

**Metropolitan Transportation Commission
Administration**

October 11, 2023

Agenda Item 2f - 23-1216

**Bid Protest of Project Finance Advisory Limited (PFAL) – Delegation of Appointment of
Hearing Panel on Appeal of Protest Determination and Delegation of Authority to Decide
Appeal**

Subject:

Delegation of appointment of a hearing panel on the appeal of Project Finance Advisory Limited (PFAL) in connection with its protest of the award of the Innovative Financing and Delivery Strategies contract for Resilient SR 37 to Ernst & Young U.S. LLP dba Ernst & Young Infrastructure Advisors LLC (Ernst & Young), and delegation of authority to the hearing panel to determine the appeal.

Background:

On September 13, 2023, the Administration Committee approved the staff recommendation to award the Innovative Financing and Delivery Strategies contract for Resilient SR 37 to Ernst & Young following the release of a Request for Proposal (RFP). PFAL, another proposer that responded to the RFP, submitted a protest to the award to Ernst & Young pursuant to the RFP's protest procedures. The authorization to award the contract was deemed conditional until the issuance of a written response to the protest by the MTC Executive Director (ED), and if the decision of the MTC Executive Director is appealed, the issuance of the MTC Administration Committee's decision.

An MTC staff person was then appointed as a protest review officer and conducted a review of the protest and recommended to the MTC Executive Director (ED) that PFAL's protest be denied. The ED agreed with the recommendation and notified PFAL of the result by letter of September 28, 2023. By letter of October 3, 2023, PFAL appealed the ED's determination to the Administration Committee pursuant to the RFP's protest procedures.

At this stage, staff requests this Committee to delegate to the Administration Committee Chair the appointment of an ad hoc group of three commissioners from the Administration Committee to comprise the hearing panel to hear PFAL's appeal of the protest determination. Staff also requests the Committee to delegate authority to the hearing panel, once it has been appointed by

the Committee Chair, to decide the appeal on behalf of the Administration Committee. The Administration Committee decision will constitute the final agency decision on PFAL's protest.

Issues:

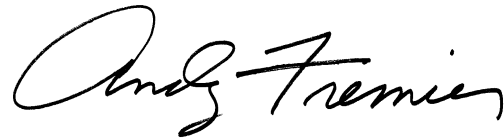
None identified.

Recommendations:

Staff recommends that Administration Committee delegate to the Administration Committee Chair the appointment of an ad hoc group of commissioners as referenced above to comprise the hearing panel related to PFAL's appeal of the protest determination, and delegate authority to the hearing panel to decide the appeal on behalf of the Administration Committee.

Attachments:

None



Andrew B. Fremier