

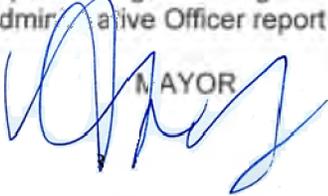
0150-10747-0000

TRANSMITTAL

TO Deborah Flint, Executive Director Department of Airports	DATE 09/16/16	COUNCIL FILE NO.
FROM The Mayor	COUNCIL DISTRICT 11	

**Proposed Fourth Amendment to Contract with Morrison & Foerster, LLP
to Extend the Term of Performance to Continue Legal Services in
Support of the Los Angeles World Airports**

Transmitted for further processing, including Council consideration. See the
City Administrative Officer report attached.


MAYOR

(Ana Guerrero)

REPORT FROM

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

Date: September 15, 2016

CAO File No. 0150-10747-0000

Council File No.

Council District: 11

To: The Mayor

From: Miguel A. Santana, City Administrative Officer *RLH
RW*

Reference: Transmittal from the Los Angeles World Airports dated August 3, 2016; referred by the Mayor for report on August 8, 2016

Subject: **REQUEST TO EXECUTE A FOURTH AMENDMENT TO CONTRACT WITH MORRISON & FOERSTER, LLP TO EXTEND THE TERM OF PERFORMANCE TO CONTINUE LEGAL SERVICES IN SUPPORT OF THE LOS ANGELES WORLD AIRPORTS**

SUMMARY

The Executive Director of the Los Angeles World Airports (Department; LAWA) requests approval to execute a Fourth Amendment to Contract No. DA-4859 with the law firm of Morrison & Foerster, LLP (contractor) to extend the term of performance for an additional two years, for a total of five years, to continue the provision of legal services in support of pending litigation involving the *City of Los Angeles Department of Airports v. JRI, Inc.* (JRI trial) and *City of Los Angeles vs. Tutor-Saliba Corporation/O&G Industries Inc., JV, etc., et al* (Runway 25L trial). The City Attorney affirms the need to continue the contractor's services. No additional funding is being requested and no substantive changes to the contract terms are being proposed.

The original three-year contract term was September 1, 2013 to August 31, 2016, with the proposed Amendment extending the term to August 31, 2018. The contract expenditure authority is \$6.1 million of which \$2,308,621 has been expended as of July 2016.

A date for the JRI trial was set for September 7, 2016. While a date for the Runway 25L trial has not yet been determined, the City Attorney believes that it may be scheduled in 2017. As a consequence of the two trials extending beyond the contract expiration date, and the fact that Morrison and Foerster has the lead position in representing the City in both lawsuits, the Department believes that it is important to retain the firm and continue to benefit from its proficiency and experience throughout the remainder of the legal proceedings.

Pursuant to the Charter Section 371(e)(2) provisions, the contractor was selected in August 2013 without using a competitive process due to (1) the urgency of the matter and (2) the logistics of the hearings—in San Mateo County—whereby the City needed to retain legal counsel with a strong presence in, and experience with, the San Francisco Bay area courts. Consequently, LAWA is

recommending that approval of the Fourth Amendment be exempt from the provisions of Charter Sections 371(e)(2) and (e)(10), "Competitive Bidding; Competitive Sealed Proposals; Exceptions." The Department believes that the use of competitive bidding at this time would be undesirable, impractical or impossible given (1) the steep learning curve and cost to select and employ another law firm at this critical point in the process; (2) the complexities of the two cases and the importance of being familiar with the history of the litigation; (3) the need to avoid delays that could place the City at a competitive disadvantage going to trial; and (4) the importance of having a law firm with a strong presence in the Bay Area.

Expenditures for the Morrison & Foerster contract will be recovered from landing fees, terminal rates and charges, and non-aeronautical revenues (e.g., concessions, parking lot revenue, etc.). Funding for the contract extension is available in the Department's 2016-17 Operating Budget within the Legal Services Division, Contractual Services cost center.

The proposed Fourth Amendment was approved by the Board of Airport Commissioners (Board) at its meeting of August 4, 2016.

Council approval of the Fourth Amendment is required in accordance with Charter Section 373, "Long Term Contracts Approved by Council," and the Los Angeles Administrative Code Section 10.5, "Limitation and Power to Make Contracts," in that the cumulative period of the contract exceeds three years. Additionally, pursuant to Charter Section 275, "Employment of Other Legal Counsel," the Council and the City Attorney must approve the use of outside legal counsel. For the Amendment to become effective, the City Attorney must also approve it as to form. The above-mentioned aspects of the proposed Fourth Amendment, and this report, are based upon revised information received from the Department subsequent to the initial request submittal.

BACKGROUND

There have been three previous amendments to the Morrison & Foerster contract since it was established in September 2013. The prior amendments have increased the contract amount by a total of \$5.7 million from the original \$400,000 to the current \$6.1 million. Of that \$6.1 million, \$3,791,379 was available, as of July 2016, to fund the proposed extension.

