



MEMORANDUM

EUGENE WATER & ELECTRIC BOARD
GENERAL ACCOUNTING

Rely on us.

TO: Commissioners Farmer, Brown, Cassidy, Cunningham, and Ernst
FROM: Cathy Bloom
DATE: December 21, 2009
SUBJECT: Bond Counsel RFP and Selection

Issue Statement

EWEB's bond counsel, Holland & Knight (previously Nixon Peabody), has undergone several changes over the last six years that has caused staff to believe that it was in EWEB's best interest to re-solicit for these services. In August, staff requested proposals (formal RFPs) from legal firms qualified to provide bond counsel services. Staff has evaluated the resulting proposals and will be recommending that the Board (at its January 5, 2010 meeting) approve award of a new contract Mersereau Shannon for Bond Counsel services and ratify counsel as a Board Retained Professional for 2010.

Background

The role of bond counsel is to represent the interests of the creditor when bonds and other forms of indebtedness are issued. Bond counsel drafts the authorizing resolutions and other loan documents and manages the closing process once the bonds are sold. When tax-exempt securities are issued, bond counsel is sometimes asked to provide advice and supplemental opinions as to the proper disposition of bond proceeds and other legal matters relating to the bonds. Bond counsel works closely with staff and is an advisor to the project team whenever debt is issued or refinanced.

Last year, during a project financing, our bond counsel engagement partner left our previous firm, Nixon Peabody and joined another firm, Holland & Knight. Then soon thereafter he joined another firm, Meyers Nave. Instead of following this key professional from firm-to-firm, staff determined that it was in the utility's best interest to retain an established firm with the qualification required to perform these services. Mersereau Shannon has the expertise needed to perform this work.

Discussion

The RFP was issued August 17, 2009 and six proposals were received: 1) Meyers Nave, 2) Pugh Jones Johnson & Quandt, 3) Orrick Harrington & Suttcliffe, 4) Foster Pepper, 5) Hawkins Delafield & Wood, and 6) a joint venture consisting of Mersereau Shannon and Ballard Spahr. The proposals were evaluated with the assistance of EWEB's financial advisor.

Evaluation criteria emphasized the availability of an engagement partner with 1) substantial electric utility background, 2) knowledge of Oregon law and 3) a tax specialist who has experience with the IRS in the application of the most recent version of the tax regulations to utility financing projects. The combination of the firms Mersereau Shannon and Ballard Spahr was unanimously determined to be the highest-ranked proposer. If approved, Mersereau Shannon will be the lead Bond Counsel and will consult with Ballard Spahr to perform the special tax counsel services.

Recommendation / Requested Action

Staff recommends Board approval of a new contract with Mersereau Shannon as EWEB's Bond Counsel. If approved, Mersereau Shannon will be included in the Board's annual ratification of Board Appointed Consultants and retained Professionals.

EWEB Board Consent Calendar Request

For Contract Awards, Renewals, and Increases

The Board is being asked to approve a new contract with **Mersereau Shannon LLP** and to appoint Mersereau Shannon LLP as EWEB's Bond Counsel.

Backgrounder (if "yes," "See backgrounder information") Yes

Board Meeting Date: January 5, 2010

Project Name/Contract#: Bond Counsel Services / RFP 026-2009

Project Contact: Cathy Bloom Ext. 7150

Purchasing Contact: Cheryl Golbek Ext. 7389

Action Requested:

Contract Award
 Contract Renewal
 Contract Increase
 Other

Contract Amount:

Original Contract Amount: \$400,000

Additional \$ Previously Approved: \$0

Invoices over last approval: \$0

Percentage over last approval: 0%

Amount this Request: \$400,000

Resulting Cumulative Total: \$400,000

Funding Source:

Budget
 Reserves
 New Revenue
 Bonding
 Other

Contracting Method:

Method of Solicitation: Request for Proposal

If applicable, basis for exemption: N/A

Term of Agreement: January 6, 2010 thru January 5, 2013

Option to Renew? Yes. Renewable up to 5 years total.

Approval for purchases "as needed" for the life of the contract Yes

Form of Contract:

Single Purchase
 Services
 Personal Services
 Construction
 IGA
 Price Agreement
 Other

NARRATIVE:

The Board is being asked to approve a new contract with **Mersereau Shannon LLP** and to appoint Mersereau Shannon LLP as EWEB's Bond Counsel. (See attached backgrounder.)

EWEB Bond Counsel is a Board Appointed Consultant and Retained Professional. Each year the Board ratifies this consultant for the year. This is the initial contract with Mersereau Shannon, so staff is asking for the Board to approve this contract and appoint Mersereau Shannon LLP as EWEB Bond Counsel. Once appointed by the Board, Mersereau Shannon will be included in the annual ratification process.

In August 2009, staff requested proposals from qualified law firms to provide Bond Counsel Services. Six proposals were received and evaluated; and Mersereau Shannon LLP was determined to be the highest-ranked proposer.

If approved, Mersereau Shannon LLP will be retained and used on an "as needed" basis to provide specialized legal services related to bond financing. Those services include the issuance of opinions on the bonds and their sale. This contract, if approved will be for three years with an option, at EWEB discretion, to renew for two additional one-year periods.

ACTION REQUESTED:

Staff requests that the Board approve a new contract with Mersereau Shannon LLP for Bond Counsel services and appoint them as EWEB's Bond Counsel Services. Funds for these services will be budgeted for 2010 and are budgeted annually.

SIGNATURES:

Project Coordinator: Jim Origliosso signing for Cathy Bloom - see signature below

Supervisor: Jim Origliosso - see signature below

Purchasing Manager: _____

Division Director: _____

General Manager: _____

Board Approval Date: _____

Secretary/Assistant Secretary verification: _____