

George Latimer
County Executive

Office of the County Attorney

John M. Nonna
County Attorney

70759

July 16, 2019

To: Honorable Board of Acquisition & Contract

From: John M. Nonna
County Attorney

Ann Marie Berg
Commissioner, Dept. of Finance

Re: Resolution to authorize the County of Westchester to enter into agreements with the law firms of Hawkins, Delafield & Wood LLP, Norton Rose Fulbright US LLP and Harris Beach PLLC, to provide Bond Counsel services to the County Attorney, for a total aggregate amount not to exceed One Million Three Hundred Fifty Thousand and 00/100 Dollars (\$1,350,000.00), for the period commencing August 1, 2019 through July 31, 2022, with a County option to renew each agreement for an additional period of two (2) years upon the same terms and conditions.

Authority is hereby requested from your Honorable Board for the County of Westchester ("County") to enter into agreements ("Agreements") with the following three (3) law firms (individually as the "Law Firm" and collectively as the "Law Firms"), to serve as bond counsel to the County Attorney: Hawkins, Delafield & Wood LLP; Norton Rose Fulbright US LLP; and Harris Beach PLLC. Each Law Firm will serve in an "of counsel" capacity to the County Attorney, for the period commencing August 1, 2019 through July 31, 2022, for an aggregate amount not to exceed Four Hundred Fifty Thousand and 00/100 Dollars (\$450,000.00) per year, for a total aggregate amount not to exceed One Million Three Hundred Fifty Thousand and 00/100 Dollars (\$1,350,000.00), pursuant to an approved fee schedule for each Agreement. The County shall have an option to renew each Agreement for one (1) additional period of two (2) years, upon the same pricing, terms and conditions. A fee schedule for each of the Agreements is attached to the Resolution submitted herewith. Authority is requested to enter into the Agreements for the aforesaid total aggregate dollar amount in order to allow for the necessary flexibility to make assignments amongst the three (3) Law Firms.

On July 15, 2019, the Honorable Westchester County Board of Legislators (“Board of Legislators”), by Act No. 2019-144, authorized the County to retain the Law Firms in accordance with the above terms.

As your Honorable Board may know, the County’s current bond counsel contracts expire on July 31, 2019. In anticipation of the expiration of these agreements on July 31, 2019, the County Attorney’s office issued a request for proposals (“RFP”) seeking bond counsel law firms to serve in an “of counsel” capacity to the County Attorney. The RFP was posted on the County’s RFP website on April 29, 2019 and was advertised in *The Bond Buyer* on April 29, 2019 and on April 30, 2019. In addition, letters were sent out to thirteen (13) law firms specializing in public finance alerting them to the County’s solicitation. In accordance with County’s policy, the County Attorney performed a search, including a search of the Minority and Women Owned Business Enterprises (“MBE/WBE”) database, to look for MBE/WBE law firms specializing in public finance. Letters were sent to two (2) MBE/WBE firms that maintain a practice in this area advising of the County’s solicitation. Proposals were due no later than May 31, 2019.

The County received proposals from seven (7) law firms in response to the RFP, as follows: Ballard Spahr LLP, D. Seaton and Associates, P.A. (MBE Certified), Hardwick Law Firm, LLC (MBE Certified), Harris Beach PLLC, Hawkins, Delafield & Wood LLP, Nixon Peabody LLP, and Norton Rose Fulbright US LLP. To evaluate each proposal, the Law Department, in conjunction with the Finance Department and the Department of Budget, used the following evaluation criteria: (i) law firm’s demonstrated capability to provide the legal services; (ii) evaluation of the professional qualifications, personal background and résumé(s) of individuals involved in providing legal services; (iii) law firm’s experience to perform the proposed legal services; (iv) law firm’s financial ability to provide the legal services; (v) a determination that the law firm submitted a complete and responsive proposal; (vi) an evaluation of the law firm’s projected approach and plans to meet the requirements of the RFP; and (vii) an evaluation of the law firm’s proposed fee submission.

Upon review of the credentials and experience of the various law firms, we believe that entering into contracts with the three (3) Law Firms above referenced to serve as bond counsel is in the best interests of the County.

The goals and objectives of the Agreements are to provide the County with the bond counsel expertise that it does not have in-house, which is necessary to represent and assist the County in all matters relating to the issuance of general obligation bonds (e.g.: taxable, tax-exempt and/or Build America Bonds), revenue bonds and/or other methods of financing public projects, including, but not limited to, tax anticipation notes, bond anticipation notes, revenue anticipation notes, debt sold through the New York State Environmental Facilities Corporation and financial matters related to the Westchester County Health Care Corporation.

The services provided under the Agreements will be tracked and monitored by both the Finance Department and the attorneys in the Law Department tasked with working with these firms.

Based upon the foregoing, your favorable action on the annexed Resolution is urged and recommended.

