

County of Santa Clara

Office of the County Executive

County Government Center, East Wing
70 West Hedding Street
San Jose, California 95110
(408) 299-5105



November 1, 2010

Todd J. Zinser
Inspector General
U.S. Department of Commerce
1401 Constitution Avenue, N.W.
Washington, D.C. 20230

Re: Broadband Technology Opportunity Program Grant Award to the San Francisco Bay Area

Dear Inspector General Zinser:

I write to request an investigation into the award of approximately \$50,593,551.00 in taxpayer funds to the San Francisco Bay Area Wireless Enhanced Broadband (BayWEB) project under the Broadband Technology Opportunity Program (BTOP) administered by the Department of Commerce (DOC) and the National Telecommunications and Information Administration (NTIA). As I explain in more detail below, this investigation is warranted and necessary in order to ensure that public funds are administered in a transparent and fair manner at all levels of government.

As a citizen and public servant, I am compelled to raise to your attention the serious concerns the County of Santa Clara has regarding the inexplicable opacity underlying the BayWEB BTOP award. The Obama Administration has laudably expressed its commitment to the transparency and prudent stewardship of funds available and distributed under the American Recovery and Reinvestment Act of 2009 (ARRA). Based on the limited information made available to me, I am persuaded that the BTOP award of ARRA funds to the BayWEB project was secured in a manner that lacked transparency and prudence. I also continue to be especially troubled that the governing bodies of jurisdictions like the County have not been and will not be afforded an opportunity to openly vet and legally approve the local government obligations, such as any General Fund commitments for project installation and maintenance, represented in the grant application.

The application¹ at issue was submitted by Motorola, Inc. based on a purported public-private partnership with Bay Area government agencies in order to improve interoperable communications throughout the ten counties, including the County, that comprise the Bay Area Urban Area Security Initiative (UASI). In communications from DOC/NTIA and the California

¹ BTOP Application Identification No. 7309.

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Emergency Management Agency (CalEMA), it appears that misinformation abounds regarding an alleged open and competitive process consistent with local government practices that resulted in the selection of Motorola as the private partner for the BayWEB project.² The County does not believe there was any legitimate open competitive process to appropriately identify Motorola as a partner to Bay Area entities for the BTOP award. However, to the extent anyone claims there was an attempt toward a competitive process, a thorough review would reveal that rogue Bay Area UASI staff operated outside the scope of their authority and circumvented any true process.

Prior to the BTOP Round 2 announcement, local entities approved issuance of a Request for Information (RFI) on September 29, 2009, to conduct an industry review of potential approaches and costs associated with the deployment of a region-wide 700 MHz broadband network.³ The RFI repeatedly stated that the "Bay Area will not award a long term contract based on this RFI."⁴ Instead, the RFI explicitly indicated that the Bay Area would subsequently determine whether a "Request for Proposals (RFP) or other competitive solicitation" would issue at a later date. The RFI further expressly indicated that "[i]t is not a requirement to participate in this industry review process in order to be considered by any competitive solicitation arising out of this process."

Yet for some curious reason, on February 1, 2010, Bay Area UASI staff, unbeknownst to the Bay Area UASI Approval Authority,⁵ unilaterally issued an email RFP solicitation solely to RFI respondents for "possible proposals for partnerships" to engage in a "public private partnership" for "Round 2 of the Broadband Technology Grant Program."⁶ This maneuver foreclosed any opportunity for an open and transparent process. It resulted in an improper and closed solicitation process that was not only contrary to the express language of any RFI, but it was also contrary to the expectations of Bay Area UASI members and contrary to local government practices for this type of vendor selection. Furthermore, as the County was attempting to sort through the mire of quickly evolving machinations of Bay Area UASI staff, key members of the County area were excluded from critical discussions and decision processes despite clear expressions of interest in participation and gaining an understanding of the partnership and commitment terms for local agencies.

The questions surrounding an alleged solicitation process and assertion of Motorola as a private partner with Bay Area entities are further compounded by the subsequent revelation that at minimum of four Bay Area UASI staff members are former employees of the successful grantee. At the very least, there is an appearance of potential impropriety that required heightened

² See Attachment 1, Letter from Anthony G. Wilhelm, NTIA (October 1, 2010) and related documents; and Attachment 2, Letter from Brendan Murphy, CalEMA (October 14, 2010) and related documents.

