

RESOLUTION 2021-14

WHEREAS, there exists a need for the services of an attorney-at-law to serve as Bond Counsel for The Bordentown Sewerage Authority; and

WHEREAS, funds are available for this purpose and a certificate of availability of funds has been provided by the designated certifying finance officer and is attached hereto; and

WHEREAS, the Local Public Contracts Law N.J.S.A. 40A:11-1 et seq. requires that the Resolution authorizing the award of Contract for "professional services" without competitive bids and the resulting contract must be available for public inspection; and

WHEREAS, the Local Public Contracts Law further requires that a Notice of the award of the contract be printed as a legal advertisement; and

WHEREAS, this Contract was awarded after a fair and open process.

NOW, THEREFORE, BE IT RESOLVED, by The Bordentown Sewerage Authority this 16th day of February, 2021 as follows:

1. Malamut & Associates, LLC, be and the same is hereby appointed as Bond Counsel for The Bordentown Sewerage Authority. The term of appointment is effective March 1, 2021 and shall be for a term of one year.

2. This Contract is awarded without competitive bidding after a fair and open process as a "professional service" in accordance with N.J.S.A. 40A:11-5(1)(a) of the Local Public Contracts Law because said contract encompasses a professional service recognized, and regulated by law.

3. The Chair and Secretary are hereby authorized and directed to execute the professional services contract with Malamut & Associates, LLC.

4. Notice of this action shall be published once as a legal advertisement in the official newspaper of The Bordentown Sewerage Authority within ten days of its adoption.

THE BORDENTOWN SEWERAGE AUTHORITY

By: M. Ellen Kulbinsky
Chair, M. ELLEN KULBINSKY

ATTEST: [Signature]
Secretary, JOSEPH R. MALONE III

I have reviewed this resolution and the certificate of availability of funds and am satisfied that an appropriate certificate of availability has been provided.

[Signature]
Thomas J. Coleman, III, Esquire
General Counsel

CERTIFICATE OF AVAILABILITY OF FUNDS

I, Elizabeth J. Kwelty, Administrative Manager and Certifying Finance Officer of The Bordentown Sewerage Authority, do hereby certify, pursuant to the rules of the Department of Community Affairs, Division of Local Government Services (N.J.A.C. 5:34-5.1 et seq.), that there are available adequate funds for the following proposed contract:

CONTRACT: Bond Counsel
CONTRACT NUMBER: 2021-C9
CONTRACTOR: Malamut & Associates, LLC
CONTRACT AMOUNT: See Compensation Proposal
BUDGETARY LINE ITEM: 01-001-500F

I certify that the same funds have not been certified as available for more than one pending contract.

2/16/2021

Date



Elizabeth J. Kwelty
Certifying Finance Officer

Special situations (check all that apply):

- A.) The Authority is operating under a temporary budget and:
- 1. the full cost of the contract is certified against the temporary budget; or
 - 2. only the pro rata amount of the contract is charged against the temporary budget and the contract contains a clause making its continuation past the date subject to a further appropriation of sufficient funds.
- B.) This contract is an open-ended contract for goods at a unit price up to a maximum amount and:
- 1. the full maximum amount permitted by the contract is being certified; or
 - 2. the amount of the purchase shall be certified at the time that such goods are ordered by attaching the certificate of availability to the file copy of the purchase order.
- C.) This 12-month contract does not coincide with the fiscal year and:
- 1. the full cost of the contract is hereby certified against the budget of the year in which the contract is awarded; or
 - 2. the amounts for which liability is to be incurred is hereby certified against the two respective budgets at this time.
- D.) This is a multi-year contract and:
- 1. this contract is for construction and related services and the full amount of the contract is hereby certified to the current budget; or
 - 2. this is not a construction contract, and the availability of funds will be certified to the respective budgets at the time that the goods or services are ordered.

2/16/2021
Date



Elizabeth J. Kwelty
Certifying Finance Officer

F. Compensation proposal.

In public finance transactions, we generally bill our clients at the conclusion of the financing for our fees and disbursements based upon fixed fee schedules or hourly rates and out-of-pocket expenses, taking into consideration the size and complexity of the financing and the extent of our responsibilities. We also consider on a case-by-case basis providing either an estimate or a "cap" on our fees and disbursements or a "discount" from normal hourly rates.

In this case, we propose the following fee structure:

1. For all legal services with respect to the authorization and the issuance of a permanent bond issue involving the preparation of a General Bond Resolution or trust indenture and is publicly offered, the fee will be \$35,000 plus \$1.10 per thousand dollars of bonds issued. If the financing consists of an issue of Additional Bonds pursuant to a supplemental bond resolution, the fee will be \$25,000 plus \$1.10 per thousand dollars of bonds issued.
2. For legal services rendered with respect to a temporary financing the fee will be (I) \$7,500 if the financing is less than \$10,000,000 and no official statement is prepared in connection with the financing, (II) \$10,000 if the financing is less than \$10,000,000 and an official statement is prepared in connection with the financing, and (III) \$1.00 per thousand dollars of notes, if the financing is greater than \$10,000,000. If a subordinated note resolution is required to issue notes, an additional fee of \$15,000 will be added. For supplemental resolutions under an existing note resolution, no fee will be charged.
3. For legal services rendered in connection with the issuance of bonds under the New Jersey Infrastructure Bank program, the fee will be \$25,000 in lieu of the fees due under paragraph 1 above. For interim financings through the NJIB, additional fees will be charged in accordance with the schedule set forth in paragraph 2.
4. Any work on Service Agreements, leases or other similar documents as they relate to the issuance of the bonds will be billed at hourly rates in effect when the services are performed.
5. In the event of a refunding bond issue providing for an escrow agreement and an investment of the proceeds consistent with the restrictions of the Internal Revenue Code to provide for the payment of a prior issue of bonds, there will be a fee of \$5,000 in addition to the fees described herein.
6. In the event that bonds are not sold after initial work has been undertaken, bond counsel services will be billed at the hourly rates in effect when the services are rendered.
7. Services rendered beyond the scope of those described above will be billed at the hourly rates for attorneys and paralegals at a blended hourly rate of \$205 an hour for attorneys and \$65 per hour for paralegals.
8. Customary disbursement also will be added to the fees referred to above. The firm will not charge for travel or mileage.