JMN/CMC
Attachment

APPROVED BOARD OF ACQUISITION & CONTRACT - 07/25/2019 - LISA MRIJAJ, SECRETARY

RESOLUTION

Upon a communication from the County Attorney and the Commissioner of Finance, be it hereby

RESOLVED, that the County of Westchester (the “County”) is hereby authorized to enter into agreements (“Agreements”) with the law firms of Hawkins, Delafield & Wood LLP, Norton Rose Fulbright US LLP and Harris Beach PLLC, to serve as the County’s bond counsel, in an “of counsel” capacity to the County Attorney, for the period commencing on August 1, 2019 and terminating on July 31, 2022, in an aggregate amount not to exceed Four Hundred Fifty Thousand and 00/100 Dollars (\$450,000.00) per year, for a total aggregate contract amount not to exceed One Million Three Hundred Fifty Thousand and 00/100 Dollars (\$1,350,000.00), payable in accordance with the attached fee schedule; and be it further

RESOLVED, that the County shall have an option to renew each Agreement for an additional term of two years upon the same pricing, terms and conditions; and be it further

RESOLVED, that the Agreements are subject to County appropriations; and be it further

RESOLVED, that the Agreements are also subject to further financial analysis of the impact of any New York State Budget (the “State Budget”) proposed and adopted during the term of the Agreements. The County shall retain the right, upon the occurrence of any release by the Governor of a proposed State Budget and/or the adoption of a State Budget or any amendments thereto, and for a reasonable period of time after such release(s) or adoptions(s), to conduct an analysis of the impacts of such State Budget on County finances. After such analysis, the County shall retain the right to either, terminate these Agreements or, to renegotiate the amounts and rates approved herein. If the County subsequently offers to pay a reduced amount to the Firms, then the Firms shall have the right to terminate their respective Agreements upon reasonable prior written notice; and be it further

RESOLVED, that the County Executive or his duly authorized designee is hereby authorized to take such action and execute the Agreements and such documents as may be necessary and appropriate to effect the purposes hereof.

Account to be Charged/credited	Fund	Dept	Major Program, Program & Phase Or Unit	Object/ Sub Object	Trust Account	Dollars
	131	51	2100	4468		\$450,000.00
	131	51	2100	4468		\$450,000.00
	131	51	2100	4468		\$450,000.00

Budget Funding Year(s) 2019-2022 Start Date 8/1/19 End Date 7/31/22

(must match resolution)

Funding Source

Tax Dollars x

State Aid _____

\$ 1,350,000.00

Federal Aid _____

(must match resolution)

Other _____

SCHEDULE OF FEES

	Hawkins Delafield & Wood, LLP	Norton Rose Fulbright US LLP	Harris Beach PLLC
Fee per \$1,000 face amount with maximum amount NTE per issuance of Notes (e.g.: TANs, RANs, BANs)	\$0.30 per \$1,000 face amount, with maximum amount NTE \$18,500	\$0.35 per \$1,000 face amount, plus hourly charges for review of the offering document, tax matter review and closing documents with a maximum fee NTE \$35,000	\$0.35 per \$1,000 face amount, subject to a maximum fee of \$20,000 for a competitive sale. For a negotiated sale, same fees apply plus unusual attorney time charged at hourly rates below.
Fee per \$1,000 face amount with maximum amount NTE per issuance of Bonds (e.g.: general obligation and revenue bonds/taxable, tax-exempt or Build America Bonds)	\$0.70 per \$1,000 face amount, with maximum amount NTE \$37,500	\$0.75 per \$1,000 face amount, plus hourly charges with a maximum fee NTE \$47,000	\$0.75 per \$1,000 face amount, subject to a maximum fee of \$40,000 for a competitive sale. For a negotiated sale, same fees apply plus unusual attorney time charged at hourly rates below.
Fee per \$1,000 face amount with maximum amount NTE per issuance of Refunding Bonds	\$0.75 per \$1,000 face amount, with maximum amount NTE \$40,000, subject to a minimum fee of \$15,000	\$0.95 per \$1,000 face amount, plus hourly charges with a maximum fee NTE \$79,000	\$0.75 per \$1,000 face amount, subject to a maximum fee of \$40,000, plus unusual attorney time charged at hourly rates below.
Fee per \$1,000 face amount with maximum amount NTE per issuance of debt through the NYSEFC	\$0.50 per \$1,000 face amount, with maximum amount NTE \$15,000 for long term financing; \$0.25 per \$1,000 face amount, with maximum amount NTE \$5,000 for short term financing (reduced by 10% for short term extensions)	\$0.75 per \$1,000 face amount for long term financings (“LTFs”) and \$0.37 per \$1,000 face amount for short-term financings (“STFs”), plus hourly charges subject to a maximum fee of \$63K for LTFs and \$26K for STFs	For BANs sold to the NYSEFC the fee would be \$0.35 per \$1,000 face amount, subject to a maximum fee of \$10,000. For Bonds sold to the NYSEFC (assuming no refunding component) the fee would be \$0.75 per \$1,000 face amount, subject to a maximum fee of \$20,000. In connection with preparation of preliminary and final Official Statements for public sale of bond and note issues, if requested, a fee of \$15,000 per issue Out-of-pocket costs not included
Hourly Rates for Other Services	Blended hourly rate of \$275 for partners and \$175 for associates	Partners: \$500 Associates: \$315 Paralegals: \$165	Blended hourly rate of \$275 for all attorneys Will entertain fee cap for unusual financing transactions
Fee for preparation of each Bond Act (or Guaranty Act in the case of the WCHCC)	\$275	Bond Act : \$1,260 for Sewer and Water;\$840 for all other County new money purposes Guarantee Act: \$840	\$300