

March 26, 2015

MEMORANDUM TO THE TRUSTEES

THE PRESIDENT and CHIEF EXECUTIVE OFFICER

**SUBJECT: Procurement (Services) Contracts –
Law Department Contracts – Awards**

SUMMARY

The Trustees are requested to approve the award and funding of the multi-year legal services contracts listed below. The awards are to be for a term of up to five years and the aggregate value of all the contracts is \$13 million. The law firms' services will be called upon on an as-needed basis. The recommendations are the culmination of a multi-month Request for Proposals ("RFP") and evaluation process described in more detail below. The intent of the process is to identify law firms to provide legal services to the Authority on an "as needed" basis. Having multiple firms for legal services contracts allows the Authority flexibility in the ultimate selection of counsel depending on the Authority's needs in various subject matter areas, including general legal services, bond, underwriter and disclosure counsel, and energy counsel.

BACKGROUND

Section 2879 of the Public Authorities Law and the Authority's Guidelines for Procurement Contracts require the Trustees' approval for procurement contracts involving services to be rendered for a period in excess of one year.

The Authority's Expenditure Authorization Procedures ("EAPs") require the Trustees' approval for the award of personal services contracts in excess of \$1 million if low bidder, or \$500,000 if sole-source or non-low bidder.

The last Law Department RFP for legal services was in 2010.

DISCUSSION

The terms of the contracts will be more than one year; therefore, the Trustees' approval is required. All of the contracts will allow the Authority, in its sole discretion, to terminate services without liability other than paying for acceptable services rendered to the effective date of termination.

The issuance of up to five-year contracts is necessitated by both cost and efficiency considerations. In many cases, fixed prices for the terms of the contracts have been negotiated. Since an assigned legal matter may extend longer than a year and require consistency in service, it is more efficient to award long-term contracts than to rebid annually.

On November 18, 2014, RFP Inquiry No. Q14-5764MR was published in the New York State *Contract Reporter* seeking qualification statements from law firms interested in providing general legal services. On November 19, 2014, RFP Inquiry No. Q14-5765MR was published seeking qualification statements from law firms interested in providing energy counsel services. On November 20, 2014, RFP Inquiry No. Q14-5766MR was published seeking responses from law firms interested in providing bond, underwriter and disclosure counsel services.

An aggregate amount of \$6 million is requested for the general legal services contracts, \$3 million for the bond, underwriter and disclosure counsel contracts and \$4 million for the energy legal services contracts. Aggregate amounts, rather than an amount per contract, are requested as it is not known which legal services will be required. Accordingly, these contracts do not obligate the Authority to a specific level of services or expenditures.

I. General Legal Services Counsel

A total of 22 law firms submitted proposals in response to the RFP for general legal services. This proposal sought information on the firms' ability to provide support in a variety of legal areas (i.e., contracts, real estate management, appropriation, sales or leases; tort liability, labor, employment and employee benefits matters; federal and/or state regulatory, licensing, environmental, administrative and/or judicial hearings or litigation advice and litigation support) relevant to the business of the Authority. Staff reviewed the qualification statements, taking into account the background and experience of the bidders, expertise and reputation in the various subject matters, hourly rates and billing practices and any past Authority experience with the firm, as well as their minority hiring record and qualification as, or commitment to working with, Minority-Owned Business Enterprises ("MBE") and Women-Owned Business Enterprises ("WBE") (collectively, "M/WBE"). In addition, the firms' locations were considered; having counsel familiar with local courts in areas of the State where the Authority's facilities and offices are located is relevant, as the Authority may be sued or may choose to sue in local jurisdictions. Finally, there is also a need to have firms with sufficient personnel and resources available to provide legal support in any of the varied specialized areas in which the Authority may require legal advice. Three of the selected 13 general legal services firms are New York State-certified M/WBE firms. Gonzalez Saggio & Harlan LLP and Graves, Horton, Askew & Johns, LLC are New York State-certified MBE firms and Towne, Ryan & Partners, P.C. is a New York State-certified WBE firm. With the exception of Pillsbury Winthrop Shaw Pittman LLP, who is requesting a waiver, all of the other firms indicated a commitment to partner with certified M/WBE firms as part of their work for the Authority. As a result of the review of the proposals, the recommendation is that contracts be entered into with the following firms for general legal services on an "as needed" basis:

Bleakley Platt & Schmidt, LLP
Carter Ledyard & Milburn LLP
Gonzalez Saggio & Harlan LLP
Hiscock & Barclay LLP
Jackson Lewis P.C.

