

RESOLUTION OF THE NEW JERSEY HOUSING AND MORTGAGE
FINANCE AGENCY REGARDING APPROVAL OF THE MINUTES
OF THE MAY 27, 2010 MEETING OF THE HMFA BOARD

WHEREAS, the Members of the New Jersey Housing and Mortgage Finance Agency have been presented and considered approval of the minutes of the May 27, 2010 meeting of the HMFA Board attached hereto as Exhibit A; and

WHEREAS, the Members are requested to adopt a resolution approving the minutes of the May 27, 2010 meeting of the HMFA Board attached hereto as Exhibit A.

NOW, THEREFORE, ON THIS 22ND OF JUNE 2010 BE IT RESOLVED BY THE MEMBERS OF THE NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY AS FOLLOWS:

Section 1. The minutes attached hereto as Exhibit A, are hereby approved

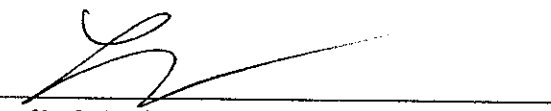
Section 2. The Request for Action, attached hereto as Exhibit A, is hereby incorporated and made part of this resolution as though set forth at length herein.

Board Member	Aye	Nay	Abstained	Recusal	Not Present
Commissioner Grifa	X				
Susan Fischer	X				
James Petrino			X		
Dan Bachalis	X				
Thomas Hunt	X				
Dorothy Blakeslee	X				
Patricia Mueller	X				
Monsignor Linder	X				
Stanley Weeks					X

CERTIFICATE

I, Leslie S. Lefkowitz, Assistant Secretary of the New Jersey Housing and Mortgage Finance Agency, do hereby certify that the foregoing is a true and correct copy of a resolution duly adopted and approved by the Members of the Agency at a meeting duly called and held on the 22nd day of June 2010 and that not less than five Members of the Agency were present and voted in favor of said resolution.

IN WITNESS WHEREOF, I have hereunto set my hand and impressed the seal of the Agency this 22nd day of June 2010.



Leslie S. Lefkowitz
Assistant Secretary

**MINUTES OF THE 351st SPECIAL TELECONFERENCE BOARD MEETING
OF THE
NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY**

MEMBERS: Lori Grifa, Acting Commissioner, DCA
* Thomas Hunt, Assistant Banking Director, Department of Banking and Insurance)
(representing Thomas Considine, Commissioner, Department of Banking and Insurance)
** Dan Bachalis, Regional Coordinator, Community Services, Division of Mental Health
Services
(representing Jennifer Velez, Commissioner, Department of Human Services)
Monsignor William Linder
Patricia Mueller
Dorothy Blakeslee

OFFICIALS

PRESENT: Marge Della Vecchia, Executive Director
Tracee Battis, Chief of Programs
Lenore Rosner, Chief of Operations
Leslie S. Lefkowitz, Chief of Legal & Regulatory Affairs
Barbara Geary, Legal Affairs Officer
Harry Stevens, General Services Assistant
Carilyn Willis, Executive Secretary

OTHERS

PRESENT: Bob Purcell, Deputy Attorney General

* Letter of May 24, 2010 designating Thomas Hunt to represent Thomas Considine, Commissioner, Department of Banking and Insurance

** Letter of March 25, 2010 designating Dan Bachalis, to represent Jennifer Velez, Commissioner, Department of Human Services

May 27, 2010

SUNSHINE ACT

"The New Jersey Housing and Mortgage Finance Agency gave notice of the time, place and date of this meeting by facsimile, regular mail and hand delivery on May 21, 2010 to the Secretary of State of New Jersey, The Star Ledger, The Times, and the Courier Post, and by posting the notice at the office of the Agency in Trenton, New Jersey. Pursuant to the New Jersey Open Public Meetings Act, a resolution must be passed by the New Jersey Housing and Mortgage Finance Agency in order to hold a session from which the public is excluded."

