



Legislation Text

File #: 2018-0428, Version: 1

DATE: October 9, 2018

SUBJECT:

RESOLUTION AUTHORIZING A SINGLE SOURCE AGREEMENT, IN ACCORDANCE WITH BOARD POLICY 110 II.H, FROM JANUARY 1, 2019 UNTIL DECEMBER 31, 2021 WITH CARPI & CLAY, INC. FOR FEDERAL LEGISLATIVE CONSULTING SERVICES FOR AN AMOUNT NOT TO EXCEED \$375,000. FUNDS FOR THE CURRENT FISCAL YEAR ARE BUDGETED; ALL FUNDS REQUIRED FOR FUTURE FISCAL YEARS WILL BE BUDGETED IN THE APPROPRIATE FISCAL YEAR, SUBJECT TO BOARD APPROVAL UPON ADOPTION OF EACH FISCAL YEAR'S BUDGET

EXECUTIVE SUMMARY:

The San Diego Unified Port District (District) utilizes legislative consulting professionals to represent the District's interests and assure that there is two-way communication with state and federal legislative branches and regulatory agencies. This agenda item requests that the Board of Port Commissioners (Board) authorize a single source agreement with Carpi & Clay, Inc. (Carpi & Clay) in accordance with Board Policy 110 II.H, for federal legislative professional services.

Areas of specific interest to the District include but are not limited to:

- Assisting in coordinating with Congressional Members and staff, as well as Administration officials, on tidelands issues;
- Acting as a liaison with several industry groups and federal agencies on District matters;
- Assisting in securing federal funding for District projects;
- Facilitating responses to requests for information from members of Congress concerning matters of interest to the District; and
- Reviewing and commenting on federal project submissions, such as grant proposals.

The nature of legislative consulting is unlike other types of professional services. Clients generally contract with legislative consulting firms for long periods of time, forging a unique relationship between the firm and organization. Unless representation is careless or is no longer beneficial, retaining an organization's legislative firm is fundamentally beneficial to the agency as changes in representation require a considerable amount of time and resources to in order to become knowledgeable in a client's distinct needs and understand how best to advocate for them.

Carpi & Clay is the District's firm of record and is a full service firm that has represented the District for the past three years. During its tenure, Carpi & Clay has provided support or advocacy for passage of legislation, monitoring potential legislation and executive actions, and coordinating communication on the District's behalf across the various channels of United States government.

Carpi & Clay proposes \$10,000 per month to represent the District, and up to \$5,000 per year for expenses incurred.

RECOMMENDATION:

Adopt a Resolution authorizing an agreement from January 1, 2019 until December 31, 2021, with Carpi & Clay, Inc. for federal legislative consulting services for an amount not to exceed \$375,000. Funds for the current fiscal year are budgeted; all funds required for future fiscal years will be budgeted in the appropriate fiscal year, subject to Board approval upon adoption of each fiscal year's budget.

FISCAL IMPACT:

Funds for the first six months of this agreement are budgeted in the approved FY 2018/2019 Professional Services account for the District's Government and Civic Relations Department.. Funds required for future fiscal years will be budgeted for in the appropriate fiscal year and cost account subject to Board approval upon adoption of each fiscal year's budget.

COMPASS STRATEGIC GOALS:

Utilizing the services of federal government affairs professionals assists the District in moving efforts that support the needs and legislative positions of the District. Their services also augment District staff by attending and representing the District's interests in important matters and providing counsel on legislative actions.

This agenda item supports the following Strategic Goal(s).

- A Port that the public understands and trusts.
- A thriving and modern maritime seaport.
- A vibrant waterfront destination where residents and visitors converge.
- A Port with a healthy and sustainable bay and its environment.
- A Port that is a safe place to visit, work and play.
- A Port with an innovative and motivated workforce.
- A financially sustainable Port that drives job creation and regional economic vitality.

