

CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK (I-BANK)

STAFF REPORT

ISSUE:

Staff requests the authority to:

- Amend the financial consultant services contract with Public Resources Advisory Group (PRAG) to increase the total amount of the contract authority to an amount not to exceed \$75,000.
- Amend the special counsel services contract with Stradling Yocca Carlson & Rauth to increase the total amount of the contract authority to an amount not to exceed \$125,000.

BACKGROUND INFORMATION:

On May 25, 2010, the I-Bank Board approved Resolution 10-22 appointing PRAG as one of five firms to serve as financial advisor to the I-Bank in relation to existing and future bond and loan programs and future bond issuances, and to authorize a contract with each firm for a term not to exceed 36 months, in each case in an amount not to exceed \$25,000. The Staff Report dated May 25, 2010, and a copy of Resolution 10-22 are attached as **Attachment A**. Pursuant to this authorization, a contract was entered into with PRAG in the amount of \$25,000, for a three year term, ending on June 30, 2013.

On September 27, 2009, the I-Bank Board approved Resolution 09-45 appointing Stradling Yocca Carlson & Rauth as one of three firms to provide as needed special counsel services to the I-Bank, and to authorize a contract with each firm for a term not to exceed two years. A contract with Stradling Yocca Carlson & Rauth was authorized in an amount not to exceed \$75,000. The Staff Report dated September 27, 2009, and a copy of Resolution 09-45 are attached as **Attachment B**. Pursuant to this authorization, a contract was entered into with Stradling Yocca Carlson & Rauth in the amount of \$75,000, for a two year term, ending on December 31, 2011.

NEED FOR INCREASE:

The Financial Information System of California (FI\$Cal) project represents a multi-year commitment by the State of California to utilize Enterprise Resource Planning (ERP) technology to transform the state's systems and workforce to operate in an integrated financial management system environment. FI\$Cal will encompass budgeting, accounting, procurement, cash management, financial management, financial reporting, cost accounting, asset management, project accounting, grant management and human resources management. The cost of the FI\$Cal project could reach \$1.6 billion over a 12 year period, depending on final design.

On December 27, 2010, an 18 month Interagency Agreement was entered into with the Department of Finance on behalf of the FI\$Cal project to provide for the necessary

resources to investigate the feasibility of financing a portion of the FI\$Cal project through conduit revenue bonds issued by the I-Bank. The services to be provided by the I-Bank under the Interagency Agreement include consulting on the appropriate structure, timing and terms of a proposed bond financing, including the use of the services of bond counsel and financial advisors under contract with I-Bank. The Department of Finance has agreed to reimburse the I-Bank for all costs related to the Interagency Agreement, including I-Bank staff costs and costs related to the use of I-Bank contract services.

I-Bank staff and Department of Finance staff have concluded that PRAG's experience and the experience of Stradling Yocca Carlson & Rauth make these firms the most appropriate of the I-Bank's financial consultants and special counsel to provide services for these purposes.

The purpose of this request is to obtain additional contract authority to allow for the use of the I-Bank's contracts with PRAG and Stradling Yocca Carlson & Rauth for work related to the FI\$Cal project. The cost of FI\$Cal-related services under these contracts will be reimbursed to the I-Bank under the Interagency Agreement. To the extent the total amount of the augmented contracts are not required to provide FI\$Cal-related services, the contracts will remain available for other services to the I-Bank that are within the contracts' scope of services. Staff requests that each contract be augmented by an additional \$50,000 to achieve this purpose.

RECOMMENDATION: Staff recommends approval of:

- Resolution 11-07 authorizing an amendment to the I-Bank's financial advisor contract with Public Resources Advisory Group to increase the total amount of the contract authority to \$75,000; and,
- Resolution 11-08 authorizing an amendment to the I-Bank's special counsel contract with Stradling Yocca Carlson & Rauth to increase the total amount of the contract authority to \$125,000.

ATTACHMENT A – MAY 25, 2010 STAFF REPORT AND RESOLUTION 10-22

CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK (I-BANK)

STAFF REPORT

SUMMARY

Staff requests the Board appoint five firms to serve as financial advisor to the I-Bank in relation to existing and future bond and loan programs and future bond issuances, and to authorize a contract with each firm for a term not to exceed 36 months, in each case in an amount not to exceed \$25,000. Staff further requests the authority to enter into one or more engagement letters with any of the pool of appointed firms, during the period of any such contract, for future bond issuance related services, subject to the limitation that such services shall be paid solely from bond proceeds, and that payment shall be conditioned upon the issuance of bonds.