BID PROTEST FOR REQUEST FOR PROPOSALS FOR LEGAL SERVICES FOR THE NEW JERSEY JUDICIARY FORECLOSURE MEDIATION PROGRAM – ITEM 1A.

Thomas Hunt moved and Dorothy Blakeslee seconded approval of the final Agency attached Resolution which incorporated the final Agency Decision regarding the Bid Protest for the Request for Proposals for Legal Services for the New Jersey Judiciary's Foreclosure Mediation Program – Region 1 by the Law Firm of Evelyn Padin.

*Aye-Lori Grifa, Dan Bachalis, Thomas Hunt, Monsignor Linder, Dorothy Blakeslee, Patricia Mueller
Nay-None*

MOTION TO ADJOURN

Dorothy Blakeslee moved and Thomas Hunt seconded motion to adjourn at 10:20 a.m.

*Aye-Lori Grifa, Dan Bachalis, Thomas Hunt, Monsignor Linder, Dorothy Blakeslee, Patricia Mueller
Nay-None*

RESOLUTION OF THE NEW JERSEY HOUSING AND
MORTGAGE FINANCE AGENCY REGARDING
BID PROTEST FOR THE REQUEST FOR PROPOSALS FOR
LEGAL SERVICES FOR THE NEW JERSEY JUDICIARY'S FORECLOSURE
MEDIATION PROGRAM – REGION 1 BY THE LAW FIRM
OF EVELYN PADIN

WHEREAS, on February 3, 2010, the Agency issued a Request for Proposals for Legal Services for the New Jersey Judiciary's Foreclosure Mediation Program for Region 1 (defined as Essex, Hudson and Union Counties) with a due date for responses of March 5, 2010 (the "RFP").

WHEREAS, the Agency received five responses to the RFP, including a response from the Law Firm of Evelyn Padin ("Padin") and Ragland & Martin, LLP ("Ragland & Martin");

WHEREAS, the Evaluation Committee was formed to review all the bids in light of the criteria set forth in the RFP and make a recommendation;

WHEREAS, after a thorough review of the bids, the Evaluation Committee recommended that an award be made to Ragland & Martin, the bidder with the highest score;

WHEREAS, on April 22, 2010, the Agency made a Notice of Award to Ragland & Martin;

WHEREAS, on April 27, 2010, Padin submitted a letter protesting the award as well as a supplemental letter dated May 12, 2010, which together are considered the "Bid Protest;"

WHEREAS, by letter dated April 22, 2010, Oren Thomas, the Agency's procurement officer, advised Ragland & Martin that its proposal was accepted; and the Agency and Ragland & Martin entered into an agreement dated April 23, 2010 for Legal Services for the New Jersey Judiciary's Foreclosure Mediation program-Region 1; and

WHEREAS, by letter dated May 18, 2010, the Agency advised Ragland & Martin that the agreement was immediately suspended and that Ragland & Martin should resume its work under the prior arrangement for providing legal services to Region 1, pending resolution of the bid protest; and

WHEREAS, the Executive Director, Marge Dellavecchia, prepared a report for the Members of Board outlining the issues raised in the protest and recommending that the Board deny the Bid Protest and award the contract to Ragland & Martin;

NOW, THEREFORE, BE IT RESOLVED ON THIS 27TH DAY OF MAY, 2010 BY THE MEMBERS OF THE NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY AS FOLLOWS:

Section 1. The Final Agency Decision regarding the Bid Protest attached hereto in substantial form as Exhibit A and incorporated herein and made part of this resolution, is hereby approved.

Section 2. The Board Secretary or the HMFA Executive Director is hereby authorized to make such modifications to the Final Agency Decision as directed by the Members of the Board in consultation with the Attorney General and to execute such Final Agency Decision on behalf of the Agency;

Section 3. HMFA staff shall serve the Final Agency Decision, with modifications directed by the Board, if any, upon Padin and the HMFA Executive Director or the HMFA Chief of Operations are authorized to execute any such further documentation as is required to award the contract for the RFP to Ragland & Martin.


