

**CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY**

**Meeting Date: January 28, 2009**

***Approval to Contract for Legal Counsel Services***

Prepared by: *Patricia Tanous*

**Summary.** On September 24, 2008 the Authority approved staff to move forward with a Request for Qualifications (RFQ) for legal counsel services. The current contracts for legal counsel services expire on February 28, 2009. Staff received responses from seven firms and is authorized to award contracts to up to five firms. Staff requests the Authority's approval of a resolution to execute contracts to provide a variety of legal services with the following firms:

- Law Offices of Alexis S. M. Chiu
- Law Offices of Leslie M. Lava
- Stradling, Yocca, Carlson, & Rauth
- Orrick, Herrington & Sutcliffe LLP
- Quateman LLP

Legal services will include serving as Issuer's Counsel to the Authority on bond financings to the extent that those services are unavailable through the Attorney General's Office. The full scope of legal services to be provided is shown at Exhibit A.

**Proposed Amount.** Total aggregate of \$550,000

**Term of Contract.** Two years from March 1, 2009 through February 28, 2011, with an optional one-year extension. The contracts may be terminated by CPCFA at any time without cause.

**Background.** Current contracts with legal counsel firms will expire on February 28, 2009. To maintain a continuity of legal counsel services, staff sought and received Authority authorization on September 24, 2008 to move forward with a Request for Qualifications (RFQ) for legal counsel services. The Authority also received written approval from the Office of the Attorney General on August 20, 2008 to contract for outside legal services. On October 17, 2008, RFQs were mailed to law firms on the State Treasurer's Office, Public Finance Division list of approved bond counsel firms.

**Evaluation and Selection Process.** The evaluation and selection process consisted of:

1. An initial review of each Statement of Qualifications (SOQ) to determine whether it met the minimum qualifications and administrative requirements of the RFQ (e.g., inclusion of required documents, compliance with other administrative stipulations and required format).
2. A Staff Evaluation Committee evaluation and scoring of each SOQ that met the minimum qualifications and administrative requirements. Proposals needed to achieve a minimum of 80 points out of 100 maximum possible points to be considered responsive.

Response. The following seven firms responded to the RFQ:

- Law Offices of Leslie M. Lava
- Law Offices of Alexis S. M. Chiu
- Orrick, Herrington & Sutcliffe LLP
- Stradling, Yocca, Carlson, & Rauth
- Lofton & Jennings
- Quateman LLP
- Hawkins Delafield & Wood LLP

Analysis. Six of the seven firms met the minimum qualifications and administrative requirements of the RFQ. The Staff Evaluation Committee determined that the following five firms met the minimum 80 points required to qualify for a contract award and were the most responsive to the conditions of the RFQ. These firms have either committed to subcontract with a Disabled Veteran Business Enterprise (DVBE) or conducted a Good Faith Effort to meet the 3% DVBE participation goals set out in the RFQ.

1. Law Offices of Alexis S. M. Chiu
2. Law Offices of Leslie M. Lava
3. Stradling, Yocca, Carlson, & Rauth
4. Orrick, Herrington & Sutcliffe LLP
5. Quateman LLP

Recommendation. Staff recommends approval of a resolution to authorize the execution of contracts for legal counsel services with the following firms in the amounts shown below:

- Law Offices of Alexis S. M. Chiu for an amount not to exceed \$100,000;
- Law Offices of Leslie M. Lava for an amount not to exceed \$100,000;
- Stradling, Yocca, Carlson, & Rauth for an amount not to exceed \$100,000;
- Quateman LLP for an amount not to exceed \$100,000;
- Orrick, Herrington & Sutcliffe LLP for an amount not to exceed \$150,000.

**A RESOLUTION OF THE CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY AUTHORIZING EXECUTION OF CONTRACTS TO RETAIN FIVE FIRMS TO PROVIDE LEGAL COUNSEL SERVICES FOR THE CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY’S PROGRAMS AND OTHER ACTIONS RELATED THERETO**

**January 28, 2009**

**WHEREAS**, the California Pollution Control Financing Authority (the “Authority”) was created under the provisions of the California Pollution Control Financing Act as contained in Section 44500, et seq., of the California Health and Safety Code; and

**WHEREAS**, the Authority is vested with all powers reasonably necessary to carry out the powers and responsibilities of the California Pollution Control Financing Act pursuant to California Health and Safety Code Section 44517; and

**WHEREAS**, pursuant to California Health and Safety Code Section 44521 the Attorney General shall be the legal counsel for the Authority, but with the approval of the Attorney General, the Authority may employ such legal counsel as in its judgment is necessary or advisable to enable it to carry out the duties and functions imposed upon it, including the employment of such bond counsel as may be deemed advisable in connection with the issuance and sale of bonds; and

**WHEREAS**, there is a need to execute contracts in order to retain firms to provide legal counsel services; and

**WHEREAS**, the Authority proposes to execute contracts in order to retain firms to provide legal counsel services and other actions related thereto of the Authority’s programs.

