



Legislation Text

File #: 17-0155, **Version:** 2

Community Development Agency, Transportation Division, recommending the Board approve and authorize the Chair to sign Agreement for Services 461-S1711 with Bender Rosenthal, Inc., for as needed right of way services in the not-to-exceed amount of \$350,000, for a term effective upon execution by both parties and expiring three years thereafter. (Cont. 4/18/2017, Item 17)

FUNDING: For various Capital Improvement Program and Environmental Improvement Program projects, funding will be provided by associated Federal, State, and Local funding sources. (Federal Funding)

DEPARTMENT RECOMMENDATION

Community Development Agency (CDA), Transportation Division (Transportation), recommending the Board approve and authorize the Chair to sign Agreement for Services 461-S1711 (Agreement) with Bender Rosenthal, Inc., (Bender Rosenthal), for as needed right of way services in the not-to-exceed amount of \$350,000, for a term effective upon execution by both parties and expiring three years thereafter.

Transportation recommends the Board make findings in accordance with Chapter 3.13, Section 3.13.030, of the County Ordinance Code that it is more economical and feasible to engage an independent contractor for as needed right of way services, representing real property acquisition, appraisal services, and relocation services, because there are specialty skills required for the work performed under the Agreement that are not expressly identified in County classifications.

Some of the work to be performed under this Agreement is bargaining unit work, however, there are specialty skills required for certain aspects of the work, including relocation services which require specialized knowledge of eminent domain proceedings and processes, and when federal and state regulations require independent acquisition and appraisal services for project development. The need for specialty services is sporadic and, at times, required by regulation.

DISCUSSION / BACKGROUND

County Procurement and Contracts conducted a Request for Qualifications process for CDA in October 2016. Statements of Qualifications were evaluated and ranked and a list of acceptable right of way service vendors was established. For real property appraisals, acquisition services, and relocation services, Bender Rosenthal was ranked second out of a field of nine participants.

Transportation is required to use outside consultant appraisers for right of way valuations to ensure independent and unbiased findings, and where with such property acquisitions, the possibility of eminent domain proceedings exist. The use of independent appraisers is mandated by regulations associated with the requirements imposed by the use of federal and state funding on virtually all of Transportation's construction projects. In the event that an acquisition becomes the subject of an eminent domain proceeding, the testimony of the independent appraiser, as well as the documented parcel diaries of the contacts while negotiating with the property owners, are essential to the successful outcome of the acquisition.

For real property acquisitions on projects utilizing federal dollars and federally assisted programs, Transportation's processes are governed by the Federal and State Relocation Assistance and Real Property Acquisition Policies Act, as set forth in the California Department of Transportation (Caltrans) Right of Way Manual. Caltrans requires that there be a separation of acquisition and appraisal functions (§7.05.00 of the Caltrans Right of Way Manual). Government Code §7267 and the Code of Civil Procedure §1263.010 also dictate procedures to be followed in order to acquire right of way for various projects. All of these regulations require professionally trained and experienced right of way professionals to maintain standards of ethics and impartiality in negotiations for the acquisition of real property for public project purposes.

Transportation's existing right of way agreements were utilized to a greater extent than originally anticipated due to a new requirement where appraisal reviews are required for federally funded right of way acquisitions (Federal Highway Administration [FHWA]) . Most of Transportation's Capital Improvement Program (CIP) projects are funded with FHWA funding and, therefore, Transportation is including appraisal review services in this proposed Agreement.

Under current regulations, Transportation can and has been preparing valuations for easement acquisitions. In acquisitions that require both fee title and easements, however, Transportation has been utilizing the services of outside contractors, as it is more fiscally efficient to have the same entity performing both.

Transportation staff provides contract negotiation and administration oversight, prepares and reviews waiver valuations for easement acquisitions, negotiates acquisitions based on consultant provided valuations and works with the title company to close escrows and transfer title. Transportation reviewed its right of way acquisitions based on the approved CIP and Environmental Improvement Program and determined that it does not currently have sufficient staff to handle all of the projected right of way needs for the programs. Consultant services will be required to cover fluctuations in future workload. Included in these services may be valuations for easement acquisitions.

As this Agreement is an on-call agreement, Transportation will only utilize this Agreement for acquisition services when required by the County or outside agencies, or when County staff is not available. Because of the labor intensive nature of relocation services, it may be better to utilize this Agreement instead of County staff if relocation services are required.

The County Purchasing Agent reviewed and provided approval of Transportation's request to process the Agreement with Bender Rosenthal, and concurs that Transportation's request is in compliance with Board of Supervisor's Policy C-17.

The El Dorado County Employees Association, Local 1, has been informed of this proposed Agreement.

ALTERNATIVES

1) An alternative would be to not approve the Agreement. If the Agreement is not approved, delays would be expected in project delivery. Also, right of way for many projects is ultimately transferred to Caltrans. Without outside contractors, projects may not meet Caltrans requirements, in which case, Caltrans would not accept those projects at their completion.

2)) Transportation could attempt to hire staff with the specialty skills required for a short period of

time (part time, limited term). This is likely not feasible since someone with this expertise would likely not be willing to work part time in a limited term capacity, resulting in possible project delays as current staff would be required to complete the work. This would not eliminate the need for independent real property services when required by outside agencies.

OTHER DEPARTMENT / AGENCY INVOLVEMENT

County Procurement and Contracts

County Counsel and Risk Management has approved this proposed Agreement.

CAO RECOMMENDATION

It is recommended that the Board approve this item.

FINANCIAL IMPACT

Funding for the Agreement will be provided by various Capital and Environmental Improvement Program project budgets, including federal, state, and local funding sources. There is no change to Net County Cost.

CLERK OF THE BOARD FOLLOW UP ACTIONS

- 1) The Clerk of the Board will obtain the Chair's signature on two (2) original copies of the Agreement.
- 2) The Clerk of the Board will forward one (1) fully executed original copy of the Agreement to the Community Development Agency, Contracts and Procurement Unit, for further processing.

STRATEGIC PLAN COMPONENT

Infrastructure, Public Safety, and Economic Development

CONTACT

Bard R. Lower, Transportation Division Director
Community Development Agency