

New York Liquidation Bureau
180 Maiden Lane
New York, NY 10038
www.nylb.org

Date Posted:
October 27, 2020

Proposal Submission Deadline:
December 4, 2020 at 5:00 pm (EST)

REQUEST FOR PROPOSAL

TRUSTEE SERVICES

For the New York Liquidation Bureau

Voluntary Employees Beneficiary Association

Retiree Health Benefits Trust

REQUEST FOR PROPOSALS

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REQUEST FOR PROPOSALS

Request for Proposals

THE NEW YORK LIQUIDATION BUREAU

The New York Liquidation Bureau (“NYLB”) carries out the responsibilities of the Superintendent of Financial Services of the State of New York (“Superintendent”) as receiver (“Receiver”) administering the affairs of impaired or insolvent insurance companies that are in court-ordered receivership.

The NYLB invites all qualified firms that provide trustee services (each, a “Bidder”) to draft and submit, at Bidder’s sole expense, a proposal (“Proposal”) in accordance with the requirements outlined in this request for proposal (“RFP”). The selected Bidder (“Awardee”), if any, will perform services solely on behalf of the Superintendent as Receiver of impaired or insolvent insurance companies, not in her capacity as regulator.

TIMETABLE OF KEY EVENTS

The NYLB reserves the right, in its sole discretion, to modify any event, time, or date in the timetable below. The NYLB will notify Bidders of any changes.

Event	Date
RFP posting on NYLB website	October 27, 2020
Deadline to submit written questions to the NYLB	November 30, 2020
Deadline to submit Proposals to the NYLB	December 4, 2020

DESCRIPTION OF SERVICES REQUESTED

Description of Services Requested

TRUSTEE SERVICES

The NYLB offers retiree medical benefits to its employees through participation in the New York State Health Insurance Program, a New York State-sponsored retirement health benefits plan (“Retiree Medical Benefit Plan”) as a non-governmental employer. The NYLB has reserved approximately \$30 million for the purpose of partially pre-funding its future obligations under the Retiree Medical Benefit Plan.

The NYLB will create the New York Liquidation Bureau Voluntary Employees’ Beneficiary Association Retiree Health Benefits Trust (“VEBA Trust”), which is designed to qualify as a tax-exempt trust under section 501(c)(9) of the Internal Revenue Code, by which it can safeguard and use the reserved funds for their intended purpose. The VEBA Trust will be operated and administered for the benefit of retired NYLB employees, dependents and beneficiaries of retired employees who are eligible to participate in the Retiree Medical Benefit Plan. The NYLB will fund the VEBA Trust with the reserved funds, which will be available to help defray future costs of its Retiree Medical Benefit Plan obligations and cannot be diverted for other purposes.

The NYLB is seeking trustee services for the VEBA Trust from a qualified financial institution authorized to act as a trustee in New York State under applicable state or federal law; **provided, however, that the institution is not subject to regulation by the New York State Department of Financial Services.**

Services that will be required under the Trust Agreement include, but are not limited to:

- **Safe and proper fund oversight** – The trustee, directly or through an investment manager, must take all reasonable actions to hold and safeguard VEBA Trust fund assets.
- **Prudent investments** – The trustee must invest VEBA Trust assets pursuant to instructions and guidelines from the Investment Committee or investment professional.
- **Proper administration** – The trustee must operate and administer the VEBA Trust in accordance with the provisions of the Trust Agreement, including disbursement of funds at the direction of the Administrative Committee.
- **Fiduciary responsibilities** – The trustee must acknowledge its status as fiduciary of the VEBA Trust and perform all of its duties under the legal standard of prudence and care applicable to fiduciaries.
- **Accounting** – The trustee must maintain accurate records and provide accounting for VEBA Trust fund assets.

DESCRIPTION OF SERVICES REQUESTED

The trustee will be compensated in accordance with terms of a Trust Agreement with the NYLB, and pursuant to a mutually agreeable fee arrangement.

