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Memorandum

TO: BATA Oversight Committee

DATE: January 4, 2012

FR: General Counsel

W. I. BATA Administration

RE: Contract – Legal Services: William E. Donovan (\$200,000 through December 31, 2012)

Summary of Action

This item recommends that BATA enter into a sole source contract based on compelling business reasons to negotiate and enter into a professional services agreement with William E. Donovan, Attorney at Law, for legal services advising BATA as to public finance (including bonds, swaps and disclosure counsel services), use of BATA revenues, interaction with the California legislature, the California Transportation Commission, other state agencies and State Treasurer's Office, HOT lanes, and legislation. As discussed below in more detail, Mr. Donovan was counsel to BATA's bond counsel law firm until recently. His knowledge of BATA's affairs is unmatched. Entering into a sole source contract with Mr. Donovan will ensure BATA receives the depth of expertise it has relied on for the last seven years and will be critically important to BATA in connection with the 390 Main Street and HOT lanes projects.

Discussion

Orrick, Herrington & Sutcliffe LLP ("Orrick") has acted as BATA's bond and finance counsel since 1997. Since 2004, Mr. Donovan, in an Of Counsel capacity, has advised BATA on a range of topics, including being one of the primary senior lawyers as bond counsel, disclosure counsel, swap counsel, advising on legislation and interaction with the Legislature, public finance, use of BATA revenues, establishment of joint powers authorities and their operation under law and interaction with the State Treasurer's Office and various state agencies, including the CTC. On many occasions, Mr. Donovan's comprehensive knowledge of BATA's financial operations and the laws and rules applicable to the use of BATA revenues have been unmatched by anyone in the industry and have proven invaluable to BATA. Mr. Donovan's deep understanding of the legislative process and laws pertaining to toll funds and joint powers authorities has informed and guided BATA numerous times. His insights into the HOT lanes project were crucial in the recent CTC application process.

With the exception of the 390 Main Street real estate transaction and the Ambac litigation, Orrick has been paid for its services out of bond proceeds with such payments approved as part of the bond issuance resolution. Orrick was last paid in this fashion in 2010, in the amount of \$2,340,000 for bond counsel/finance counsel services corresponding to \$3.9 billion in new money and reoffered bond issuances. In 2009, Orrick was paid \$2,209,000 for bond counsel/finance counsel services corresponding to \$2.1 billion in new money and reoffered bond issuances. Mr. Donovan's billable time over these two years was paid out of these overall amounts. Orrick did not receive any payment for bond counsel or finance counsel services in 2011 as no bonds were issued in 2011.

Recently, Mr. Donovan ended his association with Orrick, becoming a sole practitioner. Maintaining continuity and depth of expertise on the many complex legal issues BATA faces is critical, particularly in the areas of joint powers authorities and the HOT lanes project. Mr. Donovan's continued provision of legal advice and services as part of the public finance team rendering services to BATA will protect BATA's interests and facilitate efficient use of other legal resources.

Recommendation

I recommend that this Committee authorize a sole source legal services agreement with William E. Donovan, Attorney at Law, to provide legal services as described above, beginning in January 2012 and continuing through December 31, 2012, having a maximum amount of \$200,000, with a first fiscal year budget (until June 30, 2012) of not to exceed \$100,000. Funding for the contract is set aside in the designated reserve.


Adrienne D. Weil

AW: rc

REQUEST FOR COMMITTEE APPROVAL
Summary of Proposed Contract

Work Item No.: BATA Administration

Consultant: William E. Donovan
Attorney at law
Davis, CA

Work Project Title: Legal Services

Brief Scope of Work: Advise BATA as to public finance (including bonds, swaps and disclosure counsel services), use of BATA revenues, joint powers authorities, interaction with the California legislature, the California Transportation Commission, other state agencies and State Treasurer's Office, HOT lanes, and legislation.

Project Cost Not to Exceed: \$200,000

Funding Source: BATA Administration

Fiscal Impact: Project costs are consistent with budgeted funds.

Motion by Committee: That the Executive Director or his designee is authorized to negotiate and enter into a contract with William E. Donovan, Attorney at Law, for the purposes described above and in the General Counsel's memorandum dated January 4, 2012, and the Chief Financial Officer is directed to set aside funds, from the legal reserve set forth in Resolution 98, Revised, for such contract, as specified above.

BATA Oversight Chair: _____
Bill Dodd

Approved: Date: January 11, 2012