

# SAN LUIS OBISPO COUNCIL OF GOVERNMENTS

## STAFF REPORT

**MEETING DATE:       APRIL 8, 2009**

**SUBJECT:               TRANSPORTATION FISCAL AND COMPLIANCE AUDITS**

### SUMMARY

A Request for Proposals (RFP) was issued in February soliciting proposals to prepare Transportation Development Act (TDA) fiscal audits. The TDA audits include SLOCOG, San Luis Obispo Regional Transit Authority (SLORTA), South County Area Transit (SCAT), San Luis Obispo County, Ride-On Transportation and Morro Bay. This staff report describes the audit and selection process and includes a recommendation to hire an audit firm.

### RECOMMENDATION

**Staff:**     Approve contracts with Moss, Levy & Hartzheim LLP – CPAs for SLOCOG, SLORTA and Ride-On Transportation audits for \$25,000.

### DISCUSSION

The Transportation Development Act (TDA) requires an annual fiscal/compliance audit of each TDA recipient and each TDA trust fund being administered by the Regional Transportation Planning Agency (RTPA). The previous audit contract entered into by SLOCOG for this purpose was for four years, 2004/05 – 2007/08.

For the past four years Glenn, Burdette, Phillips & Bryson (GBPB), have completed these audits for SLOCOG. Their contract expired on June 30, 2008. It's SLOCOG policy to utilize new auditors every four years to assure continual reassessment of its financial records and assure compliance with the law. SLOCOG staff prepared and distributed a Request for Proposals (RFP) for its audit needs and for all TDA recipient agencies that wished to receive proposals. SLOCOG pays for audits of agencies whose TDA funding is allocated off-the-top or contributed by all member jurisdictions (SLOCOG, SLORTA, and Ride-On). All other TDA recipients contract independently with auditors of their choice who are sometimes able to do TDA compliance testing combined with other audit tasks at a reduced cost. All proposals to complete these other audits were forwarded to those jurisdictions for their use.

Two proposals were received. A copy of each proposal was distributed to staff from SLOCOG, SLORTA, SCAT, the County, Ride-On Transportation and the City of Morro Bay. SCAT, the County, and Morro Bay will use this information for individual selection if they choose. Staff from SLOCOG, SLORTA, and Ride-On Transportation reviewed and rated the proposals according to the guidelines noted in the RFP. The proposal with the highest score – Moss, Levy & Hartzheim LLP - CPAs – has been recommended by SLOCOG, SLORTA and Ride On Transportation for SLOCOG, SLORTA and Ride On Transportation agency audits and trust funds. The tentative 2009/2010 budgeted amount for fiscal audits is \$36,000; the budget proposed for adoption will be modified to the actual contract amount.

**Contract Between**  
**The SAN LUIS OBISPO COUNCIL OF GOVERNMENTS**  
**And Moss, Levy & Hartzheim, LLP - CPAs**

**To Prepare**  
**SLOCOG, SLORTA and Ride On Transportation Fiscal Audits**

**THIS CONTRACT** is entered into this 8<sup>th</sup> day of April 2009, by and between the SAN LUIS OBISPO COUNCIL OF GOVERNMENTS, (hereinafter referred to as "SLOCOG") and Moss, Levy & Hartzheim, LLP - CPAs, an independent contractor (hereinafter referred to as "Contractor");

**WITNESSETH:**

**WHEREAS**, Section 99245 of the Public Utilities Code requires an annual fiscal and compliance audit of all claimants of Transportation Development Act monies; and

**WHEREAS**, Title 21, Chapter 3, Subchapter 2, Article 5.5, Section 6662 of the California Administrative Code requires an annual fiscal and compliance audit of regional entities; and

**WHEREAS**, SLOCOG prepared and distributed a Request for Proposals (RFP) for its, San Luis Obispo Regional Transit Authority (SLORTA), South County Area Transit (SCAT), Ride On Transportation, San Luis Obispo County and Morro Bay audit needs; and

**WHEREAS**, Contractor was selected through a competitive "Request for Proposal" (RFP) process initiated by SLOCOG and is specially trained, experienced, expert and competent to perform such special services; and

**WHEREAS**, Contractor agrees to perform the specified audit services according to the scope of work (Attachment A); and

**NOW, THEREFORE**, the parties do mutually agree as follows:

1. Retention of Services. SLOCOG hereby engages Contractor and Contractor hereby agrees to perform for SLOCOG the services hereinafter set forth for the compensation hereinafter set forth, all pursuant to the terms and conditions herein.

