### Agenda Item:

**Subject:** Budget Adjustment and Contract with Best, Best and Krieger for Legal Services for Butte Choice Energy Authority

**Department:** County Administration

**Contact:** Brian Ring  
**Phone:** 530.552.3311

**Meeting Date Requested:** April 14, 2020

**Fiscal Impact:**

The costs associated with the contract for this fiscal year are anticipated to be under $40,000. Any costs expended on this contract will be paid back to the County once BCEA has become operational and revenues permit (customarily 18 - 24 months after becoming operational).

**Personnel Impact:**

None.

**Action Requested:**

1) Approve Budget Adjustment from general fund appropriations for contingency (4/5 vote required); and
2) Approve Contract and authorize the Chair to sign.

**Administrative Office Review:** Brian Ring, Assistant Chief Administrative Officer


**BUDGETARY ADJUSTMENT WORKSHEET**

**Description of Budget Action:** Budget adjustment for CCA consultant

<table>
<thead>
<tr>
<th>(Column 1) Fund</th>
<th>(Column 2) Charge Code</th>
<th>(Column 3) Account #</th>
<th>(Column 4) Account Description</th>
<th>Use of Funds (Column 5) Recommended Appropriation Increase/(Decrease)</th>
<th>Source of Funds (Column 6a) Recommended Revenue Increase/(Decrease)</th>
<th>(Column 6b) Use of Fund Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>0010</td>
<td>6900000</td>
<td>580020</td>
<td>GENERAL FUND CONTINGENCIES</td>
<td>(40,000.00)</td>
<td></td>
<td></td>
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<tr>
<td>0010</td>
<td>0201000</td>
<td>534000</td>
<td>CONSULTANTS</td>
<td>40,000.00</td>
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<td></td>
</tr>
</tbody>
</table>

**TOTAL** 

<table>
<thead>
<tr>
<th>Use of Funds Source of Funds</th>
<th>Use of Fund Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

Reviewed and approved for Auditor-Controller: 

Journal Date: B -
STANDARD CONTRACT
Greater than $25,000.00

This Contract, dated as of the last date executed by the County of Butte is between the County of Butte, a political subdivision of the State of California, hereinafter referred to as “County”, and the Contractor indicated in the variable information table below, hereinafter referred to as “Contractor.”

VARIABLE INFORMATION TABLE

| Term of This Contract (Complete Dates in Just One of the Following Three Rows) |
|-----------------------------|-----------------------------|
| Term Begins | Term Completion Date |
| ☑ On Following Date | 3/1/20 | ☑ On Following Date | 2/28/21 |
| ☐ Upon Date Notice to Proceed Received | ☐ Calendar Days Following Receipt of Notice to Proceed |
| ☐ Upon Last Date Executed by County | ☐ Calendar Days Following Execution of Contract by County |

Term Begins | Term Completion Date
---|---
On Following Date | 3/1/20
Upon Date Notice to Proceed Received | Calendar Days Following Receipt of Notice to Proceed
Upon Last Date Executed by County | Calendar Days Following Execution of Contract by County

County Department | Administration | FOB Point
---|---|---
Terms | Net 30 | Basis of Price (Do Not ✚ More Than One of the Following Four Blocks)
Price | ☑ Fixed Price | ☐ Annual Price | ☐ Monthly Price | ☑ Hourly Rate

Not-to-Exceed Price | $120,000 |
√ if Reasonable Expenses are authorized in addition to Hourly Rate

Contractor Contact Information

<table>
<thead>
<tr>
<th>Contractor</th>
<th>Project Manager</th>
</tr>
</thead>
<tbody>
<tr>
<td>Best, Best and Krieger</td>
<td>Brian Ring</td>
</tr>
</tbody>
</table>

City, State & ZIP | Sacramento, CA 95814 | Oroville, CA 95966
Telephone | 916-325-4000 | 530-552-3311
Email | bring@buttecounty.net |

County Contact Information

WHEREAS, County, through the County Department identified above, desires to have work described in the Attachment III - Scope of Work performed; and

WHEREAS, Contractor possesses the necessary qualifications to perform the work described herein.

