

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

July 16, 2012

Request for Proposals (“RFP”) to Serve as Bond Counsel to the Turnpike Authority of Kentucky during Fiscal Year 2013.

Introduction

The Office of Financial Management (“OFM”) of the Finance and Administration Cabinet of the Commonwealth of Kentucky (the “Cabinet”), on behalf of the Turnpike Authority of Kentucky (the “Authority” or “TAK”), is requesting proposals from prequalified firms for the professional services of bond counsel for the issuance of bonds during the engagement period ending June 30, 2013.

Pursuant to KRS 45A.850, the Authority seeks to hire **one (1) bond counsel firm** to provide services to the Authority to complete selected financings by the Authority during Fiscal Year 2013. OFM will have the option to extend the contract of the bond counsel firm, on the same terms and conditions, for an additional twelve (12) month period. The Authority intends to issue bonds on a negotiated basis. The firm selection will be determined based upon the final rankings of this RFP.

Background

The 2010 Extraordinary Session of the General Assembly adopted House Bill 3 (The Kentucky Transportation Cabinet Budget), which included authorization for \$400 million of Economic Development Road Revenue Bonds to support projects in the Biennial Highway Construction Plan. The Authority is expected to provide permanent financing for the projects. The bill also included \$10.5 million of Aviation Bonds expected to be issued through the State Property and Buildings Commission (“SPBC”) supported by revenues from the Road Fund; therefore, financing for that project will not be issued under this engagement.

The Authority has adopted a resolution which approved the bond-funded projects authorized by the 2010 Extraordinary Session of the General Assembly. The resolution provided for the reimbursement of authorized expenditures, not to exceed \$400 million, made prior to the issuance of any bonds, and additionally provided for the advancement of monies for the planning and construction of the project to be reimbursed by bond proceeds, as applicable. The Authority anticipates a bond issuance before the end of Fiscal Year 2013 that would include approximately \$200 million of the current Road Fund bond authorization.

The 2012 Extraordinary Session of the General Assembly adopted House Bill 2 (The Kentucky Transportation Cabinet Budget), which included authorization for \$12.5 million of

Road Fund bonds for the Replacement of the Driver Licensing System which is expected to be issued through SPBC supported by revenues from the Road Fund. As a result, financing for this project will not be issued under this engagement.

The Transportation Cabinet's 2012 Recommended Highway Plan is the vehicle through which major highway improvement projects scheduled for the upcoming biennium are submitted to the General Assembly for approval. The Plan contains many priority operational, maintenance, safety, pavement restoration, and bridge repair projects. The Transportation Cabinet's Recommended Six-Year Road Plan to the 2012 General Assembly was based on expectations that \$5.67 billion of traditional state and federal highway dollars will be available to address transportation needs throughout the state through 2018.

House Bill 4 of the 2009 Special Session of the General Assembly created the Kentucky Public Transportation Infrastructure Authority ("KPTIA") and authorized the formation of a bi-state authority to develop a financial plan for funding the estimated \$2.6 billion Louisville Southern Indiana Ohio River Bridges ("LSIORB") Project. Financing for the LSIORB Project will be provided by KPTIA for the Downtown Crossing and by the State of Indiana for the East End Crossing and is not part of this engagement.

The timing of bond issuances for the Authority will depend on project needs and market conditions. There can be no assurance by the Authority that transactions contemplated in this RFP will be completed during the contract period. Potential economic refunding transactions may be issued separately or combined with new money transactions as circumstances permit.

Description of Services Sought

The primary objectives of the Authority's bond financings are to:

1. Minimize the costs 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.

The firm engaged to provide bond counsel services to the Authority will be working with OFM and a senior managing underwriting firm that will be selected in a similar process as the bond counsel firm. The firm selected to perform these services for the Authority will be responsible for the oversight of the entire bond issue(s). These duties include, but are not limited to, providing legal opinions and legal advice related to debt structuring and disclosure, reviewing preliminary and final official statement, coordinating the sale and closing of the securities, identifying tax issues including arbitrage regulations and ongoing status of project tax exemption, consulting with the Authority, the trustee and the

Commonwealth, providing information as requested to the rating agencies, overseeing of printed bond certificates, preparing timely advertisements (notices of sale), drafting and circulating required issuance documents for approval, and assisting with compliance of any continuing disclosure requirements. Any fees incurred will be payable only upon successful closing of the issue.

