



# Memorandum

**Date:** June 21, 2019

**To:** Transportation Authority Board

**From:** Cynthia Fong – Deputy Director for Finance & Administration

**Subject:** 07/09/19 Board Meeting: Award Three-Year Professional Services Contracts, with an Option to Extend for Two Additional One-Year Periods, to Nossaman LLP, Meyers Nave Riback Silver & Wilson, and Wendel, Rosen, Black & Dean LLP, in a Combined Amount Not to Exceed \$1,000,000 for On-Call General Legal Counsel Services

<p><b>RECOMMENDATION</b>    <input type="checkbox"/> Information    <input checked="" type="checkbox"/> Action</p> <ul style="list-style-type: none"> <li>• Award three-year professional services contracts, with an option to extend for two additional one-year periods, to Nossaman LLP (Nossaman), Meyers Nave Riback Silver &amp; Wilson (Meyers Nave), and Wendel, Rosen, Black &amp; Dean LLP (Wendel Rosen) in a combined amount not to exceed \$1,000,000 for on-call general legal counsel services.</li> <li>• Authorize the Executive Director to negotiate contract payment terms and non-material terms and conditions</li> </ul> <p><b>SUMMARY</b></p> <p>We are seeking professional services of legal firms experienced in matters related to the operation of public entities to provide on-call general legal counsel services. We also need broad and deep access to specialized transportation legal services given the wide range of desired proficiencies and experience, the amount and complexity of the Transportation Authority’s and Treasure Island Mobility Management Agency’s (TIMMA’s) work programs, as well as occasional conflicts of interest or availability that arise for specific efforts. We issued a Request for Qualifications (RFQ) in May. By the proposal due date, we received six Statements of Qualifications. Following interviews with three firms, the selection panel recommends award of contracts to the three highest-ranking firms: Nossaman, Meyers Nave, and Wendel Rosen. The establishment of contracts with multiple consultant firms will enable the Transportation Authority to enlist the services of a broad range of legal consultants on an on-call, as-needed basis.</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Fund Allocation</li> <li><input type="checkbox"/> Fund Programming</li> <li><input type="checkbox"/> Policy/Legislation</li> <li><input type="checkbox"/> Plan/Study</li> <li><input type="checkbox"/> Capital Project Oversight/Delivery</li> <li><input type="checkbox"/> Budget/Finance</li> <li><input checked="" type="checkbox"/> Contract/Agreement</li> <li><input type="checkbox"/> Other:</li> </ul> <hr/>
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## DISCUSSION

### Background.

We contract with City departments and outside firms for certain specialized professional services in areas where factors like costs, work volume or the degree of specialization required would not justify

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the use of in-house staff. Currently the Transportation Authority utilizes the City Attorney's Office for certain inter-agency agreements and project litigation, and utilizes Nixon Peabody LLP and Squire Sanders & Dempsey LLP for bond counsel. We currently contract with Nossaman and Wendel Rosen for specialized transportation legal counsel services. The breakdown of past assignments to these firms are included as Attachment 2. Our policy is to competitively re-bid professional services contracts after five years. We propose to contract with multiple consultant firms with whom the Transportation Authority may call upon on a task order basis, which is intended to increase competition and allow for improved responsiveness (e.g., during times of peak demand).

The RFQ scope of services, included as Attachment 1, describes example tasks types that are representative of the needs in the coming three years under this contract, which are also listed below.

1. Parliamentary Procedure and Rules for Transportation Authority Board and Citizens Advisory Committee
2. Administration
3. Financial
4. Sales Tax (Proposition K) and Vehicle Registration Fee (Proposition AA) Administration
5. Congestion Management Program and Transportation Fund for Clean Air Program
6. Planning and Project Development Support (e.g. Lombard Reservation System, Downtown Congestion Pricing, and U.S. 101/I-280 Managed Lanes)
7. Legislation
8. Litigation
9. General Advice
10. Miscellaneous

### **Procurement Process.**

The Transportation Authority and TIMMA issued a joint RFQ for on-call general legal counsel services on May 7, 2019. Although a pre-proposal conference was not held, respondents were able to submit questions regarding the RFQ and receive responses by May 17. We took steps to encourage participation from small, local, and disadvantaged business enterprises, including advertising in five local newspapers: the San Francisco Chronicle, San Francisco Examiner, the Small Business Exchange, Nichi Bei, and the San Francisco Bayview. We also distributed the RFQ and questions and answers to certified small, local, and disadvantaged businesses; Bay Area and cultural chambers of commerce; and small business councils.