NOW THEREFORE BE IT AGREED between the parties to this Contract that this Contract is subject to the provisions contained in the following attachments, which are made a part of this Contract. Should there be any conflicts between this Contract and the attachments that are incorporated herein, precedence shall first be given to the provisions of this Contract followed by the attachments, in descending order, as indicated below:

Attachment I – Terms and Conditions
Attachment II – Insurance Requirements for Most Contracts
Attachment III – Scope of Work

By signature below, the department head or his or her deputy certifies that no unauthorized alterations have been made to the Attachment I – “Terms and Conditions” and/or the Attachment II – “Insurance Requirements for Most Contracts”.

Brian Ring
Typed or Printed Name | Signature | Date
---|---|---
Steve Lambert | Date | Chair, Butte County Board of Supervisors

This Contract and the above listed Attachments represent the entire undertaking between the parties.

COUNTY

CONTRACTOR

By Date

Steve Lambert

Harriet Steiner

REVIEWED FOR CONTRACT POLICY COMPLIANCE

REVIEWED AS TO FORM

General Services Contracts Division

BRUCE S. ALPERT

By Date

Butte County Counsel
ATTACHMENT I
TERMS AND CONDITIONS

1. **Scope of Work.** The work to be undertaken is identified in the attached “Attachment III – Scope of Work” which is made a part of this Contract.

2. **Reimbursement.** The work shall be performed for the Fixed price, Annual price, Monthly price or Hourly rate as indicated above in the variable information table, but shall not exceed the Not-to-Exceed Price if included in the variable information table. Reasonable expenses are authorized in addition to the Hourly Rate if both the Hourly Rate block and the block authorizing Reasonable Expenses are checked in the variable information table. Payment shall be made after the Project Manager or designee reviews and approves the work and after submittal of an invoice by the Contractor.

3. **County Project Manager.** The County project manager or designee for this undertaking who will receive payment invoices and answer questions related to the coordination of this undertaking is identified above in the variable information table.

4. **Independent Contractor.** Contractor is an independent contractor, working under his/her own supervision and direction and is not a representative or employee of County. Contractor agrees to file tax returns and pay all applicable taxes on amounts paid pursuant to this Contract.

5. **Confidentiality and Ownership.** The COUNTY retains the exclusive right of ownership to the work, products, inventions and confidential information produced for the COUNTY by the CONTRACTOR, and the CONTRACTOR shall not disclose any information, whether developed by the CONTRACTOR or given to the CONTRACTOR by the COUNTY. The parties agree that the COUNTY will own the work, products, inventions or information produced by the CONTRACTOR pursuant to this Contract.

6. **Termination.** This Contract may be terminated by either the County or Contractor by a thirty day written notice. Authorized costs incurred by the Contractor will be reimbursed up to the date of termination. Notwithstanding anything stated to the contrary herein, this Contract shall expire on the Completion Date indicated in the above Variable Information Table unless the Completion Date is modified by written amendment to this Contract.

7. **Indemnification.** Contractor agrees to accept responsibility for loss or damage to any person or entity, and to defend, indemnify, hold harmless and release the County, its officers, agents and employees from and against any and all actions, claims, damages, disabilities or expenses that may be asserted by any person or entity, including Contractor, to the extent arising out of or in connection with the negligent acts or omissions or willful misconduct in the performance by Contractor hereunder, whether or not there is concurrent negligence on the part of the County, but excluding liability due to the active negligence or willful misconduct of the County. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Contractor or its agents under worker’s compensation acts, disability benefit acts, or other employee benefits acts. Contractor shall be liable to County for any loss of or damage to County property arising out of or in connection with Contractor’s negligence or willful misconduct.

8. **Insurance Requirements.** Contractor shall procure and maintain for the duration of this Contract, insurance against claims for injuries to persons or damages to property which may arise from, or be in connection with the performance of the Work hereunder by Contractor, Contractor’s agents, representatives, employees and subcontractors. At the very least, Contractor shall maintain the insurance coverages, limits of coverage, and other insurance requirements as described in Attachment II to this Contract.
9. **Changes to the Contract.** Changes to this Contract may only be approved by written amendment to this Contract.

