

Only firms which have been prequalified by the Office of Financial Management to provide bond counsel services for FY 2012 and FY 2013 to the Kentucky Housing Corporation may submit a response to this Request for Proposals.

July 12, 2012

Request for Proposals (RFP) to Serve as Bond Counsel to the Kentucky Housing Corporation for Fiscal Year 2013

The Office of Financial Management (“OFM”) of the Finance and Administration Cabinet of the Commonwealth of Kentucky, on behalf of the Kentucky Housing Corporation (“KHC” or the “Corporation”), is inviting proposals from prequalified firms to provide bond counsel and related general legal services to the Corporation. Pursuant to KRS 45A.850, the Corporation seeks to hire **one (1) bond counsel firm** to provide the desired services for the engagement period beginning July 1, 2012 and ending June 30, 2013 (“FY 2013”), with an option to renew on the same terms and conditions for one additional fiscal year.

KHC’s mission is to promote, develop and to provide a wide range of housing opportunities to assist low and moderate income individuals and families in obtaining decent, affordable housing. A key component in carrying out this vital mission is the continued ability of the Corporation to obtain favorable financing terms to fund its housing programs. For the Corporation to continue to support its programs and maintain its financial strength, KHC requires the professional services of bond counsel on an ongoing basis.

The Corporation’s Housing Revenue Bond Indenture (the “Indenture” or “General Bond Resolution”) is rated AAA by Standard & Poor’s and Aaa by Moody’s Investors Service. However, the current bond market makes the prospect of being able to issue tax-exempt debt and offer mortgages at competitive rates challenging. As such, the Corporation expects opportunities to issue bonds, under the Indenture, to be limited and anticipates issuing no more than \$100 million in one or more transactions, exclusive of economic refunding opportunities. The single-family bond issues will provide continued funding for the Corporation’s Homeownership Program and will likely involve new money, replacement refunding, and possibly economic refunding of select bonds. The Corporation may also consider the creation of one or more new indentures to advance its mission. Additionally, bond counsel will be required to act as “Issuer’s Counsel” in the event that multi-family bonds are issued on a conduit basis.

Financial information regarding the Corporation and its programs, including the Annual Financial Report and Secondary Market Disclosure, are available at the Corporation’s web site, www.kyhousing.org. Official Statements for recent transactions may be found at www.MuniOS.com or at www.emma.msrb.org.

The financing objectives of the Corporation and OFM in the selection of bond counsel are:

1. Develop financing plans to optimize bonding resources and other funding opportunities to provide for uninterrupted Homeownership Program funding;
2. Minimize issuance costs and program expenses;
3. Maintain the AAA/Aaa ratings on the Corporation’s Housing Revenue Bonds;

4. Minimize interest costs and resulting mortgage rates throughout the life of the financing;
5. Continue availability of consulting and special services during the contract period to meet the Corporation's objectives.
6. Provide opinions related to the substitution or replacement of liquidity providers.
7. Assist with the creation of a new indenture for the primary purpose of funding multifamily development.

All bond transactions undertaken during the contract period will be under the direction of the Corporation and OFM as financial advisor to the Corporation. Any offerings are subject to approval by the Corporation's Board of Directors, the State Property and Buildings Commission and the Capital Projects and Bond Oversight Committee of the Legislative Research Commission of the Kentucky General Assembly, and the Office of Financial Management.

Description of Services Sought

The firm engaged to perform bond counsel services will be working with the Corporation, OFM, underwriting firms, a cash flow advisor, and a trustee. The firm selected to perform bond counsel services will be responsible for duties which include but are not limited to: notice of sale; providing legal opinions and legal advice related to debt structuring; interest rate swaps; program documentation; the legal sale and closing of securities; and tax issues including secondary market disclosure compliance and arbitrage regulation compliance; consulting with the trustee and the Corporation; drafting and circulating of required issuance documents for approval- including duties related to the potential creation of new indentures, remarketing agreements, and liquidity agreements; reviewing the Preliminary Official Statement (POS) and final Official Statement in a negotiated sale, and coordinating the closing of all issues.

General legal services will be required throughout the year in addition to those services performed during the bond issuance process. These services may include, but not be limited to: assistance in promulgating administrative regulations, drafting statutory language and opinions, and interpretation of the General Bond resolution provisions and tax law. The Corporation anticipates that up to 50 hours of legal services beyond those services performed during the bond issuance process may be required. The Corporation will not contract separately for these services and the cost for these services must be included in your firm's per bond fee proposal.

The engagement will include services for all transactions of the Corporation for fiscal year 2013. The engagement may be extended, on the same terms and conditions, for one additional fiscal year at the discretion of KHC and OFM.