Section 4. This resolution shall take effect immediately upon expiration of the ten (10) business day period following the delivery of the minutes of the meeting to the Governor or immediately upon approval of the minutes by the Governor within such ten (10) business day period.

Board Member	Aye	Nay	Abstained	Recusal
Commissioner Grifa	X			
Dan Bachalis	X			
Thomas Hunt	X			
Dorothy Blakeslee	X			
Patricia Mueller	X			
Monsignor Linder	X			

CERTIFICATE

I, Leslie S. Lefkowitz, Assistant Secretary of the New Jersey Housing and Mortgage Finance Agency, do hereby certify that the foregoing is a true and correct copy of a resolution duly adopted and approved by the Members of the Agency at a meeting duly called and held on the 27th day of May 2010 and that not less than five Members of the Agency were present and voted in favor of said resolution.

IN WITNESS WHEREOF, I have hereunto set my hand and impressed the seal of the Agency this 27th day of May 2010.



Leslie S. Lefkowitz
Assistant Secretary

Exhibit A

State of New Jersey
NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY
FINAL AGENCY DECISION

IN THE MATTER OF BID AWARD FOR
LEGAL SERVICES FOR THE NEW JERSEY
JUDICIARY'S FORECLOSURE MEDIATION
PROGRAM, REGION 1

Dear Ms. Padin:

On February 3, 2010, the New Jersey Housing and Mortgage Finance Agency (the "Agency") issued a Request for Proposals for Legal Services for the New Jersey Judiciary's Foreclosure Mediation Program ("NJJFM"), Region 1 (hereinafter referred to as the "RFP"). In the RFP, Region 1 is defined as Essex, Hudson and Union Counties. The due date for responses was March 5, 2010. Your firm submitted a bid in advance of the due date. (Throughout, this decision, the Law Firm of Evelyn Padin shall be referred to as "Padin.")

The Agency received four other responses to the RFP from the following bidders: (1) Law Office of Janet C. Navarro, (2) the Szymanski Law Firm, (3) Stephen Dempsey, Counselor at Law and (4) Ragland & Martin, LLP, (referred to herein as "Ragland & Martin"). An Evaluation Committee was formed to review the bids in light of the criteria set forth in the RFP and make an award recommendation. After a thorough review of the bids, the members of the Evaluation Committee recommended that an award for a contract be made to Ragland & Martin. By letter dated April 22, 2010, Oren Thomas, the Agency's procurement officer, advised Ragland & Martin that its proposal was accepted.

By letter dated April 22, 2010, the Agency informed you that it selected another vendor. On April 28, 2010, the Executive Director of the Agency received your letter dated April 27, 2010, protesting the award to another bidder and requesting copies of certain documents. By letter dated May 5, 2010, Denise Hammerstone, Assistant Director of Administration, briefly

responded to your contentions and indicated that certain documents related to the RFP would be made available to you for inspection and others may be available pursuant to a request under the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq.¹ The Agency's letter further afforded you an opportunity to supplement your bid protest within five (5) business days of a review of the records. On May 7, 2010, Linda Aristondo, an attorney at your firm, inspected documents which were made available at the Agency's office.

On May 11, 2010, the Agency received a letter from you seeking an extension of time to submit a supplemental response to your bid protest. By telefax on May 13, 2010, the Agency received a letter dated May 12, 2010 supplementing your bid protest dated April 27, 2010. The Agency responded on May 14, 2010 acknowledging the receipt of the protest.

It must be noted that the Agency and Ragland & Martin entered into an agreement dated April 23, 2010, for legal services for the NJJFM Program-Region 1. However, by letter dated May 18, 2010, Ms. Hammerstone advised Ragland & Martin that the agreement was immediately suspended due to the bid protest and that Ragland & Martin should resume its work under the prior arrangement.

