



Metropolitan Water Reclamation District of Greater Chicago

100 East Erie Street
Chicago, IL 60611

Legislation Text

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TRANSMITTAL LETTER FOR BOARD MEETING OF OCTOBER 21, 2010

COMMITTEE ON PROCUREMENT

Mr. Richard Lanyon, Executive Director

Issue purchase order and enter into an agreement with Bradley S. Waterman, Attorney at Law to represent the District in the matter of a United States Internal Revenue Service examination of the District's issuance of Build America Bonds in an amount not to exceed \$50,000.00. Account 101-30000-601170, Requisition 1313736

Dear Sir:

Following the issuance and sale of the \$600 Million Taxable Capital Improvement Bonds, Limited Tax Series of 2009 (Build America Bonds - Direct Payment), the District received an "inquiry" from the U.S. Securities and Exchange Commission ("SEC") requesting the production of voluminous documentation pertaining to that transaction. The District enlisted the assistance of its bond counsel for that transaction, Chapman and Cutler, to respond to the SEC. All of the documents requested have been assembled and reduced to a CD which was transmitted to the SEC. Nothing further has been heard by the District from the SEC in this regard. We are advised, however, that the SEC has issued subpoenas for documents to Mesirow Financial, the underwriter for this transaction, and Chapman and Cutler.

On September 24, 2010, the District received a letter from the U.S. Internal Revenue Service ("IRS") advising that it has initiated an "examination" of that transaction, again requesting production of voluminous documentation. We contacted Chapman and Cutler immediately for counsel and assistance in production of the necessary documents. Chapman responded by advising that by virtue of the SEC looking directly at Chapman's involvement in the bond sale, its interests and the District's interests may be adverse and hence a possible conflict of interest exists, and it must decline the request to become directly involved on the District's behalf. Furthermore, because of the complexity and nuances of direct dealing with the IRS, Chapman customarily refers controversies such as this to an attorney who concentrates in this area of practice. Chapman gave the General Counsel the name of the attorney to whom it refers matters such as this.

The attorney to which Chapman referred is Bradley S. Waterman of Washington, D.C. He is a tax lawyer and is characterized as a tax controversy lawyer. The General Counsel talked with Mr. Waterman for nearly an hour regarding this new matter. The points Mr. Waterman emphasized in his conversation are the following:

- a) This is a serious matter
- b) The District should not be dealing directly with the IRS
- c) This may be the first examination/audit of a Build America Bond issue
- d) Consequently, the municipal bond market will be watching this matter closely

We have reviewed Mr. Waterman's curriculum vitae, typical case reports and other reference materials. Mr. Waterman's normal hourly rate is \$500.00 plus expenses but he has agreed to accept an hourly rate of \$450.00 plus expenses. Note that the General Counsel also briefly consulted with another counsel that specializes in this area of law for possible selection and this rate appears to be within the norm. However, Mr.

Waterman could not estimate a budget for this entire matter since examination/audits of Build American Bond transactions are new and the issuer's posture relative to the IRS is strictly reactionary.

Based upon the referral by Chapman and Cutler, review of the documentation supplied by Mr. Waterman and the General Counsel's conversation with him, the Law Department believes that Bradley S. Waterman can properly counsel the District and represent its interests in dealing with the IRS in this matter. Inasmuch as Mr. Waterman is possessed of a high degree of professional skill, such purchase order may be issued without competitive bidding in accordance with Section 11.4 of the Purchasing Act.

In view of the foregoing, it is recommended that the Director of Procurement and Materials Management be authorized to issue a purchase order and enter into an agreement with Bradley S. Waterman, Attorney at Law, in an amount not to exceed \$50,000.00, after said agreement is approved by the General Counsel as to form and legality.

Further, that the Chairman of the Committee on Finance, the Clerk, and the Executive Director be and they are hereby authorized and directed to execute the aforesaid purchase order as well as any written agreement associated with said purchase order, and further, that the Executive Director be authorized to execute an IRS Power of Attorney designating Mr. Waterman as the District's attorney/representative in this matter and that the General Counsel be authorized to further take any and all action necessary to implement, execute, and effectuate resolution of this matter.

Funds are available in Account 101-30000-601170.

Requested, Frederick M. Feldman, General Counsel, FMF:AJC:jvs

Recommended, Darlene A. LoCascio, Director of Procurement and Materials Management

Respectfully Submitted, Barbara J. McGowan, Chairman Committee on Procurement

Disposition of this agenda item will be documented in the official Regular Board Meeting Minutes of the Board of Commissioners for October 21, 2010

Attachment