

CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY

Meeting Date: January 17, 2012

Approval to Contract for Legal Counsel Services

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Summary. On October 25, 2011 the Board approved staff to proceed with a Request for Proposals (RFP) for legal services for up to five firms and up to \$550,000. Staff received responses from eleven firms and is proposing to award contracts of \$135,000 each to four firms, totaling an aggregate amount of \$540,000. Staff requests the Board's approval of a resolution to execute contracts to provide a variety of legal services with the following firms:

- Law Offices of Leslie M. Lava
- Law Offices of Alexis S. M. Chiu
- Orrick, Herrington & Sutcliffe LLP
- Hawkins, Delafield & Wood 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 (AGO). The full scope of legal services to be provided is shown at Exhibit A.

Background. Current contracts with legal counsel firms expire on February 28, 2012. To maintain continuity of legal counsel services, staff sought and received Authority authorization on October 25, 2011 to move forward with an RFP for legal counsel services for up to five firms and up to \$550,000. The Authority received written approval from the AGO on October 17, 2011 to contract for outside legal services. On December 21, 2011, the RFP were advertised and made available to potential interested bidders.

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

1. An initial review of each proposal to determine whether it met the minimum qualifications and administrative requirements of the RFP (e.g., inclusion of required documents, compliance with other administrative stipulations and required format).
2. A Staff Evaluation Committee independently evaluated and scored each proposal that met the minimum qualifications and administrative requirements. The scores were then compiled and ranked for each proposal. Proposals needed to achieve a minimum of 80 points out of 100 maximum possible points to be considered for a contract award.
3. Eleven firms responded to the RFP.

Analysis. All eleven firms met the minimum qualifications and administrative requirements of the RFP. A staff evaluation committee completed its review of the proposals and determined that the following four firms met the minimum 80 points required to qualify for a contract award and were the most responsive to the conditions of the RFP and should be awarded a contract.

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- Law Offices of Leslie M. Lava
- Law Offices of Alexis S. M. Chiu
- Orrick, Herrington & Sutcliffe LLP
- Hawkins Delafield & Wood LLP

Proposed Amount. Staff proposes awarding \$540,000 to be divided among four contracted firms with a two year term for each contract and allowance for a one-year extension.

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 Leslie M. Lava for an amount not to exceed \$135,000;
- Law Offices of Alexis S. M. Chiu for an amount not to exceed \$135,000;
- Hawkins Delafield & Wood LLP for an amount not to exceed \$135,000;
- Orrick, Herrington & Sutcliffe LLP for an amount not to exceed \$135,000.

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

January 17, 2012

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:

The Authority hereby authorizes the execution of a contract in an amount not to exceed \$135,000 to retain **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 \$135,000 to retain the **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 \$135,000 to retain **Hawkins Delafield & Wood LLP** 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 \$135,000 to retain **Orrick, Herrington & Sutcliffe LLP** to provide legal counsel services and other actions related thereto of the Authority's programs.

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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.

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 Director and staff of CPCFA to supplement the technical expertise of the CPCFA staff. The Contractor shall perform services designated by the Authority on specific task order work assignments as more fully described in the contract. From time to time the Authority has had a greater need to engage outside counsel in areas outside of the Attorney General's expertise, such as specialized tax issues. This work may constitute the bulk of the Authority's outside counsel needs.
2. Legal Services on Bond Financings

The services to be rendered by the Contractor may include but are not limited to the following, except to the extent that any of the enumerated services constitute legal services for the Authority which are available from the Office of the Attorney General.

 - a. 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 Authority's 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 Authority, 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. A sample work order is provided in Exhibit B of the Sample Contract in this RFP.
 - b. The Contractor shall provide advice and assistance in maintaining and monitoring Small Business Assistance Fund monies, and obtaining tax rulings related thereto in order to maintain the tax exempt status of currently outstanding bonds.
 - c. The Contractor shall provide assistance and advice on tax and legal matters on prior, current or proposed financings.
 - d. The Contractor shall provide assistance in preparing for and responding to Internal Revenue Services (IRS) audits in a timely manner.
 - e. The Contractor shall work with other California State agencies as deemed appropriate by the CPCFA.
 - f. The Contractor shall meet, as needed, with the Authority and its staff at a location to be determined by the Authority's staff.

Legal Services on Special Projects

From time to time, CPCFA may request the Contractor to assist with special projects on an as-needed basis. Such special projects may include, but are not limited to the following:

- g. Assisting in the review and revision of CPCFA's tax exempt bond issuance programs and guidelines.
- h. Assisting CPCFA in creating template bond documents and identifying, addressing and resolving common policy issues that tend to arise in bond documents from transaction to transaction.
- i. Assisting in the creation and implementation of new financing programs including bond and equipment financing, loans or grants. The Contractor shall participate in developing and implementing the Authority's programs as required.
- j. The Contractor shall provide other related services as requested by the Authority from time to time. In all respects, the Contractor shall represent the best interests of the Authority and the State of California in all transactions and proceedings.

3. Contract Deliverables and Payment Method for Services

The deliverables will vary depending on the status of each program area, the development and implementation of CPCFA's existing and new programs and other related services requested by CPCFA as needed. The specific deliverables, responsibilities, and timetables will be established between CPCFA and the Contractor via task order (further described in the Sample Contract, Section F, Exhibit A, page 3 and Exhibit B, pages 4-5).

The Contractor shall then provide the Executive Director with a detailed work plan, which will include:

- a. Project name and Agreement Number and services to be provided.
- b. Name(s) of individuals(s) who will work on the project and their titles/classifications and billing rates per hour to be charged.
- c. Estimated reimbursable expenses; a "not to exceed" price for the defined work; elements deemed necessary by the Contractor and the Executive Director or Deputy Executive Director.
- d. Deliverable items required during or at completion of the task order work assignment.
- e. Timeline.