In accordance with Section 5.18 of the RFP, Marge Della Vecchia, Executive Director of the Agency, has submitted a report, dated May 25, 2010, to the Board containing her findings and recommendations regarding the award of the contract and your bid protest (the "Executive Director's Report").

¹ On May 6, 2010, the Agency received Government Records Request # W50475 requesting documents relating to the request for proposals for legal services for the NJJFM Program issued on December 29, 2008. The Agency responded in a timely fashion to your OPRA request by its due date of May 17, 2010, and informed you the documents were gathered and copied. You responded to Agency staff that you were canceling your OPRA request and did not want copies of the documents.

In this bid challenge, you are demanding that your firm be awarded the contract or, in the alternative, that the Agency "re-open the bid" because you assert the "evaluation process was fundamentally flawed and in direct contravention to all notions of fairness and due process under law." In reviewing your bid protest, this Board has taken into consideration your bid response, the successful bidder's response, the above referenced correspondence, the RFP terms, the Evaluation Committee's recommendation, the Agency's policy and procedures governing the purchase of goods and services and applicable law as well as the Executive Director's Report. For the reasons stated below, after careful consideration, the Members of the Board of the Agency (the "Board") issue this Final Agency Decision denying the bid protest and the relief requested. In making this Final Agency Decision, the Board affirms the award of the contract to Ragland & Martin and authorizes Agency staff to proceed with the award.

Findings of Fact/Conclusions of Law

Preliminarily, the Board finds that the bid protest dated April 27, 2010, was received in a timely manner in accordance with Section 5.18 of the RFP. On May 7, 2010, you were provided access to the following documents: (1) all bids, successful and unsuccessful submitted in response to the RFP; and (2) all records of contacts, records of initial evaluations, any correspondence with bidders, any revised technical and/or price proposals, the Agency's evaluation and award recommendation. You were further given an opportunity to supplement your initial letter of protest dated April 27, 2010 after inspection of those documents. The Agency received your letter supplementing the protest on May 13, 2010.

The Board further finds that your bid met the threshold requirements set forth in the RFP. The Agency received four other proposals from the following bidders all of which were responsive: (1) the Law Office of Janet C. Navarro, (2) the Szymanski Law Firm, (3) Stephen Dempsey, Counselor at Law and (4) Ragland & Martin. The proposals were evaluated based on

the following criteria and eligible to receive maximum points as follows: (1) the quality of the bidder's experience representing borrowers in residential foreclosure proceedings and clients at mediation sessions – up to 35 points; (2) the quality of the bidder's plan to provide representation to the projected number of clients in Region 1 or for more than the projected number of clients for the same allocation – up to 35 points; and (3) the bidder's administrative and organizational ability to perform the work of the contract for Region 1 – up to 30 points. See Section 4.2 of the RFP.

As set forth in the Evaluation Committee's memorandum, the Committee reviewed and scored each bid in accordance with the above-described criteria and scoring method. The Evaluation Committee Members engaged in a telephone conference with Steven Ragland of Ragland & Martin and participated in a personal meeting with Evelyn Padin, Linda Aristondo and Carmen Mendiola of the Law Firm of Evelyn Padin. Ragland & Martin, the successful bidder, was given a total score of 287 points by the Evaluation Committee and your firm was the second highest bidder with a score of 278 points, a difference of nine points. The Evaluation Committee noted in its recommendation that Ragland & Martin "has demonstrated experience with the NJJFM Program in that they are currently serving Region 4 and serving Region 1 on an interim basis."

Taking your April 27 and May 12 letters together, you assert the following reasons that the bid should be awarded to your firm or, in the alternative, re-opened:

- (1) The legal experience of the attorneys in your firm, including the fact that your firm has several bilingual attorneys (Spanish/English) and that Region 1 has a large population of Spanish-speaking homeowners;
- (2) The successful bidder is allegedly a two-person, all male, Caucasian law firm located in Ocean County;

- (3) The Agency impermissibly and inappropriately relied upon unsubstantiated comments of court administrative staff; and
- (4) The Agency impermissibly gave too much weight to the successful bidder's experience in representing homeowners in the NJJFM Program.

