

Only firms which have been prequalified by the Office of Financial Management for Fiscal Year 2014 and Fiscal Year 2015 to provide bond counsel services to the Kentucky State Property and Buildings Commission may submit a response to this Request for Proposal.

May 22, 2013

Request for Proposals (“RFP”) to Serve as Bond Counsel to the Kentucky State Property and Buildings Commission During Fiscal Year 2014

The Office of Financial Management (“OFM”) of the Finance and Administration Cabinet of the Commonwealth of Kentucky (the “Cabinet”), on behalf of the Kentucky State Property and Buildings Commission (the “Commission” or “SPBC”), is requesting proposals from prequalified firms to provide bond counsel services to the Commission for the issuance of bonds during the engagement period ending June 30, 2014.

Pursuant to KRS 45A.850, the Commission seeks to hire **one (1) bond counsel firm** to provide services to the Commission for bond issuances over a period of twelve (12) months. The firm chosen pursuant to this RFP will be contracted for a period of twelve (12) months to complete selected financings by the Commission for Fiscal Year 2014. OFM will have the option to extend the contracts of the bond counsel firm, on the same terms and conditions, for an additional twelve (12) month period. The Commission may issue bonds on a negotiated or competitive sale basis. All firm selections will be determined based upon the final rankings of this RFP. The Commission anticipates hiring one (1) bond counsel firm to provide services for all bond issuance transactions.

The 2012 Regular Session of the General Assembly delivered House Bill 265 (Executive Branch Budget other than the Transportation Cabinet) to the Governor on March 30, 2012 and the 2012 Extraordinary Session of the General Assembly delivered House Bill 2 (Kentucky Transportation Cabinet Budget) to the Governor on April 20, 2012, establishing an Executive Branch Budget for the biennium ending June 30, 2014. Governor Beshear took final action on House Bill 265 on April 13, 2012 and took final action on House Bill 2 on May 2, 2012. Together, the bills authorize bond financing for projects totaling \$238.86 million to support various capital initiatives of the Commonwealth. Of the total authorization, \$182.86 million is General Fund supported, \$12.5 million is supported by Road Fund appropriations, and \$43.5 million is Agency Restricted Fund supported. A portion of the Agency Restricted Fund authorization listed above has been permanently financed.

The 2013 Regular Session of the General Assembly delivered House Bill 7 to the Governor on February 20, 2013 authorizing a list of capital projects for the Kentucky state universities. Governor Beshear took final action on House Bill 7 on February 21, 2013. The bill authorizes bond financing for various university capital projects totaling \$363.3 million to support various capital initiatives of the state universities, which are Agency Fund supported.

In addition, House Bill 238 was signed by the Governor on March 22, 2013 authorizing an agency fund bond supported capital project for the Judicial Branch in conjunction with the Administrative Office of the Courts for financing of Phase I E-Case and Docket Management system capital project totaling \$28.1 million to be issued through the Kentucky State Property and Buildings Commission or the Kentucky Asset/Liability Commission.

The balance of prior bond authorizations of the General Assembly dating back from 2005 to 2012 totals \$1,506.73 million. Of these prior authorizations, \$470.96 million is General Fund supported, \$46.77 million is Agency Restricted Fund supported, \$423 million is supported by Road Fund appropriations and \$566 million is Federal Highway Trust Fund supported.

A list of all authorized but unissued debt for General Fund supported bond projects is identified in **Attachment A**. The Kentucky General Assembly may authorize additional debt financing to support capital initiatives of the Commonwealth in future sessions. The issuance of any new debt authorized, if any, could be included in this contract engagement.

The Road Fund supported bonds will generally be issued by the Turnpike Authority of Kentucky and are not anticipated as part of this engagement. Likewise, any GARVEE bonds will be issued by the Asset/Liability Commission (“ALCo”) and are not a part of this engagement. Additionally, a majority of the Agency Fund supported bonds authorized for the state-supported institutions of higher education will be issued by the individual institutions and will not be a part of this engagement.

