) (AB117) also requires ESPs to demonstrate financial viability to the CPUC as risk-bearing entities. Finally, Section 394(b) (AB117) also requires ESPs to demonstrate technical and operational ability as suppliers, which it appropriately does not require of CCAs as organizations of ratepayers. PUC Section 394.5 (AB117 also provides for CPUC enforcement of ESP rules, and to revoke an ESP's registration, and to order an ESP to refund monies.

No such rules and powers apply to CCAs in AB117. CCAs are required to submit Implementation Plans, but not to receive approval of the Plans by the CPUC. CCAs are required to register with the CPUC, but unlike ESPs, no statutory authority is granted to the CPUC to de-register or penalize a CCA.

Add Conclusions Concerning CCA Legal Authority

Insert the following text as Section 1.6 to Chapter III, "Legal Authority"

1.6 Conclusions Conerning CCA Legal Authority

- **Other Agencies and Private Entities Already Perform "Utility-Type" Work in San Francisco. The SF Dept of Environment has run residential and business sector energy efficiency and solar programs for several years. San Francisco businesses have participated in Direct Access since 1998. Businesses and residents have developed and**

continue to develop Distributed Generation such as solar photovoltaics. None are in violation of the Charter.

- **"Utility" Means Poles and Wires, Which CCA Excludes by Law. Indeed, AB117 maintains a mandatory investor-owned utility role for PG&E. AB117 requires that investor-owned utilities (PG&E) "shall continue to provide all metering, billing, collection, and customer service to retail customers that participate in community choice aggregation programs. Bills sent by the electrical corporation to retail customers shall identify the community choice aggregator as providing the electrical energy component of the bill" (PUC Section 366.2(c)(9).**

- **AB117 Firewalls CCAs and Municipal Utilities. CCA is not legally a "utility." Under AB117 it is a "communitywide electricity buyers' program" that uses a local government process (PUC Section 331.1(a)). AB117 defines CCAs as consumer protection entities and firewalls them against municipal utilities: "Notwithstanding Section 366, a community choice aggregator is hereby authorized to aggregate the electrical load of interested electricity consumers within its boundaries to reduce transaction costs to consumers, provide consumer protections, and leverage the negotiation of contracts. However, the community choice aggregator may not aggregate electrical load if that load is served by a local publicly owned electric utility, as defined in subdivision (d) of Section 9604" (myy emphasis, PUC Section 366.2(c)(1)).**

- **CCAs are Voluntary Consumer Entities with Consumer Opt-Out Rights. CCAs are consumer-based purchasing entities, not "utilities." AB117 gives customers the "entitlement" to aggregate their electric loads as members of their local community with community choice aggregators (PUC Section 366.2. (a) (1)). As CCA is defined as a form of Direct Access (not municipalization), customers must be given an opportunity to opt-out of their community's aggregation program ((PUC Section 366.2.(a)(2).**

- **CPUC Defines CCAs as Customers, not Municipal Utilities. The CPUC defines CCAs as utility customers entitled to the same CPUC protection and treatment as bundled service customers for these services: "CCAs, like all customers, are entitled to some expectation that their charges will be predictable and subject to review by the Commission." (My emphasis, D.04-12-046 in R.03-10-003, p.24).**

- **Municipal Utilities Not Subject to California Public Utilities Jurisdiction, But CCAs are. Unlike a utility, a city entering into a CCA is a retail entity subject to CPUC jurisdiction. Under state law, it is therefore legally not a utility.**

- **AB117 Requires CCAs to be Governed by the Board of Supervisors. AB117 defines a CCA governing board as being either a city council or board of supervisors ((PUC Section 331.1(a) , not a city agency, meaning it is unlawful for any entity other than the Board to control the program. AB117 also requires that any CCA contract award be by ordinance (PUC Section 366.2(c)(10)(A), which only the Board can approve.**

