



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Alameda Corridor Transportation Authority

June 14, 2018

To:	Governing Board
From:	Heather M. McCloskey, Co-General Counsel  Lauren Misajon, Co-General Counsel 
Subject:	<i>Approve Legal Services Agreements with Bergman, Dacey, Goldsmith PC; Best, Best & Krieger LLP; Burke, Williams & Sorensen, LLP; Gibbs Giden Locher Turner Senet & Wittbrodt LLP; Hanson Bridgett LLP; Hawkins Delafield & Wood LLP; Kutak Rock LLP; Nixon Peabody LLP; Nossaman LLP; O'Melveny & Myers LLP; Polsinelli LLP; and Theodora Oringher PC</i>

Recommendation:

- 1) Approve the selection of, and proposed five-year legal services agreements with, the following law firms:
 - Bergman, Dacey, Goldsmith PC
 - Best, Best & Krieger LLP
 - Burke, Williams & Sorensen, LLP
 - Gibbs Giden Locher Turner Senet & Wittbrodt LLP
 - Hanson Bridgett LLP
 - Hawkins Delafield & Wood LLP
 - Kutak Rock LLP
 - Nixon Peabody LLP
 - Nossaman LLP
 - O'Melveny & Myers LLP
 - Polsinelli LLP and
 - Theodora Oringher PC; and
- 2) Authorize the Chief Executive Officer of Chief Financial Officer to execute said agreements; and
- 3) Allocate \$600,000, as appropriated in the FY19 Budget, for legal services during FY19 as explained further herein.

Discussion:

ACTA has hired outside law firms to provide specialized legal services since 1997. Competitive selection procedures for law firms were undertaken in 2005, 2008 and 2013. Since 2008, legal services agreements have been awarded for five-year terms. The agreements with twelve firms currently in effect from the 2013 selection process will expire on June 30, 2018.

In anticipation of the current legal services agreements' upcoming expiration date, ACTA issued a Request for Proposals ("RFP") for legal services on March 12, 2018. As in the past, the request for legal services was made for specific practice areas, with the intention of selecting multiple firms for each area of specialized work. The requested practice areas for which ACTA requires outside legal assistance are public finance; business transactional matters; general litigation; real property transactions; construction contracts and claims; and environmental regulations and entitlements.¹ Firms were invited to submit proposals offering services in one or more practice areas.

Thirty-one firms responded to the RFP, submitting proposals by the April 17, 2018 deadline. See Transmittal 1. Proposals were reviewed, and selection of firms was based upon the following criteria:

- The quality and responsiveness of the proposal;
- Demonstrated specific expertise, experience and qualifications of the firm and the attorneys identified for the proposed practice areas;
- The proposed approach and strategy, including staffing, for any proposed practice area;
- General experience representing and advising public entities in the proposed practice areas, including litigation where applicable;
- Ability to provide the proposed legal services on a continuous basis; and
- Rates, fees and cost effectiveness of the proposed services to be provided.

The selection committee reviewing the proposals and making the selection recommendations consisted of both ACTA's Co-General Counsel, ACTA's Chief Financial Officer and one Deputy City Attorney from the Harbor Division of the Los Angeles City Attorney's Office. The written proposals were independently reviewed and evaluated by each selection committee member. Thereafter, the selection committee discussed each firm's proposal with respect to the selection criteria and made a determination regarding whether to select or interview each firm.

The selection committee agreed that eight firms currently under contract with ACTA should be recommended to have their contracts renewed based upon their proposals and their work with

¹ One practice area, insurance recovery, was not requested in the RFP, but is proposed to be awarded without a competitive process to one firm (Hanson Bridgett) which is providing current on-going services in the Dominguez Channel environmental remediation matter. Because the firm is completing services for a current project, and no additional services are foreseen, a competitive process was not practical at this time.

ACTA during the preceding five years.² Of the twenty-three remaining firms, six were invited to attend in-person interviews with the selection panel on May 8, 2018. From that group of six, four firms were selected for recommendation to provide legal services to ACTA.

