



ERIE COUNTY WATER AUTHORITY
INTEROFFICE MEMORANDUM

August 8, 2018

To: Terrence D. McCracken, Secretary to the Authority
From: Karen A. Prendergast, Comptroller *KAP*
Subject: Interim Financial Audit

At our meeting on August 7th, Commissioner Jones requested a copy of our current contract for Audit Services and discussed the possibility of an interim audit through his appointment date.

I have provided the contract to Commissioner Jones. It does not, however, contain a provision for additional audit services. I believe the most efficient way to obtain interim audit services with Drescher & Malecki is by Board resolution. They have audited our annual financial statements since 2014 — most recently, the 2017 audit report was issued on March 22, 2018. Another firm would likely decline an interim audit engagement or would require significantly more time to opine on our financial statements.

After preliminary discussions with Nichole Ruf at Drescher & Malecki, it was determined that no time or cost estimate could be made without defining a more specific scope of work. With the permission of the Board, I would like to pursue the possibility of an interim audit through Board resolution after obtaining clarification on scope. Alternately, Commissioner Jones could request expanded testing or specific reviews when the audit of the 2018 financial statements begins in mid-December.

Going forward, contracts for audit services should contain a provision for other audit or accounting services at an established hourly rate. I have included a copy of the Audit Services contract as well as Drescher & Malecki's current hourly rates for your records.

If you concur that this is an issue which requires Board consideration, please include a staff item on the Audit Committee meeting of August 16, 2018.

PROFESSIONAL SERVICES CONTRACT

AGREEMENT made this 16th day of October, 2014, by and between:

ERIE COUNTY WATER AUTHORITY
295 Main Street, Room 350
Buffalo, New York 14203

hereinafter referred to as the "Authority", and

Drescher & Malecki LLP
3083 William Street, Suite 5
Cheektowaga, New York 14227

hereinafter referred to as "Consultant".

WHEREAS, the Authority desires to contract with the Consultant to render professional independent certified public accounting audit services upon the terms and for the consideration hereinafter stated;

WHEREAS, the Consultant represents that it is properly qualified to render such services;
and

WHEREAS, the parties desire to set forth herein the terms and conditions under which the said professional services will be furnished;

NOW, THEREFORE, in consideration of mutual promises herein set forth, the parties agree as follows:

1. QUALIFICATION OF CONSULTANT:

The Consultant shall perform its services under this agreement in a skillful and competent manner in accordance with the prevailing standards of the consulting profession. The Consultant will be responsible to the Authority for errors or omissions in the performance of its services and failure to perform thereof.

2. SCOPE OF SERVICES:

The Erie County Water Authority requires an Independent Certified Public Accountant(s) to provide audit and accounting advisory services for each of its fiscal years ending December 31, 2014, 2015 and 2016. Services will include, but are not limited to:

1) Examination of Financial Statements for the three years ending December 31, 2014, 2015 and 2016 resulting in the expression of an opinion on these statements by the Independent Certified Public Accountant.

2) Examination of the Statement of Investments for the three years ending December 31, 2014, 2015 and 2016 resulting in the expression of an opinion on this report of investments by account (Extension and Improvement Account, Operating and Maintenance Account, Debt Service Reserve Account, Debt Service Account, Long-Term Investment Account and any other required accounts) and income derived therefrom.

3) Examination of the Schedule of Overhead Percentage for the three years ending December 31, 2014, 2015 and 2016 resulting in the expression of an opinion on the overhead methodology and components used to arrive at the overhead percentage.

4) Meet with management of the Authority, prior to conducting the annual audit, to discuss issues, concerns, developments, matters, etc., with regard to the issuance of the Financial Statements, Statement of Investments and/or the Schedule of Overhead Percentage. Also, discuss with and provide to the Authority's management a listing of the client-assistance schedules prepared for the annual audit by the Independent Certified Public Accountant, prior to commencing the annual audit.

5) A formal report to the Audit Committee of the Board of Commissioners on the results of each annual audit presented by the partner-in-charge of the engagement, including procedures followed and comments on any material items noted during the examination.

6) The Authority has been submitting its Financial Statements to the Government Finance Officers Association (GFOA) for consideration of receiving GFOA's Certificate of Achievement for Excellence in Financial Reporting. If there is any additional cost associated with the respondent's services, please identify the particulars for the charges and the total cost for the same. The Authority has received the award for the years ended December 31, 2004, through December 31, 2012 and has applied for consideration for 2013.

All reports for each year must be completed by March 25th of the following year and sufficient number of copies of the reports delivered to the Authority in order to allow the Authority to comply with New York State Public Authorities Law reporting deadline which is March 31st each year. The Authority also requires all reports to be provided in Microsoft Word so that selected reports can be reproduced in the Authority's Annual Report.

