

FOR CONSIDERATION

December 16, 2010

TO: The Directors

FROM: Dennis M. Mullen

SUBJECT: Establishment of Supplemental Pre-Qualified Counsel List

RE: Approval of Pre-Qualified Counsel

Background

The Corporation continues to implement or facilitate a number of large and complex economic development projects. The size, nature, complexity and timing of these projects typically require the Corporation to call on the assistance of outside counsel in various areas of expertise. To permit the Corporation to respond to the needs of these projects expeditiously, while having available to the Corporation the benefits of a broad solicitation of qualified outside law firms, legal department staff has recommended the creation of a list of pre-qualified counsel. At its September 18, 2008 meeting, the Corporation approved such a list, to remain in effect for three years, with an option for the General Counsel to extend the list for a fourth year.

To broaden the geographic scope of the counsel to reflect the Corporation's state-wide activities, as well as to increase diversity among our pool of counsel, staff has conducted a broad supplemental solicitation of interested law firms and review of the submissions, resulting in the supplemental list now proposed. The supplemental list does not supplant the 2008 list, but adds to it. Firms on the 2008 list will continue to be qualified. It is anticipated that the supplemental list will terminate at the same time as the 2008 list.

The Solicitation

In September 2010, staff placed an advertisement in the New York State Contract Reporter requesting statements of qualification from law firms in the following areas of law: real estate and land use; environmental; condemnation; construction; bankruptcy; labor; taxation; and, in each case, related litigation. This advertisement ran in the September 17, 2010 issue of the Contract Reporter and responsive submissions were due by October 15, 2010.

In addition, our Affirmative Action office sent faxes to all law firms on its list of qualified W/MBE enterprises. All such communications advised the firms of the procurement opportunity.

Twenty-two firms responded to the advertisement. The responses were evaluated by staff of the legal department, in each case including the General Counsel, on the basis of, among other things: number and experience of attorneys practicing in each area of expertise; commitment to diversity in hiring and retention of staff, demonstrated experience in development projects

similar to those in which the Corporation engages; experience in government and public/private initiatives generally; and willingness to work within the Corporation's limitation on hourly fees. Staff considered the submissions of each firm, interviews with selected firms and in some cases additional information requested in clarification of an initial submission or interview. One firm was found to be non-responsive to the solicitation, because it did not accept the cap on hourly rates.

Based on the review, staff recommends the approval of the seven firms listed below as pre-qualified counsel to the Corporation in the indicated areas of expertise. This will permit staff to respond to project needs more efficiently.

All firms recommended have been determined by staff to be responsible vendors pursuant to the Corporation's Procurement Guidelines, being financially responsible, legally authorized to do business in the state, have not been found lacking in integrity based on VendRep and other review, and have demonstrated performance on government legal matters.

The recommended firms in each area of expertise (and, in each case, related litigation) are as follows:

(* = certified W/MBE, ** = 50% woman owned, *** = 2 of 5 partners are women).

Real Estate and Land Use

Gonzalez Saggio Harlan, LLP, NYC *
Saunders Kahler, LLP, Utica ***
Arent Fox, NYC

Construction

Gonzalez Saggio Harlan, LLP, NYC *
Saunders Kahler, LLP, Utica ***

Environmental

Knauf Shaw, LLP, Rochester **

Labor

Rao Tiliakos, LLP, NYC *
Putney Twombly Hall & Hirson, LLP, NYC
Saunders Kahler, LLP, Utica ***

Bankruptcy

Arent Fox, NYC
Saunders Kahler, LLP, Utica ***

Special Litigation

Brown & Hutchinson, Rochester *
Arent Fox, NYC

Financial Commitment and Selection from the List

The Directors are not now being asked to authorize the retention of any firm in connection with any matter. Instead, the requested approval would serve to make available to the Corporation a selection of candidate firms that have been through a broad solicitation process. This would allow staff to select from among the candidate firms to recommend to the Directors in the future for retention in connection with particular projects without the need for conducting individual solicitations in each instance. This will save for each project two or more months that is normally needed to conduct a solicitation, perform the necessary review and formulate a recommendation.

In addition, staff recommends that the General Counsel be given the authority to refer to any such counsel matters in related areas of expertise as the General Counsel may deem appropriate and advisable in connection with any project. For example, in the event that a tax issue arises in connection with a real estate transaction, the General Counsel in her discretion could call on the expertise of tax attorneys with the pre-qualified firm that was selected to handle the real estate aspects of the transaction.

Duration of List

Staff recommends that the supplemental pre-qualified list remain in effect for the duration of the 2008 list referred to above, i.e., until the meeting of the Directors first occurring after September 18, 2011 or, in the discretion of the General Counsel, until the meeting of the Directors first occurring after September 18, 2012.

Environmental Review

ESDC staff has determined that this determination does not constitute an action as defined by the New York State Environmental Quality Review Act and its implementing regulations. No further environmental review is required in connection with the requested approval.

Recommendation and Requested Action

Staff recommends and the Directors are requested to approve the firms listed above as pre-qualified counsel in the areas of expertise listed above (and in each case related litigation) and, in the discretion of the General Counsel, such related areas of expertise as the General Counsel may deem appropriate and advisable in connection with any project, for a term to expire with the expiration of the 2008 pre-qualified counsel list, i.e., until the meeting of the Directors first occurring after September 18, 2011 or, in the discretion of the General Counsel, until the meeting of the Directors first occurring after September 18, 2012.

Attachment

Resolution

December 16, 2010

NEW YORK STATE URBAN DEVELOPMENT CORPORATION – Approval of
Supplemental List of Pre-Qualified Counsel

BE IT RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered to be filed with the records of the Corporation, the following law firms be and each hereby is, approved as pre-qualified and responsible counsel in the areas of expertise set forth below (and, in each case, related litigation), and in such other areas as the General Counsel may in his or her sole discretion may deem appropriate or advisable in connection with any particular project or matter, such approval to remain in effect until the expiration of the pre-qualified counsel list established by the Directors at their September 18, 2008 meeting, i.e., until the meeting of the Directors first occurring after September 18, 2011 or, in the discretion of the General Counsel, until the meeting of the Directors first occurring after September 18, 2012.

Real Estate and Land Use

Gonzalez Saggio Harlan, LLP, NYC *
Saunders Kahler, LLP, Utica ***
Arent Fox, NYC

Construction

Gonzalez Saggio Harlan, LLP, NYC *
Saunders Kahler, LLP, Utica ***

Environmental

Knauf Shaw, LLP, Rochester **

Labor

Rao Tiliakos, LLP, NYC *
Putney Twombly Hall & Hirson, LLP, NYC
Saunders Kahler, LLP, Utica ***

Bankruptcy

Arent Fox, NYC
Saunders Kahler, LLP, Utica ***

Special Litigation

Brown & Hutchinson, Rochester *
Arent Fox, NYC

(* = certified W/MBE, ** = 50% woman owned, *** = 2 of 5 partners are women).

* * *