



Bay Area Infrastructure Financing Authority
Bay Area Metro Center
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Memorandum

TO: BAIFA

DATE: April 18, 2018

FR: Executive Director

W.I.: 6840

RE: Consultant Contract – Legal Services: Nixon Peabody LLP (\$1,000,000)

Overview

Staff requests the Authority to approve a sole source contract retaining Nixon Peabody LLP (Nixon Peabody) for bond counsel services for BAIFA through June 2022. The proposed contract is for four years in a not to exceed amount of \$250,000 per annum for a total not to exceed amount of \$1,000,000, subject to future budget approvals.

Background

MTC has been working on a plan to securitize certain federal transportation funds for over two years. In particular, the immediate need for project funds for BART's ongoing vehicle replacement program exceeds the capacity of available federal funding. This issue can be addressed through a bond financing that puts proceeds into projects earlier and utilizes available federal funds to repay the debt service over 10-15 years. The bonds will be issued in series according to project need by BAIFA over the next 3-5 years.

Staff recommends utilizing Nixon Peabody as Bond Counsel for the BAIFA transactions. Charles Wolf, a partner at Nixon Peabody, has many years of experience in public financings and has acted as underwriter's counsel for Bay Area Toll Authority (BATA) bond transactions for over 10 years. Nixon Peabody has also provided advisory services for winding down the Association of Bay Area Governments Finance Authority for Nonprofit Corporations (FAN) and establishing a new Advancing California Finance Authority (ACFA) financing conduit.

Staff would now like to retain Nixon Peabody on a sole source basis to provide bond counsel services for BAIFA. Nixon Peabody will act as bond counsel and provide general legal services for all BAIFA transactions. The base fee of \$250,000 annually is applied against general administrative duties and document development. Actual transaction compensation will be paid from the subsequent financings. Staff is confident that Nixon Peabody will continue to provide outstanding legal service on our transactions.

Recommendation

Staff is requesting that the Authority authorize the Executive Director, or designee, to negotiate and enter into a sole source contract with Nixon Peabody to provide bond counsel and related advice to BAIFA through June 30, 2022, in an amount not to exceed \$250,000 per annum, for a total not to exceed \$1,000,000, subject to the approval of future BAIFA budgets. Annual funding covers expenses in advance of a transaction. Actual transaction compensation will be paid through the individual bond transactions.



Steve Heminger

SH:bm

REQUEST FOR AUTHORITY APPROVAL

Summary of Consultant Contract

Work Item No.:	6840
Contractor:	Nixon Peabody LLP
Work Project Title:	Legal Services
Purpose of Project:	To provide bond counsel services for BAIFA
Brief Scope of Work:	Provide bond counsel and general legal support for future BAIFA financings through June 2022
Project Cost Not to Exceed:	\$250,000 per annum, for a total not to exceed \$1,000,000, subject to the approval of future BAIFA budgets
Funding Source:	BAIFA Express Lanes Program Operating Budget (Transaction compensation will be paid out of proceeds from individual bond transactions.)
Fiscal Impact:	\$250,000 is included in FY 2017/18 BAIFA Express Lanes Program Operating Budget, future costs are subject to the approval of future BAIFA budgets.
Motion by Authority:	That the Executive Director or his designated representative is authorized to negotiate and enter into a consultant contract with Nixon Peabody LLP for bond counsel services, as described above and in the Executive Director's Memorandum dated April 18, 2018, in an amount not to exceed \$250,000 per annum, and the Chief Financial Officer is directed to set aside funds in the amount of \$250,000 for such consultant contract, subject to the approval of future BAIFA budgets.

BAIFA:

Jake Mackenzie, Chair

Approved:

Date: April 25, 2018