The Commission has adopted resolutions which approved the General Fund supported capital construction projects authorized by the General Assembly. The resolutions provided for the reimbursement of authorized expenditures made prior to the issuance of any bonds, and additionally provides for the advancement of monies for the planning and construction of the projects to be reimbursed by bond proceeds, as applicable.

A preliminary project and debt analysis indicates that the Commission is may conduct one bond issue during Fiscal Year 2014 with an estimated size of approximately \$100 million. If issued in Fiscal Year 2014, it is anticipated that the transaction will be to provide permanent financing for projects that are underway and are expected to meet expenditure tests as required by the Internal Revenue Code. Additional issuances may be required in Fiscal Year 2014 or 2015 if the General Assembly authorizes additional debt financings in the upcoming 2014 Regular Session. Actual bond issuances for the Commission will depend on capital project needs and market conditions at the time of sale. There can be no assurance by the Commission that transactions contemplated in this RFP will be completed during the contract period. Potential refunding candidates may be combined with new money transactions as circumstances permit.

The primary objectives of the Commission for the bond financings are to:

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. Convert interim financing provided by ALCo to permanent financing issued by the Commission, if applicable.
4. Maximize permissible investment earnings.
5. Minimize budgetary process complications.

6. Minimize future administrative requirements.

Description of Services Sought

The firm engaged to provide bond counsel services to the Commission will be working with OFM and a senior managing underwriting firm and/or a financial advisor firm that will be selected in a similar process as the bond counsel firm. The firm selected to perform these services for the Commission will be responsible for the oversight of legal services for the entire bond issue. For both the **negotiated** and **competitive** bond transactions, these duties include, but are not limited to, providing opinions and legal advice related to debt structuring and disclosure, reviewing preliminary and final official statements, coordinating the sale and closing of the securities, identifying tax issues including arbitrage regulations and ongoing status of project tax exemption, consulting with the Commission, the trustee and the Commonwealth, providing information as requested to the rating agencies, attending/testifying at legislative committee meetings, assisting in presentations as needed, overseeing the printing of bond certificates, drafting and circulating required issuance documents for approval, assisting with compliance of any continuing disclosure requirements as well as preparing official transcripts in a timely manner and assisting in the review of draft legislation related to the Commission. In addition, duties for any competitive bond transactions will include the drafting and producing of preliminary and final official statements. The General Assembly has not appropriated money for the payment of fees outside of the bond issuance process; therefore, any fees incurred will be payable only upon successful closing of the issue.

GENERAL INFORMATION

The Commission

Created pursuant to KRS 56.450, the Commission provides financing for capital construction projects and economic development programs approved by the General Assembly of the Commonwealth of Kentucky. The Commission issues lease revenue bonds to finance projects for which the debt service is appropriated from the Commonwealth's General, Agency, and in some cases, Road Funds. The Commission's uninsured ratings for General Fund supported bonds are "Aa3" from Moody's Investors Service, Inc., "A+" from Standard & Poor's Ratings Services, and "A+" from Fitch Ratings. The Commission is composed of the Governor (who is the Chairman of the Commission), the Lieutenant Governor, the Attorney General, the Secretary of the Finance and Administration Cabinet (who is the Executive Director of the Commission), the Secretary of the Cabinet for Economic Development, the State Budget Director, and the State Controller. OFM serves as staff to the Commission, and the Executive Director of OFM serves as Secretary to the Commission.

KRS 56.450(4) authorizes the Commission, on application of any state agency of the Commonwealth, to issue revenue bonds in the Commission's name in accordance with the provisions of KRS Chapters 56 and 58, secured by and payable solely from all or any part of the revenues derived from the leasing of the project financed to such state agency. The Commission is authorized to execute lease agreements with those state agencies requesting the Commission to issue revenue bonds, which leases provide for the payment of lease rentals to the Commission in order to make principal and interest payments on the revenue bonds issued in the name of the Commission.