Bond, Schoeneck & King, PLLC
Gibbons PC
Graves, Horton, Askew & Johns LLC
Holland and Knight, LLP
McCarter & English, LLP

Nixon Peabody LLP
Towne, Ryan & Partners P.C.

Pillsbury Winthrop Shaw Pittman LLP

If approved by the Trustees, the new contracts would become effective on or about May 26, 2015 for a term of up to five years.

II. Bond, Underwriter and Disclosure Counsel

A total of 12 firms responded to the RFP for bond, underwriter, and disclosure counsel services. Authority staff from legal and finance evaluated the written responses, and interviewed several bidders. The evaluation took into consideration a number of factors, including cost; the experience of the bidders with public finance and the power industry; experience representing the Authority and other public entities; written proposal quality; quality of responses to questions during interviews; and status as, or experience with and willingness to team with, M/WBE firms.

Typically, for bond issuances, there are three distinct roles for counsel: bond, disclosure and underwriter counsel representation. Both bond and disclosure counsels represent the interests of the issuers like the Authority. However, it is industry and Authority practice to have separate entities serve in these roles. From time to time, the Authority also consults with bond counsel and disclosure counsel on matters relating to its other municipal finance products, compliance with securities law and related issues. In contrast, underwriter counsel represents the interests of the Authority's underwriters. However, it is common practice for bond issuers like the Authority to recommend law firms for this role. The Authority will finance the services for all three roles, but will only enter into contracts with the bond and disclosure counsel firms.

Of the 12 firms that responded to the RFP, the following 6 firms exhibited exemplary qualifications for providing legal services relating to bond issuances:

Bryant Rabbino LLP
Gonzalez Saggio & Harlan LLP
Hawkins Delafield & Wood LLP
McKenna, Long & Aldridge LLP
Nixon Peabody LLP
Orrick Herrington & Sutcliffe LLP

These firms all have significant experience in public finance, tax issues related to bond matters and public power, and have exposure to numerous high-value bond issuances. In addition, Bryant Rabbino LLP and Gonzalez are New York State-certified MBE firms. All of the firms have indicated a commitment to partner with certified M/WBE firms as part of their work for the Authority. Given the overall quality of services that these firms would be able to provide, and using the criteria previously noted, it is recommended that the following firms be retained to provide bond issuance services on an "as needed" basis for legal services as follows:

Bond Counsel
Bryant Rabbino LLP
Hawkins Delafield & Wood LLP

Orrick Herrington & Sutcliffe LLP

Underwriter Counsel

Bryant Rabbino LLP
Gonzalez Saggio & Harlan LLP
Nixon Peabody LLP
Orrick Herrington & Sutcliffe LLP

Disclosure Counsel

Hawkins Delafield & Wood LLP
McKenna Long & Aldridge LLP
Nixon Peabody LLP

If approved by the Trustees, the new contracts would become effective on or about May 26, 2015 for a term of up to five years.

III. Energy Services Counsel

A total of 10 law firms submitted proposals in response to the RFP to provide legal services related to energy services matters. These responses were reviewed and evaluated by Authority staff. Staff considered the experience of the bidders with energy services matters, expertise of the firm's attorneys, proposal quality, hourly rates, past Authority experience with the firm and the firm's record of hiring minorities and working with M/WBE law firms. All of the selected firms indicated their commitment to partner with New York State-certified M/WBE firms as part of their work for the Authority when possible. There are several firms identified in the bidders' M/WBE utilization plans that have applied to the Empire State Development for M/WBE certification. As a result of this evaluation, the following firms are recommended to be retained for energy services work:

Bond, Schoeneck & King PLLC
Hiscock & Barclay LLP
Holland & Knight LLP
Van Ness Feldman PC
Stinson Leonard Street LLP

The new contracts would become effective on or about May 26, 2015 for a term of up to five years, subject to the Trustees' approval, which is hereby requested.