BACKGROUND

The I-Bank currently has contracted with four financial advisory firms to provide financial assistance with I-Bank programs and bond issuances. These three-year contracts will expire on June 30, 2010. The need for independent financial advisory services related to the I-Bank's bond and infrastructure loan programs is ongoing due to the bond and loan workload of the I-Bank.

A Request for Qualifications (RFQ) was issued on April 22, 2010 for the I-Bank staff to select one or more firms to provide financial advisory services relating to the following scope of services:

- A. Financial analysis and assistance with structuring complex Infrastructure State Revolving Fund Program loans.
- B. Assistance with the issuance of bonds and/or post bond services for revolving loan programs such as the I-Bank's ISRF Program, the California State Water Resources Control Board Clean Water Revolving Loan Fund and other State revolving loan program bonds issued by the I-Bank.
- C. Assistance with the issuance of bonds and/or post-bond work related to I-Bank's State School Fund Apportionment Lease Revenue Bond Program.
- D. Assistance with the issuance of bonds and/or post-bond work related to any other I-Bank Bond Financing Programs (excluding pooled bond issuances¹).
- E. Assistance with financial advisory work related to the development of innovative and new economic development bond and/or State or Federal financing programs that facilitate the development of public development facilities or economic development facilities within the State.

¹ On August 25, 2009, the I-Bank Board established a list of financial advisors specifically for pooled bond issuances undertaken by the I-Bank. The pooled bond financial advisor list is still active and this RFQ did not include financial advisory work related to such pooled-bond issuances.

- F. Other debt and financial management matters or special projects as requested by I-Bank.

The RFQ cited examples of typical financial advisory tasks that include, but are not limited to, the following:

- Perform credit analysis and assist with structuring a variety of credit types and repayment streams for individual credits to be included in the revolving loan program bond issuances.
- Participate in meetings and conference calls with I-Bank staff, other State staff, applicants, borrowers, and/or other financing team members as needed.
- Analyze the cost benefits of different bond structuring and pricing options including, but not limited to, fixed rate versus variable rate bonds, insured versus uninsured bonds, callable versus non-callable bonds, and par versus discounted bonds.
- Participate in all bond pricing discussions. Based on direction from the I-Bank staff, provide data on market comparables and different indices that can be used in pricing discussions.
- Assist I-Bank staff in rating agency and/or bond insurer presentations or investor meetings related to a particular financing.
- Participate in bond document review and due diligence sessions. Coordinate with I-Bank staff and counsel to ensure compliance with federal tax law.
- Participate in reviewing the underwriter's quantitative analysis related to the bond sizing, structure and flow of funds.
- Assist I-Bank staff in reviewing the underwriter's proposed allocation of the bonds.
- Review and provide input on the preliminary and final bond official statements.
- Participate in post-financing review that includes a report addressing how the I-Bank's bonds priced relative to market indices, comparables and any goals established prior to sale.
- Assist I-Bank staff in reviewing and/or analyzing post-financing issues that may arise.

The RFQ contemplated that one or more firms will be selected. Any firm entering into an agreement with the I-Bank may be requested to provide services when it is determined that the firm is best suited to provide the services required. That determination will be based on a combination of all of the following:

- The availability of the firm to provide the requested services, which determination will take into account any client conflicts of interest the firm may have;

- The suitability of the firm to provide the requested services, which determination will take into account the Firm's experience for which services are being sought; and
- The hourly rate charged by each firm.

The RFQ was sent to all 49 firms on the State Treasurer's Office (STO) list of financial advisors approved for transactions undertaken by the STO, and the RFQ was also posted on the I-Bank's website at www.ibank.ca.gov. No questions were received from potential applicants by the April 29, 2010 deadline date. The following twelve firms responded by the May 5, 2010 due date:

1. Backstrom McCarley Berry & Company
2. Capitol Public Finance
3. Fieldman, Rolapp & Associates
4. First Southwest Company
5. Gardner, Underwood & Bacon LLC
6. KNN Public Finance (KNN)
7. Lamont Financial Services Corporation (Lamont)
8. MF Whipple & Associates
9. Public Financial Management (PFM)
10. Public Resources Advisory Group (PRAG)
11. Sequoia Financial Group LLC (Sequoia)
12. Urban Futures Inc.

ANALYSIS

A review committee comprised of I-Bank management evaluated each of the twelve proposals to ensure each firm met the minimum qualifications specified in the RFQ. The review committee determined that each firm submitting a proposal met the minimum qualifications.