- **Future SFPUC Control of Solar, Wind Facilities is Already Provided by LAFCO's Approved Plan. We have provided for ultimate SFPUC control by stating that any solar, wind or other facilities that are developed could become SFPUC assets when the H Bonds are retired. We have also proposed that the SFPUC develop the 150 MW wind component and sell the power to San Francisco ratepayers through the City and County's chosen ESP. While we are setting up CCA so that the City and County may convert to a municipal utility at a future date, CCA itself is not that utility. Thus, the determination of what party should be the implementing entity is a policy issue for the Board to decide, not a legal issue.**

Replace Independent CCA Program Implementation Entity With SFPUC/DOE/Program Director Structure

Delete Section 1.4 of and Exhibit V-1 of Chapter V, "Program Implementation," and insert the following:

1.4 Implementing Entity Organizational Structure

The Board of Supervisors finds that the Public Utilities Commission and Department of the Environment lack sufficient expertise to implement the City and County's Community Choice Aggregation Program. In addition, the Board of Supervisors finds that the SFPUC's resources are currently focused on major projects under its water and sewer business.

Therefore, the Board of Supervisors elects to create, fund and appoint a Community Choice Aggregation Program Director (PD). The PD shall be directly responsible to the Board of Supervisors for the implementation of CCA and ordinance 86-04, and shall be budgeted within the Board of Supervisors.

Accordingly the SFPUC's proposed annual $9M budget shall be reduced to $4.5 M/yr, and the Board shall directly administer $4.5M/yr to its chosen PD. Thus, the Board-appointed Program Director will administer half of the CCA program budget directly, and be able to hire outside consultants for essential expertise required by the PD.

SFPUC/DOE staff and other in-house resources shall be budgeted to work as a dedicated team chosen and removable from the project by the PD. SFPUC/DOE shall make staff and office resources available to the PD according to each agency's CCA budgets. In addition, the PD will oversee SFPUC/DOE staff paid for by their CCA budgets. The PD will first select a CCA Program Manager from within the SFPUC, and another CCA Program Manager from within the SFDOE. The two Program Managers shall serve as a

liaison between the PD and agency staff, and shall be responsible for the full compliance of agency employees with the directions of the PD. The PD may select among SFPUC and SFDOE staff with appropriate expertise according to program needs. The PD may remove staff from the program, or assign new staff to the program, according to program needs. The PD will perform the six-month and annual Employee Evaluations for the two Program Managers. Finally, the PD will select among existing SFPUC and DOE agency consultants based on available expertise. All SFPUC staff, as well as existing SFPUC consultants, shall be paid for by SFPUC's $4.5M/yr. CCA Budget. All SFDOE staff and consultants shall be paid for by SFDOE's annual CCA budget.

Staff from the SFPUC and Department of the Environment shall have opportunity to participate in the program design, administration, management, or evaluation of the Electric Service Provider's energy efficiency program implementation, as determined by the Board-appointed CCA Program Director. The PD shall receive, manage and allocate all Energy Efficiency Public Goods Charge funds paid to the City and County by the California Public Utilities Commission or other potential sources.

For expertise and staffing resources not available among SFPUC/SFDOE staff or existing consultants, the PD will independently retain consultants, or other personnel. These parties shall be hired as contractors and paid from the PD's $4.5M/yr. Budget. The PD shall obtain office space, equipment and materials under his/her own budget.

The Board of Supervisors shall receive candidates for PD within one month of the Board's adoption of the Implementation Plan, and shall appoint a PD within two months of said adoption.
The PD shall be an individual who serves under contract at the pleasure of the Board, and may be removed by ordinance of the Board and Mayor. The PD must report on the use of these funds to the Budget and Finance committee on a quarterly basis.

The PD shall make an appearance before the Board of Supervisors twice a year to report on the expenditures he/she has authorized, work completed, and work in progress, and shall present updated schedules on the implementation of CCA. The PD shall file its written report with the Budget and Finance Committee, which may convey this report to the Board with any recommendations, as appropriate.