Additional information regarding the Commission can be found at OFM's website <http://finance.ky.gov/services/ofm/Pages/SPBC.aspx>

Debt Service Appropriation Process

The Commonwealth of Kentucky is constitutionally mandated to budget on a biennial cycle, with the new biennium beginning July 1 of the even numbered calendar years. The biennium consists of two (2) fiscal years, each fiscal year beginning July 1 and ending June 30 of the next calendar year. 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 only requests the amount of new debt service dollars required to support new or expansion projects to be funded via the debt issuance process. 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 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. New money debt service appropriations are moved to the Finance and Administration Cabinet and combined with existing General Fund debt service appropriations at the beginning of each fiscal year. General Fund debt service, which is not expended in the fiscal year for which it is appropriated, cannot be carried forward into the subsequent fiscal year and will lapse to the General Fund Surplus Account.

REQUIRED COMPONENTS OF THE PROPOSAL

Your proposal must specifically address each of 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 as stated herein.)

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 members of 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 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 (75%)

A. **Relevant Experience of the Firm (15%)**

1. Briefly describe the history and organization of the firm and its municipal finance law department.
2. Provide a discussion of relevant bond counsel experience of the firm for lease appropriation revenue bonds. Highlight both taxable and tax-exempt experience and the conversion to permanent financing of a commercial paper or interim financing program similar in nature and credit to prior ALCo Bond Anticipation Note (“BAN”) or line of credit transactions. Please indicate the date of each relevant transaction.
3. Describe your firm’s technological capabilities, for example, software applications, ability to provide preliminary and official statements in searchable and ready-to-post pdf format, and ability to provide transcripts on CD-R Disc.

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

1. Provide a discussion of the experience and qualifications of the firm’s representatives who would work on the proposed financial transactions. Provide relevant experience the individuals have had on similar issues. Highlight both taxable and tax-exempt experience and the conversion to permanent financing of a commercial paper or interim financing program similar in nature and credit to prior ALCo BAN or line of credit transactions. Provide the names and resumes of all individuals who would be assigned to work on the issues and identify the lead and tax 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. **Please note that any changes made to the representation for the Commission must be approved in writing by OFM.**
2. Provide specific references of the firm’s and lead counsel’s experience with similar issuers. Include names, addresses and telephone numbers.

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

Please identify and discuss any relevant tax and legal issues the Commission may face or wish to consider which would impact its ability to issue the authorized debt and efficiently achieve its financing objectives with respect to each of the following items:

1. Economic Development Bond Pools

In 2006 Regular Session of the General Assembly, House Bill 380 authorized a bond pool in the amount of \$17,500,000 was authorized for an Economic Development Bond Pool, and in the 2010 Extraordinary Session of the General Assembly, House Bill 1 authorized a bond pool in the amount of \$7,500,000 to provide loans and/or grants for new and existing companies locating or expanding in Kentucky. The program has predominately provided grants to local municipalities who extend the proceeds to eligible companies for economic development projects. Certain repayment provisions apply in the event the company does not meet required investment, wage, and job expectations. However in most cases, any repayment is returned to the local municipality (and not the state) to be used for further economic development projects with the approval of the Cabinet for Economic Development. Security for these proceeds will be fully supported by General Fund appropriations and not from any project loan repayments. Bonds for this pool are typically issued once the project has been identified and in some cases, the bond proceeds are used to reimburse any receivable initially established for the project.

House Bill 1 also authorized \$25,000,000 for a loan pool for The Kentucky Economic Development Finance Authority (KEDFA). KEDFA makes low interest loans from this pool to firms that locate or expand operations in the Commonwealth. All loans are secured by collateral such as real estate, equipment, letter of credit, or guarantee.