By the due date of June 6, 2019, we received six Statements of Qualifications in response to the RFQ. A selection panel comprised of Transportation Authority staff evaluated the Statements of Qualifications based on the criteria identified in the RFQ, including the proposer's understanding of project objectives, technical and management approach, and capabilities and experience. The panel selected three firms to interview on June 19, 2019. Based on the competitive process defined in the RFQ, the panel recommends awarding contracts to the three highest-ranked firms: Nossaman, Meyers Nave, and Wendel Rosen. The three highest-ranked firms provide a strong set of skills, specialists, and relevant experience. Both Nossaman and Wendel Rosen build upon proven track records of performance, while Meyers Nave demonstrated a strong set of qualifications and management approach, in particular regarding their experience with managed lanes projects.

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The selection panel recommends that the Transportation Authority and TIMMA both award contracts to the same three firms, as both agencies share legal resources. Awarding contracts to the same on-call legal firms will enhance staff efficiency in issuing task orders and supporting project needs. The contract award for TIMMA's portion of the contract will be considered by the TIMMA Committee at its next scheduled meeting in July.

We plan to use federal funds to cover a portion of this contract and have adhered to federal procurement regulations. Due to the specialized nature of the requested services we established a Disadvantaged Business Enterprise (DBE) goal of 0% for this contract based on recommendation from the California Department of Transportation, and accepted certifications by the California Unified Certification Program. Nossaman has made a commitment to exceed the DBE goal and includes 10% DBE participation from San Francisco-based, Asian-American-owned firm Law Offices of Alexis S.M. Chiu. Meyers Nave and Wendel Rosen do not include any subconsultants.

The selected consultant firms will remain eligible for consideration for task order negotiation on an as-needed basis for the initial three-year term, plus two optional one-year extensions. While the Transportation Authority intends to engage pre-qualified firms based on capabilities, experience, and availability, no selected team is guaranteed a task order.

### **FINANCIAL IMPACT**

The scope of work described in the RFQ is anticipated in the Transportation Authority's proposed Fiscal Year 2019/20 work program and budget through relevant projects and studies. Budget for these activities will be funded by a combination of federal and/or state grants from Caltrans and the Metropolitan Transportation Commission, local agency contributions, and Prop K sales tax funds. The first year's activities are included in the Transportation Authority's proposed Fiscal Year 2019/20 budget and sufficient funds will be included in future fiscal year budgets to cover the cost of these contracts.

### **CAC POSITION**

The CAC will consider this item at its June 26, 2019 meeting.

### **SUPPLEMENTAL MATERIALS**

Attachment 1 – Scope of Services

Attachment 2 – General Legal Counsel Services Past Work Assignments (2015 – 2019)

Attachment 1  
Scope of Services

The Transportation Authority is seeking the services of legal firms experienced in matters related to the operation of public entities. The below example task types are representative of needs in the coming three years – additional undetermined task types are anticipated to be needed and not all task types listed below will necessarily be produced under these contracts. The Transportation Authority may assign tasks on these qualifications as well as capabilities, experience, availability, and conflicts of interests, if any. Contractors are not guaranteed a task under these contracts.

