

Request for Proposal for Legal Services To Represent the Berkeley County Solid Waste Authority

The Berkeley County Solid Waste Authority (hereafter “the Authority”) requires legal representation in the development and negotiation of a long-term lease or other similar real estate transaction of land owned by the Authority to be leased to a private company (Entsorga West Virginia, LLC) for the purpose of building and operating an innovative privately-owned commercial solid waste facility. Qualified law firms or attorneys are invited to submit a proposal on or before Thursday, April 11, 2013, to so represent the Authority. Selection of a winning proposal, if any, will be made as soon as possible after that date with representation to commence forthwith upon selection. It is expected that representation will begin as soon as April 18, 2013 and will continue for six to twelve months thereafter. However, a large proportion of the work will be done in the first two months of representation.

Background:

Article 4 of Chapter 22C of the West Virginia Code establishes county “solid waste authorities” to provide specified planning, zoning, and public-service functions with respect to solid waste management within the county, including powers relating specifically to solid waste disposal facilities. Pursuant to W. Va. Code § 22C-4-24, the Authority has promulgated a “Commercial Solid Waste Facility Siting Plan” for Berkeley County that allows for the construction and operation of a Class B commercial mixed waste resource recovery facility at the Authority’s property adjacent to 870 Grapevine Road in Martinsburg, West Virginia. Entsorga West Virginia, LLC (“Entsorga”) has proposed to build and operate such a facility at that location and has obtained a “Certificate of Site Approval” from the Authority to do so. Entsorga has also obtained a Certificate of Need from the Public Service Commission for that purpose and is in the process of securing a solid waste facility permit from the West Virginia Department of Environmental Protection.

The proposed Entsorga facility will utilize European “HEBIOT”¹ technology in conjunction with automated equipment to sort, separate and process mixed solid waste into traditional recyclables and a recovered product called solid recovered fuel (SRF) that can be used for fuel for cement manufacturing kilns and other industrial facilities. This technology furthers the Authority’s objectives by reusing and recycling substantial quantities of waste that would otherwise be landfilled.

The Authority intends to enter into a long-term lease to enable Entsorga to utilize up to 17 acres of the Authority’s land for the planned facility, and desires legal representation in connection therewith.

Authority to Retain Private Counsel:

West Virginia Code Section 22C-4-9 states, in part: “The attorney general shall provide legal counsel and representation to each county and regional solid waste authority within the existing resources and appropriations available for such purposes, or with the written approval of the attorney

¹ High Efficiency Biological Treatment.

general said authority may employ counsel to represent it.” The Attorney General has granted his consent for the Authority to procure its own counsel through a cooperative competitive process consistent with the policy objectives that underlie the Attorney General’s draft “Outside Counsel Policy.”²

The firm or attorney, if any, that is selected as a result of this process will contract directly with the Authority, and the Authority shall be solely responsible for payment of attorney fees and expenses associated with the representation.

Conflict of Interest Information:

All the entities described below have interests that may be adverse to the Authority with respect to the representation herein sought.

Entsorga West Virginia, LLC, is the intended lessee of the property owned by the Authority. It is a Delaware limited liability company authorized to conduct business in West Virginia, the equity in which is or will be held by Entsorgafin S.p.A., a joint-stock company based in Tortona, Italy; Apple Valley Waste Technologies, Inc., and Chemtex International, Inc., based in Raleigh, N.C. The parent company of Apple Valley Waste Technologies, Inc. is Apple Valley Waste Services, Inc., a Delaware corporation, which also owns the Eastern Panhandle’s largest residential waste haulers (AVW of West Virginia and Morgan Sanitation). Said parent company (Apple Valley Waste Services, Inc.) is primarily owned by Summer Street Capital 11, L.P., a Buffalo, N.Y. based private equity firm.

Solid waste facilities in the area that may be in competition with the proposed facility are owned or operated by the Jefferson County Solid Waste Authority and subsidiaries of Waste Management, Inc., including Waste Management of West Virginia, Inc.

