

REGIONAL TRANSIT ISSUE PAPER

Agenda Item No.	Board Meeting Date	Open/Closed Session	Information/Action Item	Issue Date
2	06/25/12	Open	Action	06/18/12

Subject: Awarding a Contract for Bond Counsel and Disclosure Counsel Services to Orrick, Herrington & Sutcliffe LLP

ISSUE

Whether or not to award a Contract for Bond and Disclosure Counsel Services to Orrick, Herrington & Sutcliffe LLP.

RECOMMENDED ACTION

Adopt Resolution No. 12-06-____, Awarding a Contract for Bond Counsel and Disclosure Counsel Services to Orrick, Herrington & Sutcliffe LLP.

FISCAL IMPACT

The cost of the bond service will be contingent on successful completion of the bond issuance, therefore there is no fiscal impact to the operating budget. Consultant fixed fee rates will depend upon whether fixed rate or variable rate bonds will be issued. The total maximum fee for bond counsel and disclosure counsel services for fixed rate bonds is \$155,000; the maximum total fee for bond counsel and disclosure counsel services for variable rate bonds is \$210,000. The type of bonds issued won't be known until a later date; therefore, the total not-to-exceed amount of the Contract will be \$210,000.

DISCUSSION

On December 12, 2011, the RT Board authorized the release of a Request for Proposals (RFP) for a contract for Bond Counsel and Disclosure Counsel Services for the purpose of assisting RT with its first direct issuance of revenue bonds. An abbreviated scope of services for each follows:

Bond Counsel will advise RT on legal and tax issues pertaining to the structure of the transaction and will perform the following tasks: draft documents required for the authorization, issuance, sale, and delivery of bonds; coordinate the authorization and execution of required documentation; review existing relevant legal documents; deliver required legal opinions related to enforceability of bonds and exclusion of interest from gross income of bondholders for federal and state income tax purposes; prepare closing documents; coordinate pre-closing and closing transactions; and, assist in preparation of presentations to the RT Board, rating agencies, and investors.

Disclosure Counsel will advise RT on relevant disclosure matters and perform the following tasks: prepare the relevant disclosure documents required for the issuance of bonds, including the Preliminary Official Statement and the Official Statement; deliver the opinion(s) of disclosure counsel; and, assist in preparation of presentations to the RT Board, rating agencies, and investors.

Approved:


General Manager/CEO

Presented:


Chief Financial Officer

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Staff released the RFP on March 26, 2012. The solicitation was advertised in publications of general circulation and posted on RT’s website under Contracting Opportunities. Thirty-six firms received the RFP. In response, RT received 12 proposals on March 1, 2012 from: Ballard Spahr LLP; Best Best & Krieger LLP; Fulbright & Jaworski, LLP; Hawkins, Delafield & Wood LLP; Kutak Rock LLP; Nixon Peabody, LLP; Nossaman LLP; Orrick, Herrington & Sutcliffe, LLP (Orrick); Polsinelli Shughart LLP; Richards, Watson & Gershon; Squire Sanders LLP; and Stradling Yocca Carlson & Rauth.

The RFP was structured so that Proposers could propose on Bond Counsel Services, Disclosure Counsel Services or for both Bond Counsel and Disclosure Counsel Services. RT reserved the right to enter into multiple contracts should the need arise. The proposals were scored separately for bond counsel and disclosure counsel services and the qualifying criteria in the RFP was the same for both: Proposer’s understanding of the project (30%), staffing and experience (35%), project work plan (15%), and competitiveness of price (20%). Ranking was based on a maximum of 100 points, using a scoring range of 1 to 10, and weighted in the four aforementioned categories.

Due to limited subcontracting opportunities, no SBE goal was set for this procurement.

