

REGIONAL TRANSIT ISSUE PAPER

Agenda Item No.	Board Meeting Date	Open/Closed Session	Information/Action Item	Issue Date
2	09/23/13	Open	Action	09/13/13

Subject: Approval of Contract for Legal Services for Litigation of Section 13(c) Dispute

ISSUE

Whether to approve a contract with Thompson Coburn LLP for legal services for litigation of Section 13(c) issue.

RECOMMENDED ACTION

Adopt Resolution No. 13-09-____, Award of a Contract with Thompson Coburn LLP for Legal Services for Litigation of the Section 13(c) Issue.

FISCAL IMPACT

Budgeted:	Yes	This FY:	\$	150,000
Budget Source:	Operating	Next FY:	\$	
Funding Source:	STA, Measure A, Fare Revenue	Annualized:	\$	
Cost Cntr/GL Acct(s) or Capital Project #:	61/63003	Total Amount:	\$	150,000
Total Budget:	\$150,000			

DISCUSSION

On December 12, 2012, the United States Department of Labor (USDOL) notified RT that it was requesting certification review of federal New Starts grant funds awarded to RT by the Federal Transit Administration (FTA) for the South Sacramento Corridor Phase 2 Project. Under Section 13(c) of the Urban Mass Transportation Act of 1964, USDOL certification that a grant recipient is compliant with its obligations under Section 13(c) is required for FTA to release such grant funds. In its request, USDOL specifically sought input from RT and affected labor unions at RT as to whether the provisions of the Public Employees Pension Reform Act of 2013 (PEPRA) conflicted with obligations created by Section 13(c).

Under Section 13(c), recipients of federal transit funding must agree to preserve certain rights and privileges related to collective bargaining as a condition of receiving federal funding. Upon receipt of objections by affected labor unions, USDOL is required to evaluate any such objections and determine whether they are sufficient to require negotiations between the parties to resolve any issues.

On December 20, 2012, the Amalgamated Transit Union (ATU) filed an objection with the USDOL alleging that compliance with PEPRA was inconsistent with the protections found in Section 13(c). Similar objections were filed with USDOL on pending FTA grants throughout California. On

Approved:

Presented:

Final 09/16/13

General Manager/CEO

Chief Counsel

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January 10, 2013, USDOL notified RT that it had determined that the ATU's objection was sufficient and directed the parties to engage in good faith negotiations to resolve the matter. The Section 13(c) process provides a 30-day period for the parties to negotiate a mutually acceptable accommodation or to submit any unresolved issues, along with final proposals, for further consideration by USDOL. RT and ATU were unable to resolve the issues raised by PEPRA and final proposals were submitted to USDOL on February 12.

The parties were then directed by USDOL to formally brief the matter; the written briefing process was completed by May 20, 2013 and the matter was submitted to USDOL for its final determination.

On September 4, 2013, USDOL issued its final determination, concluding that PEPRA makes changes to pensions that are inconsistent with Section 13(c) mandates to preserve pension benefits and continue collective bargaining rights, thereby precluding USDOL from certifying RT's grants. As a result, approximately \$55 million of RT's grant funds have been held by the FTA, including approximately \$13.9 million which will lapse at the end of the federal fiscal year.

On September 4, 2013, state legislation was introduced to provide a 15-month exemption from PEPRA for public employees protected under Section 13(c). The bill, AB 1222 (Bloom/Dickinson), received final approval from the Legislature on September 11 and will be sent to the Governor for signature upon enrollment; the Governor has 30 days to sign the bill. If signed, it is anticipated that the statutory exemption from PEPRA will permit the USDOL to certify grants in the future; however, several lapsed grants are anticipated to be at risk of loss. The legislation links the duration of the PEPRA exemption to future legal review in the federal courts. A successful challenge to the USDOL action will end the exemption; an unsuccessful challenge will leave the exemption in place permanently.

Because RT faces the loss of \$13.9 million in FTA funds due to USDOL's decision not to certify RT's grant application, the RT Board has determined that it is in RT's best interest to pursue the litigation envisioned in AB 1222.

Given the effort needed to resolve this matter in court during the tight window afforded by AB 1222, it is critical that work start on the litigation as soon as possible.

RT previously retained Mr. Kent Woodman of Thompson Coburn LLP to advise RT on Section 13(c) matters and to represent RT in the current USDOL administrative process. Mr. Woodman is an expert in this extremely specialized area of the law. He has over 30 years of experience in this subject area and is uniquely qualified to provide expert representation to RT. Mr. Woodman served as the FTA's Chief Counsel from 1981 to 1984 and has subsequently worked at the two most experienced Section 13(c) firms in the country. He has written definitive treatises on the subject and represented numerous public agencies on a variety of Section 13(c) matters. He is familiar with RT, not only from prior representation of RT in 1999 and 2007, but more recently from his current work on the Section 13(c)/PEPRA issue.

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As a result, Mr. Woodman is familiar with RT, the interplay of Section 13(c) and PEPRA, and the various arguments presented to USDOL during the administrative review process. This will allow him to proceed quickly without having to expend time on becoming familiar with the facts and issues involved in the dispute. His rates are comparable to the other firms practicing in this subject area and he is also providing RT with a discount from his normal rates.

Engaging Mr. Woodman would be a sole source procurement permitted under Title I, Section 1.405 of the RT Administrative Code. Subsection 1.405.C. permits sole source solicitation of service contracts “when the Board determines that it is in the best interests of the RT to solicit only one consultant or to amend an existing contract without compliance with the competitive solicitation procedures set forth in this Article III.”

The need for expert, specialized legal services to address this unprecedented issue is urgent and it appears to be in RT’s best interest to retain Thompson Coburn LLP to provide the necessary legal representation to resolve this matter.

RESOLUTION NO. 13-09-_____

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

September 23, 2013

AWARD OF A CONTRACT WITH THOMPSON COBURN LLP FOR LEGAL SERVICES FOR LITIGATION OF THE SECTION 13(C) ISSUE.

WHEREAS, on September 4, 2013, the United States Department of Labor (hereafter "USDOL") determined it could not certify the release of several federal funding grants awarded to the Sacramento Regional Transit District (hereafter "RT"); under Section 13(c) of the Federal Transit Act based on the Department's interpretation of the impacts of the Public Employee Pension Reform Act of 2013; and

WHEREAS, the loss of such funding will seriously harm RT's ability to fund ongoing services and improvement projects; and

WHEREAS, RT urgently requires specialized legal services to challenge the USDOL determination; and

WHEREAS, Thompson Coburn LLP has specialized expertise in Section 13(c) matters and litigation and has previously provided legal services to RT related to the current Section 13(c) grant certification process and its PEPRA-based objections.

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

THAT, in accordance with Section 1.405.C of RT Administrative Code, the Board finds that it is in the best interests of RT to award the contract for legal services to Thompson Coburn LLP and to proceed with litigation against the United States Department of Labor related to its Section 13(c) determination related to RT's federal grants; and

THAT, the Engagement Letter with Thompson Coburn LLP executed by the General Manager/CEO on September 3, 2013, is hereby ratified; and

THAT, the contract between the Sacramento Regional Transit District and Thompson Coburn LLP whereby Thompson Coburn agrees to provide legal services as specified, for an amount not to exceed \$150,000, is hereby approved; and

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

PATRICK HUME, Chair

A T T E S T:

MICHAEL R. WILEY, Secretary

By: _____
Cindy Brooks, Assistant Secretary