The range of law firms recommended, and the budget allocations made therein, provides legal resources to meet ACTA's present and currently known legal needs. Legal services may be initiated by ACTA staff contacting ACTA's Co-General Counsel to discuss the legal matter at hand. Co-General Counsel, in consultation with ACTA staff, will decide whether the matter may be handled in-house or if additional specialized services are required. Generally speaking, however, for services related to public finance (i.e. bond and disclosure counsel), litigation matters and environmental regulatory matters (e.g. CEQA/NEPA counsel), outside counsel services will be engaged.

When outside legal services are necessary for either existing or future matters, assignments may be given to law firms on a case-by-case basis by ACTA's Co-General Counsel after discussion with ACTA staff. However, it is intended that when a project (e.g. annual continuing disclosure) or significant need for legal services arises in the future, firms within the required practice area will be asked to submit a proposal for the work, propose attorneys to be assigned, provide examples of similar prior experience, if any, and submit a proposed schedule and budget. A current conflict check will also be conducted in order to ensure that a firm is not engaged for work in which it may have a client conflict, unless appropriate waivers are obtained. It is intended that this "mini-proposal" process will ensure that ACTA receives legal services from the most qualified firm for that specific matter, along with a competitive budget proposal.

Transmittal 2 provides a table showing each proposed law firm's selected practice areas, proposed budgets, supervising attorney and current work assignments, if any.

While the proposed contract values do account for current on-going work with firms currently under contract, the proposed amounts do not take into account the possibility of future significant legal services such as litigation or regulatory actions. Should such legal service needs arise, additional funding may be requested for approval by the Board, as an additional budget allocation and/or a contract amendment as may be required, in order to address these unforeseen needs. However, firms solely in the public finance group, newly selected firms and firms under contract but not currently providing services, have proposed annual budgets in the amount of \$20,000 to account for potential new work as small short-term projects may arise and be assigned. Moreover, although not envisioned as necessary until 2023, fees for public finance firms providing bond and disclosure services for bond sales will be funded from the proceeds of the transaction and will not be included as part of the contract budget value.

Transmittal 3 provides the agreement template each firm has agreed to and signed. Transmittal 4 provides the rate sheets to be included as Exhibit A with each firm's agreement.

For reference, some modifications from the prior 5-year agreement terms have been made, including:

² Of the four remaining firms currently under agreement with ACTA, three firms did not submit a proposal while one firm was not selected for renewal.

1) The addition of a "Most Favored Nation" clause (see Transmittal 3, Section IV.F) which obligates each law firm to offer ACTA the same rates for the same type of work found in any contract the firm has with either the City of Los Angeles or City of Long Beach City Attorney's Office. As a result of this provision being placed in the agreement, seven firms lowered their proposed rates during agreement negotiations and two firms proposed rates matching their existing contracts. Three firms do not have agreements for legal services with either City;

2) Previous ACTA legal services agreements granted an annual rate increase of 3% for each year after the first year of the agreement. The proposed agreements provide 3% rate increases for the last 3 years of the 5-year agreement term. See Transmittal 4; and

3) The proposed agreements name specific lawyers as authorized billers in Exhibit A. This practice allows for an understanding between each law firm and ACTA which specific attorneys may bill for services when assigned. Billing for services provided by a lawyer who is not an authorized biller may be declined unless advance written approval from ACTA's Co-General Counsel to add an attorney as an authorized biller has been obtained. See Transmittal 3, Section III.C and Transmittal 4.

Budget Impact:

The proposed total five-year contract budget for the twelve firms is \$3,000,000. Funding for outside legal services to be provided during the current fiscal are included in the FY19 Program Budget in the amount of \$600,000. A budget allocation will be requested in each subsequent fiscal year's budget approval process.

Transmittal 1 – Law Firms Submitting Proposals in Response to the RFP

Transmittal 2 – Proposed Law Firm Practice Areas, Budgets and Additional Information

Transmittal 3 – Agreement Boilerplate

Transmittal 4 – Law Firm Rate Sheets (Exhibit A of each Agreement)