FISCAL INFORMATION

Funds required to support contract services are available through the Law Department Outside Counsel budget, which has been included in the 2015 approved O&M Budget, or, in the case of debt issuances, from the proceeds of the sale of the Authority's debt instruments. Funds for subsequent years, where applicable, will be included in the budget submittals for those years, as well as from capital funding (where appropriate) as tasks are assigned. Payment will be made from the Operating Fund.

RECOMMENDATION

The Executive Vice President and General Counsel, the Executive Vice President and Chief Financial Officer and the Acting Vice President – Procurement recommend the Trustees' approval of the award of procurement contracts for a term of up to five years, in an aggregate amount of \$13 million, to the law firms referenced in Exhibit "A" attached hereto, for the purposes set forth above.

For the reasons stated, I recommend the approval of the above-requested action by adoption of the resolution below.

Gil C. Quiniones
President and Chief Executive Officer

RESOLUTION

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority and the Authority's Expenditure Authorization Procedures, approval is hereby granted for the award and funding of the procurement services contracts to the law firms set forth in Exhibit "A" attached hereto, for a term of up to five years, in an aggregate amount of \$13 million, as recommended in the foregoing memorandum of the President and Chief Executive Officer; and be it further

RESOLVED, That the Chairman, the Vice Chair, the President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things and take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Executive Vice President and General Counsel.

I. General Services Counsel RFP Q14-5764MR

Bleakley Platt & Schmidt LLP
One North Lexington Ave.
White Plains, New York 10602

Bond, Schoeneck & King PLLC
1010 Franklin Avenue, Suite 200
Garden City, New York 11530

Carter Ledyard & Milburn LLP
2 Wall Street
New York, NY 10005

Gibbons P.C.
One Pennsylvania Plaza, 37th Floor
New York, New York 10119

Gonzalez Saggio & Harlan LLP
292 Madison Avenue, 19th Floor
New York, New York 10017

Graves, Horton, Askew & Johns LLC
1750 K St., NW, Suite 200
Washington, DC 20006

Hiscock & Barclay LLP
One Park Place
300 South State Street
Syracuse, New York 13202

Holland and Knight LLP
31 West 52nd Street
New York, NY 10019

Jackson Lewis P.C.
44 South Broadway, 14th Floor
White Plains, New York 10601

McCarter & English LLP
245 Park Avenue, 27th Floor
New York, New York 10167

Nixon Peabody LLP
677 Broadway, 10th Floor
Albany, NY 12207

Pillsbury Winthrop Shaw Pittman LLP
1200 Seventeenth Street, NW
Washington, DC 20036

Towne, Ryan & Partners P.C.
450 Karner Road
Albany, New York 12205

II. Bond, Underwriter and Disclosure Counsel RFP Q14-5766MR

Bryant & Rabbino LLP
1180 Avenue of the Americas
New York, NY 10036

Gonzalez Saggio & Harlan LLP ¹
292 Madison Avenue, 19th Floor
New York, New York 10017

Hawkins Delafield & Wood LLP
One Chase Manhattan Plaza
New York, NY 10005

McKenna Long & Aldridge LLP
3030 Peachtree Street NE
Atlanta, GA 30308

Nixon Peabody LLP
677 Broadway, 10th Floor
Albany, NY 12207

Orrick Herrington & Sutcliffe LLP
666 Fifth Avenue
New York, NY 10103

¹ As underwriter's counsel, this firm will not enter into a contract directly with the Authority.

III. Energy Services Counsel RFP Q14-5765MR

Bond, Schoeneck & King PLLC
1010 Franklin Avenue, Suite 200
Garden City, NY 11530

Hiscock & Barclay LLP
One Park Place
300 South State Street
Syracuse, NY 13202

Holland & Knight LLP
31 West 52nd Street
New York, NY 10019

Stinson Leonard Street LLP
1775 Pennsylvania Avenue NW, Suite 800
Washington, DC 20006

Van Ness Feldman LLP
1050 Thomas Jefferson Street NW, 7th floor
Washington, DC 20007