INVESTMENT MANAGEMENT OR ADVISORY SERVICES

Separate and in addition to trustee services, the NYLB may consider retaining an investment manager or advisor for the VEBA Trust. To the extent that Bidder is able to provide investment management or advisory services, Bidder is encouraged to submit additional, detailed information in its Proposal regarding such ancillary services, including fees.

With respect to investment management or advisory services for the VEBA Trust assets, Bidder must provide investment advice in light of the investment objectives established by the investment committee and the size and liquidity requirements of the VEBA Trust fund; review and propose revisions to the VEBA Trust's investment guidelines; manage the portfolio in accordance with the VEBA Trust's investment guidelines; provide transparency regarding investment selection and advisory processes; monitor compliance and controls; report quarterly to the VEBA Trust Investment Committee regarding the portfolio's performance and overall capital market conditions; and otherwise communicate with the trustee and the Investment Committee, including any significant economic changes impacting the VEBA Trust investment portfolio.

RULES AND INSTRUCTIONS

Rules and Instructions

CONFIDENTIALITY AGREEMENT

For additional information, including the proposed Trust Agreement and investment guidelines, a Bidder must complete notice details in paragraph 9 of the Confidentiality Agreement attached as Appendix A, sign it, and return a PDF copy of the executed Confidentiality Agreement to the NYLB Chief Compliance Officer & Counsel at compliance@nylb.org. Upon receipt, the NYLB will deliver a fully executed Confidentiality Agreement, the proposed Trust Agreement and investment guidelines to the Bidder via email and respond to questions submitted.

TRUST AGREEMENT

Bidder must review the proposed Trust Agreement and identify any term or condition with which it may have a concern or otherwise could not accept if Bidder were selected as Awardee. Bidder must provide any contract language requested or required for inclusion in the Trust Agreement. When submitting a Proposal, Bidder must include any comments and a mark-up to the Trust Agreement reflecting its proposal of revised terms.

QUESTIONS

All questions regarding this RFP must be submitted in writing via email to the NYLB Chief Compliance Officer & Counsel at compliance@nylb.org no later than **November 30, 2020 at 5:00 pm (EST)**, unless such deadline is extended in writing by, and in the sole discretion of the NYLB. Responses will be provided to Bidders via email.

RULES AND INSTRUCTIONS

RESTRICTED COMMUNICATIONS

The NYLB Chief Compliance Officer & Counsel is the sole point of contact for the RFP. Except as necessary for conducting previously established business with the NYLB, Bidders may not communicate with NYLB personnel other than the NYLB Chief Compliance Officer & Counsel until an Awardee is selected and announced. The NYLB will disqualify a Bidder that engages in a prohibited communication material in nature, as determined by the NYLB in its sole discretion. Any RFP-related information provided by someone other than the NYLB Chief Compliance Officer & Counsel will not be considered binding.

ADDITIONAL TERMS

Each Proposal must adhere to the requirements outlined in this RFP. Non-compliance may result in disqualification.

The NYLB, in its sole discretion, may modify, rescind or provide an addendum to this RFP. This RFP and any subsequent modifications are the sole reference and authority for the preparation of a Proposal. This RFP, together with information provided pursuant to the Confidentiality Agreement, supersedes all prior RFPs, agreements, understandings or other information related to the requested services, regardless of source or form.

This RFP does not obligate the NYLB to enter into a Trust Agreement with any Bidder. Bidder is solely responsible for all costs and expenses related to the Proposal, including development costs or any expenses incurred in responding to the NYLB post-submission.

All submissions and any data or other information shared with the NYLB during the RFP process become the property of the NYLB and will not be returned. The NYLB will safeguard and maintain the confidentiality of such information to the same extent it safeguards its own confidential information. Please note that the NYLB is not subject to the New York State Freedom of Information Law (FOIL). Therefore, Proposals, evaluations and any other non-public information related to the RFP process are not subject to disclosure.

BIDDER REQUIREMENTS

Bidder Requirements

MINIMUM QUALIFICATIONS

Bidder must possess, in its own name, all requisite licenses, certifications, permits, approvals and authorizations required under federal, state or local law to perform the services requested, and must be in good standing and not subject to any regulatory proceedings that could result in suspension, revocation, or other limitation on its ability to provide such services.