2. Water and Sewer Projects

In the 2010 Extraordinary Session of the General Assembly, House Bill 1 provided additional bond authorization for the bond pools for infrastructure for economic development funds for coal and non-coal producing counties. The pools are authorized for bond proceeds in the amount of \$5,195,100 for the Infrastructure for Economic Development Fund for Coal Producing Counties and \$11,834,700 for the Infrastructure for Economic Development Fund for Non-Coal Producing Counties respectively and are under the administrative jurisdiction of the Kentucky Infrastructure Authority (“KIA”). The bonds are expected to be issued by the Commission. The bond proceeds will be used to provide grants to local government entities primarily for various water and sewer projects.

In addition, House Bill 1 provided bond authorization for the Fund A (Federally Assisted Wastewater Revolving Fund Program) in the amount of \$10,000,000 in Fiscal Year 2011 and \$10,000,000 in Fiscal Year 2012. This program finances local wastewater treatment and collection facilities that qualify under U.S. Environmental Protection Agency requirements. Unissued bond authorization for Fund A and is \$17,700,000. House Bill 1 also provided bond authorization for the Fund F (Federally Assisted Drinking Water Revolving Loan Fund Program) in the amount of \$6,000,000 in Fiscal Year 2011 and \$6,000,000 in Fiscal Year 2012. This program finances local drinking water facilities that qualify under U.S.

Environmental Protection Agency requirements. The unissued bond authorization is \$9,000,000. Funds are provided by the U.S. Environmental Protection Agency through capitalization grants of 83.33 percent of the total project for both programs. The State matches these funds with a 16.67 percent match of the total project through issuance of General Fund supported debt. Four percent of the capitalization grants is reserved for the program's administrative costs. The Commission anticipates issuing these bonds.

Most recently, in the 2012 Regular Session of the General Assembly, House Bill 265 provided bond authorization for the Fund A (Federally Assisted Wastewater Revolving Fund Program) in the amount of \$1,500,000 in Fiscal Year 2014. House Bill 265 also provided bond authorization for the Fund F (Federally Assisted Drinking Water Revolving Loan Fund Program) in the amount of \$2,200,000 in Fiscal Year 2014. A potential current economic refunding of bonds previously issued by KIA may be issued by the Commission and be a part of this contract. Please identify any legal issues that could be of concern to OFM should such a transaction occur?

3. Aviation Projects

In the 2010 Extraordinary Session, House Bill 1 provided Road Fund bond authorization of \$10,500,000 in the Fiscal Year Biennium 2010-12 for the Transportation Cabinet for Aviation Development. These funds will be used to provide support for the development, rehabilitation, and maintenance of public use aviation facilities in the Commonwealth. These bonds will need to be issued by the Commission. There are instructed budget transfers from the Aviation account to the General Fund. At the present time, staff has taken a very conservative approach with respect to this authorization and assumed a taxable issuance. Please discuss under what circumstances you believe the bonds could be issued on a tax-exempt basis, if any.

4. Road Fund Projects

In the 2012 Extraordinary Session, House Bill 2 provided Road Fund bond authorization of \$12,500,000 in the Fiscal Year Biennium 2012-14 for the Transportation Cabinet for the Driving Licensing System. These funds will be used to provide support for the development and creation of a database that will be used across the Commonwealth. These bonds will need to be issued by the Commission.

Please comment on suggested due diligence by the Commission in monitoring such projects for potential future changes in use, project size, grants, or other related issues to ensure the tax-exempt status of the bonds.

5. Other Legal Issues

- a. Please identify or discuss any further legal issues (e.g. Dodd-Frank or

pension disclosure) pertaining to any recent regulations or developments (e.g. U.S. Government downgrade) that you believe may have a material impact on issuance of debt by the Commission.

- b. 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.

