



To: Bay Area UASI Approval Authority

From: UASI Staff

Date: August 18, 2011

RE: Item # 7: Legal Fees for PSST Lease Corrective Action

Action or Discussion Item:

Discussion and Action.

Background:

At the July 14, 2011 Approval Authority meeting, staff was requested to make additional inquiries to CalEMA to determine if legal services connected to Project Cornerstone would be an eligible M & A expense under the FY 2010 UASI grant.

Project Cornerstone was a broadband pilot project for four sites that were paid for in the FY 2009 UASI grant. Although additional funding for this project has not currently been allocated, equipment purchased with these funds are federal assets and may require funding for maintenance or repair using the FY 10 grant. The waiver currently being sought by Oakland, San Francisco, and San Jose to obtain a lease for PSST will allow the sites developed by Project Cornerstone to communicate with all other sites in the Bay Area. Legal services for this process may be related to Project Cornerstone.

Discussion/descriptions:

Are legal services for PSST Lease Corrective Action allowable under the 2010 UASI grant program?

Per discussions with CalEMA, FY 2010 grant funds may be allowable for legal services for PSST Lease Corrective Action as management and administrative costs for FY 2010 provided that the specific conditions described below are satisfied.

Grant Guidelines and Requirements:

The FY 2010 UASI grant guidelines describe allowable management and administrative costs to include the hiring of full or part-time staff or contractors/consultants to assist with the management of the respective grant program, application requirements, compliance with reporting and data collection requirements – as described, this includes legal services. However, these fees cannot be considered supplanting and/or violate “lobbying prohibitions” as described in Appendix A.

Assuming that the scope of legal services under the grant guidelines are eligible, then the

jurisdiction responsible for either performing or contracting for these services will be required to follow the federal, state, and local grant requirements, policies, and procedures as delineated in the sub-recipient MOU and provide a detailed scope of work that includes tasks, deliverables and performance milestones. All cash reimbursement requests must be supported by functional timesheets, payroll records, agendas, work products, contract, invoices, cancelled checks, and related materials as required by the MOU and grant assurances. Overhead and indirect costs are not allowable costs.

The funds allocated for legal services would be effective with the approval of a MOU or an amendment of an existing MOU by the sub-recipient.

Conditions to be satisfied:

1. **Scope of Legal Services.** If the scope of legal services is deemed allowable under the grant guidelines, then the jurisdiction responsible for either performing or contracting for these services will be required to follow the federal, state, and local grant requirements, policies, and procedures as delineated in the sub-recipient MOU and provide a detailed scope of work that includes tasks, deliverables and performance milestones. All cash reimbursement requests must be supported by functional timesheets, payroll records, agendas, work products, contract, invoices, cancelled checks, and related materials as required by the MOU and grant assurances. Overhead and indirect costs are not allowable costs.
2. **Reasonableness of costs.** If the Scope of Legal Services is deemed allowable, then the costs need to be reasonable as determined by the prudent person test (i.e. charge amount not excessive and within the bounds of common sense) and necessary for proper and efficient performance and administration of the grant.
3. **Compliance with the Personnel Cap.** If the scope and costs are allowable, reasonable, and necessary, then the 50% personnel cap needs to be met. This cap applies to all staff and contractors hired. Legal services would be included in this cap.
4. **CalEMA Approval of Budget Modification.** If the above mentioned conditions are satisfied, then a modification request can be submitted to the state. No funds may be expended until CalEMA has approved this modification. Any legal costs incurred prior to this approval are ineligible.
5. **Amendments to Subrecipient MOU.** Legal Services will only be applicable to subrecipients (JPAs are not considered to be subrecipients). Any MOU that has already been signed will require an amendment. No services rendered prior to the signing of the MOU would be eligible.

Timelines. The process to obtain approval of the modification by the state may take from a couple of weeks to a month. The completion of the amendment to the Subrecipient MOU will be dependent upon the jurisdiction's ability to execute the MOU through their processes.

What is the Budget or Fiscal Impact?

All M & A funds for the 2010 grant have been allocated. Therefore, legal services would require a reallocation of funds. In order to accomplish this, salary savings in the form of delayed hiring or personnel cuts, or cuts from other M & A expenditures would have to occur. The Approval Authority would be requested to approve these changes prior to submission to the state.

Staff Recommendations:

The M & A allocation in the 2010 UASI grant is limited to 5% of the grant or \$1.7 million. These funds have been completely allocated and approved by the Approval Authority. Staff has identified approximately \$49,290 in potential salary savings (due to delays in hiring of grants

management unit staff) and recommends that the Approval Authority approve this sum for legal services to be paid through the 2010 UASI grant provided that the conditions as previously discussed are satisfied.

Action Requested of the UASI Approval Authority:

This is a policy decision for the UASI Approval Authority.

Appendix A

Supplanting – Grant funds need to supplement existing funds, and cannot replace (supplant) funds that have been appropriated for the same purpose. Sub-grantees and sub-recipients may be required to supply documentation certifying that a reduction in non-Federal resources occurred for reasons other than the receipt or expected receipt of Federal funds.

Lobbying Prohibitions -No Federal appropriated funds may be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement.

Disclosure of Lobbying Activities -If any other funds than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or an employee of Congress, or employee of a Member of Congress in connection with the Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers including subgrants, contracts under grants and cooperative agreements, and subcontract(s) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.