10. **Contractor’s Standard of Care.** County has relied upon the professional ability and training of the Contractor as a material inducement to enter into this Contract. Contractor hereby warrants that all of Contractor’s work will be performed in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable Federal, State and local laws, it being understood that acceptance of Contractor’s work by County shall not operate as a waiver or release.

11. **Termination for Exceeding Maximum Level of Expenditures.** Contracts exceeding the monetary limits delegated to the Purchasing Agent, or authorized deputies, are not valid unless duly executed by the Chair of the Board of Supervisors. If this Contract was executed for the County of Butte by the Purchasing Agent, or authorized deputy, this Contract shall automatically terminate on the date that the provision of services or personal property or incurring of expenses, the cumulative total of which, exceeds the amount prescribed by Government Code Section 25502.5 for personal services contracts or the amount prescribed by Public Contract Code Section 22032 (b) for public works contracts.

12. **Termination for Exceeding Maximum Term.** Contracts exceeding the five-year term delegated to the Purchasing Agent, or authorized deputies, are not valid unless duly executed by the Chair of the Board of Supervisors. If this Contract was executed for the County of Butte by the Purchasing Agent, or authorized deputy, this Contract shall automatically terminate on the date that the term exceeds five years. Amendments to this Contract, or new Contracts for essentially the same purpose, shall not be valid beyond the five-year limitation unless duly executed by the Chair of the Board of Supervisors.

13. **Compliance with Laws.** Contractor shall comply with all Federal, State and local laws, rules and regulations including, without limitation, any nondiscrimination laws.

14. **Applicable Law and Forum.** This Contract shall be construed and interpreted according to California law and any action to enforce the terms of this Contract for the breach thereof shall be brought and tried in the County of Butte.

15. **Contradictions in Terms and Conditions.** In the event of any contradictions in the terms and/or conditions of this Contract, these Attachment I TERMS AND CONDITIONS shall prevail.

16. **No Delegation or Assignment.** Contractor shall not delegate, transfer or assign its duties or rights under this Agreement, either in whole or in part, directly or indirectly, by acquisition, asset sale, merger, change of control, operation of law or otherwise, without the prior written consent of County and any prohibited delegation or assignment shall render the contract in breach. Upon consent to any delegation, transfer or assignment, the parties will enter into an amendment to reflect the transfer and successor to Provider. County will not be obligated to make payment under the Agreement until such time that the amendment is entered into.
ATTACHMENT II
INSURANCE REQUIREMENTS FOR MOST CONTRACTS
Not for Professional Services or Construction Contracts

*Please provide a copy of Attachment II to your insurance agent.

Contractor shall procure and maintain for the duration of this contract, insurance against claims for injuries to persons or damages to property that may arise from or be in connection with the performance of the work hereunder by Contractor, Contractor’s agents, representatives, employees and subcontractors. Before the commencement of work Contractor shall submit Certificates of Insurance and Endorsements evidencing that Contractor has obtained the following forms of coverage:

A. MINIMUM SCOPE AND LIMITS OF INSURANCE - Coverage shall be at least as broad as:

1) Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than $1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

2) Automobile Liability: ISO’s Commercial Automobile Liability coverage form CA 00 01.
   1. Commercial Automobile Liability: Covering any auto (Code 1) for corporate/business owned vehicles, or if Contractor has no owned autos, covering hired (Code 8) and non-owned autos (Code 9), with limits no less than $1,000,000 per accident for bodily injury and property damage.
   2. If no transportation services of any type are provided, and use of a motor vehicle is strictly limited to travel to and from work or work sites, evidence of Personal Auto Policy coverage with limits no less than $100,000 per person, $300,000 each accident, $50,000 property damage may be provided in lieu of Commercial Automobile Liability Insurance.

3) Workers’ Compensation Insurance: As required by the State of California, with Statutory Limits and Employer’s Liability Insurance with limit of no less than $1,000,000 per accident for bodily injury and disease. (Not required if Contractor provides written verification he or she has no employees.)