Additionally, the committee evaluated the RFQ responses relative to each firm's ability to perform the selected scope of services, including information regarding the qualifications and experience of the firm and its personnel relative to revolving loan and bond financings, California state and local government and public school financings experience, as well as the firm's commitment to the State, its proposed rate of compensation and the overall quality of the responses. Based on this evaluation, the review committee recommends the selection of the following firms:

- KNN
- Lamont
- PFM
- PRAG
- Sequoia

The review committee concluded that having a choice of firms will enable the I-Bank to make firm selections based upon firm staffing availability and expertise. Continuing past practice, a firm will only be paid for work the firm is requested to perform, and for work acceptably performed.

Three of the proposed firms are currently financial advisors to the I-Bank, Lamont, KNN and PFM. I-Bank staff have had good experiences working with each of these three firms during the term of the prior contract. I-Bank staff has had satisfactory experience working directly with principals of PRAG and Sequoia in the context of I-Bank conduit bond issuances.

The firms collectively have extensive experience and capabilities in planning, structuring, and executing a myriad of State and local municipal bonds, including:

- Voter-approved debt such as general obligation and registered voter special tax bonds;
- Revolving loan program bonds and pooled bond financings;
- Lease financings including certificates of participation and lease revenue bonds;
- Revenue bonds and installment sales certificates of participation;
- Tax allocation bonds and other forms of redevelopment finance;
- Assessment, special tax and Mello-Roos bonds;
- Judgment and pension bonds, tobacco-securitization bonds, insurance bonds and other hybrid security structures;
- Advance and current refundings;
- Fixed, variable-rate, multi-modal, and synthetic securities;
- Taxable municipal bonds;
- Short-term note financings; and,
- Long-term strategic planning and other types of municipal consulting.

Below are some brief highlights of the relevant experience of all five firms as described in the responses to the RFQ:

KNN

- Local Government Finance. During the past five years, the firm has provided financial advisory services on 109 local government municipal bond issues (not including schools) throughout California that involved tax allocation, lease revenue and enterprise revenue bond financings totaling over \$7.5 billion. The firm represented numerous municipalities participating in U.S. Environmental Protection Agency funded programs for clean water and drinking water. The firm's main clients are small to medium sized local governments that are infrequent issuers of debt similar to many ISRF Program borrowers.
- School Finance. The firm completed 191 long term primary and secondary education (K-14) school district financings totaling \$14.1 billion over the last five years. The firm served as financial advisor on the three inaugural I-Bank State

School Fund Apportionment Lease Revenue Bond Program issues in 2005, a refunding in 2008, as well as the most recent King City Joint Union High School District issue.

- California Government Finance. The firm served as financial advisor on 37 transactions for the State of California with a total par amount of approximately \$9.75 billion over the last five years. KNN currently serves as financial advisor to the State Public Works Board in connection with its Lease Revenue Bond Program as well as the California State University System.
- Thomson Reuters ranked KNN among the decade's top 10 financial advisory firm nationally based upon par amount despite the firm's exclusive focus on California financings.

Lamont

- State Revolving Funds. The firm has extensive knowledge of the ISRF Program, having served as a financial advisor to the I-Bank since 1996. Lamont assisted with the development and implementation of the ISRF Program and issuance of the 2004, 2005, and 2008 ISRF Revenue Bonds. Lamont has also assisted with the design, development and implementation of SRF programs for 9 other states and serves as the financial advisor to five major state issuers of clean water and drinking water SRF programs.
- Local Government Finance. The firm has assisted California cities with the issuance of electric system revenue COPs, lease revenue bonds and wastewater system revenue COPs.
- California Government Finance. Lamont completed financial advisory assignments for financings totaling \$35.5 billion in California alone on numerous types of complex and unique bond issuances. The firm has extensive experience with other State agencies, including: the State Water Resources Control Board; the California Energy Commission; State Public Works Board; the Golden State Tobacco Securitization Corporation; the Economic Recovery Bond Committee; the Department of Transportation; Department of Corrections; and, the Department of General Services.

