

BOND FINANCE COMMITTEE MEETING

at the offices of the
New York State Urban Development Corporation
d/b/a Empire State Development Corporation
633 Third Avenue
New York, N.Y. 10017

Thursday

October 15, 2015 11:00 a.m.

AGENDA

I. FOR CONSIDERATION

- A. State Personal Income Tax Revenue Bonds – Approval of Application to the Public Authorities Control Board for State Personal Income Tax Revenue Bonds Series 2015 and 2016 (the “Bonds”) and Appointments of Bond Counsel and Underwriters



FOR CONSIDERATION

October 15, 2015

TO: The Bond Financing Committee Members

FROM: Howard A. Zemsky

SUBJECT: Issuance of State Personal Income Tax Revenue Bonds – Preliminary Actions

REQUEST FOR: Approval of Application to the Public Authorities Control Board for One or More Series of State Personal Income Tax Revenue Bonds from 2015 to 2016 (the “Bonds”) and Authorization to Enter into Contracts to Provide Legal Services for the New York State Urban Development Corporation (“UDC” or the “Corporation”) in Connection with the Issuance of Personal Income Tax Revenue Bonds and to Take Related Actions

I. INTRODUCTION/BACKGROUND

The Bond Financing Committee of the New York State Urban Development Corporation is being asked to approve the submission of an application (the "Application") to the Public Authorities Control Board ("PACB") in connection with the proposed issuance of State Personal Income Tax Revenue Bonds, and to authorize the Corporation to enter into contracts with bond counsel in connection with the issuance of the Bonds. The Corporation will be utilizing the services of PRAG as a financial advisor. The Division of Budget maintains the contract and related payment obligations for PRAG.

II. THE BONDS

The Bonds are authorized by multiple Project Acts, as amended and supplemented, and related appropriations acts, as amended and supplemented, and the Tax Revenue Act (collectively, the “Project Acts”). Pursuant to the Project Acts, UDC is authorized to assist in financing certain correctional and youth facilities, economic development projects, housing, various capital projects and equipment projects (the “Projects”). In addition, the Corporation may issue bonds to refund bonds previously issued by the Corporation or other state entities in accordance with the State Finance Law.

In accordance with the Project Acts, UDC intends to issue one or more series of its revenue bonds pursuant to a general resolution of the Corporation entitled State Personal Income Tax Revenue Bonds (General Purpose) General Resolution as well as appropriate Series and Bond Financing Committee Resolutions.

The proceeds of the Bonds will be used to fund Projects, refund bonds previously issued by the Corporation, and pay all costs and expenses of UDC incurred in connection with the issuance of the Bonds.

III. FINANCING

The Corporation intends to issue one or more series or sub-series of the Bonds in accordance with the Project Acts. The Bonds will be fixed rate debt in an amount not to exceed \$2,800,000,000 including Bonds issued to pay costs of issuance.

The Bonds will be special obligations of the Corporation and will be payable from and secured by amounts paid to the Corporation by the State, acting by and through the Division of the Budget pursuant to a financing agreement between the Corporation and the State.

IV. BOND COUNSEL CONTRACT SUMMARY

Counsel: Hawkins, Delafield & Wood, LLP ("HDW") and the Law Offices of Joseph C. Reid, P.A. ("Joseph C. Reid") (collectively, "Counsel")

Scope of Services: Counsel would serve as co-bond counsel to provide legal services to the Corporation in connection with the issuance of one or more series of Personal Income Tax Revenue Bonds from 2015 to 2016. If the Corporation issues the Bonds in more than one series it will have the option of using Counsel for the additional series.

Contract Amount: \$500,000 (which includes the fee for both HDW and Joseph C. Reid under separate retainers)

Funding Source: The contracts would be funded from Bond proceeds as a cost of issuance.

A. COUNSEL SELECTION PROCESS

In April of 2012, staff of the Corporation advertised for legal counsel in the following areas: real estate and land use, environmental, construction, condemnation, bankruptcy, labor, taxation, bond financing, foreclosure and, in each case, related litigation. Sixty-six firms responded (including Counsel), the responses were evaluated, and in September 2012 the Directors approved a Pre-Qualified Counsel List. HDW was pre-qualified in the area of bond financing at the senior tier, and Joseph C. Reid was pre-qualified in the area of bond financing at the junior tier.

Staff recommended the retention of Counsel as legal counsel for the Bonds based on: (a) knowledge and expertise of the firms; (b) prior experience as bond counsel, and HDW's specific experience in PIT bond issuances; (c) Counsel's rates; and (d) the pre-qualification process.

HDW has not served as bond counsel since 2011. This is a large transaction financing a large number of projects requiring experienced counsel and extensive tax counsel due diligence. HDW has substantial PIT Bond experience. Joseph C. Reid is a certified Minority-owned Business Enterprise who has previously provided excellent service as bond counsel for the Corporation. The appointment of the firms represents an equitable distribution of work among UDC's rotating slate of law firms to handle the Corporation's appropriation debt in terms of size of transaction, fees received, length of time since their last engagement and total number of transactions. For all the reasons stated above, staff has requested that Counsel be retained for this transaction.