**NOW, THEREFORE, BE IT RESOLVED** by the Authority, as follows:

**Section 1.** The Authority hereby authorizes the execution of a contract in an amount not to exceed \$100,000 to retain Law Offices of Alexis S. M. Chiu to provide legal counsel services and other actions related thereto of the Authority’s programs.

**FURTHER**, the Authority hereby authorizes the execution of a contract in an amount not to exceed \$100,000 to retain the Law Offices of Leslie M. Lava to provide legal counsel services and other actions related thereto of the Authority’s programs.

**FURTHER**, the Authority hereby authorizes the execution of a contract in an amount not to exceed \$100,000 to retain Stradling, Yocca, Carlson, & Rauth to provide legal counsel services and other actions related thereto of the Authority’s programs.

**FURTHER**, the Authority hereby authorizes the execution of a contract in an amount not to exceed \$100,000 to retain Quateman LLP to provide legal counsel services and other actions related thereto of the Authority’s programs.

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**FURTHER**, the Authority hereby authorizes the execution of a contract in an amount not to exceed \$150,000 to retain Orrick, Herrington & Sutcliffe LLP to provide legal counsel services and other actions related thereto of the Authority's programs.

**Section 2.** The Executive Director is hereby authorized for and on behalf of the Authority to execute contracts and such other documents necessary to retain the firms to provide legal counsel services.

**Section 3.** This resolution shall take effect immediately upon its approval.

**Exhibit A**  
**Scope of Legal Services**

1. The Contractor is expected to work closely on an as-needed basis with the Executive Directors and staff of the CPCFA and CAEATFA (the “Authorities”) and supplement the technical expertise of the CPCFA staff and CAEATFA staff. The Contractor shall perform services designated by the Authorities on specific task order work assignments as more fully described in the contract. In recent years the Authorities have had a greater need to engage outside counsel as Issuer’s Counsel for the Bond Financing Programs. This work may constitute the bulk of the Authorities’ outside counsel needs. The services to be rendered by the Contractor may include but are no limited to the following, except to the extent that any of the enumerated services constitute legal services for the Authorities which are available from the Office of the Attorney General.
2. The Contractor shall serve as Issuer’s Counsel for bond financings when the Public Finance Team within the Office of the Attorney General cannot provide the service. With respect to activities under the Authorities’ bond programs, Issuer’s Counsel will be expected to review and comment on the loan agreement, escrow agreement, indenture, tax certificate, bond purchase agreement, preliminary and final official statements, final resolution, and the SBAF resolution. On a case-by-case basis, upon request of the Authorities, Issuer’s Counsel also may be asked to review borrower-related documents, such as organizational documents and the reimbursement agreement, as well as borrower counsel and credit provider counsel opinions.
3. The Contractor shall participate in developing and implementing the Authorities’ programs as required.
4. The Contractor shall provide assistance and advice on prior, current or proposed transactions, as requested.
5. The Contractor provide advice and assistance in maintaining and monitoring Small Business Assistance Fund moneys, obtaining tax rulings related thereto in order to maintain the tax exempt status of currently outstanding bonds.
6. The Contractor shall provide assistance and advice on tax and legal matters arising from previous financings.
7. The Contractor shall provide assistance in preparing for and responding to IRS audits, in a timely manner.
8. The Contractor shall work with other California State agencies as deemed appropriate by the Authorities.
9. The Contractor shall work on other issues related to the missions of the Authorities as directed by the Executive Director of the CPCFA.
10. The Contractor shall meet, as needed, with the Authorities’ and their staff at a location to be determined by the Authorities’ staff.

**Exhibit A**

11. The Contractor shall provide other related services as requested by the Authorities' from time to time. In all respects, the Contract shall represent the best interests of the Authorities' and the State of California in all transactions and proceedings.
12. The Contractor shall serve as counsel and provide guidance on advanced transportation, renewable energy, distributed generation, energy efficiency, demand side management and greenhouse gas reduction projects.
13. The Contractor shall serve as counsel and provide guidance on state and federal regulatory issues concerning gas, electricity, ratemaking, power purchase agreements, energy efficiency/demand side management, advanced transportation and greenhouse gas reductions including the development and implementation of CAEATFA programs as required.
14. The Contractor shall serve as counsel and provide guidance on financing opportunities under federal and state law including, Clean Renewable Energy Bonds, Energy Conservation Bonds, Green Building and Sustainable Design Project Bonds, Advanced Transportation Bonds, Energy Security Bonds and other creating financing options concerning renewable energy, energy efficiency, demand side management, distributed generation, advanced transportation, Energy Security and greenhouse reduction projects.