PFM

- Large nationwide firm that in 2009 provided financial advisory services to 832 bond transactions totaling over \$51 billion.
- State Revolving Funds. Since 2000, the firm has served as the primary financial advisor to U.S. EPA funded water and wastewater revolving funds (SRFs) in 14 of 27 states who leverage their SRF programs and several who are in the exploratory phase of leveraging. During this period, the firm assisted clients to issue 133 SRF related financings totaling a par amount of \$15.5 billion.
- Local Government Finance. Since 2005, PFM has assisted in 29 local government tax allocation bond issues totaling 1.2 billion, served as financial advisor for 28 lease revenue and leaseback Certificates of Participation (COP) transactions in California representing 1.7 billion of par value and completed 767 water, sewer and gas transactions between 2000-2009 for a total par value of

43.9 billion. PFM has advised on Tax Exempt Commercial Paper advising on 20 transactions for a total of \$2.3 billion nationwide since 2005.

- The firm has completed over 100 Build American Bond issues since the passage of the American Recovery and Reinvestment Act of 2009.

PRAG

- PRAG is the top-ranked financial advisory firm in California for 7 of the past 10 years, including 2009. The firm has completed more than 250 transactions totaling over \$155 billion over the last 190 years in California (Thomson Reuters).
- State Revolving Funds. In 2002, PRAG professionals assisted the I-Bank to issue bonds for the inaugural leveraging of the State Water Resources Control Board Clean Water SRF.
- Local Government Finance. In the last five years, the firm has served as financial advisor on 77 local government bond sales totaling \$17.1 billion.
- School Finance. PRAG's lead professional was the underwriter on the I-Bank's 2005 State School Fund Apportionment Lease Revenue bonds, as well as lease financings for school districts in San Diego, Los Angeles and Val Verde (Riverside County).
- California Government Finance. PRAG was hired as first financial advisor to the State Treasurer over 20 years ago and continues to serve as financial advisor on the State's fixed rate general obligation bond program.

Sequoia

- Sequoia is certified as a small business by the California Department of General Service. Newly created financial advisory firm with two principals that have over 50 years of combined financial advisory, rating agency and bond underwriting experience at other firms.
- State Revolving Fund. One of Sequoia's principals assisted in the creation of the *Criteria, Priority and Guidelines* for the ISRF Program, and was the underwriter on the I-Bank's ISRF Program Bonds, Series 2004. One of the firm's principals underwrote bonds issued on behalf of the State Water Resources Control Board for the Clean Water State Revolving Fund participated as an underwriter for \$63 million Florida State Infrastructure Bank revenue bonds.
- Local Government Finance. The firm recently closed \$16.6 million in water revenue bonds for Garden Grove Public Financing Authority.
- School Finance. The firm currently serves a financial advisor to California School Finance Authority and Sweetwater Union High School District.

Fees. All firms submitted proposals for varying hourly rates, ranging from the hourly rates applicable to work performed by managing directors/partners/principals to subordinate staff such as senior vice president, vice president, senior managing consultant, consultant, assistant vice president, associate and analyst. The final fee proposals for the selected firms for the hourly rate to be paid to a firm's highest paid representative are as follows:

Firm	Highest Hourly Fee
KNN	\$300
Lamont	\$275 first contract year \$285 second and third contract years
PFM	\$300
PRAG	\$300
Sequoia	\$275

The initial fee proposal from KNN and PRAG included a maximum hourly rate higher than \$300 per hour, but in recognition of the competitiveness of the fee proposals received from other firms, following negotiation with I-Bank staff, these two firms reduced their maximum hourly rate proposal to \$300.

Contracts. Staff proposes to enter into a three-year contract for \$25,000 with each appointed firm detailing the scope of responsibilities as well as the method of compensation. The RFQ stated that the I-Bank reserved the right to extend the term of any contract entered into as a result of the selections made pursuant to the RFQ for up to two additional years, subject to the satisfactory negotiation of terms acceptable to both parties. Staff recommends that the Executive Director be delegated the authority to make firm selections for financial advisory assignments.

Engagement Letters. Staff also proposes that these five firms be approved as a pool of financial advisory firms eligible for appointment by the Executive Director to serve as the I-Bank's financial advisor in relation to specific future bond transactions. Any such appointment will be based on the firm's expertise in providing the type of financial advisory services required by the specific bond transaction, and on cost of services. Upon appointment, the firm will enter into an engagement letter with the I-Bank, which shall provide that any compensation for the bond transaction related services will be solely from bond proceeds, and not pursuant to the existing contract between the firm and the I-Bank.

Application of Public Contract Code and Government Code. Government Code Section 63087 provides that any agreements entered into by the I-Bank in connection with the sale of bonds² is exempt from Public Contract Code Section 10295 and Sections 10335 to 10382, inclusive.