**Task Types:**

1. **Parliamentary Procedure and Rules for Transportation Authority Board and Citizens Advisory Committee.** Attendance at board and committee meetings and consultation on Rules of Order, Ralph M. Brown Act, Administrative Code, City and County of San Francisco Elections Code, San Francisco Sunshine Ordinance, and conflict of interest issues. Contractor will be expected to attend the monthly meetings of the Transportation Authority Board and Committees.
2. **Administration. Personnel:** As needed, advise regarding all labor-related issues such as benefits, hiring, discipline, termination, and review of internal policies and procedures. **Contracts:** As needed, review and/or draft legal documents including procurements, contracts, specifications, and standard grant agreements, including necessary legal opinions on restrictions, revisions, claims, default liability, protests and appeals. **Public Records Act:** As needed, advise on public records requests regarding scope of request, reviewing records, and approach to retrieving/releasing records.
3. **Financial.** Assist in the review of financial, budgetary and debt program matters, including developing opinions on debt issuance documents and offering memoranda, financial presentations, representations and audit documents, and review of investment, debt and fiscal policies.
4. **Sales Tax (Proposition K) and Vehicle Registration Fee (Proposition AA) Administration.** Address questions regarding the validity, collection, administration and use of sales tax and vehicle registration fee revenues. Assist with the Transportation Authority Strategic Plan funding requirements, categories and subcategories, requirements applicable to the Transportation Authority and sponsoring agencies; reimbursement eligibility; applicability of environmental and other state or federal requirements; and the like.
5. **Congestion Management Program and Transportation Fund for Clean Air Program.** Review issues of jurisdiction and legal authority, environmental requirements, restrictions, formation and legislation, and state and federal requirements.
6. **Planning and Project Development Support (e.g. Lombard Reservation System, Downtown Congestion Pricing, and U.S. 101/I-280 Managed Lanes).** Review issues of jurisdiction and legal authority; support environmental requirements; develop, review and/or advise on policy and operating agreements; develop and/or review vendor and operator procurement documents and contracts; and advise on local, state, and federal requirements and legislation.
7. **Legislation.** Assist in drafting or reviewing legislation and the legislative process, from the local to the federal level.

Attachment 1  
Scope of Services

8. **Litigation.** Prepare necessary documents, provide legal representation in court as required to initiate and prosecute or respond to lawsuits, and support mediation and negotiations (settlement) as needed.
9. **General Advice.** Provide verbal or written advice, as requested by the Transportation Authority, on questions concerning the conformity of any contemplated action of the Transportation Authority with applicable law and other matters, including providing guidance on the Transportation Authority's projects.
10. **Miscellaneous.** Provide verbal or written advice relating to California Environmental Quality Act/National Environmental Policy Act, construction (including construction manager general contractor), right of way, real estate and land use, state transportation finance, regional transportation planning and programming, and public private partnerships, among others.

**Attachment 2:  
General Legal Counsel Services Past Work Assignments (2015-2019)**

<b>Legal Firm</b>	<b>Work Assignment Description</b>	<b>Amount</b>
Nossaman LLP	General Legal Services <sup>1</sup>	\$500,528
	Presidio Parkway	\$337,000
	Geary Bus Rapid Transit	\$208,681
	Finance/Debt Issuance	\$169,480
	Downtown Extension	\$50,000
	Yerba Buena Island Projects	\$32,793
	Vision Zero	\$10,000
	San Francisco Transportation Plan	\$6,775
	Treasure Island Mobility Management Agency	\$5,529
	Van Ness Bus Rapid Transit	\$3,002
	I-280 Balboa Park Interchange	\$760
	Quint-Jerrold Connector Road	\$342
<b>Total Work Assignments Awarded to Nossaman LLP</b>		<b>\$1,324,890</b>
Wendel, Rosen, Black & Dean LLP	Yerba Buena Island Projects	\$156,500
	Treasure Island Mobility Management Agency	\$65,520
	General Legal Services <sup>1</sup>	\$25,000
	Transportation Network Company Research	\$20,000
	I-280 Balboa Park Interchange	\$956
	Vision Zero Ramps Phase 2	\$722
<b>Total Work Assignments Awarded to Wendel, Rosen, Black &amp; Dean LLP</b>		<b>\$268,698</b>
<b>Total Work Assignments Awarded to Date</b>		<b>\$1,593,588</b>
<b>Total Work Assignments Awarded to Disadvantaged Business Enterprise Firms</b>		<b>\$111,470</b>

<sup>1</sup> General legal services encompass activities such as attending Board and Committee meetings, assistance on contracts, advising on records requests and personnel matters, as well as providing legal services for Transportation Authority initiatives not covered by separate work assignments.