³ Attachment 3, San Francisco Bay Area Request for Information 2009-DEM01 (RFI). This RFI was to support a local level project known as Project Cornerstone and response could also potentially inform other future projects.

⁴ See e.g., Attachment 3, RFI, pgs. 1, 18 and 19.

⁵ The County of Santa Clara is a member of the Bay Area UASI Approval Authority.

⁶ Attachment 4, BTOP Email RFP Solicitation from Clement Ng, Bay Area UASI (February 1, 2010).

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attention to this particular solicitation process based upon basic conflict of interest and local government standards. The County continues to implore the DOC/NTIA to suspend, or postpone, the BayWEB project award until concerns regarding the vendor selection have been addressed.

I also believe the findings of an investigation would support postponing the award as the County and other local jurisdictions are still waiting for critical information for our governing bodies to legally approve the representations prematurely made in the grant application regarding local commitments for implementation and maintenance of this project. DOC/NTIA has indicated that it relied on the endorsements of the County and City of San Jose in making the BayWEB award. It is true that the County was solicited for letters of general support before the BTOP grant application for BayWEB was finalized. However, that solicitation was made with the promise that critical information would be forthcoming.⁷ It is significant that the County did not then and still does not now have all of the information necessary in order to make an informed decision about the commitments required for this specific initiative. To be clear, the County provided its letter in order to assist the regional goal of implementing a public safety broadband initiative, and to demonstrate support for that concept. Indeed the County continues to support the concept and believes its more than two million citizens would benefit from expanded broadband service for emergency responders and wireless broadband service.

However, the County does not condone the process marshaled in an opaque and highly suspect fashion to date to accomplish this worthy goal. In light of your commitment to the independent and objective oversight of DOC programs and operations, the County reiterates its request for an investigation into the BTOP BayWEB award in order to ensure that the assertions upon which DOC/NTIA relied actually bear out. I believe your investigation would reveal that the public partnership with Motorola was an important reason for approval of the application. However, the identified BayRICS Policy Group that undergirds the BayWEB application had never met at the time the application was submitted and statements within the application that anyone was acting on behalf of the Bay Area or that legal commitments were made by many of those agencies to participate in the application or the BayWEB project were premature.

At the local level, General Fund dollars will be required for BayWEB project installation and maintenance. However, local jurisdictions such as the County have received little information regarding such obligations and have not received approval from our own governing bodies despite apparent representations to the contrary. We would like for Bay Area jurisdictions to have the opportunity to take all relevant and pertinent information to our governing bodies in order to fulfill the requirements of the BayWEB project. This is a responsible request in light of our collective accountability to the public for ARRA funds and General Fund dollars at the local level. In order to do so, we request that information and documents related to the alleged vendor

⁷ Attachment 5: Email from Laura Phillips, dated February 18, 2010, to Michael Milas, Executive Director of Silicon Valley Regional Interoperability Authority.

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solicitation process and the subsequent Motorola application and award be fully disclosed to the Bay Area agencies. We are puzzled and disappointed by the ongoing failure to provide this reasonable information, which in my view lends further support to the need for an investigation.

Thank you in advance for your attention to this matter.

Sincerely,



Jeffrey V. Smith
County Executive

Enclosure(s):

- Attachment 1 Letter from Anthony G. Wilhelm, NTIA (October 1, 2010) and related documents
- Attachment 2 Letter from Brendan Murphy, CalEMA (October 14, 2010) and related documents
- Attachment 3 San Francisco Bay Area Request for Information 2009-DEM01 (September 29, 2009)
- Attachment 4 BTOP Email RFP Solicitation from Clement Ng, Bay Area UASI (February 1, 2010)
- Attachment 5 Email from Laura Phillips to Michael Milas, Executive Director of Silicon Valley Regional Interoperability Authority (February 18, 2010)

Cc: Gary Locke, Secretary of U.S. Department of Commerce
Matthew R. Bettenhausen, Secretary, California Emergency Management Agency
Chuck Reed, Mayor, City of San Jose
Bay Area UASI Approval Authority Members
Miguel Marquez, Santa Clara County Counsel