6. INDEMNIFICATION:

The Consultant shall indemnify the Authority against any and all claims arising from the services performed by the Consultant herein and shall defend and hold harmless the Authority from and against all claims, suits, actions, costs, counsel fees, expenses, damages, judgments or decrees based upon or arising out of damage to property or injury to persons or other tortious' conduct caused or contributed to it by the Consultant or anyone under its direction or control or on its behalf in the course of its performance under this Agreement. The Consultant further agrees to indemnify, defend and hold harmless the Authority from any and all claims in reference to the services performed by the Consultant hereunder which may infringe on a patent, copyright, trade secret or other proprietary right of any third party.

7. CONFIDENTIAL INFORMATION:

In order to assist the Consultant in the performance of this Agreement, the Authority may provide the Consultant with confidential information including, but not limited to information relative to the services to be performed. All information received by the Consultant in any fashion and under any conditions resulting from the rendering of the services in consideration of this agreement, is considered confidential. The Consultant shall hold in confidence and not disclose to any person or any entity, any information regarding information acquired during the performing of services including but not limited to information relative to the services to be performed.

The Consultant shall use at least the same degree of care to protect and prevent unauthorized disclosure of any confidential information as it would use to protect and prevent unauthorized disclosure of its own proprietary information. The Consultant shall use confidential information only in the performance of this Agreement. No other use of the confidential information whether for the consultant's benefit or for the benefit of others shall be permitted.

In no event is the Consultant authorized to disclose confidential information without the prior written approval of the Authority. The terms of this paragraph shall be binding during and subsequent to the termination of this agreement.

8. INSURANCE:

The Consultant shall secure and maintain such insurance as will protect itself from claims under the Workers' Compensation Act; claims for damages because of bodily injury, including personal injury, sickness or disease, or death of any of its employees or of any person other than its employees; and from claims for damages because of injury to or destruction of property including loss of use resulting therefrom in the amounts indicated on Exhibit "C" of the RFP. The Consultant shall provide and maintain insurance that will provide coverage for claims arising out of the negligent performance of its services. The Consultant shall provide Certificates of Insurance certifying the coverage required by this provision.

9. COPYRIGHTS, TRADEMARKS, AND LICENSING:

All materials produced under this Agreement, whether produced by the Consultant alone or with others, and whether or not produced during regular working hours, shall be considered work made for hire and the property of the Authority. The Consultant shall, during and subsequent to the terms of this Agreement, assign to the Authority, without further consideration, all right, title and interest in all material produced under this Agreement. All material produced under this Agreement shall be and remain the property of the Authority whether or not registered.

In performing work under this agreement, the Consultant may be granted access to the Authority's GIS data, documents, and other information. The Consultant understands and agrees that the use of such data, documentation and information shall be treated as confidential information and the Consultant shall abide by the terms and conditions of any confidentiality and copyright leasing agreements.

10. NEW YORK LAW AND JURISDICTION:

Notwithstanding any other provision of this Agreement, any dispute concerning any question of fact or law arising under this Agreement which is not disposed of by agreement between the Consultant and the Authority shall be governed, interpreted and decided by a Court of competent jurisdiction of the State of New York in accordance with the laws of the State of New York and venue shall be the County of Erie, State of New York.

11. CONFLICTS OF INTEREST:

The Consultant represents that it has advised the Authority in writing prior to the date of signing this Agreement of any relationships with third parties, including competitors of the Authority, which would present a conflict of interest with the rendering of the services, or which would prevent the Consultant from carrying out the terms of this Agreement or which would present a significant opportunity for the disclosure of confidential information. The Consultant will advise the Authority of any such relationships that arise during the term of this Agreement. The Authority shall then have the option to terminate the Agreement without further liability of the Consultant, except to pay for services actually rendered.

12. ADDITIONAL CONDITIONS:

The Consultant and the Authority acknowledge that there may be additional conditions, terms and provisions which shall apply specifically to the services to be performed. The parties agree to negotiate in good faith to agree upon such additional terms.

13. ENTIRE AGREEMENT:

This Agreement, the RFP issued by the Authority and the Consultant's response to the RFP constitute the entire understanding of the parties and no representations or agreements, oral or written, shall vary or modify the terms herein. This Agreement supersedes all prior contemporaneous communications, representations, or agreements, whether oral or written with

respect to the subject matter hereof and has been induced by no representations, statements or agreements other than those herein expressed. No agreement hereafter made between the parties shall be binding on either party unless reduced to writing and signed by an authorized officer of the party sought to be bound thereby.

14. INDEPENDENT STATUS:

Nothing contained in the Agreement shall be construed to render either the Authority or the Consultant a partner, employee or agent of the other, nor shall either party have authority to bind the other in any manner, other than as set forth in this Agreement, it being intended that the Consultant shall remain an independent contractor responsible for its own actions. The Consultant is retained by the Authority only for the purpose and to the extent set forth in this Agreement.