Government Code section 63086 authorizes engaging consultants in connection with the issuance of bonds and payment of those consultants from bond proceeds. Financial advisory services related to a bond issuance will be pursuant to an engagement letter, and shall be payable from bond proceeds. Financial advisory services not payable from

² "Bonds" is defined in Government Code Section 63010(e) as "bonds, including structured, senior, and subordinated bonds or other securities; loans; notes, including bond, revenue, tax or grant anticipation notes; commercial paper; floating rate and variable maturity securities; and any other evidences of indebtedness or ownership, including certificates of participation or beneficial interest, asset-backed certificates, or lease-purchase or installment purchase agreements, whether taxable or excludable from gross income for federal income taxation purposes."

bond proceeds will be engaged pursuant to a standard State consulting services contract.

RECOMMENDATION

Staff recommends approval of Resolution 10-22 appointing the following five firms:

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Firm	Highest Hourly Fee
KNN Public Finance	\$300
Lamont Financial Services Corporation	\$275 first contract year \$285 second and third contract years
Public Financial Management	\$300
Public Resources Advisory Group	\$300
Sequoia Financial Group LLC	\$275

to serve as financial advisor to the I-Bank in relation to existing and future bond and loan programs and future bond issuances, and to authorize a contract with each firm for a term not to exceed 36 months, in each case in an amount not to exceed \$25,000, and in each case providing for compensation at not greater than the hourly rates as shown above. Staff further recommends that, for the period of these contracts, these five firms constitute a pool of financial advisors from which the Executive Director may appoint one or more firms to provide bond issuance-related services for future bond transactions, subject to the limitation that such services shall be provided pursuant to an engagement letter and paid for solely from bond proceeds, and that payment shall be conditioned upon the issuance of bonds. It is further recommended that each contract and engagement letter provide for reimbursement of the types of costs specified in the firms' responses to the RFQ or as otherwise reasonably approved by the I-Bank contract manager.

The term of each of these appointments or contracts is as stated above unless otherwise rescinded or extended by the Board.

RESOLUTION NO. 10-22

**RESOLUTION OF THE CALIFORNIA INFRASTRUCTURE
AND ECONOMIC DEVELOPMENT BANK APPOINTING
FINANCIAL ADVISORS AND AUTHORIZING CONTRACTS
AND ENGAGEMENT LETTERS THEREWITH**

WHEREAS, the California Infrastructure and Economic Development Bank (“I-Bank”) is formed within state government for the purpose of administering the provisions of the Bergeson-Peace Infrastructure and Economic Development Bank Act (California Government Code Section 63000 et seq.; the “Act”);

WHEREAS, the Act authorizes the I-Bank to issue revenue bonds for its purposes, including to provide funds for the payment of costs of economic development facilities and public development facilities, to issue a variety of bonds for the benefit of the State of California and its departments and agencies, to refund previous obligations of the I-Bank or a sponsor, and to provide funds for expenditures of the I-Bank incident to issuance of bonds or refunding bonds; and

WHEREAS, the Act authorizes the I-Bank to engage the services of financial consultants to render professional and technical assistance in carrying out the purposes of the Act;

WHEREAS, the Act authorizes that when such financial consultants provide services in connection with the issuance and sale of any bonds (as that term is defined in the Act), payment for such services may be made out of the proceeds of the sale of the bonds;

WHEREAS, the Act provides that Section 10295 and Sections 10035 to 10382, inclusive, of the Public Contract Code shall not apply to agreements entered into by the I-Bank in connection with the sale of bonds or notes;

WHEREAS, pursuant to that authorization, the I-Bank sent a Request for Qualifications (“RFQ”) to each firm on the then-current Financial Advisor Pool list maintained by the State Treasurer’s Office;

WHEREAS, twelve responses were received, and following a review by I-Bank staff the following five firms have been proposed to this board for appointment as financial advisors to the I-Bank:

- KNN Public Finance;
- Lamont Financial Services Corporation;
- Public Financial Management;
- Public Resources Advisory Group; and
- Sequoia Financial Group LLC.

NOW, THEREFORE, the Board of Directors of the California Infrastructure and Economic Development Bank does resolve as follows:

Section 1. KNN Public Finance, Lamont Financial Services Corporation, Public Financial Management, Public Resources Advisory Group, and Sequoia Financial Group LLC are hereby appointed to provide financial advisory services, including without limitation those related to the financial analysis and structuring of complex Infrastructure State Revolving Fund Program loans, post-issuance matters related to bonds issued by the I-Bank, and other debt and financial management matters and special projects related to bonds or loans issued by or proposed to be issued by the I-Bank, all of which services are hereby determined to be in connection with the sale of bonds or loans.

