

Management Committee

For the Metropolitan Council meeting of May 22, 2019

Subject: Southwest Light Rail Transit (Green Line Extension) Real Estate Legal Services Contracts (19P037)

Proposed Action

That the Metropolitan Council: (1) find that it is most advantageous for the Council to award real estate legal services contracts to the law firms of Best and Flanagan, Kennedy and Graven, and J. Selmer Law; and (2) authorize the Regional Administrator to negotiate and execute contracts for legal services related to real estate acquisition and relocation claims for the Southwest LRT Project as follows:

Legal Firm	Condemnation Actions	Total Amount
Best and Flanagan LLP	B, C, E, F, G, H, K, L and N	\$1,250,000
Kennedy and Graven Chartered	I, J, M, O, P, Q, R and T (Relocation)	\$680,000
J. Selmer Law PA	A, D and S	\$270,000
		\$2,200,000

Summary of Committee Discussion/Questions

Robin Caufman, Director of TSD Administration, presented the item including status of right-of-way acquisitions and relocations for Southwest LRT, overview of the procurement process and equity considerations.

Council member Lee asked why there was a difference in the number of actions and contract amounts. Ms. Caufman noted that there were two reasons:

- (1) The three selected proposers didn't propose on all of the actions and we could only award actions that they proposed on.
- (2) In the scope of work, we identified the areas of expertise that would be needed for each action, including noise and vibration; one of the proposers did not demonstrate previous experience with noise and vibration issues in their proposal.

The item was moved by Council member Barber, seconded by Council member Lilligren. Motion carried.

Management Committee

Meeting date: May 8, 2019

For the Metropolitan Council meeting of May 22, 2019

Subject: Southwest Light Rail Transit (Green Line Extension) Real Estate Legal Services Contracts (19P037)

District(s), Member(s): All Districts

Policy/Legal Reference: Metropolitan Council 3-3; Minn. Stat. §§ 473.129, 473.3999

Staff Prepared/Presented: Ann Bloodhart, General Counsel, 651-602-1105
 Joan Hollick, Interim Director, New Starts Program, 612-373-3820
 Robin Caufman, Director TSD Administration, 651-602-1457

Division/Department: Regional Administration, Office of General Counsel

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Background

In November 2016, the Council adopted Resolution No. 2016-28 declaring that the Southwest LRT Project (Green Line Extension) is a valid public purpose for the use of condemnation proceedings and directing the Council’s attorneys to acquire properties needed for the Project by condemnation if they could not be acquired by direct negotiation. In 2017, the Council authorized the use of condemnation for certain parcels appraised at greater than \$1 million.

In late 2016 and early October 2017, the Council executed sole source contracts with two law firms to support real estate acquisition and relocation for the Southwest LRT Project. At that time, it was unknown how many parcels would be put into condemnation or the extent to which relocations would require legal services.

In 2017, the Minnesota Legislature amended the eminent domain statute and clarified that the Council must pay landowners certain attorneys’ fees and costs for LRT projects. This new law discouraged owners from settling and resulted in more parcels being put into condemnation.

By early 2018, it was determined that neither MnDOT legal staff nor the Council’s Office of General Counsel had the capacity to handle all Southwest LRT condemnations or relocation claims. As a result, the Council used its legal services contracts to prepare condemnation documents, file actions, represent the Council in property acquisitions and condemnation-related processes, and provide legal counsel for relocation claims. The contracts subsequently were amended to increase the value

because the Council needed to acquire title and possession in time for construction and needed to timely handle ongoing condemnation and relocation work.

The Council finalized critical agreements with the freight railroads in July 2018 and was awarded a Letter of No Prejudice by the Federal Transit Administration (FTA) in November, allowing it to award the civil construction contract in December. The last condemnation actions were filed in June/July 2018 and the Council acquired title and possession of all parcels, except for two. For the Southwest LRT Project, the Council has acquired title and possession of 104 parcels through the condemnation process, which must be completed through settlements or commissioners' hearings to resolve valuation claims. In addition, approximately 20 complex relocation claims are under review or in the appeal process. Rather than amending its existing contracts, the Council issued a Request for Proposals (RFP) for new contracts to complete the post-Title and Possession actions of the condemnation process and support the remaining relocation claim reviews and appeals. The Council separated the work into 19 condemnation actions, that included batches of one to ten parcels as well as one package for relocation matters, and identified certain issues (e.g., noise and vibration) for which interested firms would be expected to have expertise. The Council asked proposers to identify which actions they were interested and qualified to work on. The proposed allocation of work is based upon the findings of the evaluation panel that it represented the best value to the Council and was the most advantageous.

The RFP was issued March 5, 2019. Representatives from 6 firms attended the March 12, 2019 pre-proposal meeting. One addendum was issued. There were seven registered document holders. Four proposals were received on March 26, 2019, and reviewed by the evaluation panel.

Rationale

These legal services contracts are necessary for the Council to proceed with the Southwest LRT Project and help ensure the owners' just compensation claims in condemnation and relocation claims are heard and resolved in a timely manner.

Thrive Lens Analysis

Construction of the Southwest LRT Project (Green Line Extension) will increase the region's prosperity as it will provide access to 80,900 forecasted jobs and a new transportation option for 55,000 forecasted residents within ½ mile of the planned new stations in addition to the 145,300 forecasted jobs and 35,600 forecasted residents for downtown Minneapolis.

The Office of Equal Opportunity reviewed the contract initiation memo and did not assign a DBE goal. This is a federally funded contract so MCUB goals are not applicable. To advance the Council's commitment to providing opportunity to underutilized businesses, the Procurement staff reviewed the directory and only found 4 law firms in the DBE directory and 10 law offices in the MCUB directory. However, none of the DBE or MCUB law firms included real estate/condemnation law in their business description. J. Selmer Law PA, a minority owned firm, had been a DBE but is no longer registered. Best and Flanagan LLP lead attorney providing the legal services is a woman.

Funding

Funds for these contracts are included in the Project budget.

Known Support / Opposition

There is no known opposition to this action.