DISCUSSION:

The District utilizes the services of federal and state legislative consulting professionals to represent its interests and ensure two-way communication exists between the District and legislative and executive branches of government. Federal legislative consulting representation assists with communicating the positions of the District on federal legislation and proposed rulemaking. Facilitating responses to requests for information concerning District matters from members of Congress and federal administrative and regulatory agencies is a crucial role. These representatives also assist with meetings of District staff and/or Commissioners with the offices of federal elected officials and regulatory agencies.

It is a common practice for public agencies to retain federal lobbying support. Federal legislative consulting representatives are able to assist by providing or recommending the necessary actions to secure passage of legislation and rulemaking promoting Board policy positions. More specifically, a legislative consulting firm provides resources for policies and legislation on important District issues, such as and public access, infrastructure needs, and environmental regulatory policy actions to ensure that the District's interests are advanced or protected. They are able to inform the offices of elected officials and relevant committees of the District's position on federal legislation, as well as testify in congressional committees as appropriate. Additionally, they assist in setting the rules for legislative funding, seek grant funding, engage with federal partners, facilitate permitting and regulations, and help with special pieces of legislation

The proposed agreement (Attachment A) is a single source agreement with Carpi & Clay. This proposal includes services in the following areas, among others:

- Ensure that the District and its interests are represented in all legislative, executive and other matters occurring in the nation's legislative and administrative processes;
- Act as a liaison with the American Association of Port Authorities and other industry groups related to District matters;
- Communicate the District's interests to relevant organizations and federal agencies;
- Facilitate responses to requests for information from members of Congress concerning matters of interest to the District; and
- Review and comment on federal project submissions, such as grant proposals.

In August 2015, the District released a Request for Qualifications to solicit potential respondents for federal legislative consulting services. At the end of the open period, nine firms had responded. Carpi & Clay, Inc., a full service, bi-partisan firm located in Washington, D.C., was the firm chosen through the competitive procurement process, and has served the District faithfully since that time. As a general rule, the relationship between a legislative advocate and client is fashioned over time and as such, enjoys high respect by industry peers - so much so that solicitations for new lobbying bids are typically seen as signs that there is a problem with the existing representation. Absent those issues, re-soliciting for a legislative consulting contact is not usually cost-effective.

Carpi & Clay has been an active participant in federal legislative, regulatory and budget discussions one behalf of the Port. A few selected highlights:

- Port Security / Cyber Security -- Through the assistance of Carpi & Clay, the Port has been a vocal advocate on behalf of the Port Security Grant program. Beginning in early 2016, Carpi & Clay arranged for the Port to educate Members of Congress, the Department of Homeland Security (DHS) and the US Coast Guard on need to expand grant funding for cyber security. This included a congressional briefing that presented specific proposals for consideration. These activities were rewarded when the Department of Homeland Security announced the 2017 port security grants - 80% of the port's project requests for were selected for funding. Meanwhile, Carpi & Clay has been advocating for continued appropriations to support the Port's port security needs, which included a briefing for the House Transportation & Infrastructure Committee. The Port's CyberCommand was specifically referenced during the Committee's hearings on maritime security technologies.

