

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 Infrastructure Authority may submit a response to this Request for Proposals.

June 27, 2013

Request for Proposals (RFP) to Serve as Bond Counsel to the Kentucky Infrastructure Authority for Fiscal Year 2014

The Office of Financial Management (“OFM”) of the Finance and Administration Cabinet of the Commonwealth of Kentucky, on behalf of the Kentucky Infrastructure Authority (“KIA” or the “Authority”), is inviting proposals from prequalified firms to provide bond counsel services to the Authority. Pursuant to KRS 45A.850, the Authority seeks to hire **one (1) bond counsel firm** to provide the desired services for the engagement period beginning July 1, 2013 and ending June 30, 2014 (“FY 2014”), with an option to renew on the same terms and conditions for one additional fiscal year at the discretion of OFM and the Authority.

The Authority was created to provide a mechanism for funding construction of infrastructure projects by governmental agencies of the Commonwealth. Currently there are four loan programs administered by the Authority. Additionally, the Authority administers state funded Special Appropriation Grants. These include:

Fund A - Clean Water State Revolving Fund Loan Program

This program is used to finance local wastewater treatment facilities and nonpoint source projects that qualify under the U.S. Environmental Protection Agency requirements of the Clean Water Act. Debt service for Fund A revenue bonds issued to provide the required state match is funded through state appropriations. The Authority has issued leveraged agency bonds for the Fund A program, program revenues are used for the debt service on these bonds.

Fund B - Infrastructure Revolving Loan Program

This program provides funding for utilities and other public services projects. Debt service for bonds issued to capitalize Fund B is funded through state appropriations. The last appropriation for this program was received during the 1992-1994 biennium.

Fund C - Governmental Agencies Program

This program provides local governmental agencies funding for infrastructure projects through direct loans from cash within the program that may be reimbursed from the issuance of debt. Debt service for Fund C revenue bonds is paid from program revenues and not from state appropriations. As a result, no budgetary authorization is required.

Fund F - Drinking Water State Revolving Fund Loan Program

This program is used to finance local drinking water treatment facilities that qualify under the U.S. Environmental Protection Agency requirements of the Safe Drinking Water Act. Debt service for Fund F revenue bonds issued to provide the required state match is funded through state appropriations. The Authority has issued leveraged agency bonds for the Fund F program, program revenues are used for the debt service on these bonds.

SPAP - Special Appropriation Grants (State Funded)

The Kentucky General Assembly may appropriate by budget line item grants for water and wastewater infrastructure projects that have historically been administered by Authority.

The 2010 Kentucky General Assembly adopted a budget for the biennium ending June 30, 2012 (House Bill 1, as enacted and vetoed in part) which authorized an additional \$100 million of leveraged agency bonds for the Fund A program and \$25 million of leveraged agency bonds for the Fund F program. In each program, KIA was authorized to leverage existing loan repayments to support new bonds in order to significantly increase the amount of loan funds available to each program. The Authority issued (negotiated) the full authorization on March 27, 2012 as the \$111,345,000 Kentucky Infrastructure Authority Wastewater and Drinking Water Revolving Fund Revenue Bonds, Series 2012A.

The 2012 Kentucky General Assembly adopted a budget for the biennium ending June 30, 2014 (House Bill 265, as enacted and vetoed in part) which contained no additional agency bond authorization for any Authority programs. Bonds were authorized for any required state match for federally assisted programs. These bonds were issued by the State Property and Buildings Commission. The Authority plans to request authorization for the biennium ending June 30, 2016. The Authority and OFM are soliciting responses for bond counsel for the issuance of bonds related to the leveraged loan program, as well as any bonds issued for the Fund C program. At the present time, any state General Fund supported bonds, new money or refunding, are expected to be issued by the State Property and Buildings Commission. The Authority anticipates that future bond sales for the leveraged loan program and the Fund C program will be conducted on a negotiated basis, but reserves the right to issue the bonds on a competitive bid basis.

For additional information on the Authority or its programs, please see their web site at:

<http://kia.ky.gov/>

There can be no assurance by OFM or the Authority that transactions contemplated in this RFP will be completed during the contract period.