The Agency is authorized “[t]o make and enter into and enforce all contracts and agreements necessary, convenient or desirable to the performance of its duties and the execution of its powers” under the New Jersey Housing and Mortgage Finance Agency Law of 1983. N.J.S.A. 55:14K-5(i). It distributed the RFP pursuant to this authority and its policy and procedures for the purchase of goods and services, effective November 2006 (“2006 Procurement Policy”). Section 5.16 of the RFP provided that the “[a]ward shall be made with reasonable promptness by written notice to the responsible bidder whose bid, conforming to this RFP, will be most advantageous to the HMFA. Cost, experience, references, ability to meet specifications and responsiveness to RFP are major considerations in the selection.” Similarly, Article VII (C)(1) of the 2006 Procurement Policy states that “[t]he Agency will select with reasonable promptness the responsible bidder whose bid, conforming to the bid requirements or specifications will be most advantageous to the Agency, price and other factors considered.”

After reviewing the Evaluation Committee's memorandum and the individual evaluation forms, the Board finds that the members of the Evaluation Committee gave appropriate weight to the first criterion of the RFP: the quality of the bidder's experience representing borrowers in residential foreclosure proceedings and clients at mediation sessions – up to 35 points. Padin received scores of 35, 35 and 30 from the respective Committee members for this category, for a total of 100 points. For the same category, Ragland & Martin received scores of 35, 35 and 35 from the respective Committee members, for a total of 105 points. The Evaluation Committee gave substantial weight to the legal experience of the Padin attorneys as evidenced by the high

scores it received. In addition, the Evaluation Committee members remarked favorably about the bi-lingual staff at Padin.

Padin improperly asserts that the Agency should have taken into account the bidders' race and gender in evaluating the proposals. The race and gender of the bidders and their employees were not factors under the RFP and the Agency did not solicit information from bidders as to their race or gender. Furthermore, Padin incorrectly states that Ragland & Martin is a two-person, all male Caucasian law firm. The Ragland & Martin response indicates that it has four attorneys dedicated to the NJJFM Program, two of whom are female. Members of the Evaluation Committee have met with both Steven Ragland and David Martin and neither appears to be Caucasian. In a telephone conference, Steven Ragland indicated that two to three other attorneys associated with the firm could be available to cover mediations as needed.

In addition, Padin incorrectly claims that Ragland & Martin are located in Ocean County which is "a substantial distance from the counties it was selected to serve." Although its main office is in Cherry Hill, Ragland & Martin obtained office space in Newark on a per diem basis to meet with NJJFM clients for the other regions it represents. Its response indicated that the firm would do the same for Union county if it were awarded the contract. Moreover, Ragland & Martin indicated that it would meet with clients in the evening or on weekends in their homes, utilize space at the county courthouses or meet with clients at the office of their foreclosure mitigation counselor.

Padin next argues that the members of the Evaluation Committee impermissibly relied upon unsubstantiated comments about the attorneys at the Padin firm and that Padin was not given the opportunity to refute such comments. The Administrative Office of the Courts ("AOC") created the NJJFM Program to provide legal representation and mediation assistance to homeowners involved in residential foreclosures. Agency staff works closely and cooperatively

with the AOC and the Office of Dispute Settlement within the Department of the Public Advocate regarding the legal and counseling services provided in the NJJFM Program to eligible homeowners. Staff members of these three offices regularly share information about the NJJFM Program. In view of the close scores of Ragland & Martin and Padin, an Evaluation Committee member who also administers HMFA's involvement in the NJJFM Program sought information about the bidders from the AOC court staff who administer the NJJFM Program in Hudson County. Such AOC court staff told Agency staff that Evelyn Padin is frequently late for appearances and has had cases dismissed for failure to appear.²