2. Scope of Services. Pursuant to this Contract, Contractor shall provide to SLOCOG the audit services described in the Scope of Work, attached hereto as Exhibit A and further described in Contractor's proposal for audits of SLOCOG, SLORTA, Ride On Transportation and SLOCOG's trust funds and Service Authority for Freeways and Expressways (SAFE) funds, subject to refinement only by mutual agreement of subject entities, Contractor, and the SLOCOG Executive Director.

3. Term of Contract: This Contract shall commence effective on the 8<sup>th</sup> day of April 2009, and shall terminate on December 31, 2012, unless said work is completed on a date prior thereto, or unless terminated earlier as provided herein. Contractor will furnish sufficient personnel to: complete all draft financial and compliance audits before December 1, 2009, 2010, 2011, and 2012. Extensions may be granted by the SLOCOG Executive Director or delegated staff.

4. Compensation. SLOCOG shall pay to Contractor as compensation in full for all service performed by Contractor pursuant to this Contract, a sum equal to \$25,000 for audits of the year ended June 30, 2009, 2010, 2011, and 2012. SLOCOG hereby warrants that funds are available from which payment may be made. Said compensation shall be paid in the following manner: SLOCOG shall pay said compensation to Contractor on a monthly basis, after the receipt of an itemized bill thereof from Contractor and the progress report specified in item No. 17. Ten percent (10%) of each payment will be withheld by SLOCOG pending satisfactory completion of all work contracted for hereunder.

5. Termination of Contract for Convenience of Either Party. Either party may terminate this Contract at any time by giving to the other party ten (10) days written notice of such termination. Termination shall have no effect upon the rights and obligations of the parties arising out of the transaction occurring prior to the effective date of such termination. Contractor shall be paid for all work satisfactorily completed prior to the effective date of such termination.

6. Termination of Contract for Cause. If, through any cause within its control, Contractor fails to fulfill in a timely and professional manner its obligations under this Contract, or if Contractor violates any of the terms or provisions of this Contract, SLOCOG shall have the right to terminate this Contract effective immediately upon SLOCOG giving written notice thereof to Contractor. Termination shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination. Contractor shall be paid for all work satisfactorily completed prior to the effective date of such termination.

7. Modification. This Contract, together with Attachment A, constitutes the entire understanding of the parties hereto and no changes, amendments, or alterations shall be effective unless in writing and signed by both parties.

8. Non-Assignment of Contract. Inasmuch as this Contract is intended to secure the specialized services of the Contractor, Contractor shall not assign, transfer, delegate, or sublet this Contract or any interest herein with the exception of that outlined in the Contractor's proposal without the prior written consent of the SLOCOG Executive Director, and any such assignment, transfer, delegation, or sublet without SLOCOG's prior written consent shall be considered null and void.

9. Covenant. The validity, enforceability and interpretation of any of the clauses of this Contract shall be determined and governed by the laws of the State of California.

10. Enforceability. The invalidity and unenforceability of any terms or provisions hereof shall in no way affect the validity or enforceability of any other terms or provisions.

11. Employment Status. Contractor shall, during the entire term of the Contract, be construed to be an independent Contractor, and shall in no event be construed to be an employee of SLOCOG. Contractor understands and agrees that he/she is not, and will not, be eligible for membership in, or any benefits from, any SLOCOG group plan for hospital, surgical or medical insurance, or for membership in any SLOCOG retirement program, or for paid vacation, paid sick leave, or other leave, with or without pay, or for any other benefit which accrues to a SLOCOG employee.

12. Warranty of Contractor. Contractor warrants that they are properly certified and licensed under the laws and regulations of the State of California to provide the services herein agreed to.

13. Conflicts of Interest. No officer, employee, director or agent of SLOCOG shall participate in any decision relating to this Contract which affects his/her personal interest or the interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any such person have any interest, direct or indirect, in this Contract or the provisions thereof.

14. Indemnification. Contractor shall defend, indemnify and save harmless SLOCOG, its officers, agents and employees, from any and all claims, demands, damages, costs, expenses, or liability arising out of this contract or occasioned by the performance or attempted performance of the provisions hereof except those arising from the sole negligence or willful misconduct of SLOCOG, including, but not limited to, any act or omission to act on the part of the Contractor or his/her agents or employees or other independent contractors directly responsible.

