

NOTE: Only firms which have been prequalified by the Office of Financial Management to provide bond counsel services to the Kentucky Asset/Liability Commission for Fiscal Years 2014-2015 may submit a response to this Request for Proposals.

May 22, 2014

RE: Request for Proposals ("RFP") to Serve as Bond Counsel to the Kentucky Asset/Liability Commission for Fiscal Years 2015-2016.

The Office of Financial Management ("OFM") of the Finance and Administration Cabinet of the Commonwealth of Kentucky, on behalf of the Kentucky Asset/Liability Commission ("Commission"), is requesting proposals from prequalified firms to provide bond counsel services to the Commission beginning July 1, 2014 through June 30, 2016. Information concerning the Commission and its activities can be found at <http://finance.ky.gov/services/ofm/Pages/default.aspx>.

In 2010, the General Assembly authorized \$435 million of Grant Anticipation Revenue Vehicle ("GARVEE") notes: \$105 million was issued for the purpose of financing expenditures related to the Louisville Southern Indiana Ohio River Bridges ("LSIORB") project. The remaining \$330 million of authorization was to be issued for the purpose of financing the US-68/KY-80 Lake Barkley and Kentucky Lakes Bridges project. These Notes are supported by payments received from the Federal Highway Trust Fund. In March of 2014, the Commission issued \$150 million of this authorization. The Commission anticipates issuing at least one (1) Project Note transaction during this period for the purpose of continuing/completing the 2010 GARVEE authorization.

The 2014 Regular Session of the General Assembly authorized \$742.8 million in General Fund supported debt financed projects, \$721.3 million in Agency Restricted Fund supported debt financed projects, and \$5.0 million in Road Fund supported debt financed projects.

Based on the size of the recent budget authorization and on the size of any additional capital project authorizations forthcoming from the General Assembly, the Commission may wish to establish one or more interim borrowing programs to provide short-term financing for authorized projects. This financing would likely be done through the issuance of Project Notes, primarily in the form of Bond Anticipation Notes ("BANs") or some form of a line of credit or bank loan, to fund any authorized projects supported by General Fund, Road Fund, or Agency Fund appropriations. Depending on the fund source, the State Property and Buildings Commission, the Turnpike Authority of Kentucky, or the respective State University would ultimately issue the permanent bonds to refund any BANs issued by the Commission.

With the exceptions of Fiscal Year 2004 and Fiscal Years 2010-2014, the Commission has previously issued one or more General Fund Tax and Revenue Anticipation Notes

("TRANs") every year since Fiscal Year 1998. The Commission does not currently anticipate issuing a General Fund TRAN for Fiscal Year 2015. However, the Commission may choose to issue TRANs in future fiscal years depending on budgetary and market conditions.

The primary objectives of any Project Note, BAN, Line of Credit or Bank Loan are to:

1. Provide interim and/or permanent financing for capital projects as necessary;
2. Provide low cost funding alternatives;
3. Minimize budgetary complications;
4. Possibly maintain a limited amount of variable rate exposure for a portion of the Commonwealth's debt.

The primary objectives of any TRAN issues are to:

1. Fund mismatches of General Fund revenues and expenditures within a fiscal year;
2. Reduce the cost of funds through the use of external sources;
3. Maximize permissible arbitrage earnings;
4. Maximize administrative flexibility.

Description of Services Sought

The firm selected to provide bond counsel services to the Commission will be working with OFM and multiple underwriting firms that have been selected in similar fashion as the bond counsel firm. The firm selected to perform bond counsel services will be responsible for duties which include, but are not limited to, providing opinions, tax opinions and advice related to debt structuring, the sale and closing of the securities and tax issues including arbitrage regulation and secondary market disclosure compliance, consulting with the trustee and the Commonwealth, drafting and circulating required issuance documents for approval and coordinating the closing of the issue. Bond counsel may also be called upon to assist in drafting legislation and administrative regulations related to the Commission.