The Board finds that the Evaluation Committee properly considered the comments of the AOC court staff in evaluating the bidders' ability to provide the legal services being sought under the RFP. See In the Matter of Honeywell Information Systems, Inc. Protest of Contract Award Requisition x-32, 145 N.J. Super. 187, 200 (App. Div.1976), certif. den., 73 N.J. 53 (1977) (in determining what bid is most advantageous to the State, the Director of Purchase and Property must exercise "exercise the sound business judgment of an executive based on all available data, expertise, and advice which he may be able to garner from all available sources"). Furthermore, the Board agrees with the Executive Director's conclusion in her report that the Evaluation Committee "would be remiss if it ignored such comments." Padin also asserts that the Agency disregarded two excellent references for the firm; however, she offers nothing to substantiate this assertion. Indeed, Agency staff followed up with the references Padin submitted.

The Agency, however, is under no obligation to embark upon an investigation to "determine whether the statements were full, fair and accurate" as Padin suggests. The need to undertake such an investigation would make the RFP process unduly burdensome. Rather,

² Department of the Public Advocate, Office of Dispute Settlement representatives were addressees on the e-mail correspondence sent by Agency staff. However, here does not appear to be any responses from that office. Nonetheless, Agency staff appropriately contacted the Public Advocate because it conducts foreclosure mediation services on behalf of the AOC and may have had performance related information.

negative comments may be weighed along with the positive comments: the Agency may make its business judgment on the basis of all available data, expertise, and advice, garnered from all available sources. Ibid.

Padin's final argument is that the Agency impermissibly gave too much weight to the successful bidder's experience in representing homeowners in the NJJFM Program, thereby thwarting the intent of fair and open competition from potential bidders. Padin asserts the "Agency award was based on an internal and non-disclosed standard not defined in the RFP namely to award the Contract to one of the three current Program vendors." However, the Agency finds that the Evaluation Committee properly applied the scoring criteria stated in the RFP. In fact, the scoring system in the RFP was the same scoring system used in 2009 when the Agency sought bids for legal services for the entire state. Additionally, the RFP afforded equal weight (up to 35 points) to the quality of the bidder's experience and the quality of the bidder's plan to provide representation to the projected number of clients in Region 1. The fact that Ragland & Martin is currently under contract in Ocean, Atlantic, Camden, Cape May, Cumberland, Gloucester and Salem Counties and has been performing to the satisfaction of the AOC and Agency staff is a factor that the Agency may take into account. Ibid. The Board notes that another unsuccessful bidder who responded to this RFP had direct experience in the NJJFM Program and a positive referral from Court staff, but was not awarded this contract. Therefore, undue weight was not given to Ragland & Martin's prior experience in representing clients of the NJJFM program.

Conclusion

The Board finds as set forth in the Executive Director's report that Ragland & Martin was selected because that firm: (1) demonstrated that its attorneys have depth of experience in representing homeowners in both foreclosure proceedings and the NJJFM Program; (2)

presented a reasonable plan for serving clients in Region 1 by acquiring office space in Newark on a per diem basis, proposing to acquire office space in Union county if it was awarded the contract, and to meet with clients at their foreclosure mitigation counselor's office or in their homes in the evening or on weekends; and (3) demonstrated it had sufficient administrative staff and the organizational capacity to serve the projected number of clients. The Board further finds that the Evaluation Committee gave appropriate weight to the three criteria set forth in the RFP and exercised sound business judgment in recommending that the contract be awarded to Ragland & Martin. For the foregoing reasons, the Board denies Padin's protest and its request that the contract for Legal Services for the NJJFM Program for Region 1 be awarded to Padin or, in the alternative, to reopen the bid. In making this Final Agency Decision, the Board affirms the award of the contract to Ragland & Martin and authorizes Agency staff to proceed with the award.

This constitutes a Final Agency Decision. If you disagree with this determination, you may appeal to the Superior Court of New Jersey, Appellate Division, within 45 days of the effective date of this letter in accordance with the Rules Governing the Courts of the State of New Jersey.