

M E M O

Alameda Corridor Transportation Authority

To: Governing Board

Meeting Date: June 1, 2023

From: Heather M. McCloskey, Co-General Counsel
Thomas Oh, Co-General Counsel

Subject: APPROVE Legal Services Agreements with Everett Dorey LLP; Orbach Huff & Henderson LLP; and the Law Office of Sima Salek

Recommendation:


- 1) Approve legal services agreements with Everett Dorey LLP; Orbach Huff & Henderson LLP; and the Law Office of Sima Salek.
- 2) Authorize the Chief Executive Officer or designee to execute said agreements.

Discussion:

Starting in 1997, ACTA has hired outside law firms to provide on-call specialized legal services, including litigation matters. Since 2008, ACTA has contracted with law firms through competitive selection procedures conducted in five-year intervals. The agreements currently in effect with law firms selected from the 2018 competitive process will expire on June 30, 2023.

In anticipation of the current agreements' upcoming expiration date, ACTA issued a Request for Proposals ("RFP") for legal services on January 24, 2023. The request for legal services was made for specific practice areas, with the intention of selecting one or more firms for each area of specialized work. The practice areas for which ACTA requires outside legal assistance are public finance (bond, tax, and disclosure counsel); business transactions and contracts; employment matters; real property transactions; construction contracts and claims; environmental regulations and entitlements; and general litigation for these practice areas. Firms were invited to submit proposals offering services in one or more practice areas.

Twenty-five firms responded to the RFP, submitting proposals by the February 24, 2023, deadline. See Transmittal 1. Proposals were reviewed and selection of firms was based upon the following criteria:

- Demonstrated specific expertise, experience and qualifications of the firm and the attorneys for each proposed practice area;
 - The firm's approach and strategy, including staffing, to provide services for each proposed practice area;
 - Hourly rates, fees and cost effectiveness of the proposed practice areas; and
 - The firm's general experience representing and advising public entities in the proposed practice areas, including litigation where applicable.
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A selection committee consisting of both ACTA's Co-General Counsel, ACTA's Chief Executive Officer, ACTA's Chief Financial Officer and one Deputy City Attorney from the Harbor Division of the Los Angeles City Attorney's Office reviewed the proposals and made the selection recommendations set forth herein. 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 decided whether to select, reject or interview each firm.

The selection committee agreed that ten firms currently under contract with ACTA should be recommended to have their contracts renewed based upon their proposals and their work with ACTA during the preceding five years. A request to approve amendments with these ten firms is the subject of a separate agenda item for the ACTA Governing Board meeting held on June 1, 2023.

For the fifteen remaining firms that submitted proposals, the selection committee interviewed seven firms on May 1st and 2nd, 2023. From the interviews, three firms were selected for recommendation to provide legal services to ACTA. Everett Dorey LLP was selected to provide general litigation services for employment, real property, construction, and environmental matters; Orbach, Huff & Henderson LLP was selected to provide transaction and litigation services for business contracts, employment, real property, construction and environmental matters; and the Law Office of Sima Salek was selected to provide employment and workplace investigation services. Transmittal 2 provides a table showing each proposed law firm's supervising attorney, selected practice areas, and proposed budgets. Transmittal 3 provides the agreement for each law firm. The hourly rate structure set forth in Exhibit A of the agreements is the same for all firms, namely, the firm's proposed first year rates apply for the first two years, followed by 4% increases for years three through five.

These proposed law firms, along with those firms proposed for agreement renewal by amendment, will provide coverage for the range of services to meet ACTA's present and currently known legal needs. On a day-to-day basis, 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, legal services for public finance matters (i.e., bond, tax, and disclosure counsel), litigation matters and environmental regulatory matters (e.g. CEQA/NEPA counsel), require services by outside counsel.

When outside legal services are necessary, 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, whenever a larger size project or significant need for legal services arises, 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 to ensure that a firm is not engaged for work in which it may have a client conflict, unless appropriate waivers are obtained. Conducting these "mini-proposal" procedures ensures that ACTA receives legal services from the most qualified firm for that specific matter, along with a competitive budget proposal.

The proposed budgets for each of the three law firms will cover on-call services to be provided as needed. However, the budget allocations 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 in the form of a contract amendment for the selected law firm to address these unforeseen needs.

Budget Impact:

The proposed total five-year contract budget for the three agreements is \$200,000. Everett Dorey LLP and Orbach, Huff & Henderson LLP each have proposed agreement amounts of \$75,000 and the Law Office of Sima Salek has a proposed agreement amount of \$50,000. Annual requests for approval to fund on-call legal services provided by these law firms will be made pursuant to ACTA's annual budget approval process. For the FY23-24 budget, the funding requested for these three firms is \$40,000. See Transmittal 2.

Co-General Counsel Review:

ACTA's Co-General Counsel has reviewed and approved the proposed agreements as to form.

Transmittals:

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

Transmittal 2 – Proposed Law Firm Practice Areas and Budgets

Transmittal 3 – Agreements with Everett Dorey LLP; Orbach Huff & Henderson LLP; and Law Office of Sima Salek