The engagement will include services for all note issuances of the Commission from the date of the contract through June 30, 2016. The engagement may be extended for two additional fiscal years under the same terms and conditions at the discretion of OFM and the Commission.

GENERAL INFORMATION

The Commission was created by the General Assembly under KRS 56.860–869 to develop policies and strategies to minimize the impact of fluctuating interest rates on the Commonwealth's interest-sensitive assets and interest-sensitive liabilities. The Commission is authorized to issue Tax and Revenue Anticipation Notes, Project Notes and Funding Notes. Tax and Revenue Anticipation Notes are to be used for the purpose of providing monies to discharge expenditure demands in anticipation of revenues and taxes to be collected during the fiscal year. Project Notes are to be used for authorized projects upon

request of the Finance and Administration Cabinet, to be repaid through financing agreements or alternative agreements. Funding Notes are to be used for the purpose of funding obligations payable under KRS 161.550(2) and KRS 161.553(2), or judgments against the Commonwealth or any state agency. OFM, which is in the Finance and Administration Cabinet, serves as staff to the Commission.

The Kentucky Asset/Liability Commission is composed of five members, each serving in an *ex officio* capacity. The members are as follows: the Secretary of the Finance and Administration Cabinet, who acts as Chairperson; the Attorney General; the State Treasurer; the State Budget Director; and the State Controller as follows:

Lori Flanery	Secretary of the Finance and Administration Cabinet, Chairperson
Jack Conway	Attorney General
Todd Hollenbach	State Treasurer
Jane Driskell	State Budget Director
Ed C. Ross	State Controller

The Secretary to the Commission is Ryan Barrow, the Executive Director of OFM.

Debt Service Appropriation Process

The budget process normally begins in August prior to the start of each new biennium. Each cabinet and agency prepares a budget request for the upcoming biennium, which is submitted to the Office of the State Budget Director (“OSBD”). Each cabinet and agency requests the amount of new debt service dollars required to support new or expansion projects to be funded via the debt issuance process. Road Fund supported debt service for all existing notes and/or bonds is requested by the Transportation Cabinet. Debt service for new projects is estimated using a debt service template which provides rate assumptions for 5-, 7-, 10-, and 20-year bonds issued on a tax-exempt or taxable basis. The OSBD further refines the cabinet and agency budget requests into the Governor’s Executive Budget Request, which is then presented to the General Assembly.

Required Components of Proposal

Each response to the RFP must include and address the following items. Failure to comply with the requirements of the RFP will result in the firm's response not being evaluated by the Selection Committee (See Selection and Notification).

I. Disclosure

1. Certify that there has been no material change to any of the statements and certifications made by the firm in its response to the Request for Qualifications, Section II, Disclosure, issued by OFM on January 28, 2013. In the event there has been a material change, please specify the nature of the change and the impact of the change on the firm and its ability to provide the desired services.
2. Detail any criminal investigation, indictment, prosecution or other proceeding that has ever been brought against your firm (provide attachment if necessary). Also, describe any civil litigation pending or concluded within the last three years against your firm that would impair the firm's ability to provide the requested services (provide attachments if necessary). Also, describe the nature of any conflicts of interest that you believe may exist or arise.
3. Disclose any potential conflicts of interest with representing the Commonwealth in this matter, including any potential conflicts of interest of employees assigned to this project and potential conflicts with any Commission members. The Commonwealth reserves the unqualified right to disqualify an entity or cancel any contract for any potential conflict of interest issues raised initially and/or during the life of any contract awarded.

II. Qualifications

1. Relevant Experience of the Firm

- A. Briefly describe the history and organization of the firm and its municipal finance law department.
- B. Provide a discussion of relevant bond counsel experience of the firm with municipal financings similar to those proposed by the Commission. Please provide a listing of relevant transactions and indicate your firm's involvement and the date of each.
- C. Provide a discussion of relevant bond counsel experience of the firm in the area of Kentucky law, particularly statutes or case law related to the issuance of Commission Notes.

