

**Only firms which have been prequalified by the Office of Financial Management to provide bond counsel services for FY 2014 and FY 2015 to the Kentucky Higher Education Student Loan Corporation may submit a response to this Request for Proposals.**

June 24, 2014

**Request for Proposals (“RFP”) to Serve as Bond Counsel to the Kentucky Higher Education Student Loan Corporation for Fiscal Year 2015.**

The Office of Financial Management (“OFM”), of the Finance and Administration Cabinet of the Commonwealth of Kentucky, on behalf of the Kentucky Higher Education Student Loan Corporation (“KHESLC” or the “Corporation”), is requesting proposals from prequalified firms to provide professional services of bond counsel to the Corporation during the period of July 1, 2014 through June 30, 2015 (“FY 2015”). Pursuant to KRS 45A.850, the Corporation seeks to hire one (1) bond counsel firm to provide services to the Corporation to complete potential financings by the Corporation during FY 2015.

The Corporation could potentially issue up to \$170 million in bonds or notes during FY 2015. Financings could include, (1) a LIBOR Floating Rate Note (“LFRN”) providing permanent financing for rehabilitated Federal Family Education Loan Program (“FFELP”) loans and also to possibly refinance outstanding auction rate securities and/or (2) tax-exempt or taxable fixed rate municipal bonds providing permanent financing for the Corporation’s supplemental loan program.

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, [http://www.kheslc.com/who\\_mission.html](http://www.kheslc.com/who_mission.html). Official Statements for recent transactions may be found at [www.MuniOS.com](http://www.MuniOS.com) or at <http://emma.msrb.org/default.aspx>.

The primary objectives of the Corporation and OFM for the bond financings are to:

1. Maximize the amount and level of legal expertise brought to each transaction;
2. Derive maximum economic benefit from new money and potential refunding issues consistent with the Internal Revenue Code, when applicable; and
3. Minimize issuance costs.

The Corporation's objectives, with respect to its financings, are as follows:

1. Continue to develop a cost-effective, profitable supplemental loan program.
2. Minimize or reduce financing and program risks.
3. Identify potential profit opportunities.

All debt offerings will be under the direction of the Corporation and OFM as financial advisor to the Corporation. Offerings are subject to approval by the Corporation’s Board of Directors, OFM, the State Property and Buildings Commission, and the Capital Projects and Bond Oversight Committee of the Kentucky General Assembly.

### **Description of Services Sought**

The firm engaged to perform bond counsel services will be working with the Corporation, OFM, Bank of America Merrill Lynch as senior managing underwriter, and selected or existing trustees. 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; program documentation; the legal sale and closing of securities; and tax issues including secondary market disclosure compliance and arbitrage regulation compliance; consulting with the trustees and the Corporation; drafting and circulating of required issuance documents for approval which includes duties related to the potential creation of new indentures, remarketing agreements, and liquidity agreements; reviewing the Preliminary Official Statement (POS) and final Official Statement (OS) in a negotiated sale, and coordinating the closing of all issues. Any fees incurred will be payable only upon successful closing of the issue.

General legal services will be required throughout the year in addition to those services performed during the bond issuance process. These services include, but are not limited to, providing opinions and tax law interpretation regarding provisions of the Corporation's multiple indentures. 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 FY 2015. The engagement may be extended, on the same terms and conditions, for one additional fiscal year at the discretion of KHESLC 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 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.
- 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 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%)**

### A. **Relevant Experience of the Firm (20%)**

1. Briefly discuss your firm's future commitment to municipal finance generally and to educational finance law specifically.
2. Provide a discussion of relevant experience of the firm as bond counsel or underwriter's counsel in the area of student loan revenue bond financings.
3. Provide specific examples of transactions of similar nature and credit for which the firm has served as bond counsel or underwriter's counsel.

### B. **Relevant Experience and Qualifications of the Representatives of the Firm (25%)**

1. Provide a discussion of the experience, qualifications and availability of the firm's representatives who would work on the Corporation's account. Provide the names and resumes of all individuals who would be assigned to work with the Corporation and identify the lead and tax 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 that arise during the normal course of business during the contract period. **Please note that any changes made to representation for the Corporation during any engagement must be approved by the Corporation and OFM.**
2. Provide specific references for the firm and lead counsel's experience with similar issuers. Include names, addresses and telephone numbers.

### C. **Legal Issues That May Impact the Issuance of Debt by the Corporation (35%)**

1. Discuss in general terms the relevant legal issues affecting the issuance of student loan revenue bonds. Provide a discussion of any legal issues with potential bond issuances involving (a) the financing of rehabilitated FFELP loans with LFRNS, and (b) the financing of supplemental loans under an open indenture.
2. Discuss the recent developments in federal student loan program laws and regulations, tax and arbitrage issues affecting the issuance of student loan revenue bonds.