The objectives of the Authority in the selection of a bond counsel are as follows:

1. Minimize the cost of funds and the carrying costs associated with unexpended bond proceeds within policy constraints.
2. Maximize the amount and level of legal expertise brought to each transaction.
3. Maximize permissible arbitrage earnings.
4. Minimize budgetary process complications.
5. Minimize future administrative requirements.

All bond transactions undertaken during the contract period will be under the direction of the Authority and OFM. Any offerings are subject to approval by the Authority'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.

Description of Services Sought

The firm engaged to perform bond counsel services to the Authority will be working with the Authority, OFM, the Trustee, a financial advisor (if applicable), and a senior underwriting firm in a negotiated transaction. The firm selected to perform bond counsel services will be responsible for duties which include, but are not limited to: providing legal opinions and legal advice related to program and loan documentation, debt structuring, the sale and closing of securities, tax issues, continuing disclosure and arbitrage compliance issues; drafting and circulating bond issuance documents for approval, reviewing the Preliminary Official Statement (POS) and the Official Statement (OS) in a negotiated transaction, as well as coordinating the closing of any bond issues. In the event that the Authority issues bonds on a competitive basis the bond counsel firm engaged for the transaction will be required to prepare the POS and the OS as part of their duties.

GENERAL INFORMATION

The Authority

The Kentucky Infrastructure Authority is a municipal bond financing agency created under Kentucky Revised Statute (KRS) 224A to provide infrastructure loans and grants to local governmental agencies and investor-owned utilities. The Authority is an agency of the Commonwealth of Kentucky. The Authority collects loan payments on a semi-annual and monthly basis from, as of the date of this publication, 231 borrowers for 459 loans. Other accounting transactions include investments, inter-fund transfers, debt service payments, operating and construction disbursements, etc. To date, the Authority has issued 50 series of bonds with 8 series outstanding.

The Authority has received and continues to apply for capitalization grants to fund the Clean Water State Revolving Fund and the Drinking Water State Revolving Fund), administered by the U.S. Environmental Protection Agency.

The Authority has issued bonds under seven separate indentures. Currently, six of the indentures have no debt service reserve requirement. The Governmental Agencies Program indenture includes provisions for a pooled debt service reserve fund and surplus funds, among other accounts.

Debt Service Appropriation Process

The General Assembly is required by the Kentucky Constitution to adopt measures providing for the state's revenues and appropriations for each fiscal year. The Governor is required by law to submit a biennial State Budget (the "State Budget") to the General Assembly during the legislative session held in each even numbered year. State Budgets have generally been adopted by the General Assembly during those legislative sessions, which end in mid-April, to be effective upon the Governor's signature for appropriations commencing for a two-year period on the following July 1.

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 in addition to debt service required on outstanding Agency Bonds. General Fund supported debt service for all existing bonds is requested by OFM in the Finance and Administration Cabinet's budget request. Debt service for new projects is estimated using a debt

service template which provides rate assumptions for 7, 10, and 20 year bonds issued on a tax-exempt or taxable basis. 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

- 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 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 attachments 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 Authority'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 (75%)

A. Relevant Experience of the Firm (15%)

1. Provide a discussion of the experience, qualifications and availability of the firm's representatives who would work on bond issues of the Authority.
2. Provide the names and resumes of all individuals who would be assigned to work with the Authority and identify the lead counsel. Discuss the relevant bond counsel or underwriter's counsel experience of the firm's representatives in the area of infrastructure, state revolving fund and pooled financing. 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 made to legal counsel assigned to the Authority must be approved by the Authority and OFM.
3. Describe your firm's technological capabilities, for example, communication abilities,

software applications and ability to provide searchable transcripts on CD.

B. Relevant Experience and Qualifications of the Representatives of the Firm (35%)

1. Identify which of the firm's representatives will be responsible for the Authority's general legal services and day-to-day legal assistance and their availability. Discuss their experience in providing this type of assistance, their experience in dealing with the structure and function of utilities and their current responsibilities. Please provide four (4) references for this type of work including names, addresses and telephone numbers, specifically those related to a leverage program.
4. Provide specific references including names, addresses and telephone numbers, of similar issuers with which the firm and lead counsel have worked.