- D. Describe your firm's technological capabilities such as creating CD-ROM based transcripts.

2. Relevant Experience and Qualifications of the Representatives of the Firm

- A. Provide a discussion of the experience, qualifications, and availability of the firm's representatives who would work on the Commission's issues. Provide the names and resumes of all individuals who would be assigned to work with the Commission and identify the lead counsel. Specifically address the firm's intent regarding who would be assigned to be the contact for the Commission should the lead counsel be unable or unavailable to serve the Commission for any reason. Additionally, provide a statement as to the availability and willingness of the firm to perform analyses and prepare opinions concerning tax-related issues, establishing the Trust Indenture, Bond Resolution, Letter of Credit, Liquidity Facility and other legal services on a timely basis during the contract period which may not be directly related to the debt issuance process. Please note that any changes made to legal counsel assigned to the Commission must be approved by OFM.
- B. Provide specific references of experience with similar issuers for the firm and lead counsel. Include names, addresses, and telephone numbers.

3. Legal Issues That May Impact the Issuance of Debt by the Commission

- A. Project Note/BAN Issues

The Commission has previously issued Project Notes for General Fund, Road Fund, Agency Fund, and Federal Highway Trust Fund projects.

Currently, the Commission does not have any active trust indentures for General Fund, Road Fund, or Agency Fund BANs. Depending upon the size and timing of additional capital project authorizations from the General Assembly, the Commission may require one or more new trust indentures for the purpose of providing interim financing for the Commonwealth's capital programs through the issuance of Project Notes (BANs) or may consider some form of a line of credit or bank loan. It is anticipated that, depending on the funding source, the State Property and Buildings Commission, the Turnpike Authority of Kentucky, or the respective State University would issue permanent bonds to refund any BANs or line of credit/bank loan issued by the Commission.

The Commission anticipates issuing Project Notes supported by Federal Highway Trust Fund reimbursements, similar to the 2014 Series A Notes, for the purpose of providing permanent financing for the US-68/KY-80 Lake Barkley and Kentucky Lakes Bridges project. There is currently \$180 million of authorized but un-issued authorization available for this purpose.

Please discuss any recent legal developments that may impact the sizing and sale of Project Note issuances.

B. TRAN Issues

The most recent TRAN transactions have been executed on a negotiated basis as fixed rate notes to mature within the applicable fiscal year. The Commission utilizes a statistical based model with typically 5-8 years of historical data to project future cash flow deficits. In recent years, the majority of the TRAN Notes have been swapped back to a variable rate in order to better match corresponding assets.

Please discuss any recent legal developments that may impact the sizing and sale of a TRAN, including an associated interest rate swap.

C. Other Legal Issues

Please identify or discuss any further legal issues (e.g. Dodd-Frank or pension disclosure) pertaining to any recent regulations or developments that your firm believes may have a material impact on issuance of debt by the Commission.

D. Post-Issuance Compliance Implementation

Does your firm have any specific guidance for issuers on post-issuance compliance? Please provide discussion/suggestions on the best, most efficient way to implement procedures regarding post issuance compliance for the Internal Revenue Service for ongoing tracking and documentation of capital projects financed with tax-exempt bond proceeds. Please indicate your firm's willingness to work with OFM staff regarding post-issuance compliance.

III. Fee Proposal

Provide a fee proposal (Attachment C) for work to be performed during the contract period. Bond counsel fees will be paid only upon completion and closing of a note issue. Provide one (1) fee proposal on a per \$1,000 bond basis inclusive of all expenses which shall include copying, faxing, mailing (excluding overnight delivery), telephone, transcripts (loose), travel and other out-of-pocket expenses. The Commission will pay, with written proof, invoices for advertising notices of sale,

overnight delivery, and bound and CD-ROM transcripts. The Commission will provide **minimum** compensation of \$10,000 per issuance and **maximum** compensation of \$100,000 per issuance. For purposes of your firm's proposal, assume the Commission will complete one (1) GARVEE Project Note transaction for \$180 million, one (1) Project Note BAN transaction for \$150 million, one (1) Project Note Line of Credit/Bank Loan for \$150 million, and one (1) TRAN transaction for \$400 million. For BANs, Line of Credit and TRANs, please provide a one-time flat (\$) fee as well for the creation of each new respective trust indenture.