**III. Fee Proposal (Attachment B)-(20%)**

Provide a fee proposal for work to be performed during the engagement period. Bond counsel fees will be paid only upon completion and closing of the respective bond issue. The Corporation will pay, with written proof, invoices for advertising notices of sale, overnight delivery, and bound and CD-ROM transcripts.

- (A.) Provide a fee proposal, assuming an approximate \$140 million issuance of LFRNs **under a newly created indenture** on a per \$1,000 bond basis inclusive of all expenses which shall include copying, faxing, mailing, telephone, travel and other out-of-pocket expenses. **Minimum and/or maximum fees per issuance are acceptable but must be specifically detailed.**
  
- (B) Provide an all-inclusive fee proposal, assuming a \$30 million issuance of fixed rate tax-exempt bonds **under an existing Indenture**. **Minimum and/or maximum fees per issuance are acceptable but must be specifically detailed.**

**The Fee Proposal must be submitted in a separate sealed envelope. Failure to adhere to these requirements contained on Attachment B will result in disqualification of the response.**

**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 events.
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 of any proposal.
2. Any costs incurred by the proposer 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, e-mail or writing to the address below by **12:00 noon ET on Monday, July 7, 2014**. Any questions submitted, and answers thereto, may be distributed to all pre-qualified 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) hard-copies and one (1) electronic copy of each proposal and all related materials must be received no later than **2:00 p.m. ET on Tuesday, July 15, 2014** at the following address:

Office of Financial Management  
Kentucky Higher Education Student Loan Corporation  
Bond Counsel FY 2015 RFP  
702 Capitol Avenue, Suite 76  
Frankfort, Kentucky 40601-3453  
Phone: (502) 564-2924 Fax: (502) 564-7416  
[Tammy.McCall@ky.gov](mailto:Tammy.McCall@ky.gov)

**Note: Proposals received after the stated deadline will NOT be accepted. It is the responsibility of the respondent, NOT the courier services, to meet the deadline. 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, will be composed of two staff members of the Corporation (voting), three staff members of OFM (voting) and one merit employee of the State Auditor of Public Accounts (non-voting). 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 C for enacted KRS 45A.490 to 45A.494 “Kentucky Preference Laws”).**

Statutes may be accessed at <http://www.lrc.ky.gov/legislation.htm>

**Contact with Selection Committee Members**

Please note that any contact made by the firm with any member of the Selection Committee members, 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 on behalf of the Corporation respectfully solicits the submission of a proposal by your firm.

**Attachments:**

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

**ATTACHMENT A**

**EVALUATION CRITERIA**

**Kentucky Higher Education Student Loan Corporation  
Request for Proposals  
Bond Counsel FY 2015**

	<b><u>Evaluation Criteria</u></b>	<b><u>Weight</u></b>
1.	Relevant Experience of the Firm	20%
2.	Relevant Experience and Qualifications of the Firm's Representatives	25%
3.	Legal Issues	35%
4.	<u>Fee Proposal</u>	<u>20%</u>
	<b>Total</b>	100%

**ATTACHMENT A**

**EVALUATION FORM**

**Kentucky Higher Education Student Loan Corporation  
Request for Proposals  
Bond Counsel FY 2015**

FIRM: \_\_\_\_\_

REVIEWER: \_\_\_\_\_

DISCLOSURE: \_\_\_\_\_ Yes \_\_\_\_\_ No

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

Score (20 points possible): \_\_\_\_\_

Notes: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

2. **RELEVANT EXPERIENCE AND QUALIFICATIONS OF FIRM'S REPRESENTATIVES** - (Number and availability of staff, background, individual experience on similar transactions, identification of principal contact, and references for principal contact)

Score (25 points possible): \_\_\_\_\_

Notes: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

3. **LEGAL ISSUES** - (Depth and quality of discussion, demonstration of understanding of the student loan industry and the Corporation's financing programs)

Score (35 points possible): \_\_\_\_\_

Notes: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Total Score\*: \_\_\_\_\_

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

**ATTACHMENT B**

**FEE PROPOSAL**

**Kentucky Higher Education Student Loan Corporation  
Request for Proposals  
Bond Counsel FY 2015**

**BOND ISSUANCE EXPENSE:**

(A.) Issuance of \$140 million of LFRNs inclusive of all expenses: copying, faxing, mailing, telephone, travel and other out of pocket expenses for issuance under a newly created indenture.

Price Per Note	Indenture Creation Fee	Min/Max Fee
_____	_____	_____

(B.) Issuance of up to \$30 million through the issuance of fixed-rate taxable or tax-exempt bonds under an existing indenture.

Price Per Bond/Note	Min/Max Fee
_____	_____

**(A)+(B) = \_\_\_\_\_ (Total Fee for Evaluation)**

**\*Note: The Corporation 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.**

\_\_\_\_\_  
Signed Date

\_\_\_\_\_  
Firm

## Attachment C

### 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.