The Consultant is free to choose the aggregate number of hours worked and substantially all of the scheduling of such hours as it shall see fit at its discretion within the limitations set forth hereinbefore in Paragraph 2.

Neither the Consultant nor its employees shall be considered under the provisions of this Agreement or otherwise as having an employee, servant or agency status or as being entitled to participate in any plans, arrangements or distributions of the Authority.

In providing the services under this Agreement, the Consultant represents and warrants that it has complied with all applicable federal, state and local laws particularly with respect to licenses, withholdings, reporting and payment of taxes. The Consultant agrees to furnish copies of documentation to the Authority evidencing its compliance with such laws if requested. The Consultant further represents and warrants that any income accruing to the Consultant and its employees from the Agreement shall be reported as such to the appropriate taxation authorities.

15. COMPLIANCE:

The Consultant agrees that the Agreement herein shall be in compliance with and governed by the provisions of Sections 2875, 2876 and 2878 of the Public Authorities Law of the State of New York. The Consultant further affirms under the penalties of perjury that there was no collusion in the proposal submitted herein to ECWA which forms the basis of the within Agreement.

16. GRATUITIES:

The Consultant prohibits its employees from using their positions for personal financial gain, or from accepting any personal advantage from anyone under circumstances which might reasonably be interpreted as an attempt to influence the recipients in the conduct of their official duties. The Consultant or its employees shall not, under circumstances which might be reasonably interpreted as an attempt to influence the recipients in the conduct of their duties, extend any gratuity or special favor to employees of the Authority.

17. NOTICE:

Any notices required by this Agreement or otherwise shall be delivered by United States Postal Service or personal delivery upon the addresses hereinbefore stated. Any change in such addresses shall be required to be in writing to the other party and acknowledged as such.

18. SEVERABILITY:

If any provision of this agreement shall be held invalid or unenforceable, in whole or in part, such provision shall be modified to the minimum extent necessary to make it valid and enforceable, and the validity and enforceability of all other provisions of this agreement shall not be affected thereafter.

19. TERMINATION:

The Authority reserves the right to terminate this contract in the event it is found that the Certification filed by the Consultant in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Authority may exercise its termination right by providing written notification to the Consultant in accordance with the written notification terms of this contract.

ERIE COUNTY WATER AUTHORITY

By: 

Francis G. Warthling, Chairman

Drescher & Malecki LLP

By: 

THOMAS P. MALECKI, President

STATE OF NEW YORK)
COUNTY OF ERIE)ss:

On the 16th day of October, in the year 2014, before me personally came Francis G. Warthling to me known, who, being by me duly sworn, did depose and say that he resides in Blasdell, New York, that he is the Chairman of the Corporation described in the above instrument; and that he signed his name thereto by order of the Board of Directors of said Corporation.

Patricia Fabozzi
Notary Public

PATRICIA FABOZZI #4957586
Notary Public, State of New York
Qualified in Erie County
My Commission Expires October 16, 20

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

On the 13th day of October, in the year 2014, before me personally came Thomas P Malecki, to me known, who, being by me duly sworn, did depose and say that he/she resides in Town, New York, that he/she is the President of the Corporation described in the above instrument; and that he/she signed his/her name thereto by order of the Board of Directors of said Corporation.

Matthew T Malecki
Notary Public



4844-14



Erie County Water Authority

295 Main Street, Rm. 350 • Buffalo, NY 14203-2494
716-849-8484 • Fax 716-849-8467

July 31, 2017

Mr. Thomas P. Malecki
Drescher & Malecki LLP
3083 William Street, Suite 5
Cheektowaga, New York 14227

Re: Amendment No. 1
Examination of the Authority's
Financial Statements for the Years Ending
December 31, 2014, 2015 and 2016 and
Submitting the Authority's Financial
Statements/ Reports to the Government
Finance Officers Association for
Consideration of Receiving the Certificate
Of Achievement for Excellence in Financial Reporting
Project No. 201400193

Dear Mr. Malecki:

Enclosed herewith please find an Extract from the Minutes of the Meeting of the Erie County Water Authority held on Thursday, July 27, 2017 authorizing the execution of Amendment No. 1 in connection with the above-referenced contract.

Also enclosed please find a duly executed Amendment for your files.

Very truly yours,

ERIE COUNTY WATER AUTHORITY

Joseph T. Burns
Secretary to the Authority

JTB:tf

Enclosures

Cc: Robert J. Lichtenthal, Jr.
Gary Murray ✓

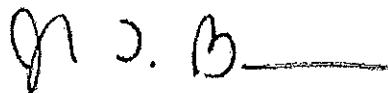


4844-14

CERTIFICATION

I, **JOSEPH T. BURNS**, the duly elected and qualified **SECRETARY TO THE AUTHORITY** to the **ERIE COUNTY WATER AUTHORITY**, a corporation existing under the Laws of the State of New York, do hereby certify that I have compared the annexed resolution which is an extract from the Minutes of the Meeting of the Authority held in the office, 295 Main Street, Room 350, Buffalo, New York, on the 27th day of July, 2017 a quorum being present and that said resolution is a true and correct copy of the resolution so adopted and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said corporation this 31st day of July, 2017.