Multiple series of notes (i.e., Tax-Exempt, AMT, Taxable) issued simultaneously under a single trust indenture are considered to be a single issuance by the Commission. No variations from a per \$1,000 bond fee (except where flat fee proposals are requested), including graduated scales or divergent minimum or maximum fees, will be accepted.

The fee proposal must be submitted on Attachment C in a separate sealed envelope. **Failure to adhere to these requirements will result in disqualification of the response.**

Reservation of Rights

OFM and the Commission reserve the right to:

1. Review and approve any change in significant staff members involved in the financing, as well as the right to discharge the firm promptly based upon such personnel changes or inability to provide access to key staff members.
2. Reject any and all proposals with cause, including failure to disclose material information.
3. Reject all proposals and seek new proposals when such procedure is reasonably in the best interest of the Commission.
4. Make investigations regarding qualifications of any or all respondents as the Selection Committee deems necessary.
5. Request and receive such additional information as the Selection Committee may reasonably require. Failure to comply with such a request will result in disqualification.
6. Waive minor irregularities in the RFP process.
7. Make all submitted proposals and any attached materials available for Open Records requests pursuant to KRS 61.870.

Liability

The Commission and OFM shall not be liable for:

1. Any costs incurred by the proposing firm in the preparation of any proposal.
2. Any costs incurred by the proposing firm in connection with any interview or negotiation relating to this RFP (i.e travel, accommodations, etc.).
3. Any disclosure, whether by negligence or otherwise, of any material or information in any form submitted by any proposing firm in response to this RFP.

Submission of Proposals

Six hard copies of each proposal, and one electronic copy, must be received at the following address no later than **4:00 p.m. ET on Friday, June 13, 2014**.

Office of Financial Management
Kentucky Asset/Liability Commission Bond Counsel RFP
702 Capitol Avenue, Suite 76
Frankfort, KY 40601-3453
Phone: (502) 564-2924
Fax: (502) 564-7416
E-mail: Marcia.Adams@ky.gov

NOTE: Proposals received after the stated deadline will NOT be accepted. It is NOT the responsibility of a courier service to meet the deadline; it is the responsibility of the respondent. Fax copies and electronic transmissions will not be accepted.

Questions

All questions and requests for information concerning this RFP must be submitted in writing to the above address by **4:00 p.m. ET on Thursday, June 5, 2014**. Questions regarding the RFP may be submitted in writing or by e-mail. Any questions submitted, and their answers, may be distributed to all respondents at the discretion of the Chairperson of the Selection Committee. Please note that questions submitted after the deadline will not receive a response.

Selection and Notification

A Selection Committee composed of OFM staff (voting) and a merit employee of the Auditor of Public Accounts (nonvoting) will review all proposals submitted. Proposals will be evaluated pursuant to the evaluation criteria outlined on Attachment A. The Selection Committee will determine whether to hold interviews with proposing firms. The Selection Committee will make a recommendation for selection pursuant to KRS 45A.840 to 45A.879. These statutes may be accessed at <http://www.lrc.ky.gov/statutes/chapter.aspx?id=37250>.

Contact with Selection Committee Members

Please note that any contact made by the firm with any member of the Selection Committee from the date of issuance of the RFP until an award of a contract is required to be disclosed by such committee member to the entire committee and will become a part of the permanent file for this selection process which is subject to open records requests.

The Office of Financial Management respectfully solicits the submission of a proposal by your firm.