Bidder may not be subject to regulation by the New York State Department of Financial Services.

Bidder must have a minimum of 5 years of experience providing trustee services and currently hold at least \$25 million in assets, excluding Bidder's own funds.

INSURANCE

Bidder must, at its own cost and expense, obtain and maintain in full force and effect during the engagement, the insurance coverage noted below, with admitted or licensed insurers in the State of New York that have an A. M. Best rating of not less than "A-", and are in a size category not lower than "VIII." Bidder must require any subcontractors working on the NYLB account to carry insurance with the same provisions specified below and limits accepted by the NYLB.

Cyber Liability

Bidder must maintain network security and privacy liability ("Cyber Liability") insurance covering liability involving privacy violations, information theft, damage to or destruction of electronic information, intentional or unintentional release of private information, alteration of electronic information, extortion or network security. Coverage must remain in effect for an additional one (1) year following the expiration of the engagement.

Cyber Liability insurance must provide coverage for first party costs and third party liability, including, but not limited to:

- Forensic investigations;
- Notification costs of communicating the breach;
- Legal defense;
- Settlements, damages and judgments related to the breach; and
- Cost of responding to regulatory inquiries and payment of penalties.

BIDDER REQUIREMENTS

Professional Liability/Fiduciary Liability/Errors and Omissions

Bidder must maintain professional liability/fiduciary liability/errors and omissions insurance to cover errors and omissions that result in financial loss to the vendor or the NYLB. If written on a “claims-made” basis, the retroactive date must pre-date the effective date of the Trust Agreement. Coverage must remain in effect for an additional one (1) year following the expiration of the engagement.

Commercial General Liability

Bidder must maintain commercial general liability insurance (property and bodily injury) and umbrella/excess insurance.

Workers Compensation

Bidder must maintain at least the minimum Workers’ Compensation Insurance required by New York law covering all of its employees.

Each policy, except workers compensation, must name the Receiver and the NYLB as additional insureds, and must be written on primary coverage, non-contributory basis. Each coverage must include a waiver of the insurer’s right of subrogation against the NYLB, the Receiver, and their officers, agents, and employees.

Bidder must provide the NYLB with at least sixty (60) days’ prior written notice of cancellation, termination or modification of coverage resulting in Bidder’s non-compliance with the above requirements.

PROPOSAL REQUIREMENTS

Proposal Requirements

Proposals must contain all information requested below. Material deviations from the required format may result in disqualification of the Proposal. If an item does not apply, Bidder must specifically indicate that the item is not applicable. Bidders may not satisfy an item of requested information by submitting or referring to a brochure, promotional or descriptive literature, or any other document unless otherwise indicated.

ORGANIZATION

1. Provide the Bidder's name, and the name(s), title(s), address(es), e-mail address(es), and telephone number(s) of the individual(s) responsible for responding to this RFP.
2. Describe the number of Bidder's employees, offices and locations. Provide location and contact information for the individuals that would serve the VEBA Trust.
3. Provide a general description of Bidder, including its history, number of years in business, business focus, other names used by Bidder, parent or affiliate organizations and current ownership structure. Indicate if Bidder is publicly traded or privately held. Provide an organizational chart of Bidder and the owners, principals and employees. If Bidder has experienced a material change in organizational structure, ownership or management in the past three years, please describe.
4. Confirm Bidder is not subject to regulation by New York State Department of Financial Services.
5. Disclose the names of the firm(s) and the types of services offered if Bidder is owned by (in whole or in part), affiliated with, or has any type of alliance with any investment management firm, investment consulting firm, and/or brokerage firm; or if Bidder, its officers or principals, or any affiliates own or operate any investment management firm, investment consulting firm, and/or a brokerage firm; or if Bidder provides investment-related and/or broker/dealer services.
6. Describe Bidder's other business affiliations, including subsidiaries, joint ventures, "soft dollar" or finder's fee arrangements with third parties and other contractual arrangements with any internal or external business partner that could relate to the services requested.
7. Describe the financial condition of Bidder and include a copy of Bidder's financial statement for the three (3) most recent annual reporting periods.
8. If Bidder intends to use any subcontractors or affiliates to provide the services described in this RFP, provide the name and qualifications for any subcontractor or affiliate.