III. Fee Proposal (25%)

The Commission is requesting one (1) fee quote on a per \$1,000 bond basis assuming your firm serves as bond counsel for the Commission for a single \$100 million traditional fixed rate General Fund lease appropriation revenue bond issue. Fee proposals will be evaluated utilizing the fee quote that you provide given this bond size assumption. Bond counsel fees will be paid only upon completion and closing of the respective bond issue. The fee proposal provided on a per \$1,000 bond basis shall be inclusive of all expenses which shall include copying, faxing, mailing (excluding overnight delivery), telephone, advertisements (public notice requirements), travel and other out-of-pocket expenses. Note that the Commonwealth will require that a minimum of three copies of the transcript of the issue be delivered which includes two (2) to the Commonwealth and one (1) to the Trustee within six months of closing of the issue. OFM requires that one hardbound, and one electronic (CD-R Disc) transcript be provided. The Commission will pay, with written proof, invoices for overnight delivery and transcripts. No variations from a per \$1,000 bond fee, including graduated scales or divergent minimum or maximum fees, will be accepted. All bond series, supported by the same fund source and sold on the same date, will be considered one issue for billing purposes. OFM assumes no responsibility for the actual amount of bonds issued during the contract period. Actual bond issuances, if any, may be greater or less than the assumed amount. The Commission will provide **minimum** compensation of \$10,000 per issuance and **maximum** compensation of \$125,000 per issuance, including any agency fund supported or refunding issues. **The firm's fee proposal must be submitted on Attachment B in a separate sealed envelope.** The Executive Director of OFM will negotiate a per bond fee based upon the top ranked firms' fee proposal. Identify also in Attachment B, a per bond fee for any Agency/Road Fund supported bond issues which is included in the provided minimum and maximum compensation to be provided by the Commission as identified above. The identified Agency/Road Fund supported fee will not be included for purposes of calculating the firm's overall score for fee proposal. Note: The previously mentioned Agency Fund and Road Fund bond authorizations may need to be issued by the Commission during the contract period. **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 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 Commission.
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 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 this RFP process.
7. Make all submitted proposals and any attached materials available for Open Records requests pursuant to KRS 61.870.

Liability

OFM and the Commission shall not be liable for:

1. Any costs incurred in the preparation or submission 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 e-mail or writing to the above address no later than **12:00 noon ET on Tuesday, June 4, 2013**. Any questions submitted, and answers, may be distributed to all prequalified firms at the discretion of the Selection Committee Chairperson. Please note questions submitted after the deadline will not receive a response.

Submission of Proposals

Submission of proposals must be received no later than 4:00 p.m. (ET) on Wednesday, June 19, 2013. Six (6) hard copies of your proposal and one (1) electronic copy (sent via email in

PDF form) along with all related materials must be received at the following address:

Office of Financial Management
State Property and Buildings Commission
Selection Committee Chairperson
Bond Counsel FY 2014 RFP
702 Capitol Avenue, Suite 76
Frankfort, Kentucky 40601-3453
Phone: (502) 564-2924
E-mail: 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. 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. The cost proposal does not need to be included in the electronic copy.

****ALL PROPOSALS SHOULD BE NO MORE THAN 50 PAGES 11 POINT FONT. RE-PRINTED MATERIALS SHOULD BE IN AN APPENDIX AND PLEASE INCLUDE AN EXECUTIVE SUMMARY PAGE.**

Scoring, Selection, and Notification

The Selection Committee established pursuant to KRS 45A.843 will be composed of five (5) OFM staff (voting and including a majority of merit employees) and one merit employee of the State Auditor of Public Accounts (nonvoting). **Proposals will be evaluated for Bond Counsel pursuant to the evaluation criteria outlined on Attachment C.** 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 E 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/>.

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 and the Commission respectfully solicits the submission of a proposal by your firm.

- Attachment A: Authorized but Unissued Bond Funded Capital Projects
- Attachment B: Fee Proposal
- Attachment C: Evaluation Criteria and Form
- Attachment D: Official Statement
- Attachment E: Kentucky Preference Laws (KRS 45A.490-494)