Sincerely,
Ryan Barrow, Executive Director

Attachment A: Evaluation Criteria
Attachment B: Evaluation Form
Attachment C: Fee Proposal
Attachment D: Kentucky Preference Laws

ATTACHMENT A

EVALUATION CRITERIA

**Kentucky Asset/Liability Commission Request for Proposals
Bond Counsel
FY 2015-2016**

<u>Evaluation Criteria</u>	<u>Weight</u>
1. Relevant Experience of the Firm	25%
2. Relevant Experience and Qualifications of the Firm's Representatives	30%
3. Legal Issues	25%
4. Fee Proposal	<u>20%</u>
TOTAL	100%

ATTACHMENT B

EVALUATION FORM

**Kentucky Asset/Liability Commission Request for Proposals
Bond Counsel
FY 2015-2016**

FIRM: _____

REVIEWER: _____

DISCLOSURE: _____ Yes _____ No

1. **RELEVANT FIRM EXPERIENCE** - (Qualifications, recent similar transactions, firm organization)

Score (25 points possible): _____

Notes _____

2. **RELEVANT EXPERIENCE AND QUALIFICATIONS OF FIRM REPRESENTATIVES** (Number of staff available, background, individual experience on similar transactions, identification of principal contact, specific firm references)

Score (30 points possible): _____

Notes _____

3. **LEGAL ISSUES** - (Depth and quality of discussion, demonstration of understanding of the Commission's programs)

Score (25 points possible): _____

Notes _____

Total Score*: _____

*Scores for fee proposals will be uniformly assigned by the Committee Chairperson.

ATTACHMENT C

FEE PROPOSAL FORM
Kentucky Asset/Liability Commission
Bond Counsel Request for Proposals
FY 2015-2016

BOND COUNSEL FEE (Price Per \$1,000 Bond)

Provide a fee inclusive of all expenses including copying, faxing, mailing*, telephone, travel and other out-of-pocket expenses. The per bond fee quoted will be applicable to all financings completed during the contract period subject to the minimum and maximum fees stated below.

Minimum fee per issuance = \$ 10,000

Maximum fee per issuance = \$ 100,000

For purposes of your firm's proposal, assume the Commission will complete A) one (1) GARVEE Project Note transaction for \$180 million, B) one (1) Project Note BAN transaction for \$150 million, C) one (1) Line of Credit/Bank Loan for \$150 million, and D) one (1) TRAN transaction for \$400 million.

Multiple series of notes (i.e., Tax-Exempt, AMT, Taxable) issued simultaneously under a single trust indenture are considered to be a single issuance by the Commission. No variations from a per \$1,000 bond fee (except where flat fee proposals are requested), including graduated scales or divergent minimum or maximum fees, will be accepted. There can be no assurance that any transaction will be completed during the contract period.

A) (5pts total)

Project Note (GARVEE) Per Bond Fee x 180,000 = _____

****B) (5pts total)**

1.) Project Note (BAN) Per Bond Fee x 150,000 = _____ (2.5 pts)

2.) One-time flat (\$) fee for creation of a new trust indenture = _____ (2.5pts)

****C) (5pts total)**

1.) Project Note (Line of Credit/Bank Loan) Per Bond Fee x 150,000 = _____ (2.5pts)

2.) One-time flat (\$) fee for creation of trust indenture for Line of Credit = _____ (2.5pts)

D) (5pts total)

1.) TRAN Per Bond Fee x 400,000 = _____ (2.5 pts)

2.) One-time flat (\$) fee for creation of a new trust indenture = _____ (2.5pts)

*****Interest Rate Swap Opinion Fee** _____

* Note: The Commission will reimburse counsel for necessary overnight mail expenses, advertising notice of sale, and for the cost of final transcripts in addition to the quoted fee.

** Note: The referenced Notes are to be General Fund supported. The Commission reserves the right to negotiate fees for Road Fund and Agency Fund supported Notes, if applicable.