PROPOSAL REQUIREMENTS

EXPERIENCE AND EXPERTISE

1. Describe Bidder's overall approach to the services requested and qualifications and experience in performing such services, including for retirement plan trusts, voluntary employees' beneficiary associations, governmental and quasi-governmental entities or similar entities.
2. List retirement benefit plan or similar clients for which Bidder provides or has provided the type of services contemplated by this RFP, where trust assets had a market value of \$10-100 million, and indicate total value of assets for each client. Include name of client, contact name, title and contact information, number of participants, and time period of client relationship.
3. Describe Bidder's experience in working with investment managers for retirement plan trusts, voluntary employees' beneficiary associations, governmental and quasi-governmental entities or similar entities.
4. Describe whether Bidder receives any form of direct or indirect compensation, including, without limitation, soft dollars, for client transactions other than direct fees paid by client. If so, please describe each additional form of compensation.
5. Identify Bidder's employees who serve as trustees and specify the average number of trust accounts handled by each professional.
6. Provide resumes and biographical information on key personnel who will be directly involved in the VEBA Trust account. Include length of service with Bidder, total years of experience, and professional licenses and designations. Include the number of trust accounts managed and any limits on the number of accounts managed. Note staff turnover by year for the last three years.
7. Describe Bidder's commitment to training and education to keep trustees and account managers informed of developments and legal requirements relevant to retirement and retiree medical benefit plans and trusts.
8. Describe Bidder's recordkeeping system(s), including whether it is a proprietary system or purchased/leased from an outside vendor, length of time the system has been in place, and how many clients are on the system.
9. Describe Bidder's system for maintaining VEBA Trust (or similar trust) income and expenditures, assets and liabilities, cash receipts and disbursements.
10. Identify individuals who prepare trust account financial reports and location of team.
11. Describe the frequency and format of reports that Bidder would regularly provide to the VEBA Trust and members, including to what extent the reports can be customized. Describe whether additional reports can be provided upon request and any additional charges imposed. Attach a sample report.

PROPOSAL REQUIREMENTS

12. Describe Bidder's services relating to the preparation of tax forms for entities like the VEBA Trust and other state and federal tax filing requirements, including a description of any additional charges imposed for those services.

REPUTATION AND INTEGRITY

1. Certify that Bidder and all staff who may potentially work on the assignments are in good standing in all jurisdictions in which they have been licensed or certified.
2. Disclose whether within the last ten years Bidder or any officer, principal or employee has been involved in any litigation, criminal charges, criminal convictions, administrative audits or investigations or other legal or administrative proceedings involving fraud, dishonesty, negligence or breach of fiduciary duty relating to the type of services requested in this RFP. If so, please provide a full explanation and indicate the status or disposition of these proceedings.
3. Describe any investigation, litigation, settlement, regulatory censure or other non-routine administrative action from the Department of Labor, the Internal Revenue Service, the Securities and Exchange Commission, the Financial Industry Regulator Authority or other state or federal agency, governmental or regulatory authority, licensing body, trade group or professional or industry association, or disciplinary or ethics panel(s) involving Bidder, its officers, principals or employees within the past ten years. Describe the charges involved, the resolution of each charge and any penalty, tax, fine or other sanction.
4. Describe Bidder's insurance coverage, including insurance outlined in Bidder Requirements, as well as any fidelity, fiduciary and liability, bond coverage, and other insurance that would cover the matters associated with the engagement of a trustee. Provide minimum limits on a per-occurrence and aggregate basis. Please provide a valid, current certificate of insurance showing the limits of coverage and any riders, exclusions or other coverage limitations.
5. Indicate whether Bidder has submitted a claim to any of its errors and omissions insurance policies, professional liability, fiduciary liability policies or fidelity bond insurance policies. If so, please provide a description of the claim and its status.
6. Confirm whether Bidder has a compliance officer on staff. If so, describe the compliance officer's role and duties with respect to the services contemplated by this RFP.
7. List three key factors that distinguish Bidder from its competitors. Describe any significant or unique awards received or accomplishments relating to Bidder or Bidder's services.
8. Provide the names of at least three (3) references for the type of work requested in this RFP. Include name of organization; name, address, telephone number and email address for the reference contact person and describe the nature of the work performed for the organization.