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

- A. 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 25, 2011. In the event there has been a material change, please specify the name of the change and the impact of the change on the firm and its ability to provide the desired services.
- B. 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.
- C. 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 of the Corporation's board 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 (80%)

1. Relevant Experience of the Firm (25%)

- A. Provide a discussion of relevant bond counsel or underwriter's counsel experience of the firm in the area of mortgage revenue bond financing. Provide specific examples of the following types of transactions for which the firm has served as bond counsel or underwriter's counsel:
 - (1) Post-1988 "qualified mortgage bonds," both new money and replacement refundings, issued under a general resolution;
 - (2) Pre-Ullman economic refundings for which the firm performed the tax analysis;
 - (3) Post Ullman economic refundings; and
 - (4) Refunding experience related to Variable Rate Demand Obligations ("VRDOs"), which were originally converted synthetically to fixed rate bonds through the use of interest rate swaps.
 - (5) Multifamily bonds issued under a general resolution
- B. Discuss any relevant experience acting as Issuer's Counsel on a conduit multi-family financing.

2. Relevant Experience and Qualifications of the Representatives of the Firm (30%)

- A. Provide a discussion of the experience, qualifications and availability of the firm's representatives who would work on the Corporation's issues. Provide the names and resumes of all individuals who would be assigned to work with the Corporation and identify the lead counsel. Additionally, provide a

statement as to the availability and willingness of the firm to perform analyses and prepare opinions concerning tax-related and/or bond resolution matters on a timely basis during the contract period which may not be directly related to the debt issuance process. Please note that any changes to lead counsel must be approved by the Corporation and OFM.

- B. Provide three (3) specific references each for the firm's and lead counsel's experience with similar issuers. Include names, addresses and telephone numbers.

3. Legal Issues Which May Impact the Issuance of Debt by the Corporation (25%)

- A. Please discuss the tax law considerations in terminating existing interest rate swaps utilizing both tax-exempt and taxable indices as part of a finance plan that assumed that the swaps were deemed "integrated." Please discuss any experience that you believe may be helpful to the Corporation in avoiding any potential pitfalls associated with such a termination.
- B. Discuss any recent developments regarding tax and other issues that may affect both the issuance of single-family and multi-family mortgage revenue bonds under existing or new indentures. Discuss how your firm's interpretation of these developments may assist the Corporation in meeting its financial objectives.
- C. Highlight any other pertinent legal issues the Corporation may face during the contract period that would impact on its ability to efficiently achieve its objectives. Provide examples of how your firm has assisted other state housing finance agency clients in such legal areas.

III. Fee Proposals (Attachment C) (20%)

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

Provide three (3) copies of the fee proposals for work to be performed during the contract period. Fees will be paid *only upon completion and closing* of a bond issue.

- A. Provide a fee proposal for bond counsel and general legal work on bonds issued under the General Resolution on a per \$1,000 bond basis inclusive of all expenses which shall include copying, faxing, mailing, (excluding overnight shipping), transcripts (loose bound), telephone, travel and other out-of-pocket expenses. Minimum fees per issuance are acceptable but must be specifically detailed. For the purpose of preparing the fee proposal for bond counsel services, use the following assumptions:
 - The Corporation expects to complete two (2) single-family transactions of approximately \$50 million each.

- Please take into consideration that the Corporation may sell different series of bonds under the General Bond Resolution which would be delivered on the same day and be considered one issue for billing purposes.
 - The Corporation will pay, with written proof, invoices for overnight delivery, advertising fees for notices of sale, and bound transcripts, including CD-ROM versions.
- B. The second fee proposal will be for an all-inclusive flat fee for swap document review and opinions associated with the potential refunding of a portion of the Corporation's outstanding VRDOs and the related termination of an integrated interest rate swap.
- C. The Corporation has existing liquidity agreements which will begin to expire during fiscal year 2014. The third fee proposal will be for opinions related to the extension or assignment of existing liquidity agreements or the development of new agreements.
- D. Provide a fourth fee calculation for the proposed creation of a multi-family general obligation indenture and bond counsel fees for multi-family loans issued under that indenture and held at the Corporation.
- E. The fifth fee proposal will be for multi-family bonds issued on a "conduit basis" where your firm would act as Issuer's Counsel. Minimum fees are acceptable but must be specifically detailed. For purposes of preparing the fee proposal for Issuer Counsel services, assume five (5) transactions of \$10 million. Fees are to be paid at closing by the developer.

