

THIS PRINT COVERS CALENDAR ITEM NO.: 8
FOR THE MEETING OF: April 21, 2005

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION: Authorizing the Executive Director to execute a Professional Services Agreement ("Agreement") for Legal Services with the law firms of Moscone, Emblidge & Quadra, LLP; Shute, Mihaly & Weinberger, LLP; Ruiz & Sperow, LLP, and Hanson, Bridgett, Marcus, Vlahos & Rudy, LLP, for three years at a cost not to exceed \$3,000,000.00. The Board is authorized to increase the overall cost if circumstances warrant.

SUMMARY:

- On January 7, 2005 an RFP for legal services was issued, seeking a single law firm or groups of lawyers to provide a broad range of specialized legal assistance and advice for the TJPA
- On February 14, 2005 nine proposals were received and five firms were invited for interviews on March 9, 2005 based on technical merit of the written proposals. (see attached Selection Report).
- Following interviews on March 3, 2005, the winning bidder was a consortium of law firms, led by a single firm, Moscone, Emblidge & Quadra, LLP, that will be the primary contact with TJPA staff. The panel determined that each firm has specialized expertise that, taken together, provides the highest ability to provide a broad range of legal services.
- Work is authorized under the proposed contract only when authorized by a written Request for Services ("RFS") signed by the Executive Director. Each RFS designates a Lead Attorney at the firm to work with the Executive Director and/or Legal Counsel as specified.
- The proposed contract designates Scott Emblidge, of Moscone, Emblidge & Quadra, LLP as "Consortium Counsel," to coordinate efforts of the other firms, including billing, and to be the primary contact with TJPA staff.
- Two RFSs are proposed to begin immediately with the contract - one for Moscone, Emblidge & Quadra for general legal services and one for Shute, Mihaly & Weinberger, LLP, for specified litigation matters, CEQA advice, and land acquisition advice.
- The estimated cost for the first year of work for Moscone, Emblidge & Quadra, LLP, is \$80,000.00. The initial estimate for the litigation and other matters being handled by Shute, Mihaly & Weinberger, LLP, is \$425,000.00, for a total of \$505,000.00.
- The proposed contract authorizes the Executive Director to request additional legal services by issuance of an additional RFS to any of the four firms that responded to the RFP.
- All billing and invoicing for work under an RFS will be submitted as one monthly bill by Consortium Counsel. Payment of the consolidated bill will be made to the Consortium Counsel.

ENCLOSURES:

1. Resolution
2. Selection Committee Report (certain attachments not included)
3. Agreement and Appendices, including two initial RFS

EXPLANATION:

The broad range of legal services in the RFP covered virtually every perceived need of the TJPA. Some of these services are highly specialized and so, the RFP allowed firms to submit combined proposals to cover the full range of services. The RFP also allowed the TJPA to select several firms or individuals and to divide contracts among the attorneys with specialized expertise. The interview panel scores, combined with the proposal scores, were used to determine that the consortium led by Moscone, Emblidge & Quadra provided the broadest range of services combined with the highest level of expertise. Each firm in the consortium has highly qualified attorneys in their particular field of expertise and the proposal was packaged to allow the firms to operate through a single attorney (the "Consortium Counsel") for ease of contract administration and tracking of costs.

Under the proposed contract, work is assigned by the Executive Director pursuant to a written RFS. Each firm explained its areas of expertise in the response to the RFP, but the Executive Director may consult with the Consortium Counsel to make any particular assignment. Two initial RFSs are attached to Appendix A of the Agreement. The first of these provides for general legal advice by the Consortium Counsel at Moscone, Emblidge & Quadra. The second lists specific legal cases and two advice matters in which Shute, Mihaly & Weinberger will represent the TJPA. Each RFS has a maximum contract amount that can not be exceeded without amendment by the Executive Director. In the future, the Executive Director may issue additional Requests for Service to these two firms or the other consortium members up to the total amount certified by the Chief Financial Officer. It is difficult to predict exactly what other work will be needed, but future TJPA activities will require additional contracts and legal advice.

The RFP noted that the TJPA's Legal Counsel is the San Francisco City Attorney and that the outside counsel would be working with the City Attorney on a variety of issues. With respect to the two RFSs issued with the Agreement, the amount, type and extent of general advice work by the Consortium Counsel and any other firm will be determined by the Executive Director's requests for ongoing assistance. The City Attorney has already retained Shute, Mihaly & Weinberger, LLP, as outside counsel to assist with certain advice work for the TJPA, and the RFS to this firm will substitute for that contract. With respect to litigation, the situation is more complex. In all current litigation against the TJPA, several other entities, including the City, the San Francisco Redevelopment Agency and the Joint Powers Board, are named as parties. The TJPA must indemnify the City and the Joint Powers Board for the cost of representation under the Joint Powers Agreement, and the City Attorney represents and will continue to represent all three member agencies of the TJPA. The City Attorney is also representing the Redevelopment Agency, along with Agency counsel, in those cases where the Agency is a party. Shute, Mihaly & Weinberger, LLP has already been retained as outside counsel by the City Attorney in the current eminent domain case, and the RFS under this new Agreement will take over from that contract. Because the TJPA is ultimately responsible for the Transbay Program and for payment for all these services, including services for the Redevelopment Agency under the already approved Implementation Agreement, the proposed Legal Services Agreement consolidates all potential needs for outside counsel under one umbrella, supervised by the TJPA.

RECOMMENDATION:

Staff recommends that the Board of Directors authorize the Executive Director to execute a Legal Services Agreement substantially similar to the Agreement attached to this Staff Report, for a period of three years for an amount not to exceed \$3,000,000.

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, The Transbay Joint Powers Authority (TJPA) is ultimately responsible for the Transbay Program, including the Transbay Terminal building, the Caltrain rail extension, associated land acquisition, and for assisting the San Francisco Redevelopment Agency on the Transbay Redevelopment Plan; and

WHEREAS, On January 7, 2005, the Transbay Joint Powers Authority issued a Request for Proposal for Legal Services to provide a broad range of general and specialized legal advice and representation for up to three years; and

WHEREAS, Following a process prescribed by federal grant conditions and overseen by the City and County of San Francisco grant authorities, the proposal of Moscone, Emblidge & Quadra, LLP, was selected as the proposal that best met the needs of the TJPA; and

WHEREAS, Moscone, Emblidge & Quadra has teamed with three other highly qualified law firms to respond to the TJPA's ongoing needs for outside legal services; and

WHEREAS, The four firms have agreed to provide services only as requested by the TJPA pursuant to written directives and to consolidate their services under one firm; and

WHEREAS, The Executive Director has negotiated an agreement that provides for the control of legal services costs through one lead attorney; and

WHEREAS, The TJPA Board has determined that funding in the amount of \$250,000 for legal services rendered under the aforementioned contract should be added to the FY2004-05 budget and transferred from the Reserve Fund, leaving unchanged the revised annual budget at \$59,451,200; now, therefore, be it

RESOLVED, That the TJPA Board of Directors hereby approves an amendment to the annual budget for FY2004-05 for legal services in the amount of \$250,000; and be it further

RESOLVED, That the Transbay Joint Powers Authority Board authorizes the Executive Director to execute a Legal Services Agreement for advice and litigation services substantially similar in all material respects to the document attached hereto, with only such changes as are necessary and approved by the Executive Director and Legal Counsel for a term of three years at a cost not to exceed \$3,000,000.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of _____.

Secretary, Transbay Joint Powers Authority