

NATIONAL PROCESSED RASPBERRY COUNCIL

Executive Committee Meeting

November 4, 2013, 9:00 a.m. PDT

Committee Members Participating:

John Clark
 Rob Dhaliwal
 Brad Rader

Others Participating:

Tom Krugman Kim Spriggs
 Tom Skilton

x = participating

A. Establish Quorum

The meeting was called to order by John Clark at 9:13 a.m. Roll Call disclosed a quorum to be present.

B. Contract Review

Tom K reminded Committee members of the action taken during the June meeting that called for the Executive Committee to develop RFQ's (Request for Qualifications) for contracted positions and to act as the Search Committee. Specifically, minutes from the June Council meeting show:

“Hector moved to have an RFQ for all contracted positions presented at the November meeting with the intent to issue the RFQ in late 2013 meeting, have the Executive Committee function as a Search Committee, and a permanent slate of contractors selected by February, 2014 to begin April 1, 2014. Rob seconded the motion which passed unanimously. “

Draft RFQ's were presented to the Committee, with Brad asking how they were developed. Tom K said that they were based on information in the current contracts and existing descriptions for similar positions in other similar organizations. Tom discussed the potential need to amend terms within existing contracts for the Executive Director and Wellness Coordinator, as both contractors were already dedicating hours well above those envisioned in June. As the Council's programs and activities will continue to grow, it is reasonable to expect hours to increase even more. Current program direction was summarized, as well as details about the Marketing Team that had been assembled after the Marketing Narrative had been approved.

Tom S directed members to two handouts describing possible resolutions for Committee consideration. The first would be to amend the previous Council resolution and maintain the current team in the interests of continuity and to avoid interrupting program implementation, and the second would be to publish the RFQ's, receive qualifications, and make a decision at a later time on whether to proceed any further.

At this time, an Executive Session to discuss contracts was called.

Returning to Open Session, Brad reported that discussion had indicated it would be prudent to maintain the current team in order not to disrupt momentum of the program as it ramped up. He noted the difficulty in evaluating the marketing program as it had not yet been launched, and said that in order to do so, the Committee discussed extending the fiscal year to be concurrent with the crop year, tabling further discussion of issuing RFQ's at this time and extending existing staff contracts until September 30, 2014. In considering this action, the Committee had also discussed the need to have a thorough presentation of the marketing program at the next Council meeting. Taking the action as described would require preparation and submission of an amended budget to AMS by January 31, 2014, amending contract dates, and preparing new Narratives if programs were added or deleted.

On a motion by Brad, seconded by Rob, it was moved and unanimously approved to recommend to the Council that: (1) the RFQ's for the Executive Director, Wellness Coordinator, and Legal Counsel positions be tabled; (2) the fiscal year be changed to October 1 – September 30 to match the crop year; and (3) the four initial service contracts be extended until September 30, 2014.

C. Executive Director Report

Tom K directed Committee members to financial reports included in the Council meeting packet, noting \$346,000 in the Council's checking account with \$542,000 in receivables from import assessments due. To date, the majority of expenditures had been for the four service contracts and/or deposits for marketing activity. No expenditures had been made yet for Research projects, but invoices were expected shortly for initial payment as called for in the contracts. A Contract Log showing all current contracts was presented for review which detailed contracted parties, contract terms, and contract values.

D. Legal Counsel

Tom S presented an overview on status of trademark registration. He explained that his firm had looked into the matter and discovered that a company based in Pennsylvania had previously applied to register a similar tagline based on an "intent to use" the mark. Tom's firm had prepared and sent a letter to the other company's attorney on behalf of the Washington Red Raspberry Commission describing historical usage of the tagline by the WRRRC and requesting that the Pennsylvania company abandon its "intent-to-use" application. As part of this process, an application to register the tag line on behalf of the WRRRC had been filed as the WRRRC is the historic user of the tag line. If registration is approved, rights to its use will be assigned to the Council. His firm is now awaiting a response from the other company's attorney. Tom indicated there is no time period for response, but that there was an expectation that it would not take too long.

Tom S. also walked-through a prepared memorandum addressing some possible inconsistencies and anomalies between the Policies and Procedures Manual and the By Laws in terms of how contracts are signed and/or approved, and how payments may be made. He told Committee members that this is not uncommon in a new organization. To resolve these inconsistencies, the Council should clarify its intent on three questions.

- 1) When are contracts required before the Council may engage an outside party?
- 2) When must a contract be submitted to the full Council for approval?

3) When must payments be approved by the Council?

In addressing the first question, Kim indicated that it was AMS's position that all Council contracts must be in writing, but that some Council expenditures and obligations did not require a contract. The Council currently had a threshold for contracts, and some services, such as hotel meeting arrangements, did not require a contract. The current Policies and Procedures Manual language requires "contracts when practicable" which was acceptable to USDA/AMS. Tom S. acknowledged these provisions but thought they might conflict with the contract approvals provisions in Bylaws Articles 5(d-f).

On the second question, Kim stated that the AMS interpretation that if an expenditure was contemplated in the approved budget, then a contract memorializing such obligation(s) was considered to be approved by the Council. This interpretation correlated with provisions in the Policies and Procedures Manual granting authority to enter into contracts. Tom S., however, referenced another provision of the Policies and Procedures Manual which required that "Draft contracts shall be prepared for review by the Council prior to submittal to USDA" that could be read as conflicting with these other provisions. Tom S. recommended that this provision should be removed as it was an inefficient step. Kim concurred.

On a motion by Rob and seconded by Brad, it was unanimously approved to remove the above referenced clause from page 34 of the Policies and Procedures Manual.

After further discussion on contract signature authority, and on a motion by Brad, seconded by Rob, it was unanimously approved to recommend that the Executive Director be authorized to sign all contracts, and that actions taken by the Executive Director regarding authorized contracts was approved.

On the third question, there was extended discussion on the interpretation of By Laws Articles V (5) (d-f). There was no clear consensus on what made sense in order to clarify the intent of these provisions. Tom S was directed to work with Kim to prepare proposed changes and to re-visit the issue at a future date.

E. Other Business; Adjourn

Brad noted that Dan Petek had expressed interest in performing marketing work for the Council. It was suggested that Brad contact Don and indicate that his interest would be noted, and the next time the Council was accepting proposals, he would be considered.

There then being no further Committee business, the meeting adjourned at 12:20 p.m.