Reservation of Rights

The Corporation and OFM reserve the right to:

1. Review and approve any change in staff members significantly involved in any financing during the contract period, and discharge the firm promptly if such personnel changes do not meet the needs of the Corporation.
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 Corporation.
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 Corporation and OFM shall not be liable for:

1. Any costs incurred in the preparation and submission of any proposal.
2. Any costs incurred 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 in response to this RFP.

Questions

All questions concerning this RFP must be submitted by facsimile, email or in writing to the address below no later than **12:00 noon EDT on Monday, July 23, 2012**. Any questions submitted, and answers, may be distributed to all prequalified firms at the discretion of the Chairperson of the Selection Committee. Please note that questions submitted after the deadline will not receive a response.

Submission of Proposals

Six (6) copies of each proposal, one electronic copy, one sealed fee proposal and all related materials must be received no later than **2:00 p.m. EDT on Thursday, August 9, 2012** at the following address:

Office of Financial Management
Kentucky Housing Corporation
Selection Committee Chair
Bond Counsel FY 2013 RFP
702 Capitol Avenue, Suite 76
Frankfort, Kentucky 40601-3453
Phone: (502) 564-2924 Fax: (502) 564-7416
Marcia.Adams@ky.gov

Note: Proposals received after the stated deadline will NOT be accepted. It is NOT the responsibility of courier services to meet the deadline; it is the responsibility of the proposer. Facsimile copies and electronic transmissions will NOT be accepted for submission of proposals; however, one electronic copy must be received by the stated deadline in addition to the hard copy submittal for the submittal package to be considered complete.

Selection and Notification

The Selection Committee, established pursuant to KRS 45A.843, is composed of two employees

from the Corporation (voting), three employees from OFM (voting), and one merit employee from the Auditor of Public Accounts (nonvoting). A majority of the voting members must be merit employees of the Commonwealth. Proposals will be evaluated by all voting members pursuant to the evaluation criteria outlined on **Attachment A**. **The Selection Committee will make a recommendation for selection pursuant to KRS 45A.840 to 45A.879, and KRS 45A.490 to 45A.494. The scoring of proposals is subject to reciprocal preference for a Kentucky resident bidder and preference for a Qualified Bidder. (See Attachment D for enacted KRS 45A.490 to 45A.494 “Kentucky Preference Laws”.)**

The Kentucky Revised Statutes and the Kentucky Administrative Regulations referenced in the RFP may be found at <http://www.lrc.ky.gov/law.htm>

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 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” pursuant to Kentucky Open Records laws.

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

- Attachment A: Evaluation Criteria
- Attachment B: Evaluation Form
- Attachment C: Fee Proposal Form
- Attachment D: Kentucky Preference Laws (KRS 45A.490-494)

ATTACHMENT A

EVALUATION CRITERIA
Kentucky Housing Corporation Request for Proposals
Bond Counsel
FY 2013

<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	20%
· HRB General Indenture Fees	
· Swap Opinion Fee	
· Liquidity Counsel Fee	
· New Indenture	
· Conduit Issuer Counsel Fee	
TOTAL	100%

ATTACHMENT B

**EVALUATION FORM
Kentucky Housing Corporation Request for Proposals
Bond Counsel
FY 2013**

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 Corporation's bonds)

Score (25 points possible): _____

Notes _____

Total Score*(80 points possible): _____

*Scores for fee proposals (20 points possible) will be uniformly determined by the Committee Chair.

ATTACHMENT C

FEE PROPOSAL FORM
Kentucky Housing Corporation Request for Proposals
Bond Counsel
FY 2013

(A) HRB INDENTURE PRICE PER \$1,000 BOND (50%) = _____ Minimum Fee per issuance (if any) = _____ (Inclusive of up to 50 hours of general housing revenue bond indenture related legal services.)	
(B) SWAP OPINION FEE	(5%) = _____
(C) LIQUIDITY COUNSEL FEE	(10%) = _____ (Fee for the establishment of a new agreement or the renewal or assignment of an existing agreement)
(D) NEW INDENTURE	(25%) = _____
Fee per issuance (if any)	= _____
Indenture Creation Fee	= _____
(e) CONDUIT ISSUER COUNSEL PRICE PER \$1,000 BOND	(10%) = _____
Minimum fee (per issuance)	= _____

Fees are inclusive of all expenses including copying, faxing, mailing, telephone, travel and other out-of-pocket expenses. The fees quoted will be applicable only to financing identified and completed during the contract period subject to any minimum fees stated above.

Note: The Corporation will reimburse counsel for necessary invoiced overnight mail expenses, notices of sale, and for the cost of CD-ROM and binding final transcripts in addition to the quoted fee.

SIGNED

DATE

FIRM NAME

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

Attachment E

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.