Section 2. This Board further authorizes a three-year contract expiring June 30, 2013, with each firm appointed in Section 1 of this resolution, each contract to be in an amount not to exceed \$25,000 and to provide for compensation at hourly rates not greater than as set forth in the Staff Report presented to the Board at this meeting.

Section 3. The Executive Director is further authorized, during the term of any contract authorized in Section 2, to select one or more of the firms under contract to provide bond issuance-related financial advisory services in connection with the issuance and sale of bonds other than pooled bonds and to enter into an engagement letter reflecting such selection, each such engagement letter to establish that services provided thereunder are to be compensated from bond proceeds upon successful issuance and sale of bonds.

Section 4. This resolution shall take effect from and after its adoption.

PASSED, APPROVED AND ADOPTED at a meeting of the California Infrastructure and Economic Development Bank on May 25, 2010, by the following vote:

AYES: BRYANT, LUJANO, BERTE, LEONARD, RICE

NOES: NONE

ABSENT: NONE

ABSTAIN: NONE



Stanton C. Hazelroth, Executive Director

ATTEST:



Roma Cristia-Plant, Secretary of the Board of Directors

CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK (I-BANK)

STAFF REPORT

SUMMARY

ISSUE: At the August 25, 2009, meeting of the I-Bank Board of Directors, I-Bank staff was directed to amend and re-issue a previously issued Request for Qualifications for Special Counsel (Initial RFQ) by the Board in order to stimulate greater price competition among applicants. A copy of the staff report presented to the August 25, 2009 meeting is attached hereto as Exhibit A.

As a result of the responses to the Amended and Restated Request for Qualifications for Special Counsel (Amended RFQ) issued by the I-Bank on August 31, 2009, and subsequent fee negotiations with the responding firms, I-Bank staff now recommends that the Board of Directors (Board) appoint the following three firms to form a pool of public finance legal experts available to provide as needed special counsel services to the I-Bank:

Firm	Proposed Contract Amount
• Hawkins, Delafield & Wood LLP (Hawkins)	\$50,000
• Ronald E. Lee, Attorney at Law and Law Office of Perry Israel (Lee & Israel)	\$75,000
• Stradling Yocca Carlson & Rauth (Stradling)	\$75,000

I-Bank staff proposes to enter into contracts with these three firms for the two-year period beginning January 1, 2010, and ending December 31, 2012, in the amounts set forth above. Each firm has proposed to provide services to the I-Bank for hourly rates that do not exceed \$460 an hour (more fully discussed in the Selection Process section below).

As with the I-Bank's existing special counsel contracts, these contracts will establish a pool of legal experts to which the I-Bank's General Counsel can assign work, depending on the type of expertise needed at any given time, and as necessary to address any conflicts that may exist with the firms' other public finance clients. As has been the case in the past, unspent funds remaining at the expiration of each contract will be disencumbered and available for other necessary operating expenses of the I-Bank, or to make loans under the Infrastructure State Revolving Fund Program.

These proposed contracts have been exempted from the contract reductions of Governor's Executive Order S-09-09, and sufficient funding exists in the 2009-2010 I-Bank budget to encumber the amounts above.

SERVICES TO BE PROVIDED BY APPROVED FIRMS: I-Bank staff proposes to engage the firms to provide the legal services described in the prior staff report upon request for specific services from the I-Bank's General Counsel.

SELECTION PROCESS: Because the special counsel services sought will be in connection with the sale of tax-exempt bonds and loans financed by or pledged to secure such bonds, the Amended RFQ was distributed to the firms on the State Treasurer's Office list of approved bond counsel as of August 31, 2009. The Amended RFQ was also listed on the I-Bank Website. Eight firms submitted timely responses to the Amended RFQ:

- Goodwin Procter LLP
- Hawkins
- Lofton & Jennings
- Orrick, Herrington & Sutcliffe LLP
- Quateman LLP
- Lee & Israel
- Sidley Austin LLP
- Stradling

A committee consisting of the I-Bank's Assistant Executive Director, General Counsel and Infrastructure State Revolving Fund Program Manager I-Bank staff reviewed the proposals to confirm compliance with the conditions of the Amended RFQ, determined that all firms met the minimum qualifications, and evaluated each response based upon: the firm's qualifications and experience; the competitiveness of the proposed fees; and the overall quality of the written response to the Amended RFQ.