According to LAWA, it is essential that the contractor be retained for the proposed two-year period in order to conclude litigation (*City of Los Angeles Department of Airports v. JRI, Inc.*) involving (1) deficiencies in the manufacture and delivery of four aircraft rescue firefighting trucks to LAX and the Los Angeles/Ontario International Airport and (2) deterioration of the recently-replaced concrete runway 25L at LAX (*City of Los Angeles vs. Tutor-Saliba Corporation/O&G Industries Inc., JV, etc., et al*). The lawsuits were initiated in 2012 and 2013, respectively. A similar lawsuit involving JRI, Inc. and the delivery of two Aircraft Rescue Fire Fighting vehicles for use at San Francisco International Airport was filed by the City and County of San Francisco in June 2010 and settled in December 2015.

The Department believes that retaining the services of Morrison & Foerster, LLP is beneficial to both LAWA and the City in that the firm is highly regarded as having exceptional litigation expertise and product liability experience.

Compliance with California Environmental Quality Act Guidelines

With respect to the Department's compliance with California Environmental Quality Act (CEQA) guidelines, continuing administrative, maintenance and personnel-related activities such as the proposed Fourth Amendment are exempt from the requirements pursuant to Article II, Section 2.f of the Los Angeles City CEQA Guidelines.

Compliance with City Administrative Requirements

Due to a lack of sufficient in-house staff with the legal and subject matter expertise needed to adequately represent the Department in its complex legal matters, combined with the volume of work required, LAWA determined that, pursuant to Charter Section 1022, the provision of legal services in support of the litigation involving these two firms can be performed more feasibly or economically by an independent contractor than by City employees.

Morrison & Foerster must comply with the following City Standard Provisions for Contracting: the Living Wage Ordinance, Affirmative Action Program, Child Support Obligations Ordinance, Contractor Responsibility Ordinance, the First Source Hiring Program for all non-trade airport jobs, and the Bidder Contributions CEC (City Ethics Commission) Form 55 pertaining to the City's contract bidder campaign contribution and fundraising restrictions. Additionally, the Department of Public Works, Office of Contract Compliance, must determine that the contractor is in compliance with the provisions of the Equal Benefits Ordinance. Furthermore, Morrison & Foerster must comply with the Charter Section 609(e) provisions pertaining to the prohibition of underwriters' gifts and political contributions. The contractor has submitted the required insurance documents and maintains insurance in the terms and amounts required.

Upon review by the Department's Contract Services Division, it was determined that the underlying agreement and proposed Fourth Amendment are not subject to the provisions of the Small Business Enterprise Program.

Alternatives to the Proposed Amendment

According to the Department, there are no viable alternatives to continuing the services of Morrison & Foerster for legal services in support of pending litigation involving the *City of Los Angeles Department of Airports v. JRI, Inc.* and *City of Los Angeles vs. Tutor-Saliba Corporation/O&G Industries Inc., JV, etc., et al* trials. Without continuing the highly specialized legal support, and without the advantage of the firm's experience with product liability litigation, LAWA's ability to successfully conclude both cases would be compromised. Therefore, approval of the proposed Fourth Amendment is viewed by the Department as the most appropriate action.

RECOMMENDATIONS

That the Mayor:

1. Approve the proposed Fourth Amendment to Contract No. DA-4859 between the Los Angeles World Airports and the law firm of Morrison & Foerster, LLP to extend the contract term for an additional two years, for a total term of five years, to continue the

provision of expert legal services to the Department for matters related to litigation involving deficiencies in the manufacture and delivery of aircraft rescue firefighting trucks to LAX and the Los Angeles/Ontario International Airport and deterioration of the recently-replaced LAX concrete runway 25L, subject to City Attorney approval as to form and compliance with the City's Standard Provisions for Contracts, including the Living Wage Ordinance, Affirmative Action Program, Child Support Obligations Ordinance, Contractor Responsibility Ordinance, the First Source Hiring Program for all non-trade airport jobs, the City Ethics Commission Form 55 pertaining to bidder contributions, the Equal Benefits Ordinance, and Charter Section 609(e) pertaining to the prohibition of underwriters' gifts and political contributions;

2. Authorize the Executive Director of the Los Angeles World Airports to execute the Amendment; and
3. Return the proposed Amendment to the Department for further processing, including Council consideration and City Attorney approval.

FISCAL IMPACT STATEMENT

Approval of the Fourth Amendment will have no impact on the City's General Fund. Funding is available from the Department's Fiscal Year 2016-17 Operating Budget in Cost Center 1110004 – Legal Services Division, Commitment Item 520 – Contractual Services. Costs incurred under Contract No. DA-4859 will be recovered from landing fees, terminal rates and charges, and non-aeronautical revenues (e.g., concessions, parking lot revenue, etc.). Future years' funding will be requested as part of the annual budget process. The use of outside legal services complies with the Department of Airports' adopted Financial Policies.

Time Limit for Council Action

Pursuant to Charter Section 373 and Los Angeles Administrative Code Section 10.5, the proposed Amendment must be approved by the Council before it can become effective. Unless the Council takes action disapproving a contract that is longer than three years within 60 days after submission to Council, the contract will be deemed approved.