

Washington Metropolitan Area Transit Authority
Board Action/Information Summary

<input checked="" type="radio"/> Action <input type="radio"/> Information	MEAD Number: 100044	Resolution: <input type="radio"/> Yes <input checked="" type="radio"/> No
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TITLE:

Legal Emergency Procurement

PURPOSE:

The purpose of this action is to ratify the General Manager`s approval to issue a Sole Source Emergency Procurement for legal services in connection with the required replacement of the financial instrument provider on several tax advantaged leases as required under the terms of those leases.

DESCRIPTION:

The terms of the 1998 leases as well as the successor leases require the replacement of the provider of various financial instruments if the financial provider`s bond rating drops below a set standard and the equity investor formally requests its replacement. Various subsidiaries of the financial instrument provider supplied the required financial instruments for the leasing transactions. At the time of the closing of all of the leases the financial instrument provider had a bond rating of AAA on both the Standard and Poors and Moody`s rating scale. If the financial instrument provider`s ratings falls below AA for the Standby Letter of Credit, the Authority is required under the 10 October 1998 transactions to replace the financial instrument provider at its own cost within 30 days of the receipt of a written request for such a replacement if so requested by the various Equity Investors. Similar requests are possible under the remaining 6 transactions but the Authority may have additional alternatives available to avoid the removal of the financial instrument provider for those transactions.

In May 2008, the financial instrument provider`s bond rating slipped to AA- on both the Standard and Poors and Moody`s rating scales. On May 27, 2008, the Authority received a formal request for the replacement of the financial instrument provider from one of the Equity Investors covering one of the October

1998 transactions. On May 30, 2008, the Authority received two more formal requests for the replacement of the financial instrument provider. Therefore, on or before June 26, 2008, the financial instrument provider must be replaced in the transaction. The other two need to be replaced on the following Monday.

The structure of a tax advantaged lease is a highly sophisticated and complex one. It involves about 30 interlocking agreements consisting of about 1,300 pages. Very few law firms undertake to represent clients in this area. Even firms with an active practice in the area would have great difficulty completing the replacement of the financial instrument provider within 30 days because of the need to renegotiate several of the interlocking documents. Thus, as a practical matter, there is only one available source for the services: the firm that negotiated the transactions -- Fulbright & Jaworski LLP.

If the Authority does not complete the replacement in the required 30 days, it will be in default and the deal may be terminated with the Authority having a multi-million dollar liability as well as facing the loss of the 104 leased rail cars. The loss of the rail cars as well as the multi-million dollar exposure threatens the continuation of a necessary Authority function, namely the ability to carry Washington residents and tourists on the Metrorail system. Thus, an emergency procurement is justified.

FUNDING IMPACT:

Program: Reimbursable
Project: Tax Advantaged Lease Program
Budget: \$5,563,412
This Action: \$125,000
Prior Approval: \$5,438,412
Remaining Budget: -0-
Remarks: Funding is from Tax Advantaged Lease proceeds. Funds needed to comply with certain provisions of the tax leases.
Operating Budget Positions: -0-
Impact: Annual Expense: -0-

RECOMMENDATION:

Staff recommends the ratification of the award of a Sole Source Emergency contract in a Not-To-Exceed Amount of \$125,000 to Fulbright & Jaworski LLP.