Scope of Representation:

The client is the five-member Board of Directors of the Authority. The attorney or firm will work in close coordination with said Board of Directors, its Chairman and any committees of the Board given responsibility with respect to the Entsorga project to review, comment upon, and draft revisions to or replacements of any draft leases or other documents submitted to the Authority by Entsorga; to engage in negotiations with representatives of Entsorga regarding the terms of the proposed real-estate transaction; to conduct factual and legal research to ensure that the Authority acts in compliance with all laws, rules, or regulations applicable in the circumstances; to communicate on an as-needed basis with 1) regulatory authorities (including the West Virginia Department of Environmental Protection, the Public Service Commission, and the State Solid Waste Management Board) to ensure legal compliance and facilitate inter-agency cooperation, 2) the West Virginia County Risk Pool (the liability

² The draft Outside Counsel Policy is posted for public comment on the Attorney General’s website. The draft Policy does not expressly encompass the hiring of private counsel by local solid waste authorities, which are county entities. The Attorney General’s Office will consider whether to include provisions specific to such local authorities within the final Policy.

insurer for the Authority), 3) any appraisal firm(s) hired by the client to ascertain the value of the proposed leasehold interest and 4) local county or municipal agencies with authority regarding building permits or infrastructure; to meet with and advise the Authority's five-member Board of Directors and any committees thereof respecting the above; and any other tasks reasonably necessary to the responsible completion of the listed services. The attorney or firm should be available to meet client representatives on short notice to address unanticipated developments.

Your Proposal:

No specific form is required of your proposal, but it should address those factors identified in the Attorney General's draft Outside Counsel Policy³, and should also address your experience and demonstrated skill (via references, example documents, and/or a descriptive narrative) in the following practice areas:

³ Said draft Policy states:

Factors to be Considered During Competitive Bidding Process: When soliciting proposals from private attorneys to represent the State on a contingency-fee basis, or any other basis, the Attorney General shall consider the following factors when determining the most competitive proposal for legal services, . . . :

Whether the private attorneys possess the requisite skills and expertise needed to handle the legal matters in question;

Whether the private attorneys possess requisite staffing and support to handle the scope of the litigation or matter;

Whether the private attorneys, or any members of the private attorneys' law firm, have been subject to reprimand by the West Virginia State Bar, or other entities, for unethical conduct;

Whether the private attorneys have been peer rated, and if so, what peer ratings they have received, along with any other recognitions or awards for legal services;

The estimated fees, costs and expenses of the private attorneys to perform the legal services requested;

The willingness of the private attorneys to enter into alternative billing arrangements;

Whether the private attorneys are in compliance with all applicable laws of the State of West Virginia; and,

Any such other relevant factors as may be identified by the Attorney General.

- A. Commercial real estate transactions;
- B. Representation of county or regional public agencies, preferably agencies responsible for solid waste planning or management; and
- C. Environmental law, particularly waste management.

In addition, your proposal should address your availability to meet with the client and its representatives in Martinsburg, WV, on a planned regular basis and on short notice. Your proposal should disclose any apparent potential conflict with your existing or former clients.

If you propose to bill hourly rates, please state them separately for each attorney or paralegal to be assigned to this representation and indicate the approximate proportion of total time that will be billed at each rate. Computerized legal research tools, such as WESTLAW or LEXIS, may not be billed as an expense. Please state your per-unit costs (if any) for expenses such as copying; whether you will bill for travel expenses to Martinsburg and at what rate; and whether and how you bill for attorney-time while traveling. Representations made in your proposal will supersede any conflicting terms that are less favorable to the client appearing in any written contract or invoice.

Your proposal should be addressed to the Office of Attorney General and emailed to rfpresponse@wvago.gov. All proposals must be received by email no later than April 11, 2013 at 4:00 p.m. Any questions regarding this request for proposal should likewise be emailed to rfpresponse@wvago.gov.

Evaluation and Acceptance:

Your proposal will be evaluated by the Office of Attorney General in consultation with the Berkeley County Solid Waste Authority. Retention of the selected attorney or firm can legally be accomplished only by a majority vote of the Board of Directors of the Authority at a duly noticed public meeting. Any and all proposals may be rejected.

Administration and Approval of Invoices:

Retention of the selected attorney or firm, if any, is conditioned upon execution of a written contract approved by the Attorney General. In no event will any such contract preclude the termination of the representation at any time by official action of the Authority Board.

A copy of all invoices submitted to the Authority will be provided to the Office of Attorney General to review for reasonableness and consistency with the proposal. Due to processing time, invoices may not be paid for as long as 60 days after receipt. No late fees or interest will be paid except as may be provided by law.

Thank you for considering this Request for Proposal.