The hourly rates proposed by the responding firms ranged from \$460 per hour to \$525 per hour. Given the severe financial constraints State government is experiencing, staff entered into subsequent negotiations with all firms resulting in six of the firms, Goodwin Procter LLP, Hawkins, Lofton & Jennings, Quateman LLP, Lee & Israel and Stradling confirming a willingness to provide special counsel services under a two-year contract for \$460 an hour. Staff proposed a two-year contract term to the firms in the hope that the economy will improve within the next 24 months, and that all parties can reassess compensation rates at that time.

Based upon the selection criteria mentioned above, and in recognition of the expertise of each of the recommended firms in the area of federal tax law applicable to the majority of the I-Bank's transactions, and the prior positive experience I-Bank staff has had in working with bond counsel at both Stradling and Hawkins, the review committee recommends the selection of three firms as special counsel to the I-Bank--Hawkins, Stradling and Lee & Israel in contract amounts as discussed below.

REVIEW OF SELECTION CRITERIA: Each firm was chosen based on the unique combination of experience and overall quality of its response to the RFQ as follows.

Firm's Qualifications and Experience. The qualifications and experience of the recommended firms remain as described in the August 25, 2009, staff report.

Competiveness of Proposed Fees. Each firm has agreed to provide services at rates that do not exceed \$460 per hour.

Overall Quality of Written Response: The overall quality of the written responses of the three proposed firms remains as described in the August 25, 2009, staff report with one change. Stradling was able to provide information sufficient for I-Bank staff to conclude that during the applicable period prior to the application, the firm had provided a sufficient amount of eligible pro bono services to meet the minimum requirement that the I-Bank can consider in awarding a contract in excess of \$50,000. As reported in the August staff report, Hawkins was unable to provide sufficient information to reach this conclusion. For this reason, this firm is being recommended for a contract that does not exceed \$50,000.

Staff is recommending the selection of three firms in order to (i) address the possibility that at any given time one or more of the firms will be unavailable due to conflicts of interests created by other existing client relationships that cannot be waived, (ii) address the possibility that the firm's attorneys do not have the time to adequately provide services at the time services are requested, and (iii) target service requests to firms based on the specific expertise exhibited by each firm to future I-Bank special counsel work, some of which is unknown at this time.

RECOMMENDATION: The contract manager for each contract shall be the I-Bank's General Counsel. Selection of a firm for each assignment will be at the discretion of the General Counsel and be based upon the firm's expertise.

As such, staff recommends approval of Resolution 09-45 appointing the following three firms:

Firm	Proposed Contract Amount
• Hawkins, Delafield & Wood LLP	\$50,000
• Ronald E. Lee, Attorney at Law and Law Office of Perry Israel	\$75,000
• Stradling Yocca Carlson & Rauth	\$75,000

to act as special counsel to the I-Bank for a two-year period beginning January 1, 2010 and ending December 31, 2011, authorizing a contract with each of the above firms for this period in an amount not to exceed the amount set forth above, for services to be provided at hourly rates that do not exceed \$460 per hour.

UNIQUE PROPOSAL AND REQUEST FOR GUIDANCE: In addition to the proposal presented, I-Bank staff wishes to report on a unique and innovative proposal for representation presented by the firm of Orrick, Herrington & Sutcliffe LLP (Orrick). Staff believes that this proposal could potentially be structured to provide significant value for

the I-Bank, and seeks the Board's input on whether to pursue this proposal either as made by this firm or with other firms in the future.

Orrick has proposed to act as special counsel to the I-Bank on a retainer fee basis. The firm proposes a retainer in the amount of \$1,000 per month, for services not including counsel services to the I-Bank for full Internal Revenue Service audits.

As reported in the press, some businesses are moving from the hourly rate method of compensation for outside counsel to the retainer or flat fee method of compensation to control costs. A retainer based compensation system can also result in contractor efficiencies in not having to account for staff time, and simplification of the billing and payment process that could more than offset the benefit of charging higher hourly rates.

While a retainer could result in a law firm being paid the retainer fee in a month in which it provided very few or no services, it could also result in a client's receipt of services far in excess of the monthly fee paid in any given month or over the term of the contract.

For example, over the three year term of the existing special counsel contract with Orrick, the I-Bank engaged the firm for 47.75, 33.25, and 22.75 hours, respectively per year. Assuming a \$1,000 per month retainer fee structure was in effect over the previous three year contract period, the effective annual hourly rate would have been \$251, \$361, and \$527, respectively in each of the three contract years, or on an aggregate contract term, the effective average hourly rate would have been \$347 (calculated as \$36,000/103.75 hours).

