



BAY AREA TOLL AUTHORITY

Bay Area Metro Center

375 Beale Street

San Francisco, CA 94105

TEL 415.778.6700

WEB www.mtc.ca.gov

Memorandum

TO: BATA Oversight Committee

DATE: February 6, 2019

FR: Executive Director

W. I. 1254

RE: Bond Counsel and Public Finance Counsel Bench and Contracts – Law Firms Pre-Qualified to Provide Bond Counsel and Public Finance Counsel Services (\$200,000 per year):

- i. Orrick, Herrington & Sutcliffe, LLP (Orrick)
- ii. Kutak Rock LLP (Kutak)

This memorandum requests authority for the establishment of a bench of the two law firms listed above to provide bond counsel and public finance counsel services to BATA for a five-year period and for the Executive Director or designee to negotiate and enter into a contract with each firm for such services.

Background

The current BATA contract for Bond Counsel and Public Finance Counsel services, held by Orrick, expires at the end of February 2019. As a result, on November 9, 2018 BATA issued a Request for Proposals for Bond Counsel and Public Finance Counsel services (RFP). The RFP contained a provision that would permit other MTC-related entities, as well as ABAG and its related entities and local collaboration programs, to utilize the firms on the bench to the extent they require bond counsel or public finance counsel services. Proposals were due to be submitted on December 14, 2018, and at that time, BATA received proposals from five firms. The proposals were evaluated on the following two factors, with the first factor weighted more heavily than the second: (1) the firm's overall experience and qualifications serving as bond counsel and/or public finance counsel for public agencies, and specifically the qualifications of the particular attorneys to be assigned; and (2) the economic advantage to BATA of the firm's compensation proposal. An evaluation panel of members of the MTC Office of General Counsel and Finance Section reviewed the five proposals.

Based on the evaluation panel's review of the proposals, we recommend a bench of the two firms referred above to provide bond counsel and public finance counsel services. Orrick, which has served BATA in this role for a number of years, was clearly the highest-rated firm on the first evaluation factor. Based on Orrick's expertise and familiarity with BATA's bond portfolio and financial issuances and transactions, it is advantageous to BATA for Orrick to continue to play a large role in BATA's bond-related and public finance work. However, Kutak also rated highly

on the first factor, and was the highest-rated firm with respect to the second factor, and it may be advantageous to BATA to also utilize Kutak for bond-related and public finance work.

The evaluation panel was pleased with the quality of the other three proposals received, which were submitted by the firms of Nixon Peabody, LLP, Thompson Coburn, LLP, and Norton Rose Fulbright, LLP. However, none of these three firms offered the level of experience offered by Orrick, or the combination of expertise and experience and economic advantage offered by Kutak.

The RFP was structured in a way to permit flexibility to BATA to negotiate with the firms on the bench with respect to each financial issuance and transaction in terms of how the firms will be compensated. Consistent with previous years, Office of General Counsel has reserved an annual budget of \$200,000 for services under this bench, but bond counsel and public finance counsel services may also be paid for out of the proceeds of specific financial issuances and transactions.

Recommendation

The Office of General Counsel recommends that the Committee authorize the Executive Director or designee to establish a bench consisting of Orrick and Kutak to provide bond counsel and public finance counsel services, and to negotiate and enter into contracts with Orrick and Kutak for such services as discussed above.



Steve Heminger

SH:ml

REQUEST FOR COMMITTEE APPROVAL

Summary of Proposed Contract

Work Item No.: 1254

Contractors: Orrick, Herrington & Sutcliffe, LLP (Orrick)
Kutak Rock LLP (Kutak)

Work Project Title: Bond Counsel and Public Finance Counsel Bench – Law Firms Pre-Qualified to Provide Bond Counsel and Public Finance Counsel Services

Purpose of Project: To provide bond counsel support for debt-related financings necessary for projects funded by bridge tolls, and to provide general finance counsel advice.

Brief Scope of Work: Assist Office of the General Counsel in providing legal services in the area of public finance and to serve as lead bond counsel.

Project Cost Not to Exceed: General financial legal services not paid from costs of issuance in finance transactions not to exceed \$200,000 annually.
Bond Counsel transactional fees to be determined per financial transaction

Funding Source: Bridge Tolls

Fiscal Impact: Funds are included in the FY 2018-19 Budget; funds for future years are subject to the approval of future BATA budgets.

Motion by Committee: That the Executive Director or designee is authorized to establish a bench of law firms referred above, and negotiate and enter into contracts with such firms, for purposes described above and in the Executive Director's February 6, 2019 memorandum and that the Chief Financial Officer is directed to set aside funds in the amount of \$200,000 per fiscal year for such contracts, subject to annual budget approval.

BATA Oversight Committee:

Amy Rein Worth, Chair

Approved: Date: February 13, 2019