Joseph T. Burns
Secretary to the Authority

(SEAL)

**EXTRACT FROM THE MINUTES OF THE MEETING OF THE
ERIE COUNTY WATER AUTHORITY
JULY 27, 2017**

At a regular meeting of the Erie County Water Authority held in the office, 295 Main Street, Room 350, Buffalo, New York, on the 27th day of July, 2017, a quorum being present, the following resolution was adopted:

WHEREAS, Heretofore and on the 16th day of October, 2014, the Erie County Water Authority ("Authority") entered into an agreement with Drescher & Malecki LLP to provide professional accounting services in connection with the examination of the Authority's financial statements for the years ending December 31, 2014, 2015 and 2016 and submission of the Authority's financial statements/reports to GFOA; and

WHEREAS, Said consultant has submitted Amendment No. 1 to amend the contract to add the option of two (2) one year mutually agreed to extensions; and

WHEREAS, The Authority's Audit Committee recommends approval of said Amendment No. 1;

NOW, THEREFORE, BE IT RESOLVED:

That Amendment No. 1 of Drescher & Malecki LLP to provide for the abovementioned change be approved; and be it further

RESOLVED: That the Chairman is hereby authorized to execute said Amendment No. 1 on behalf of the Authority.

A motion was made by Mr. Simmeth seconded by Mr. Schad and carried to adopt the foregoing resolution.

4844-14

ERIE COUNTY WATER AUTHORITY
PROFESSIONAL SERVICES CONTRACT
AMENDMENT No. 1

Project No. 201400193 Contract No. DM-2
Job No. _____ EC No. _____
OWIP No. _____ Entered by/Date 7/2017 - RJL
Title: Professional Independent Certified Public Accounting Audit Services

Consultant: Drescher & Malecki, LLP
3083 William Street, Suite 5, Cheektowaga, New York 14227

Description of Change to Contract:
Amend contract to add the option of two (2) one-year mutually agreed to extensions.

Compensation:
2017 - \$34,447.00
2018 - \$35,136.00

APPROVED BY:

DRESCHER & MALECKI LLP

ERIE COUNTY WATER AUTHORITY

Thomas P. Malecki 7/14/17
Thomas P. Malecki Date

Robert J. Lichtenhal, Jr. 7/14/17
Robert J. Lichtenhal, Jr. Date
Deputy Director

Robert Anderson 7-27-17
Robert Anderson Date
Chairman

New Contract Amount 2017 - \$34,447.00
2018 - \$35,136.00

COST PROPOSAL



We sincerely appreciate the opportunity to present our qualifications and ask that the Authority enters into a contract that will allow Drescher & Malecki LLP to provide professional independent audit services to the Authority. The individual signing the proposal is entitled to represent the firm, empowered to submit the bid, and authorized to sign a contract with the Erie County Water Authority. We have an understanding of the Authority's needs and expectations and believe no other firm can match our knowledge and ability to serve the Erie County Water Authority. Please find a detailed breakdown of our estimated rates in the charts below.

Audit				
	Planning & Control Testing	Substantive Procedures	Reporting & Communications	Total
Partner	20	23	27	70
Manager	16	22	22	70
Senior/In-charge	15	45	25	85
Staff	40	80	5	125
	<u>91</u>	<u>170</u>	<u>79</u>	<u>350</u>

	Estimated Hours	Standard Hourly Rates	Quoted Hourly Rates	Total
Partners	70	\$ 175	\$ 146	\$ 10,220
Managers	70	125	105	\$ 7,350
Supervisory staff	85	100	84	\$ 7,140
Staff	125	75	62	\$ 7,750
Total price for Audit Services				<u>\$ 32,460</u>

	Year Ending December 31,				
	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>
All Inclusive Fee	<u>\$ 32,460</u>	<u>\$ 33,109</u>	<u>\$ 33,771</u>	<u>\$ 34,447</u>	<u>\$ 35,136</u>

Rates for Additional Professional Services

The routine financial advice and consultation is embedded in our fee. Should services be requested in respect to the issuance and refinancing of debt our fee will range between \$1,500 and will not exceed \$7,500 per occurrence. Our hourly rates are as follows: Partner \$175; Manager \$125; Supervisory Staff \$100; Professional Staff \$75 and Administrative \$50.

**PROPOSAL TO SERVE
THE ERIE COUNTY
WATER AUTHORITY**