The Program Director (PD) shall be an independent consultant directly paid by and serving at the will of the Board of Supervisors. The PD, who would contract with, supervise and remove dedicated Project

Delivery Team members, must have the strongest available mix of knowledge and experience in the components of ordinance 86-04 and the Implementation Plan:

- Expertise in CA Community Choice Aggregation Law (AB117)
- Expertise in H Bond Authority (Charter Section 9.107.8);
- Expertise in CPUC CCA Regulations for CCA (R..03-10-003), electric procurement, (R. 04-04-003, R. 01-10-024) and energy efficiency (R.01-08-028);
- Familiarity With Design-Build-Operate-Maintain Precedents, Available Expertise;
- Expertise in Infrastructure Site Acqusition, Industrial Facility Permitting and Construction Management ;
- Expertise in Solar Photovoltaics Development;
- Experience in Data Management and Mapping Systems;
- Expertise in state legislative process;
- Expertise in local legislative process;
- Familiarity with CPUC, California Energy Commission (CEC) and available federal subsidies.

The board should require no longer than two months to identify and hire the PD. As Ordinance 86-04 authorizes the Board to alter the schedule for preparation of the RFP by resolution, the Board will adopt a resolution extending the deadline by one month to accommodate this delay, meaning the RFP should be submitted to the Board of Supervisors no later than January 6, 2006. The Implementation Plan shall be amended to reflect this modification of schedule.

The PD would be appointed by and report to the Board of Supervisors. Annual budget of the PD must be made as a Budget line item by the Board of Supervisors. This could be done in the Budget now in Committee, and/or through a draw on General Funds based on the H Bonds Resolution of Reimbursement prepared by Local Power.

The PD would administer the $4.5M annual Budget, which would have to be reauthorized by the Board each year, for four years, and would select and supervise SFPUC/DOE staff, as well as outside consultants, for the term of the Phase I 360 MW Rollout. The Board of Supervisors would have an option of renewal of the PD contract for a Phase II rollout.

Finally, SFPUC staff would be dedicated to this program and PD according to the selection of the PD within the SFPUC's $4.5M budget, which the SFPUC General Manger must approve within one month after the PD is approved by the Board of Supervisors.

1.4.1 Single Mission Staff

The implementing entity executive staff will be selected from a range of candidates that

have demonstrated a substantial level of relevant and successful experience in the implementation of complex programs. The individuals chosen to lead and work on this effort as employees of the SFPUC and SFDOE and contractors of the Program Director would be assigned full time to their specific CCA Program roles and would have no other work responsibilities.

The goal of structuring the staff roles and the management will be to create an organization with the greatest potential for success in implementing the CCA Program. Assembling a team of well qualified individuals, with a given single mission, will create levels of capability and focus appropriate to address the challenges inherent in CCA Program.

1.4.2 Dedicated Location

The establishment of the implementing entity in a dedicated office space will greatly enhance its efficiency and its capability to successfully implement the CCA Program. Compared to the expected physical distribution of staff if the CCA was implemented by an existing agency, co-location 'centers' the effort, and improves the efficiency of the implementation process in a number of ways.

Having the staff located in the same working space will eliminate much of the communication lag that can occur when a project team is spread across different locations and different organizations. Instead of waiting hours or days for people to return messages, or to be available for meetings, tasks can be often be progressed very quickly in a co-located setting. Co-location can also result in better information distribution. Team members tend get more 'word of mouth' information in a co-located setting, and they get it faster. Formal information management is also more efficient in a co-located setting, as the program specific records center would be easily accessible to staff.

1.4.3 Financial Management

The Program Director will need to manage a range of financial transactions and information, including confidential information. This includes all phases of structuring the Proposition H bond issuance and managing the resultant funds, all funds related to any required property acquisitions, the management of all contract accounts and

invoices, from the ESP and other vendors involved in advancing the program, the management of the ESP and consultant contracts, and may also include a range of ratepayer cost and/or payment tracking.

Having these functions consolidated in a financial management office specific to the CCA will bring a number of benefits. It will allow for the senior management team and thus the Board of Supervisors to have a single point of contact for all financial matters. All of the financial functions would be conducted by one set of staff, and the CCA financial records would be in one consolidated location.