15. Insurance. Contractor shall obtain and maintain for the entire term of Contract and Contractor shall not perform any work under this Contract until after he/she has obtained comprehensive general public liability insurance in companies acceptable to SLOCOG, authorized to issue such insurance in the State of California. Said insurance shall consist of the following:

a. Commercial General Liability Insurance: Contractor shall maintain in full force and effect, for the period covered by this Contract, liability insurance including, but not be limited to, protection against claims arising from bodily and personal injury, including death resulting there from, and damage to property, resulting from any act or occurrence arising out of Contractor's operations in the performance of this Contract, including, without limitation, acts involving vehicles. The amounts of insurance shall be not less than the following: single limit coverage in the total amount of \$500,000.00.

The following endorsements must be attached to the policy:

- (1) If the insurance policy covers on an "accident" basis, it must be changed to "occurrence."
- (2) The policy must cover personal injury as well as bodily injury.
- (3) Broad form property damage liability must be afforded.
- (4) SLOCOG and their officers and employees shall be named insured under the policy, and the policy shall provide that the insurance will operate as primary insurance and that no other insurance effected by SLOCOG will be called upon to contribute to a loss hereunder.

b. Workers' Compensation Insurance: In accordance with the provisions of Section 3700 of the Labor Code, Contractor is required to be insured against liability for workers' compensation or to undertake self-insurance. Contractor agrees to comply with such provisions before commencing the performance of the work of this Contract.

c. The following requirements apply to all insurance to be provided by Contractor:

- (1) A certified copy of each insurance policy and a certificate of insurance shall be furnished to SLOCOG within (30) days after execution of this Contract. A certificate alone is not acceptable.
- (2) Certificates and policies shall state that the policies shall not be canceled or reduced in coverage or changed in any other material aspect without thirty (30) days prior written notice to SLOCOG.
- (3) Approval of the insurance by SLOCOG shall not relieve or decrease the extent to which the Contractor may be held responsible for payment or damages resulting from Contractor's services pursuant to this Contract.

d. If Contractor fails or refuses to procure or maintain the insurance required by this paragraph, or fails or refuses to furnish SLOCOG with required proof that insurance has been procured and is in force and paid for, SLOCOG shall have the right to forthwith terminate this Contract.

16. Notices. Any notice required to be given pursuant to the terms and provisions hereof shall be in writing, and shall be sent by certified or registered mail to SLOCOG at:

San Luis Obispo Council of Governments  
1150 Osos Street, Suite 202  
San Luis Obispo, CA 93401

and to the Contractor at:

Moss, Levy & Hartzheim LLP  
802 East Main Street  
Santa Maria, CA 93454

17. Progress Reports. Invoices shall be submitted by Contractor to SLOCOG no more frequently than once per month succeeding the period within which the report is concerned. Invoices shall be accompanied by brief progress reports describing the work performed, personnel involved, and accomplishments made during the billing period, plus any problems anticipated in performing said work in the future. Contractor will furnish copies of the audit, auditor's letter, and the report on internal accounting control weaknesses as follows: the claimant or agency audited (one copy), SLOCOG (two copies), and County Auditor (one copy).

18. Copyright. Any reports, maps, documents or other materials produced in whole or part under this Contract shall be the property of SLOCOG, and shall not be subject to any application for copyright by or on behalf of the Contractor.

19. Findings Confidential. No reports, maps, information, documents, or any other materials given to or prepared by Contractor under this Contract which SLOCOG requests, in writing, to be kept confidential, shall be made available to any individual or organizations by Contractor without the prior written approval of SLOCOG. However, Contractor shall be free to disclose such data as is publicly available, already in its possession, or independently developed.

20. Prompt Payment of Withheld Funds to Sub-contractor: The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating prime contractor to the penalties, sanctions and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the contractor or subcontractor in the event of: a dispute involving late payment or nonpayment by the contractor; deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

20. Taxpayer Identification Number and Certification. The US Internal Revenue Code requires businesses and government entities to report specified information to the Internal Revenue Service (IRS) regarding payments made to independent contractors. In order to meet these reporting requirements, Contractor shall provide SLOCOG a completed Form W-9 shown by ATTACHMENT B.

21. Non Discrimination. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as SLOCOG deems appropriate.

**IN WITNESS WHEREOF**, SLOCOG and Contractor have executed this Contract effective on the date of the last signatory.

Moss Levy & Hartzheim LLP  
802 East Main Street  
Santa Maria, CA 03454

San Luis Obispo Council of Governments  
1150 Osos Street, Suite 202  
San Luis Obispo, CA 93401

BY: \_\_\_\_\_  
TITLE: Director

BY: \_\_\_\_\_  
TITLE: Executive Director

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

APPROVED AS TO FORM AND LEGAL EFFECT:

BY: \_\_\_\_\_  
Rita L. Neal, SLOCOG COUNSEL