The Selection Committee consisted of 5 members: Dee Brookshire, Chief Financial Officer; Brent Bernegger, Director, Finance and Treasury; Mike Mattos, Chief of Facilities and Business Support Services; Olga Sanchez, Senior Attorney; and Peter Ross from Ross Financial (RT’s Contracted Financial Advisor). The results of the Selection Committee’s scoring of the written proposals are as follows:

Bond Counsel Services						
Rank	Proposer	Project Understanding	Project Staffing & Experience	Project Work Plan	Price	Total Points*
1	Orrick Herrington	143	166	58	69	436
2	Nossaman	126	147	70	77	420
3	Squire Sanders	114	161	53	56	384
4	Fulbright Jaworski	87	159	48	79	374
5	Hawkins Delafiels	120	144	53	57	373
6	Nixon Peabody	99	140	57	64	360
7	Kutak Rock	84	116	50	84	333
8	Polsinelli Shughart	87	109	45	54	295
9	Ballard Spahr	72	109	47	61	288
10	Best Best & Krieger	66	105	41	67	279
11	Richards Watson	51	84	33	61	229

*500 points available

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Disclosure Counsel Services						
Rank	Proposer	Project Understanding	Project Staffing & Experience	Project Work Plan	Price	Total Points*
1	Orrick Herrington	143	165	59	60	426
2	Hawkins Delafield	122	149	56	90	417
3	Nossaman	131	149	65	66	411
4	Straddling Yocca	119	138	59	80	396
5	Squire Sanders	114	163	51	64	392
6	Fulbright Jaworski	87	159	48	62	356
7	Nixon Peabody	99	140	57	56	352
8	Kutak Rock	84	116	50	89	338
9	Polsinelli Shughart	87	112	45	68	312
10	Ballard Spahr	72	105	42	57	276
11	Best Best & Krieger	66	102	36	61	264
12	Richards Watson	51	84	33	52	220

*500 points available

The Selection Committee determined that Orrick’s proposal was the most advantageous proposal for both bond counsel and disclosure counsel services for RT and that oral presentations were not needed. The Selection Committee felt that Orrick demonstrated that it has extensive relevant experience with bond financing for California transportation projects because of the firm’s listed experience with the issuance of fare box revenue bonds, sales tax revenue bonds and other similar financing. In addition, the Selection Committee was impressed by the firm’s references which included several California transportation agencies and local government agencies including the City of Sacramento, Sacramento County, and the Sacramento Transportation Authority. The Selection Committee also found that Orrick demonstrated a strong understanding of RT and the overall project. Orrick’s proposal noted that it gained significant experience with RT through the work it performed for RT in 2010 and 2011. In 2010, Orrick provided RT with a legal opinion relating to RT’s existing bond issuance authority and provided recommendations for improving RT’s authority. In 2011, Orrick assisted RT in drafting the legislative language that was contained in AB 1143 which is the measure that granted RT the authority to directly issue bonds. Adopted in 2011, AB 1143 took effect on January 1, 2012. Orrick’s depth and breadth of experience gave the Selection Committee the confidence to determine that the Orrick team is highly qualified to serve as bond and disclosure counsel for RT’s first venture into direct revenue bond financing.

All of the Proposers’ proposed fees fell within the Independent Cost Estimate range of \$65,000 to \$110,000 for each bond counsel or disclosure counsel services and are considered fair and reasonable.

Staff recommends the Board award the bond counsel and disclosure counsel services contract to Orrick, Herrington & Sutcliffe, LLP.

RESOLUTION NO. 12-06-_____

Adopted by the Board of Directors of the Sacramento Regional Transit District on this date:

June 25, 2012

AWARDING A CONTRACT FOR BOND COUNSEL AND DISCLOSURE COUNSEL SERVICES TO ORRICK, HERRINGTON & SUTCLIFFE LLP

BE IT HEREBY RESOLVED BY THE BOARD OF DIRECTORS OF THE SACRAMENTO REGIONAL TRANSIT DISTRICT AS FOLLOWS:

THAT, the Contract between the Sacramento Regional Transit District, therein referred to as "RT," and Orrick, Herrington & Sutcliffe LLP, therein referred to as "Consultant," whereby Consultant agrees to provide Bond Counsel and Disclosure Counsel Services, as specified, for an amount not to exceed \$210,000, is hereby approved.

THAT, the Chair and General Manager/CEO are hereby authorized and directed to execute said Contract.

BONNIE PANNELL, Chair

A T T E S T:

MICHAEL R. WILEY, Secretary

By: _____
Cindy Brooks, Assistant Secretary