C. Legal Issues Which May Impact the Issuance of Debt by the Authority (25%)

1. Please identify and discuss any pertinent legal issues the Authority may face during the contract period which would materially impact the ability to efficiently achieve its financing objectives.

III. Fee Proposal (25%)

One (1) Fee Proposal must be submitted in a separate sealed envelope using Attachment C. Failure to adhere to these requirements will result in disqualification of the response.

Bond counsel fees will be paid from bond proceeds only upon the successful completion and closing of a bond issue as no funds have been appropriated for such purpose.

Provide a 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. Minimum fees per issuance are acceptable but must be specifically detailed. In preparing the fee proposal for bond issuances assume the following:

A single \$125,000,000 fixed-rate transaction during FY 2015. The amortization structure will be based upon the anticipated schedule of loan repayments.

The Authority will sell as many Bond Series as are needed from each program on the same date in order to utilize economies of scale resulting from a larger dollar volume. All Bond Series from all Authority programs sold on the same date will be considered one issue for billing purposes.

Reservation of Rights

The Authority 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 Authority.

2. Reject any and all proposals with cause.
3. Reject all proposals and seek new proposals when such procedure is reasonably in the best interest of the Authority.
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 61.872.

Liability

The Authority 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 Eastern on July 9, 2013**. 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 (1) electronic copy, one (1) sealed fee proposal and all related materials must be received no later than **2:00 p.m. Eastern on July 23, 2013** at the following address:

Office of Financial Management
Selection Committee Chair
Kentucky Infrastructure Authority
Bond Counsel RFP FY 2014
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 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, is composed of two employees from the Authority (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 determine whether to hold interviews with proposing firms. The Selection Committee will make a recommendation for selection pursuant to KRS 45A.840 to 45A.870, KRS 45A.877 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 recently 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 inspection upon public request pursuant to the Kentucky Open Records Act, KRS 61.870 – KRS 61.884.

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

ATTACHMENT A
EVALUATION CRITERIA
KENTUCKY INFRASTRUCTURE AUTHORITY
REQUEST FOR PROPOSALS
BOND COUNSEL
FISCAL YEAR 2014

	<u>Evaluation Criteria</u>	<u>Weight</u>
1.	Relevant Experience of the Firm	15%
2.	Relevant Experience and Qualifications of the Firm's Representatives	35%
3.	Legal Issues	25%
4.	<u>Fee Proposal</u>	<u>25%</u>
	Total	100%

ATTACHMENT B
EVALUATION FORM
KENTUCKY INFRASTRUCTURE AUTHORITY
REQUEST FOR PROPOSALS
BOND COUNSEL
FISCAL YEAR 2014

FIRM: _____

REVIEWER: _____

Disclosure: _____ Yes _____ No

1. RELEVANT FIRM EXPERIENCE - (Qualifications, Recent Similar Transactions, Firm Organization)

Score (15 points possible): _____

Notes: _____

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

Score (35 points possible): _____

Notes: _____

3. LEGAL ISSUES (Depth and quality of discussion of pertinent legal issues and demonstration of understanding of the Authority's bonds)

Score (25 points possible): _____

Notes: _____

Total Score*: _____

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

Note: This form must be used when submitting your Fee Proposal. It is not to be changed. Any fees not entered as requested in the format below will result in the firm's response not being evaluated by the Selection Committee. Failure to comply with the requirements of this RFP will result in the firm's response not being evaluated by the Selection Committee.

ATTACHMENT C

FEE PROPOSAL

**KENTUCKY INFRASTRUCTURE AUTHORITY
REQUEST FOR PROPOSALS
BOND COUNSEL
FISCAL YEAR 2014**

Per Bond Fee is inclusive of all expenses including copying, faxing, telephone, travel and other out-of-pocket expenses, except as noted below**. 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 for any issuance: \$ 20,000
Maximum fee for any issuance: \$100,000

Bond Counsel Fee Price Per Bond \$ _____

**Note: The Commission will reimburse bond counsel for actual cost associated with necessary overnight mail expenses, advertisements (public notice requirements) and the cost of final transcripts in addition to the quoted fee with proper documentation.

SIGNED _____ DATE _____

NAME OF FIRM _____

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.