B. SCOPE OF WORK

Counsel would advise the Corporation in securities, bonds, taxes and other related legal matters in connection with the issuance and sale of the Bonds. Such work may include, but not be limited to, drafting, negotiating, and finalizing the following types of documents: sale contracts, resolution amendments, disclosure documents and tax opinions.

C. CONTRACT - NEED, PRICE AND FUNDING

1. NEED FOR CONTRACT

In accordance with Federal tax law an opinion from bond counsel is required to opine upon tax-exempt bonds. In addition bond counsel expertise is necessary to ensure compliance with applicable securities laws and market practices. The Corporation has used experienced bond counsel on every issuance of its bonds.

2. CONTRACT PRICE AND FUNDING

Counsel will bill at ESD's standard rates and will be paid on or about the closing date from bond proceeds in an amount not to exceed \$500,000.

D. RESPONSIBLE PARTY

Pursuant to State Finance Law Section 139-j and 139-k and the Corporation's policy related thereto, staff has: (a) considered Counsel's ability to perform the services provided for in the proposed contract; and (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 Counsel to be responsible.

E. ENVIRONMENTAL REVIEW

Staff has determined that the proposed authorization constitutes a Type II action as defined by the New York State Environmental Quality Review Act and the implementing regulations for the

New York Department of Environmental Conservation. No further environmental review is required in connection with this authorization.

F. NON-DISCRIMINATION AND CONTRACTOR & SUPPLIER DIVERSITY

ESD's Non-Discrimination and Contractor & Supplier Diversity policies will apply to these contracts. Counsel shall be required to include minorities and women in any job opportunities created, and to undertake Good Faith Efforts (pursuant to 5 NYCRR Section 142.8) to solicit and utilize Minority and Women-owned Business Enterprises ("MWBEs") for any contractual opportunities generated in connection with this procurement. The Corporation shall endeavor to allocate work between Counsel so as to achieve MWBE utilization of 30% related to the total amount of the Corporation's legal fees for legal services pertaining to the Bonds.

V. REQUESTED ACTION

The Directors are asked to approve the submission of the attached application to the PACB, and to authorize the retention of HDW and Joseph C. Reid as Counsel to the Corporation for such legal services as are described in these materials in an amount not to exceed \$500,000.

VI. RECOMMENDATION

Based on the foregoing, I recommend approval of the requested action.

VII. ATTACHMENT

Resolutions

Resolution

October 15, 2015

NEW YORK STATE URBAN DEVELOPMENT CORPORATION – Authorization to Approve the Application to the Public Authorities Control Board for Issuance of One or More Series of State Personal Income Tax Revenue Bonds From 2015 to 2016 and Authorization for the Corporation to Enter into Contracts with Bond Counsel in Connection with the Issuance

WHEREAS, the State of New York has authorized the New York State Urban Development Corporation (the "Corporation") in various project acts (collectively, the "Project Acts") to finance multiple projects as defined in the Project Acts (the "Projects");

WHEREAS, the Corporation has determined to issue its bonds to finance the Projects;

WHEREAS, the Corporation is authorized to issue bonds supported by State appropriations to finance the Projects and to refund bonds previously issued by the Corporation or other authorized state entities; and

WHEREAS, in accordance with Chapter 38 of the Laws of 1976, the Corporation is seeking approval of the Public Authorities Control Board (the "PACB") for the proposed sale and issuance under the Project Acts of one or more series or sub-series of its bonds (the "Bonds").

WHEREAS, in order to facilitate the issuance of the Bonds, the officers of the Corporation propose the retention of bond counsel.

I. PACB Application

RESOLVED, the Corporation's application to the PACB for the Bonds, substantially in the form attached to this resolution, is approved for submission to the PACB.

II. Retention of Bond Counsel

RESOLVED, that in accordance with the materials presented to this meeting, a copy of which is hereby ordered to be filed with the records of the Corporation (the "Materials"), the Corporation hereby finds the law firm of Hawkins, Delafield & Wood, LLP ("HDW") to be responsible; and be it further

RESOLVED, that in accordance with the Materials presented to this meeting, the Corporation hereby finds the Law Offices of Joseph C. Reid, P.C. ("Joseph C. Reid") to be responsible; and be it further

RESOLVED, that the Corporation is hereby authorized to enter into contracts with HCW and Joseph C. Reid for the purposes and services, and substantially on the terms and conditions, as set forth in the Materials.

III. Authorized Officers

RESOLVED, that each of the President and Chief Executive Officer, any Senior Vice President, any Vice President, the Senior Vice President – Legal and General Counsel, Deputy General Counsel, the Controller, the Chief Financial Officer, the Treasurer, the Secretary and the Assistant Secretary of the Corporation, and any person duly authorized to act in such capacity, is designated an "Authorized Officer" for the purposes of this resolution; and further

IV. Further Action

RESOLVED, that the Authorized Officers are each hereby authorized and directed to approve and execute such documents, make such payments and take such other actions, in the name of the Corporation and on its behalf, as he or she may reasonably deem necessary or appropriate to carry out the foregoing resolutions, and that all such actions heretofore taken in connection with the Bonds by any Authorized 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.

* * *