*** Note: This component does not affect this section's scoring. The Commission has outstanding swaps that may need to be unwound at a future date and has therefore requested a flat fee quote be provided.

SIGNED

DATE

NAME OF FIRM:

[This Fee Proposal Must Be Submitted in a Separate Sealed Envelope.]

ATTACHMENT D

Kentucky Preference Laws (KRS 45A.490-494)

The scoring of bids/proposals is subject to Reciprocal preference for Kentucky resident bidders and Preferences for a Qualified Bidder. *Vendors not claiming resident bidder or qualified bidder status need not submit the corresponding affidavit.

Reciprocal preference for Kentucky resident bidders

KRS 45A.490 Definitions for KRS 45A.490 to 45A.494.

As used in KRS 45A.490 to 45A.494:

- (1) "Contract" means any agreement of a public agency, including grants and orders, for the purchase or disposal of supplies, services, construction, or any other item; and
- (2) "Public agency" has the same meaning as in KRS 61.805.

KRS 45A.492 Legislative declarations.

The General Assembly declares:

- (1) A public purpose of the Commonwealth is served by providing preference to Kentucky residents in contracts by public agencies; and
- (2) Providing preference to Kentucky residents equalizes the competition with other states that provide preference to their residents.

KRS 45A.494 Reciprocal preference to be given by public agencies to resident bidders -- List of states -- Administrative regulations.

- (1) Prior to a contract being awarded to the lowest responsible and responsive bidder on a contract by a public agency, a resident bidder of the Commonwealth shall be given a preference against a nonresident bidder registered in any state that gives or requires a preference to bidders from that state. The preference shall be equal to the preference given or required by the state of the nonresident bidder.
- (2) A resident bidder is an individual, partnership, association, corporation, or other business entity that, on the date the contract is first advertised or announced as available for bidding:
 - (a) Is authorized to transact business in the Commonwealth; and
 - (b) Has for one (1) year prior to and through the date of the advertisement, filed Kentucky corporate income taxes, made payments to the Kentucky unemployment insurance fund established in KRS 341.490, and maintained a Kentucky workers' compensation policy in effect.
- (3) A nonresident bidder is an individual, partnership, association, corporation, or other business entity that does not meet the requirements of subsection (2) of this section.
- (4) If a procurement determination results in a tie between a resident bidder and a nonresident bidder, preference shall be given to the resident bidder.
- (5) This section shall apply to all contracts funded or controlled in whole or in part by a public agency.
- (6) The Finance and Administration Cabinet shall maintain a list of states that give to or require a preference for their own resident bidders, including details of the preference given

to such bidders, to be used by public agencies in determining resident bidder preferences. The cabinet shall also promulgate administrative regulations in accordance with KRS Chapter 13A establishing the procedure by which the preferences required by this section shall be given.

(7) The preference for resident bidders shall not be given if the preference conflicts with federal law.

(8) Any public agency soliciting or advertising for bids for contracts shall make KRS 45A.490 to 45A.494 part of the solicitation or advertisement for bids.

The reciprocal preference as described in KRS 45A.490-494 above shall be applied in accordance with 200 KAR 5:400.

Determining the residency of a bidder for purposes of applying a reciprocal preference

Any individual, partnership, association, corporation, or other business entity claiming resident bidder status shall submit along with its response the attached Required Affidavit for Bidders, Offerors, and Contractors Claiming Resident Bidder Status. The BIDDING AGENCY reserves the right to request documentation supporting a bidder's claim of resident bidder status. Failure to provide such documentation upon request shall result in disqualification of the bidder or contract termination.

A nonresident bidder shall submit, along with its response, its certificate of authority to transact business in the Commonwealth as filed with the Commonwealth of Kentucky, Secretary of State. The location of the principal office identified therein shall be deemed the state of residency for that bidder. If the bidder is not required by law to obtain said certificate, the state of residency for that bidder shall be deemed to be that which is identified in its mailing address as provided in its bid.

