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Memorandum

TO: BATA Oversight Committee
Administration Committee

DATE: December 2, 2009

FR: Executive Director

W. I. 1236

RE: Contracts - On-call Public-Private Partnership Consultant and Legal Services:

- i). KPMG, Sacramento, CA
- ii). Jeffrey Parker & Associates, New York, NY
- iii). Halcrow, Inc., Oakland, CA
- iv). Nossaman LLP, Los Angeles, CA
- v). Bell Rosenberg & Hughes, LLP, Oakland, CA

On September 29, 2009 BATA issued a Request For Qualifications (RFQ) to select firms to provide consulting and legal assistance to BATA and MTC for services related to the evaluation of opportunities for public-private partnerships (P3) to assist in the development and implementation of transportation projects.

Given the current state of funding for transportation infrastructure, it is critical to consider a wide variety of funding and delivery approaches for the regional transportation network. In February 2009, California enacted legislation allowing the private sector to partner with public agencies in delivering transportation projects (Senate Bill 4, Second Extraordinary Session).

The intent, as specified in the RFQ, was to select one or more consultants and law firms for a period extending through June 30, 2012. Examples of potential tasks for which BATA and MTC might request assistance include: identification and evaluation of potential projects or project elements suitable for a P3, technical evaluation of the value-benefit of private sector involvements, as compared to more traditional methods of delivery, analysis of risk considerations, development of procurement strategies, and assistance with preparation of agreements and contracts.

Proposal Evaluation

In response to the RFQ, staff received Statements of Qualification (SOQs) from a total of 16 firms or teams to provide consulting services, and 9 firms to provide legal services. One proposal was reviewed as both a consulting firm and a law firm, as they proposed to provide both services.

Consultant Firms

An evaluation panel consisting of BATA, MTC and partner agency staff reviewed the consultant SOQs based on a set of criteria, including overall firm and staff expertise and experience, qualifications and availability of key staff, quality of the SOQ content and presentations, and hourly rates and cost effectiveness of management plan. The panel selected 8 firms/teams for interviews, including firms with expertise in planning, engineering, financing, project and program management and public outreach.

Staff is proposing to select three of the highest ranked firms/teams for the panel: KPMG (Sacramento CA), Jeffrey Parker & Associates (New York NY) and Halcrow, Inc. (Oakland CA). The recommended firms submitted very strong SOQs and have extensive experience in public-private partnerships. KPMG demonstrated great breadth and depth of experience in P3s both nationally and within California and can provide expertise in all of the services included in the RFQ. Jeffrey Parker & Associates has extremely relevant expertise in structuring and executing innovative transportation P3 projects and providing strategic advice to the public sector. Halcrow, Inc. provides strong international P3 experience, as well as recent relevant experience in California.

Law Firms

An evaluation panel consisting of BATA and MTC legal staff reviewed the law firms' SOQs based on criteria including demonstrated ability to provide legal services in one or more applicable areas; depth and breadth of relevant experience and availability of key staff to work on multiple projects; suitability of the management plan; hourly rates and expenses; cost effectiveness of management plan; and quality of the SOQ content and presentation.

All of the firms submitting SOQs were strong in at least one area of service contemplated by the RFQ. However, based on the evaluation criteria, the panel selected 5 firms for interviews: Nossaman, Nixon Peabody, Best Best & Krieger, Bell Rosenberg & Hughes, and Hanson Bridgett. Staff is proposing a panel of two firms to provide P3-related legal services to BATA and/or MTC for the period ending June 20, 2012: Nossaman LLP (Los Angeles, CA) and Bell Rosenberg & Hughes LLP (Oakland CA). Nossaman exhibited the most breadth of any firm submitting an SOQ, demonstrating successful experience in all of the areas contemplated by the RFQ and receiving strong references from P3 clients. Bell Rosenberg, with expertise in California toll road disputes and construction contracts and litigation, will be able to provide valuable input into the drafting of contract provisions and specifications.

Recommendation

Staff recommends that the Committee authorize the Executive Director or his designee to negotiate and enter into contracts in a total amount not to exceed \$300,000 with one or more of the following firms: KPMG; Jeffrey Parker & Associates; Halcrow, Inc. and Nossaman LLP; and Bell Rosenberg & Hughes, LLP for the evaluation, development and potential execution of P3 projects by BATA or MTC. The same recommendation will be presented to the BATA Oversight Committee on December 9, 2009. This authorization, if approved, is intended as a contract allotment as permitted by MTC Resolution No. 3619 and BATA Resolution No. 46, allowing the Executive Director or his designee to enter into contracts in any amount up to \$300,000

Steve Heminger

REQUEST FOR COMMITTEE APPROVAL
Summary of Consultant and Legal Services Contracts

Work Item No.: 1236

Consultant: KPMG, Sacramento, CA
Jeffrey Parker & Associates, New York, NY
Halcrow, Inc., Oakland, CA
Nossaman LLP, Los Angeles, CA
Bell Rosenberg & Hughes, LLP, Oakland, CA

Work Project Title: Public-Private Partnership (P3) Consultant and Legal Services

Purpose of Project: To provide consulting or legal services to BATA and/or MTC for services related to the evaluation of opportunities for P3s to assist in the development and implementation of transportation projects throughout the region

Brief Scope of Work: Examples of potential tasks for which BATA and/or MTC might request assistance include: identification and evaluation of potential projects or elements of projects suitable for a P3, technical evaluation of the value-benefit of private sector involvements, as compared to more traditional methods of delivery, analysis of risk considerations, development of procurement strategies, and assistance with preparation of agreements and contracts.

Project Cost Not to Exceed: \$300,000 total for all five contracts

Funding Source: BATA

Fiscal Impact: Project is included in BATA's budget for FY 2009-10

Motion by Committee: That the Executive Director or his designee is authorized to negotiate and enter into contracts with KPMG, Jeffrey Parker & Associates, Halcrow, Inc., Nossaman LLP, and/or Bell Rosenberg & Hughes, LLP to provide consulting or legal services, and the Chief Financial Officer is directed to set aside funds up to \$300,000 (total) for such contracts. This authorization, if approved, is intended as a contract allotment, as permitted by MTC Resolution No. 3619 and BATA Resolution No. 46, allowing the Executive Director or his designee to enter into contracts in any amount up to \$300,000.

Admin Committee Chair: _____
Tom Bates

Approved: Date: December 9, 2009

BATA Oversight
Committee Chair: _____
Bill Dodd

Approved: Date: December 9, 2009