

FOR CONSIDERATION

July 23, 2009

TO: The Directors

FROM: Dennis M. Mullen

SUBJECT: Consultant to Serve as Agent for the Purpose of Auditing
Utility and Telecommunication Service Accounts

REQUEST FOR: Authorization to Enter into a Contract with Troy & Banks Consultants and
to Take Related Actions

Background

The 2009-10 Executive Budget Call Letter issued by the Director of the Budget to all State Department and Agency Heads directed that spending must be limited to more affordable levels. The Governor took substantial action to reduce state expenditures and called for a zero growth budget. Shortly after the release of the “Mid-Year Financial Plan Update”, the Division of the Budget (“DOB”) issued Budget Bulletin B-1184, which established cost-control measures to be implemented at Agencies and Departments.

In response to the above actions, New York State Urban Development Corporation d/b/a Empire State Development (“ESDC” or “the Corporation”) accelerated its efforts to reduce operating costs and find creative ways to reduce expenses. Among the areas considered were the Corporation’s utility and telecommunication costs since annual expenditures in these two areas exceed \$1.2 million. Therefore, it was determined that a firm should be retained to conduct an audit of all utility and telecommunication service accounts. Such firms are able to secure refunds, credits or rebates for prior overcharges, billing errors or costs, in excess of those permitted by applicable contracts, tariffs, statutes, rules or regulations and secure reductions in future costs. The look back period is regulated by the NYS Statute of Limitations and ranges generally between three (3) and six (6) years. They are paid a percentage of the savings received by the Corporation and receive no fee if savings are not realized.

Selection Process

Finance staff consulted the Office of General Services’ (“OGS”) approved contractor listing for Expense Reduction Services and selected three firms to interview. The companies interviewed were Troy & Banks, UtiliSave, LLC and Secure Path Networks LLC. Upon completion of the interviews, the finance staff evaluated the firms and rated each based on several criteria including, the services to be provided, their experience with NYS government

entities, the percentage of the Corporation's savings that they would be paid and the quality of their presentation. References, as provided by each potential vendor, were contacted. Based on the proposed services to be provided, their experience with New York State government entities and their fee structure, Troy & Banks received the highest rating and it is recommended that ESDC enter into the agreement proposed below.

General

Pursuant to State Finance Law Section 139-j and 139-k and the Corporation's policy related thereto, staff has (a) considered proposed contractor's ability to perform the services provided for in the proposed contract; and has (b) consulted the list of offerers determined to be non-responsible bidders and debarred offerers maintained by the New York State Office of General Services. Based on the foregoing, staff considers the proposed contractor to be responsible.

Scope of Work

Troy & Banks will conduct an audit of ESDC's utility and telecommunication service accounts for the purpose of securing refunds, credits and cost reductions resulting from discovery of charges or costs in excess of those permitted or allowed by applicable contracts, tariffs, statutes, rules and regulations and/or from overcharges or billing errors. In addition, the accounts will be analyzed for cost reductions that extend into the future. Those accounts will continue to be monitored for twenty-four (24) months by Troy & Banks to ensure the billing remains correct. It is estimated that the audit process will take six to nine months to complete.

Terms of Agreement

ESDC will agree to pay Troy & Banks twenty-five percent (25%) of all monies refunded or credited and for any reductions in future costs resulting from account analysis. Troy & Banks will document actual monthly savings obtained by analysis of tariff cost applications and continue monitoring each account for a period of twenty-four (24) months. These fee terms are more favorable than those contained in the State contract which are based on a sliding scale ranging from 39% for twenty thousand dollars (\$20,000) of monetary refunds to 25% for one hundred thousand and one dollar (\$100,001) and above. The firm makes no guarantee or assurance of any credit, refund or cost saving results. There will be no fee for Troy & Banks services if ESDC does not receive refunds, credits or reductions in future billings.

Funding Source

There is no up front fee for this contract. Any funds due to Troy & Banks will be paid from any refunds, credits or rebates resulting from the audits after receipt by ESDC.

Requested Action

The Directors are requested to (1) make a determination of responsibility with respect to the proposed contractor; and (2) authorize the Corporation to enter into a contract with Troy & Banks for the services described above.

Attachment

Resolution

July 23, 2009

NEW YORK STATE URBAN DEVELOPMENT CORPORATION d/b/a EMPIRE
STATE DEVELOPMENT CORPORATION- Authorization to Enter into a Contract with
Troy & Banks to Conduct an Audit of Utility and Telecommunications Service Accounts

RESOLVED, that upon the basis of the materials presented to this meeting (the "Materials"), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation hereby finds Troy & Banks to be responsible; and be it further

RESOLVED, that the Corporation is authorized to enter into a contract with Troy & Banks on substantially the terms and for the purposes set forth in the materials presented to this meeting, a copy of which is hereby ordered filed with the records of the Corporation, with such changes as the Chief Financial Officer or her designee(s) may deem appropriate; and be it further

RESOLVED, that the Chief Financial Officer or her designee(s), and each of them be and hereby is, authorized to negotiate and execute the said agreement upon such terms as may be substantially consistent with the forgoing, and to take such other related actions as they may deem necessary or appropriate and that all such actions heretofore taken by any proper officer, or his or her designee(s), are hereby ratified and approved. Delivery of any documents authorized hereunder shall constitute conclusive evidence of the Corporation's due authorization and approval thereof.

* * *