PROPOSAL REQUIREMENTS

CYBERSECURITY AND IT REQUIREMENTS

1. Describe IT systems Bidder uses to manage trust accounts.
2. Confirm that all data provided by the NYLB will be stored within the continental United States in a dedicated hosting environment and within encrypted applications supported by their respective licensors/manufacturers.
3. Confirm that all data transmitted will be protected and encrypted while in transit, and describe encryption and transfer methodology.
4. Describe encryption at-rest methodology and encryption key management process.
5. Describe how NYLB-related data and configurations are segregated from the data and configurations of Bidder and its other customers.
6. Confirm that all devices used by Bidder and its employees and subcontractors, if any, are protected and updated with the latest antivirus and malware software.
7. Provide current certifications of information and technology audits and System and Organization Control Reports (Type 1 and Type II).
8. Provide Bidder's cybersecurity and access control policies, and indicate frequency of reviews/updates.
9. Describe employee security awareness training program (including whether employees are tested), if applicable, and frequency of training.
10. Describe client notification process for known security vulnerabilities, if applicable, including circumstances warranting client notification.
11. Describe data protection standards in place and any "best practices" implemented.
12. Describe change control management process.
13. Describe business recovery plan, if applicable, including frequency of testing.
14. If, in the last five years, Bidder has experienced a data breach or data security incident that was reportable under law or for which Bidder has been subject to discipline or sanction by a regulatory body, provide detail.
15. If, in the last five years, Bidder has been sued by a private party or regulatory body for a breach of data or security, provide detail.
16. NYLB utilizes .NET framework 4.7.2 or higher. Confirm that Bidder utilizes a system that can communicate with the NYLB framework and can provide data in text (.txt), comma separated values (.csv), Excel (.xlsx) or JSON (Javascript Object Notation) format.

PROPOSAL REQUIREMENTS

POTENTIAL CONFLICTS OF INTEREST

1. Describe Bidder's conflict of interest policies.
2. Identify all known employees of Bidder, or any parent, subsidiary or affiliate of Bidder, who are related by blood or marriage to any NYLB employee and/or who are living in the same household as any NYLB employee, or who were previously employed by the NYLB.
3. Identify all known NYLB employees previously employed by Bidder or any parent, subsidiary or affiliate of Bidder.
4. Indicate whether Bidder, or any parent, subsidiary or affiliate of Bidder, has been involved in litigation against the Superintendent, the NYLB and/or its estates within the last 10 years as a party, witness or otherwise.
5. List the names of all persons or entities, if any, asserting claims against the NYLB and/or its estates for which Bidder is currently performing work.
6. State whether Bidder has previously provided services to the NYLB, including whether Bidder has any financial interest in any organization that has contracted to provide services to the NYLB.

EEO/DIVERSITY/MWBE STATUS

1. Demonstrate that Bidder complies with all relevant federal, state and local equal employment opportunity and non-discrimination laws, regulations and executive orders. Attach equal employment opportunity and diversity policy statements or other official firm documents.
2. If Bidder is certified as a Minority or Women Owned Business Enterprise ("MWBE") with the New York State Department of Economic Development, provide copy of certification. If Bidder has applied for but has not yet been granted MWBE certification as of the date of the Proposal submission, submit proof of a pending application, including filing date.
3. List any other jurisdiction and/or certifying body that has deemed Bidder minority or women owned, and provide copy of certification.
4. Provide other information and data reflecting commitment to workplace and supplier diversity.

FEES

1. Set forth a complete and detailed description of Bidder's proposed fee schedule.
2. Set forth a detailed description of the services covered by the fee schedule, and any ancillary services available including any separate fees associated with each ancillary service.
3. Indicate any other expenses not covered by the fee structure for which the VEBA Trust would be responsible.

