



Memorandum

Date: 04.08.15 **RE:** Finance Committee
April 14, 2015

To: Finance Committee: Commissioners Avalos (Chair), Mar (Vice Chair), Campos, Cohen, Kim and Wiener (Ex Officio)

From: Cynthia Fong – Deputy Director for Finance and Administration *CF*

Through: Tilly Chang – Executive Director *TC*

Subject: **ACTION** – Recommend Awarding a Three-Year Legal Services Contract, with an Option to Extend for Two Additional One-Year Periods, to Nossaman LLP and Wendel, Rosen, Black & Dean LLP, in an Amount Not to Exceed \$750,000 for General Legal Counsel Services, and Authorizing the Executive Director to Negotiate the Contract Payment Terms and Non-Material Contract Terms and Conditions

Summary

The Transportation Authority maintains a contract with the City and County of San Francisco Office of the City Attorney for routine contract legal matters, and retains Nixon Peabody LLP and Squire Sanders & Dempsey LLP as bond counsel. We also contract with Nossaman LLP (Nossaman) for specialized transportation legal counsel services. That contract is in its fifth year and expires this month. The Transportation Authority's policy is to competitively re-bid professional services contracts after five years. Thus, on December 12, 2014, we issued a Request for Proposals (RFP 14/15-03) for legal counsel services. By the due date of January 12, we received seven responsive bids, which included both a technical and cost component. On January 16, we issued an invitation to interview four firms. Interviews were conducted on January 21 by a selection panel comprised of Transportation Authority staff. Based on this competitive selection process, the selection panel recommended award of a legal counsel services contract to the two highest-ranked firms, Nossaman and Wendel, Rosen, Black & Dean LLP (Wendel Rosen). Giving the wide range of desired proficiencies and experience, there is a need for broad and deep access to legal services in the contract. Therefore, we propose to contract with two firms which the Transportation Authority may call upon. This also is intended to mitigate any conflicts of interest, increase competition and allow for improved responsiveness (e.g. during times of peak demand). **We are seeking a recommendation to award a three-year legal services contract, with an option to extend for two additional one-year periods, to Nossaman and Wendel Rosen, in an amount not to exceed \$750,000 for general legal counsel services, and authorize the Executive Director to negotiate the contract payment terms and non-material contract terms and conditions.**

BACKGROUND

The Transportation Authority contracts with City departments and outside firms for certain specialized professional services in areas where factors like costs, work volume or the degree of specialization required would not justify the use of in-house staff. At present, the City Attorney's Office advises the Transportation Authority in resolving routine contract legal matters and Nixon Peabody LLP and Squire Sanders & Dempsey LLP act as bond counsel for the Transportation Authority's commercial paper program. The Transportation Authority currently contracts with Nossaman LLP (Nossaman) for specialized transportation legal counsel services. That contract will be in its fifth year and expires on June 30, 2015. The Transportation Authority's policy is to competitively re-bid professional services contracts after five years.

DISCUSSION

The purpose of this memorandum is to describe the procurement process and recommend award of a legal services contract to Nossaman and Wendel, Rosen, Black & Dean LLP (Wendel Rosen) to serve as its general counsel for an initial period of three years. Given the wide range of desired proficiencies and experience, there is a need for broad and deep access to legal services in the contract. Thus, we propose to contract with two firms which the Transportation Authority may call upon. This also is intended to mitigate any conflicts of interest, increase competition and allow for improved responsiveness (e.g. during times of peak demand).

Legal services will be requested on an hourly reimbursable basis, plus expenses, and may include, but are not limited to, the following categories of action:

1. **Parliamentary Procedure, Transportation Authority Board and Citizens Advisory Committee Rules.** Attendance at board and committee meetings, consultation on Rules of Order, Ralph M. Brown Act, Administrative Code, Elections Code, and conflict of interest issues. Attendance at meetings will be on an as-needed basis, upon request from the Transportation Authority's Executive Director.
2. **Administration.** Advise on all labor-related issues such as benefits, hiring, discipline, termination, and review of internal policies and procedures. As needed, review and/or draft legal documents including contracts, specifications, or standard grant agreements, including necessary legal opinions on restrictions, revisions, claims, default liability, protests and appeals.
3. **Financial.** Assist in the review of financial, budgetary and debt program matters, including developing opinions on debt issuance documents and offering memoranda, Transportation Authority financial presentations, representations and audit documents, budget inquiries, and review of investment, debt and fiscal policies.
4. **Sales Tax and Vehicle Registration Fee Administration.** Address questions regarding the validity, collection, administration and use of sales tax and vehicle registration fee revenues. Assist with the interpretation of the Expenditure Plan and Transportation Authority Strategic Plan funding requirements, categories and subcategories, requirements applicable to the Transportation Authority and sponsoring agencies; reimbursement eligibility; applicability of environmental and other state or federal requirements; and the like.
5. **Congestion Management Agency, Transportation Fund for Clean Air, Vehicle Registration Fee for Transportation Improvements (Prop AA) and Treasure Island Mobility Management Agency Programs.** Review issues of jurisdiction and legal authority, environmental requirements, restrictions, formation and legislation, and state and federal requirements.
6. **Legislation.** Assist in drafting or reviewing legislation and the legislative process.
7. **Litigation.** Prepare necessary documents and provide legal representation in court as required to initiate and prosecute or respond to lawsuits.
8. **General Advice.** Provide verbal or written advice, as requested by the Transportation Authority, on questions concerning the conformity of any contemplated Transportation Authority action with applicable law and other matters.

Procurement Process: On December 12, 2014, we issued a Request for Proposals (RFP 14/15-03) for legal counsel services. By the due date of January 12, 2015, we received seven proposals in response to the

RFP. One additional proposal was disqualified due to its submission past the due date and time. The review panel, consisting of three Transportation Authority staff from various divisions, reviewed the proposals based on the qualifications and other criteria detailed in the RFP. The panel interviewed four firms on January 21, 2015. Based on the selection panel's evaluation of the proposals, the review panel recommended award of the contract to the two highest-ranked firms of Nossaman and Wendel Rosen. These firms provide a robust set of skills, specialists, and relevant experience. In particular, Nossaman builds upon a proven track record of performance, and Wendel Rosen demonstrates a strong set of qualifications and management approach.

We will receive federal financial assistance to fund a portion of this procurement, and will adhere to federal regulations pertaining to Disadvantaged Business Enterprises (DBE). For this contract, we have established a DBE goal of 10%, accepting certifications issued by the Transportation Authority, the City and County of San Francisco, the California Unified Certification Program and the California Department of General Services. We took steps to encourage participation from small and disadvantaged business enterprises, including advertising in seven local newspapers: San Francisco Daily Journal, Nichi Bei Weekly, San Francisco Bay View, San Francisco Examiner, San Francisco Chronicle, Small Business Exchange, and the Western Edition. We also distributed the RFP to certified small, disadvantaged and local businesses, the Bay Area and cultural Chambers of Commerce, and the Small Business Councils.

The Nossaman team has pledged a total DBE utilization of 10% through its DBE-certified subcontractor, Law Offices of Alexis S. M. Chiu. The Wendel Rosen team has pledged a total DBE utilization of 10% and through its DBE-certified subcontractor, Curls Bartling P.C., which is also certified as a Minority-owned Business Enterprise, Women-Owned Business Enterprise, Small Business Enterprise, and Local Business Enterprise.

ALTERNATIVES

1. Recommend awarding a three-year legal services contract, with an option to extend for two additional one-year periods, to Nossaman and Wendel Rosen, in an amount not to exceed \$750,000 for general legal counsel services, and authorizing the Executive Director to negotiate the contract payment terms and non-material contract terms and conditions, as requested.
2. Recommend awarding a three-year legal services contract, with an option to extend for two additional one-year periods, to Nossaman and Wendel Rosen, in an amount not to exceed \$750,000 for general legal counsel services, and authorizing the Executive Director to negotiate the contract payment terms and non-material contract terms and conditions, with modifications.
3. Defer action, pending additional information or further staff analysis.

CAC POSITION

The CAC considered this item at its March 25, 2015 meeting and unanimously adopted a motion of support for the staff recommendation.

FINANCIAL IMPACTS

This contract will be funded from a combination of federal, state, regional and Prop K funds. The first year's activity was included in the Transportation Authority's amended Fiscal Year 2014/15 Budget. Sufficient funds will be included in future fiscal year budgets to cover the remaining cost of the contract.

RECOMMENDATION

Recommend awarding a three-year legal services contract, with an option to extend for two additional one-year periods, to Nossaman and Wendel Rosen, in an amount not to exceed \$750,000 for general legal counsel services, and authorizing the Executive Director to negotiate the contract payment terms and non-material contract terms and conditions.