I-Bank staff is unaware of any other State entity who has engaged legal firms for special counsel work related to public finance under a retainer payment structure. The above calculations of hours worked and estimated hourly rates are not necessarily indicative of future retainer fee contracts for since the I-Bank special counsel work is on an as needed basis and cannot be projected.

I-Bank staff has not had an opportunity to fully analyze how a retainer arrangement would work. In addition, there are many unknown contract measurable issues including how the I-Bank could assure continued responsiveness of counsel, and what type of work a firm under retainer would perform (work connected to previous engagements or new, unique and more time-consuming work).

I-Bank staff is seeking guidance from the Board as to whether such a retainer agreement should be explored further with Orrick, and suggestions as to what measurables or other contract terms and issues the I-Bank staff should consider.

RESOLUTION 09-45

**RESOLUTION OF THE CALIFORNIA INFRASTRUCTURE AND ECONOMIC
DEVELOPMENT BANK (I-BANK) APPOINTING THREE FIRMS TO SERVE AS
SPECIAL COUNSEL TO THE I-BANK AND AUTHORIZING CONTRACTS
THEREWITH**

WHEREAS, the California Infrastructure and Economic Development Bank (the "I-Bank") is formed within state government for the purpose of administering the provisions of the Bergeson-Peace Infrastructure and Economic Development Bank Act (the "Act"); and

WHEREAS, the Act authorizes the I-Bank to issue a variety of revenue bonds for its purposes, including those to provide funds for the payment of costs of economic development facilities and public development facilities, to refund previous obligations of the I-Bank or a sponsor, and to provide funds for expenditures of the I-Bank incident to issuance of bonds or refunding bonds; and

WHEREAS, the Act authorizes the I-Bank to engage the services of attorneys as may, in the I-Bank's judgment, be necessary in connection with the issuance and sale of any bonds, loans, notes, commercial paper and any other evidences of indebtedness or ownership; and

WHEREAS, the I-Bank has historically engaged one or more special counsel to provide legal advice in connection with the I-Bank's bonds, loans and other evidences of indebtedness; and

WHEREAS, pursuant to the authority of the Act, and acting upon direction of the I-Bank Board of Directors, I-Bank staff sent an Amended and Restated Request for Qualifications for Special Counsel ("RFQ") to all of the counsel on the then-current Bond Counsel Pool list maintained by the State Treasurer's Office, and posted the RFQ on the I-Bank's website; and

WHEREAS, eight responses were received, and following a review by I-Bank staff the following three firms are proposed for appointment as special counsel to the I-Bank: Hawkins Delafield & Wood LLP ("Hawkins"), Ronald E. Lee, Attorney at Law and Law Office of Perry Israel ("Lee and Israel"), and Stradling, Yocca, Carlson and Rauth ("Stradling"); and

WHEREAS, it is proposed that a contract be entered into with each of the three proposed firms for the period of January 1, 2010 through December 31, 2011; and

WHEREAS, it is proposed that contracts be entered into with Hawkins in an amount not to exceed \$50,000, and with Lee and Israel and Stradling, each in an amount not to exceed \$75,000, and that each contract provide for compensation at an hourly rate not greater than \$460 per hour and for reimbursement of costs reasonably approved by the I-Bank contract manager;

NOW THEREFORE, BE IT RESOLVED by the Board of Directors of the I-Bank as follows:

Section 1. The above findings are true and correct in all material respects.

Section 2. Hawkins, Lee and Israel, and Stradling are hereby appointed as special counsel to the I-Bank for the period of January 1, 2010 through December 31, 2011.

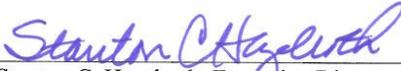
Section 3. A contract may be entered into with each of these firms in amounts not to exceed the amounts set forth next to their respective names below. Each contract shall provide for compensation at an hourly rate not greater than \$460 per hour and for reimbursement as reasonably approved by the I-Bank contract manager.

Hawkins	\$50,000
Lee and Israel	75,000
Stradling	75,000

Section 4. This resolution shall become effective upon adoption.

PASSED, APPROVED AND ADOPTED this 27th day of October 2009, by the following vote:

AYES: BERTE, LUJANO, SHEEHY, AGUIAR
NOES: NONE
ABSENT: RICE
ABSTAIN: NONE



Stanton C. Hazelroth, Executive Director

ATTEST:



Roma Cristia-Plant, Secretary