PROPOSAL SUBMISSION

Proposal Submission

BID DEADLINE

All Proposals must be delivered via email for receipt no later than **December 4, 2020 at 5:00 pm (EST)**, unless such deadline is extended in writing by the NYLB, in its sole discretion. Bidders assume all risk for timely, properly submitted deliveries. A Proposal that is late, incomplete, or otherwise not in compliance with the requirements of this RFP will be disqualified from consideration.

PROPOSAL DELIVERY

Proposals must be executed by a representative duly authorized to sign the Proposal and the Trust Agreement. A PDF copy of the original, executed version of the Proposal must be delivered via email to the NYLB Chief Compliance Officer & Counsel at compliance@nylb.org. Any proposed contract language Bidder requests or requires for inclusion in the Trust Agreement must be included with the Proposal submission.

By submitting an executed Proposal in response to this RFP, Bidder acknowledges and agrees that:

- Bidder has reviewed this RFP in its entirety and agrees to be bound by its terms and conditions. Failure to comply may result in disqualification or termination of the Trust Agreement.
- The information in the Proposal is true, accurate and complete.
- Bidder meets the Bidder requirements in this RFP, and possesses the staff, administrative capacity and resources (including financial, operational and information technology systems) necessary to perform high quality and cost-effective work to achieve the VEBA Trust's objectives.
- Bidder will fully cooperate with all requests for information and/or clarification of the Proposal.
- Proposals, evaluations and any other non-public information related to the RFP process are not subject to disclosure. Bidder will not seek such information pursuant to FOIL or otherwise.
- The Proposal, including fees and pricing, is valid and binding until the NYLB and the Awardee execute the Trust Agreement.
- Bidder will not make references to the NYLB or the VEBA Trust in any literature, promotional material, brochures, sales presentations, interviews or similar materials without the prior, express, written consent of the NYLB.

EVALUATION AND AWARD

Evaluation and Award

EVALUATION COMMITTEE

Under the supervision of the NYLB Chief Compliance Officer & Counsel, an evaluation committee will consider all qualifying Proposals. The evaluation committee may request: an interview with a Bidder by video conference; written answers to questions; or any other information or supplemental response. Any additional information obtained from such request(s) will be considered part of Bidder's Proposal.

The evaluation committee's selection of an Awardee is subject to Special Deputy Superintendent approval and the negotiation and execution of a mutually acceptable Trust Agreement.

AWARD

The evaluation committee will select the Awardee that best meets the needs of the NYLB based on the contents of each qualifying Proposal, including appropriate expertise, staffing/resources and cost. The NYLB Chief Compliance Officer & Counsel will notify the Awardee and unsuccessful Bidders in writing via email.

The NYLB will not disclose the identity of the Awardee until the parties execute a mutually acceptable Trust Agreement. The NYLB will not provide unsuccessful Bidders with information concerning the identity or number of other Bidders or Proposals considered, the evaluation committee's deliberations, or other non-public information concerning the RFP process.

EXECUTION OF TRUST AGREEMENT

The parties must execute a mutually acceptable Trust Agreement. If the Awardee fails to execute such agreement within a reasonable period of time, as determined by the NYLB in its sole discretion, the NYLB may rescind the award and select another Bidder as Awardee.

RESERVATION OF RIGHTS

Reservation of Rights

The NYLB, in its sole discretion, reserves the rights to:

- Inquire using any means it chooses into a Bidder's background or the contents of a Proposal;
- Disqualify a Bidder if such Bidder, or anyone working for Bidder, has previously failed to perform satisfactorily in connection with public bidding or contracts;
- Accept or reject any and all Proposals received in response to this RFP;
- Request any additional information deemed necessary for proper evaluation of Proposals;
- Revise or amend any provision of this RFP by written notification to Bidders, including extending a deadline regardless of whether Proposals have already been submitted;
- Waive or modify minor discrepancies or irregularities in any Proposal;
- Eliminate any mandatory requirement that is not met by all Bidders;
- Consider late or non-conforming Proposals if the NYLB does not receive an adequate number of compliant Proposals;
- Conduct additional rounds of bidding;
- Negotiate with any, all or none of the Bidders;
- Consider modifications to Proposals at any time before the selection of an Awardee if it is in the best interests of the NYLB;
- Select an Awardee other than the lowest offer;
- Select one or more Bidders as Awardee(s) for all or a portion of the services requested in this RFP;
- Rescind the award and select another Bidder as Awardee if the original Awardee fails to execute the Trust Agreement within a reasonable period of time, as determined by the NYLB in its sole discretion, or otherwise comply with the terms of this RFP;
- Withdraw the RFP at any time or otherwise decide not to procure services pursuant to the terms of this RFP;
- Utilize any idea from any Proposal.

The NYLB does not waive any other rights in connection with the RFP process.

APPENDIX A

Confidentiality Agreement

Request for Proposal for Trustee Services Confidentiality Agreement

This Confidentiality Agreement (“Agreement”), effective as of the later date signed below, is executed by the party (“Bidder”) signing the agreement and the Superintendent of Financial Services of the State of New York, in her capacity as court-appointed Receiver (“Receiver”) pursuant to Article 74 of the New York Insurance Law, so that the Receiver may provide Confidential Information (as defined below) to Bidder to prepare a response to the request for proposal (“RFP”) for trustee services.

DEFINITIONS

“Confidential Information” means any information and data, including claims and reserve information, disclosed by the Receiver or any of her Representatives to Bidder or any of its Representatives in connection with the RFP, whether oral, written, digital/electronic or other form, including without limitation any analyses, compilations, studies, communications, documents, summaries, reports, notes or other material prepared by or on behalf of Bidder or any of its Representatives to the extent that they use, contain, reflect or are derived from or incorporate, in whole or in part, any such information or data. “Confidential Information” does not include information that (i) Bidder already possesses through means other than a breach of this Agreement or any other confidentiality agreement; (ii) becomes available to Bidder on a non-confidential basis from a source other than the Receiver or the NYLB, so long as that source, to Bidder’s knowledge after reasonable inquiry, is not bound by a confidentiality obligation to the Receiver relating to such information; (iii) is independently developed by Bidder or any of its Representatives without use or benefit of or access to any Confidential Information; or (iv) is or becomes available in the public domain other than as a result of disclosure by or on behalf of Bidder or any of its Representatives in breach of this Agreement.

“New York Liquidation Bureau” and/or **“NYLB”** means the organization that acts as the staff for the Receiver, and includes any employee of or any accountant, attorney, actuary, or other professional or technical consultant or advisor retained by the Receiver or the NYLB.

“Person” must be broadly construed and includes without limitation any natural person, business, corporation, company, association, partnership, joint venture, trust, governmental authority or other legal entity.

“Representatives” means, with respect to Bidder, any director, officer, employee, any member of that party’s group of companies and their directors, officers, employees or consultants or any of that party’s advisors (including attorneys, accountants and other professional advisors engaged by it) and agents, and with respect to the Receiver, the NYLB.

NOW, THEREFORE, in consideration of the Receiver making Confidential Information available to Bidder and the possibility of entering into an agreement for services with the Receiver as set forth in the RFP, and with the intent to be legally bound, Bidder agrees as follows:

1. Bidder and its Representatives will use the Confidential Information solely for the purpose of evaluating the RFP, preparing a proposal in response to the RFP, or otherwise solely in connection with the RFP, and will keep the Confidential Information strictly confidential, except as otherwise permitted by this Agreement. Bidder will not disclose the Confidential Information except to its Representative who:
 - a. needs to know the Confidential Information as it relates to the RFP;
 - b. has been informed that the Confidential Information is subject to the terms of this Agreement;
 - c. has reviewed a copy of this Agreement; and
 - d. has agreed to comply with and be bound by the terms of this Agreement to the same extent as if he or she were a party hereto.
2. Bidder will be liable for any breach of this Agreement by Bidder or any of its Representatives and for any use of Confidential Information by any other Person if such Person acquired the Confidential Information through a breach of this Agreement.
3. Bidder hereby acknowledges and agrees that money damages would not be a sufficient remedy for any breach of this Agreement and that the Receiver will be entitled to seek injunctive or other equitable relief and specific performance, without proof of actual damages and without the need to post a bond or other security, as a remedy for any such breach. Such remedies will not be deemed to be the exclusive remedy for any breach of this Agreement but will be in addition to all other remedies available at law or in equity.
4. As between the parties, Confidential Information is the sole and exclusive property of the Receiver. At any time upon written request by the Receiver, and in any event at the conclusion of the RFP process, Bidder will promptly return to the Receiver or destroy all Confidential Information in the possession or control of Bidder or any of its Representatives. Bidder and any of its Representatives may retain Confidential Information only to the extent required by applicable law or regulation, or to comply with established data retention policies; provided that such Confidential Information, if any, remains subject to the terms of this Agreement. Upon the Receiver's request, Bidder will certify in writing that it has complied with the provisions of this paragraph.
5. In the event that Bidder or any of its Representatives is requested or required by requests for information or documents, subpoenas, investigative demand or similar legal, regulatory or judicial process to disclose any Confidential Information, Bidder will (unless legally prohibited) promptly provide the Receiver with written notice of the existence, terms and circumstances of such request prior to disclosing any Confidential Information so that the Receiver may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. If, in the absence of a protective order or waiver, Bidder or any of its Representatives is legally compelled to disclose Confidential Information, Bidder or its Representative may disclose only such portion of Confidential Information that it is legally required to disclose; provided that Bidder or its Representative will use reasonable efforts to obtain assurances that, consistent with the terms of this Agreement, the Confidential Information will be treated confidentially.

6. All Confidential Information remains confidential, privileged or protected when communicated to Bidder and the sharing of Confidential Information pursuant to this Agreement does not constitute, and will not be construed in any way to constitute, a waiver of any attorney-client privilege, work product protection or any other applicable privilege or immunity. If, in violation of this Agreement (whether intentional or otherwise), Bidder or any of its Representatives discloses to a third party any Confidential Information, such disclosure will not waive any other party's right to claim any applicable privilege or protection, and will not affect the privileges, rights and/or protections that are or may be applicable to such Confidential Information.
7. This Agreement and any dispute related hereto or arising hereunder will be governed by the laws of the State of New York without regard to any conflicts of laws principles.
8. Bidder agrees that all actions or proceedings seeking enforcement of this Agreement will be tried and litigated exclusively in the Supreme Court of the State of New York, county of New York, or if said court cannot have subject matter jurisdiction over the action or proceeding, in the United States District Court for the Southern District of New York. In connection with such actions or proceedings, but not for any other actions or proceedings, Bidder hereby: (a) stipulates that the foregoing courts will have *in personam* jurisdiction over such Bidder; (b) waives any right Bidder may have to assert the doctrine of *forum non conveniens* or similar doctrine or to object to venue; and (c) waives its right to a jury trial.
9. The Parties agree to provide any notices required by this Agreement, as follows:

<p>Receiver:</p> <p>New York Liquidation Bureau 180 Maiden Lane, 15th Floor New York, New York 10038 Attn: General Counsel jpkelly@nylb.org</p> <p>With copy to:</p> <p>Chief Compliance Officer & Counsel compliance@nylb.org</p>	<p>Bidder:</p>
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10. Nothing herein obligates either party to proceed with any transaction between them, and each party reserves the right, in its sole discretion, to terminate discussions regarding the RFP.
11. Except for paragraphs 5, 7 and 8, which remain binding after this Agreement expires, this Agreement will expire the date that is two years after the effective date of this Agreement, at which time Bidder will certify in writing to the Receiver that it has complied with paragraph 4 of this Agreement.

12. Bidder represents that this Agreement has been duly executed and delivered on its behalf by a duly authorized individual and constitutes its legal, valid, binding and enforceable obligation.

Bidder

Receiver

By: _____

By: _____

Name:

Name:

Title:

Title:

Company:

Date: _____

Date: _____