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MEMBERS



SANFORD N. BERLAND
EXECUTIVE DIRECTOR (INTERIM)

NEW YORK STATE
COMMISSION ON ETHICS AND LOBBYING
IN GOVERNMENT

PHONE: (518) 408-3976
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540 BROADWAY
ALBANY, NEW YORK 12207
ethics.ny.gov

TO: COMMISSIONERS
FROM: COMMISSION STAFF
DATE: NOVEMBER 15, 2022
RE: Request for Exemption Pursuant to POL § 73(8-b):
• [REDACTED] (Thruway Authority)

BACKGROUND

This is a request from the New York State Thruway Authority (“Thruway”) for an exemption from the post-employment restrictions, pursuant to Public Officers Law § 73(8-b), allowing the agency to contract with [REDACTED], former [REDACTED], to render services to the agency. A letter from Executive Director Matthew Driscoll in support of this request is attached hereto. The request arises from [REDACTED] 2019 retirement, and the agency’s continuing need for [REDACTED] experience and knowledge of the design issues associated with the construction of the Tappan Zee Hudson River Crossing Project (now known as the Governor Mario M. Cuomo Tappan Zee Bridge) pursuant to a design-build contract with Tappan Zee Constructors, and cost overruns associated with the bridge’s construction, that are now the subject of a multi-tiered administrative review process.

The Thruway Executive Director indicates that the agency is in the midst of a contractual administrative dispute resolution process to resolve a \$946 million contract dispute with Tappan Zee Constructors (TZC) over additional time and work involved in the bridge’s construction for which TZC claims it’s due payment. Thruway requires [REDACTED] consulting, given [REDACTED] history, experience, and knowledge of the Project’s in-depth design issues that encompass many topics throughout the life of the Project.

Executive Director Driscoll has certified to this commission that [REDACTED] has a unique combination of expertise, knowledge, and experience with respect to the agency’s review of TZC’s design plans which meets the agency’s need and is otherwise unavailable at a comparable cost.

Thruway seeks permission to engage with [REDACTED] for one year, beginning December 1, 2022, for a total contract amount not to exceed \$35,000.

LEGAL FRAMEWORK

Pursuant to Public Officers Law § 73(8-b), the Commission on Ethics and Lobbying in Government is authorized to grant exemptions to the post-employment restrictions contained in Public Officers Law § 73(8)(a) in order to permit an agency to contract with a former employee. Specifically, Public Officers Law § 73(8-b) allows for such an exemption when “the agency head certifies in writing to the Commission that such former officer or employee has expertise, knowledge or experience with respect to a particular matter which meets the need of the agency and is otherwise unavailable at a comparable cost.”

Since the provision became law in 2004, the State Ethics Commission, the Commission on Public Integrity, and the Joint Commission on Public Ethics have required requesting agencies to provide and demonstrate the following:

1. The request must be in writing and signed by the head(s) of the agency(ies);
2. The request must name the specific former officers of former employees to be exempted;
3. The request cannot be open-ended, but must be for a specific period of time;
4. The request must provide sufficient information to establish that the former employee possesses expertise, knowledge, or experience in a particular matter; institutional or general knowledge about the agency is insufficient;
5. The request must include sufficient information to establish that the agency has made inquiries as to the availability of comparable services and the cost of such services;
6. The former employee’s compensation must be commensurate with the former employee’s salary while in State service;
7. The request must provide sufficient information to establish that the agency has not contributed to creating the situation in which the former employee’s services are now required – i.e., that it has taken steps to replace the former employee; and
8. The exemption, if granted, will be for no longer than a time period necessary to enable the agency to find other means to obtain the required services.

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• [REDACTED] (Thruway Authority)

BACKGROUND

This is a request from the New York State Thruway Authority (“Thruway”) for an exemption from the post-employment restrictions, pursuant to Public Officers Law § 73(8-b), allowing the agency to contract with [REDACTED], former [REDACTED] [REDACTED], to render services to the agency. A letter from Executive Director Matthew Driscoll in support of this request is attached hereto. The request arises from [REDACTED] 2018 retirement¹, and the agency’s continuing need for [REDACTED] experience and knowledge of the in-depth environmental issues associated with the construction of the Tappan Zee Hudson River Crossing Project (now known as the Governor Mario M. Cuomo Tappan Zee Bridge) pursuant to a design-build contract with Tappan Zee Constructors, and cost overruns associated with the bridge’s construction, that are now the subject of a multi-tiered administrative review process.

The Thruway Executive Director indicates that the agency is in the midst of a contractual administrative dispute resolution process to resolve a \$946 million contract dispute with Tappan Zee Constructors (TZC) over additional time and work involved in the bridge’s construction for which TZC claims it’s due payment. Thruway requires [REDACTED] consulting, given [REDACTED] history, experience, and knowledge of the Project’s environmental implications that encompass many topics throughout the life of the Project, including the payment and change condition requirements and other contractual matters.

¹ [REDACTED] retired from the Thruway Authority on June 28, 2018 and was hired back part-time from October 3, 2018 through December 31, 2021.

Executive Director Driscoll has certified to this commission that [REDACTED] has a unique combination of expertise, knowledge, and experience with respect to the agency's review of TZC's disputed work items which meets the agency's need and is otherwise unavailable at a comparable cost.

Thruway seeks permission to engage with [REDACTED] for one year, beginning December 1, 2022, for a total contract amount not to exceed \$35,000.

LEGAL FRAMEWORK

Pursuant to Public Officers Law § 73(8-b), the Commission on Ethics and Lobbying in Government is authorized to grant exemptions to the post-employment restrictions contained in Public Officers Law § 73(8)(a) in order to permit an agency to contract with a former employee. Specifically, Public Officers Law § 73(8-b) allows for such an exemption when "the agency head certifies in writing to the Commission that such former officer or employee has expertise, knowledge or experience with respect to a particular matter which meets the need of the agency and is otherwise unavailable at a comparable cost."