- **Border Sewage --** Funding and policy issues related to Tijuana River Valley sewage continue to be a high priority for the Port's federal advocacy agenda. While this is a multi-faceted problem, Carpi & Clay has worked aggressively to protect the current funding stream that supports remediation. The President's FY2018 budget proposed to end this funding, and the House-passed appropriations bill did not fund the program. This left the Senate as the sole opportunity to protect the program. Under the guidance of Carpi & Clay, the Port commissioners pressed this issue with all Members of the San Diego Delegation and with Senator Feinstein, an appropriator, and Senator Harris. As a result, the Senate Appropriations Committee reinstated the funding, and the Port's advocates helped to protect these funds in the final government funding bill. This same scenario is playing out with the FY19 funding. However, through legislative advocacy, the House of Representatives changed course and agreed to fund the program at \$10 million for border infrastructure programs. This is the current year level of funding. The Port has been working with the San Diego House Delegation to protect these funds in the year-end government funding agreement.
- **Harbor Maintenance Trust Fund for Donor Ports --** A key legislative victory for the Port was passage of a new law - Water Resources Development Act (WRDA) 2016 - that specifically designates the Port as a donor port. Under this provision, San Diego and two other ports are now eligible to receive a new donor equity revenue stream. This development was a direct result of the Port's advocacy strategies and Carpi & Clay's direct lobbying with congressional offices, key congressional committees and a network of port advocates.
- **Cruise Tax Legislation --** A troubling provision included in the Senate Finance Committee's first draft tax reform bill was a new tax that singled out the cruise industry. It would tax cruise lines based on a percentage of time spent in U.S. waters, and was projected to generate \$700 million in new revenues over ten years if enacted. At the Port's direction, Carpi & Clay educated the Port's Congressional Delegation of the proposal and its potential impacts. Fortunately, the provision was stripped during the Senate floor debate and therefore was not included in the final tax agreement.
- **Aquaculture --** The Port's federal advocacy promoting aquaculture and the Rose Canyon Fisheries project began in earnest over the course of 2016 and has continued through the current time. Carpi & Clay's initiatives have included strategic meetings in Washington, DC with Members of the Senate and House, the Corps of Engineers, the Secretary of Interior and his senior staff, the Secretary of Commerce's senior staff and National Oceanic and Atmospheric Administration's senior leaders. Moreover, the firm has helped promote the Port's Blue Economy initiatives and developed legislative outreach on legislation authored by Sen. Wicker (R-MS) to streamline regulatory permitting and advance sustainable offshore aquaculture. In addition, the firm participated in the drafting of the white paper submitted to the Secretary of Commerce - Federal Aquaculture Policy - A Case Study in Permitting: Authority, Process, and Timeline). This paper provides insights into the Port's own experiences with a permitting process that is poorly defined and in need of transparency, federal agency coordination and streamlining.
- **1220 C Street Land Conveyance --** The Port's efforts to secure usage of Navy-leased property at 1220 C Street required legislative action. Carpi & Clay worked very closely with

the Port's leadership to facilitate high-level communications with the Navy and members of the House Armed Services Committee. Working with Representatives Peters, Davis and Hunter, Carpi & Clay supported the development and enacted of statutory authority to convey the lease at 1220 C Street to the Port.

Carpi & Clay are in frequent communication with the Port's Congressional Delegation and helps facilitate meetings, briefings and project strategies. This provides the District with strategic engagement and representation of District priorities at the federal government level, maintaining a presence in the ever-changing legislative and political arena of the nation's capitol. To ensure the District continues to enjoy adequate representation and effective management of key relationships at the federal level of government, staff recommends that, in accordance with Board Policy 110 II.H, the Board award a professional services agreement to Carpi & Clay, Inc. for a total not to exceed \$375,000 for a period of three years.

General Counsel's Comments:

The Office of the General Counsel has reviewed and approved the proposed agreement as to form and legality.

Environmental Review:

The proposed Board direction or action, including without limitation, a resolution to authorize an amendment for architectural consulting services, does not constitute a "project" under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Section 15378 because it will not have a potential to result in a direct or indirect physical change in the environment and is, therefore, not subject to CEQA. No further action under CEQA is required.

In addition, the proposed Board action complies with Sections 21 and 81 of the Port Act, which allow for the Board to pass ordinances and resolutions, and use District funds for expenses of conducting the District. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board action is consistent with the Public Trust Doctrine.

Finally, the proposed Board direction or action does not allow for "development," as defined in Section 30106 of the California Coastal Act, or "new development," pursuant to Section 1.a. of the District's Coastal Development Permit Regulations. Therefore, issuance of a Coastal Development Permit or exclusion is not required.

Equal Opportunity Program:

Not applicable.

PREPARED BY:

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Attachment(s):

Attachment A: Agreement - Carpi & Clay, Inc.