

STAFF REPORT—EXECUTIVE DIRECTOR DELEGATION

SUMMARY

Harbors and Navigation Code statutes allows for the BOPC Executive Director to perform a myriad of duties with the approval of the Board. The State Administrative Manual states that State Boards and Commission contracting documents must be accompanied by a resolution, unless by statutes the executive officer is authorized to sign the documents. A resolution from the Board authorizing the Executive Director to procure and consummate contracts for goods and services, and to hire staff will assist with streamlining the Board's operations.

RELEVANT HARBORS AND NAVIGATION CODE STATUTES

Harbors and Navigation Code

§ 1156.

(a) The board may appoint, fix the compensation of, and from time to time adjust the compensation of, an executive director who is exempt from the civil service laws, and other employees as may be necessary. The executive director may perform all duties, exercise all powers, discharge all responsibilities, and administer and enforce all laws, rules, and regulations under the jurisdiction of the board, with the approval of the board, including, but not limited to, all of the following:

- (1) The administration of personnel employed by the board in accordance with the civil service laws.
- (2) To serve as treasurer of the board and keep, maintain, and provide the board with all statements of accounts, records of receipts, and disbursements of the board in accordance with the law.
- (3) The issuance and countersigning of licenses that shall also be signed by the president of the board.
- (4) The administration of matters and the maintenance of files pertaining to action taken against licenses issued by the board.
- (5) The administration of investigations of, and reporting on, a navigational incident or other matter for which a license issued by the board may be revoked or suspended.
- (6) To work with board members, staff, and other interested stakeholders to recommend improvements in the pilot training program.
- (7) Under the direction of the board, to coordinate with other state and federal agencies charged with protecting the environment and with the oil and hazardous chemical shipping industry.
- (8) Any other function, task, or duty as may reasonably be assigned by the president of the board, including, but not limited to, performing research and obtaining documents and other evidence for board activities, including rate hearings.

(b) The Secretary of Business, Transportation and Housing shall appoint one assistant director to serve in a career executive assignment at the pleasure of the secretary. The assistant director shall have the duties as assigned by the executive director, and shall be responsible to the executive director for the performance of his or her duties.

(c) The board may employ personnel necessary to carry out the purposes of this chapter. All personnel shall be appointed pursuant to the State Civil Service Act (Part 1 (commencing with Section 18000) of Division 5 of Title 2 of the Government Code), except for the executive director and the assistant director, who shall be exempt from state civil service. The board may

fix the compensation of, and from time to time adjust the compensation of, any employees as may be necessary.

(d) All personnel of the board shall be appointed, directed, and controlled by the board, the executive director, or the board's authorized deputies or agents to whom it may delegate its powers.

(e) The board may contract and employ commission investigators. The board shall adopt regulations for the minimum standards for a commission investigator that shall include, but are not limited to, a basic knowledge of investigative techniques and maritime issues.

(Amended by Stats. 2011, Ch. 324, Sec. 7. Effective January 1, 2012.)

State Administrative Requirements¹

SAM—CONTRACTS

AUTHORIZATION OF AGREEMENTS

1208

(Reviewed 6/14)

1. State Departments—Authorized Signatures

- a. Authority to sign purchase documents is limited to those executive officers who either have statutory authority or have been duly authorized in writing by one who has statutory authority.
- b. Anyone who signs a purchase document should have knowledge in the procurement laws, policies, and procedures pertaining to the goods or services being procured. If an individual with signature authority does not possess sufficient procurement knowledge and expertise, the individual should, prior to signing, have the purchase document reviewed by someone who possesses such knowledge and expertise.
- c. Delegation of signature authority is a selective process and should be commensurate with experience with principles of sound contracting and procurement policies, demonstrated familiarity with the process of purchase document formation, execution, and administration, and completion of applicable training and/or certifications.
- d. Each executive officer who has statutory authority to sign purchase documents shall ensure that his/her agency maintains a current written record of agency employees authorized to enter into and sign purchase documents on behalf of that agency. This written record shall be subject to DGS audit.
- e. State Board's and Commission's purchase documents in excess of \$5,000 must be accompanied by a copy of the resolution approving the execution of the purchase document, unless by statute the executive officer may sign the purchase document.

DISCUSSION

Contracts. Section 1152 (a) of the Harbors and Navigation Code (HNC) includes various, but not an exhaustive, list of duties, functions and powers of the Executive Director to be carried out with the approval of the Board. HNC § 1152 (d) states that the Board shall contract with and

¹ SAM means the State Administrative Manual. SAM uses “contracts” and “agreements” interchangeably.

employ commission investigators. Procuring goods and services, and executing contracts is not specifically listed.

The State Administrative Manual requires all boards and commissions that enter into contracts exceeding \$5,000 or more to provide a copy of the resolution approving the purchase document unless by statutes the executive officer has authority to sign the purchase document.

The Board, in its daily functions, contracts with and procures a wide variety of goods and services, and given the statutory authority of the Board, the Executive Director and the State Administrative Manual requirements, for efficiency purposes, the Board should officially delegate to the Executive Director the authority to procure and consummate contracts and to hire staff.

For purposes of such a delegation, the term “contracts” is used broadly to include purchase of services through standard agreements, interagency agreements, service order agreements, lease agreements, and other contractual arrangements. The purchase of goods can be achieved through purchase order agreements and other types of purchasing documents. Most of the Board’s operating expenses and equipment (OE&E)² fall under this broader “contract” category, and are therefore relevant in the context of any delegation of contracting authority to the Executive Director. The Board also enters into training contracts with trainees in the Pilot Trainee Training Program that provide neither a good nor a service to the Board, but are contracts.

The Board’s OE&E budget for FY 2019-20 is approximately \$25,000. The majority of the Board’s contracts are less than \$600,000 each with terms not exceeding five years. The Board currently has one outstanding contract for more than \$600,000 for manned model services. The cumulative amount of current Board contracts that are less than \$600,000 equals nearly \$2 million. The cumulative amount of 8 current trainee contracts equals just over \$2 million.

Hiring. HNC § 1152 (c) states the Board shall employ staff. HNC § 1152 (d) states that all personnel are to be appointed, directed and controlled by the Board, the Executive Director or a designee of the Board. For the past decade, the Executive Director has made the selection and hiring decisions of civil service staff on behalf of and at the convenience of the Board.

RECOMMENDATION

For efficiency and streamlining purposes, and to meet the state administrative requirements, it is recommended that the Board document in a resolution the delegation to the Executive Director the authority to procure goods and service, and to execute contracts on behalf of the Board. It is recommended that the delegation apply to a contract not exceeding \$600,000 with for no longer than a five-year term, and that the total cumulative amount of delegated contracting authority should not exceed \$4,500,000 at any one time. The delegation should also include the authority for the Executive Director to hire civil service staff.

It is advisable that any delegated authority to the Executive Director allow the Executive Director to seek Board advice on any contract or contract amendment decision should they chose

² OE&E includes purchases associated with printing, communications, postage, training, equipment and general expenditures.

to do so, allow the Executive Director to designate someone to make contracting and hiring decisions in the event that they are unable to do so, require the Executive Director or their designee to report to the Board whenever any delegated authority is exercised, and that the Board review the contract and hiring delegated authority authorization annually.

It is also recommended that the delegated authority endorse and ratify any past contracting and hiring actions by the Executive Director.

Such an Executive Director contract and hiring delegation authority would aid the efficient functioning of the Board, and would not supplant the authority of the Board in any decisions it wishes to make directly.