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6. The former employee's compensation must be commensurate with the former employee's salary while in State service;
7. The request must provide sufficient information to establish that the agency has not contributed to creating the situation in which the former employee's services are now required – i.e., that it has taken steps to replace the former employee; and
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• [REDACTED] (Thruway Authority)

BACKGROUND

This is a request from the New York State Thruway Authority (“Thruway”) for an exemption from the post-employment restrictions, pursuant to Public Officers Law § 73(8-b), allowing the agency to contract with [REDACTED], former [REDACTED], to render services to the agency. A letter from Executive Director Matthew Driscoll in support of this request is attached hereto. The request arises from [REDACTED] 2021 retirement, and the agency’s continuing need for [REDACTED] experience and knowledge of the in-depth commercial issues associated with the construction of the Tappan Zee Hudson River Crossing Project (now known as the Governor Mario M. Cuomo Tappan Zee Bridge) pursuant to a design-build contract with Tappan Zee Constructors, and cost overruns associated with the bridge’s construction, that are now the subject of a multi-tiered administrative review process.

The Thruway Executive Director indicates that the agency is in the midst of a contractual administrative dispute resolution process to resolve a \$946 million contract dispute with Tappan Zee Constructors (TZC) over additional time and work involved in the bridge’s construction for which TZC claims it’s due payment. Thruway requires [REDACTED] consulting, given his history, experience, and knowledge of the Project’s commercial implications that encompass many topics throughout the life of the Project, including the payment and change condition requirements and other contractual matters.

Executive Director Driscoll has certified to this commission that [REDACTED] has a unique combination of expertise, knowledge, and experience with respect to the agency’s review

of TZC's disputed work items which meets the agency's need and is otherwise unavailable at a comparable cost.

Thruway seeks permission to engage with [REDACTED] for one year, beginning December 1, 2022, for a total contract amount not to exceed \$35,000.

LEGAL FRAMEWORK

Pursuant to Public Officers Law § 73(8-b), the Commission on Ethics and Lobbying in Government is authorized to grant exemptions to the post-employment restrictions contained in Public Officers Law § 73(8)(a) in order to permit an agency to contract with a former employee. Specifically, Public Officers Law § 73(8-b) allows for such an exemption when "the agency head certifies in writing to the Commission that such former officer or employee has expertise, knowledge or experience with respect to a particular matter which meets the need of the agency and is otherwise unavailable at a comparable cost."

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6. The former employee's compensation must be commensurate with the former employee's salary while in State service;
7. The request must provide sufficient information to establish that the agency has not contributed to creating the situation in which the former employee's services are now required – i.e., that it has taken steps to replace the former employee; and
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RE: Request for Exemption Pursuant to POL § 73(8-b):
• [REDACTED] (Homes and Community Renewal)

BACKGROUND

This is a request from Homes and Community Renewal (HCR) for an exemption from the post-employment restrictions, pursuant to Public Officers Law § 73(8-b), allowing the agency to contract with [REDACTED], former [REDACTED], to render services to the agency. A letter from Commissioner RuthAnne Visnauskas in support of this request is attached hereto. The request arises from [REDACTED] 2022 retirement from State service and the agency's continuing need for [REDACTED] familiarity with and expertise in the agency legal department's transactional practice, including the negotiation, documentation, and closing of certain NYS Housing Finance Agency¹ (HFA) bond financed multi-family housing projects, and post-closing asset management issues related to those projects.

The HCR Commissioner indicates that the agency needs [REDACTED] expertise with Housing Finance Agency (HFA) bond financed multi-family housing projects in order to support the work of HCR junior attorneys in five transactions that were under negotiation at the time of [REDACTED] retirement and scheduled to close next month, in addition to the negotiation of transactions anticipated to close in March 2023². Commissioner Visnauskas' exemption certification letter indicates that [REDACTED] played a critical role in advancement of these complex real estate financing transactions, and that [REDACTED] continued involvement and support of the agency's ongoing transaction work in that regard is critical to meeting the immediate goals of the agency to

¹ The New York State Housing Finance Agency is housed within Homes and Community Renewal.

² The exemption certification letter's reference to March 2022 includes a typographical error; the year should read 2023, consistent with the agency's anticipated closure of certain HFA financed projects in the first quarter of 2023.

finance affordable multi-family housing projects; as well as to facilitate the transition to new leadership in the wake of [REDACTED] separation from State service.

Commissioner Visnauskas has certified to this commission that [REDACTED] has a unique combination of expertise, knowledge, and experience with respect to the transactional and asset management functions undertaken by the agency's Office of [REDACTED] in support of the Governor's recently adopted Housing Plan that is otherwise unavailable at a comparable cost.

HCR seeks permission to engage with [REDACTED] for six months, at no more than 3 days per week, for a total contract amount not to exceed \$70,000. Her annual salary at the time of her retirement was \$205,000.

LEGAL FRAMEWORK

Pursuant to Public Officers Law § 73(8-b), the Commission on Ethics and Lobbying in Government is authorized to grant exemptions to the post-employment restrictions contained in Public Officers Law § 73(8)(a) in order to permit an agency to contract with a former employee. Specifically, Public Officers Law § 73(8-b) allows for such an exemption when "the agency head certifies in writing to the Commission that such former officer or employee has expertise, knowledge or experience with respect to a particular matter which meets the need of the agency and is otherwise unavailable at a comparable cost."

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8. The exemption, if granted, will be for no longer than a time period necessary to enable the agency to find other means to obtain the required services.