1.4.4 Efficient Staff Structure

As discussed above, it is expected that the core senior staff of the Program Director would have been selected from a range of well qualified candidates, and their skills would be well suited to their roles. At a more junior level, the Program Director would also oversee a small core support staff, whose roles were broader, designed to suit the ongoing needs of the CCA Program.

Instead of building a larger full time team to provide all of the skills required to implement the CCA Program, the Program Director will be able to structure consultant services contracts to provide skills needed for particular phases of the program on a task basis. This structure allows the right skills to be available when needed. It also allow the Program to be more cost effective, carrying a smaller core staff, and applying skills only when needed.

Add Details on the RFP Process and Outcomes

Insert the following at the end of Section 2.6 of Chapter V, "Program Implementation: ESP RFP":

The CCA RFP process shall be undertaken by the CCA Program Director, and shall consist of several steps. First, the Program Director shall undertake a prequalification process, or Request for Qualifications (RFQ), for parties interested in participating in the RFP, to present their qualifications to the Program Director.

Second, the PD shall present a preliminary draft RFP to qualifying bidders for Industry Review, providing prospective bidders with the opportunity to comment on their ability to respond to the preliminary draft RFP, and to recommend changes.

Finally, the Program Director shall not present a final draft RFP to the Board of Supervisors for approval, unless at least two (2) qualifying bidders indicate a willingness to submit bids in response to the final draft RFP.

The Board of Supervisors shall have final authority to approve the final draft RFP pursuant to Ordinance 86-04.

Add Details on the RFP Bids Evaluation Process

Insert the following at the beginning of Section 2.6.2 of Chapter V, Program Implementation: Procurement Process":

The Program Director, SFPUC, SFDOE and CCA Citizens' Advisory Task Force shall review qualifying bids and make their recommendation concerning ESP bids to the Board of Supervisors, which shall review the bids and decide whether to approve, by resolution, any one of the proposals submitted by qualified bidders in response to the RFP. If the Board of Supervisors does approve a bid, the Program Director and City Attorney shall prepare an ESP contract for approval by the Board of Supervisors. The approval shall be undertaken by Ordinance, pursuant to AB117. If the Board of Supervisors does not approve any of the qualifying bids, the Program Director shall prepare a report to the Board of Supervisors and Mayor outlining the cause of the RFP failure, and recommending a course of action.

Add Details on a High Opt-Out Rate

Insert the following paragraph on page 5 between the paragraph ending with the word "terminates" and the paragraph beginning with the word "Moreover."

CCSF's CCA RFP shall require bidders to accept liability associated with the rate of customer Opt-Out during the 120-day opt-out period required by AB117. The RFP shall allow ESPs to assign a premium to this risk within their rates, and shall require ESPs to provide various forms of financial assurance such as

a bond or letter of credit from a third party, or their parent company, in the event that costs associated with the opt-out rate exceed the the assigned premium.

Rollout Performance and H Bond Tranches

Insert the following paragraph on page 56 between the paragraph ending with the word "Attorney" and the paragraph beginning with the words "The ESP":

Bidders for the ESP contract shall be pre-qualified , so that only firms with the capacity to provide CCSF with sufficient performance security can bid for the project. A qualifying ESP will have to post a significant performance security (either 100% of the capital project value or some major percentage of the capital project value) prior to entering into the contract, which financially binds a third party surety company or bank to provide a binding commitment of funds from the third party to CCSF cover the ESP's capital project obligations if the ESP defaults.

The ESP contract will be structured so that the ESP can only invoice for payment from the H Bond funds for 360 MW capital work that has been completed and verified by the CCA Program Director. The ESP can never be given any form of advance payment for the capital work or for any reason except for Mobilization. CCSF will float the H Bonds under one umbrella bond arrangement through a bond broker. Under this arrangement, a smaller number of bond releases, or "tranches" shall be undertaken over time that corresponds to the capital program cash flow needs.

END