If Contractor maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

B. OTHER INSURANCE PROVISIONS - The insurance policies are to contain, or be endorsed to contain, the following provisions:

1) The County of Butte, its officers, officials, employees and volunteers are to be covered as additional insureds on the CGL and Commercial Auto policies with respect to liability arising out of work or operations performed by or on behalf of the Contractor, including materials, parts or equipment furnished in connection with such work or operations. General Liability coverage can be provided in the form of an endorsement to Contractor’s insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38 and CG 20 37 forms if later revisions used).

2) For any claims related to this contract, Contractors insurance coverage shall be primary insurance coverage at least as broad as ISO Form CG 20 01 04 13 as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees and volunteers shall be excess of Contractor’s insurance and shall
3) Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the County.

C. WAIVER OF SUBROGATION: Contractor hereby grants to County a waiver of any right to subrogation which any insurer of said Contractor may acquire against the County by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.

The Workers’ Compensation policy shall be endorsed with a waiver of subrogation in favor of the County for all work performed by the Contractor, its employees, agents and subcontractors.

D. SELF-INSURED RETENTIONS: Self-insured retentions must be declared to and approved by the County. The County may require Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or County.

E. ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best’s rating of no less than A:VII, unless otherwise acceptable to the County.

F. VERIFICATION OF COVERAGE: Contractor shall furnish County with original certificates of insurance including all required amendatory endorsements (or copies of the applicable policy language affecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor’s obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

G. SPECIAL RISKS OR CIRCUMSTANCES: County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

H. SUBCONTRACTORS: Contractor shall include all subcontractors as insured under its policies or require all subcontractors to be insured under their own policies. If subcontractors are insured under their own policies, they shall be subject to all the requirements stated herein, including providing the County certificates of insurance and endorsements before beginning work under this contract.
ATTACHMENT III
SCOPE OF WORK

Unless indicated otherwise herein, the Contractor shall furnish all labor, materials, transportation, supervision and management, and pay all taxes required to complete the project described below:

Should Contractor provide services prior to execution of contract, all items stated in the contract, including all attachments, shall apply at the time services are performed.

CONTRACTOR RESPONSIBILITY

Contractor shall provide general counsel legal services to Butte Choice Energy, herein referred to as “Agency”). Contractor shall provide legal support for Agency Board of Directors (Board) meetings, legal advice on bylaws and policies and procedures, and provide legal support on other technical related matters as needed.

Contractor Tasks:

Contractor shall provide to Agency and County general counsel services which include, but not limited to:
- General legal support for the Agency such as governance and operations including required legal filings with County or state agencies as may be required by law
- Preparation of bylaws or operating rules as may be desired by the Board
- Review of monthly Board agendas and materials, and attendance at all Board meetings and workshops.
- Provide Brown Act, Conflict of Interest and Public Records Act advice and representation
- Provide and/or review standard vendor contract terms and template for consultants and professional service providers. Draft/review contract for wholesale power services, data management and other high dollar, technical service contracts.
- Advice to the Agency’s Chief Executive Officer (CEO) and designated staff on administrative and operational matters, including but not limited to Community Choice Aggregate (CCA) laws, regulations, rate settings, utilization of CCA revenues, power procurement.
- Research and advice on operational/public agency legal questions asked by the Board, Agency’s Chief Executive Officer and designated staff
- Advice and assistance on other legal matters as may be assigned by the Agency’s Chief Executive Officer.
- Drafting or review of routine Agency contracts
- Specialized legal work, such as regulatory advice and advocacy, power procurement, litigation, California Environmental Quality Act (CEQA) document review, public finance, employment law advice such as employee discipline, pension and retirement issues and wage and hour disputes, and other complex matters, as requested by Agency or County.

Contractor Compensation:

The maximum amount billable under this contract is $120,000. Contractor shall invoice County as outlined below:

| Partners and of Counsel Attorneys | $395 per hour |
| Associates                        | $315 per hour |
| Paralegals                        | $175 per hour |

Contractor shall submit fully delineated invoices to County on a monthly basis. Upon receipt, review and approval of Contractor’s invoices, County shall make every effort to pay within 30 days.

COUNTY RESPONSIBILITY

County and Agency shall work with Contractor to provide information necessary to complete the Contractor’s tasks above.