GENERAL INFORMATION

The Turnpike Authority

The Turnpike Authority was created pursuant to KRS 175 and constitutes a de jure municipal corporation and political subdivision of the Commonwealth. The Turnpike Authority is authorized under the Act, subject to the limitations contained in the Biennial Appropriations Act and terms of written agreements with the Transportation Cabinet, to construct, reconstruct, maintain, repair and operate turnpike projects, resource recovery road projects, and economic development road projects, to lease such projects to the Transportation Cabinet and to issue its revenue bonds, revenue refunding bonds, revenue notes and revenue bond anticipation notes to finance such projects. The Authority's uninsured ratings for Road Fund supported bonds are "Aa2" with a "stable" outlook from Moody's Investors Service, Inc., "AA+" with a "stable" outlook from Standard & Poor's Ratings Services, and "AA-" with a "negative" outlook from Fitch Ratings. The Turnpike Authority members are the Governor (serving as Chairman), the Lieutenant Governor (serving as Vice Chairman), the Attorney General, the Secretary of the Finance and Administration Cabinet, the Secretary of the Transportation Cabinet, the State Highway Engineer and the Secretary of the Cabinet for Economic Development. The current members of the Turnpike Authority are as follows:

Governor	Steven L. Beshear
Lieutenant Governor	Jerry E. Abramson
Attorney General	Jack Conway
Secretary, Finance and Administration Cabinet	Lori H. Flanery
Secretary, Transportation Cabinet	Michael Hancock
State Highway Engineer	Steven K. Waddle
Secretary, Cabinet for Economic Development	Larry M. Hayes

The Executive Director of the Authority is Edgar C. Ross, the Secretary of the Authority is F. Thomas Howard, and the Treasurer is Doris A. Howe. OFM serves as staff to the Authority

Debt Service Appropriation Process

The Commonwealth of Kentucky is statutorily 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 requests the amount of new debt service dollars required to support new or expansion projects to be funded via the debt issuance process. Road Fund supported debt service for all existing bonds is requested by the Transportation Cabinet. Debt service for new projects may be estimated using a debt service template which provides rate assumptions for 5-, 7-, 10-, and 20-year bonds issued on a tax-exempt or taxable basis. The OSBD further refines the cabinet and agency budget requests into the Governor’s Executive Budget Request, which is then presented to the General Assembly.

REQUIRED COMPONENTS OF THE PROPOSAL

Each response to the RFP must specifically 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 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, potential conflicts with any Authority members, and potential conflicts that could arise from the financing of the LSIORB Project, particularly as it relates to the financing of the East End Crossing. 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 transportation related lease appropriation revenue bonds. Highlight both taxable and tax-exempt experience. Please indicate the date of each relevant transaction.
3. Provide a discussion of relevant bond counsel experience of the firm in the area of Kentucky law, particularly statutes or case law related to the issuance of TAK revenue bonds.
4. Describe your firm's technological capabilities, for example, communication abilities, software applications 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. 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 Authority should the lead counsel be unable or unavailable to serve the Authority for any reason. **Please note that any changes made to the representation for the Authority 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 Authority (25%)

1. Please identify and discuss any recent general and legal issues the Authority may face or wish to consider which would impact its ability to issue the authorized debt and efficiently achieve its financing objectives.
2. Discuss the impact of a potential cap on tax-exempt income or the elimination of tax-exemption would have on the Authority.

3. Discuss the provisions and impact of the newly enacted MAP-21 authorization, if any.

III. Fee Proposal (Attachment C) (25%)

The Authority is requesting one (1) fee quote on a per \$1,000 bond basis assuming your firm serves as bond counsel for the Authority for a single \$200 million Road Fund lease appropriation revenue bond issue. Fee proposals will be evaluated utilizing the fee quote that you provide given this bond size assumption. The bonds are expected to be issued in a fixed rate mode. 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, 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 Authority will pay, with written proof, invoices for overnight delivery, transcripts, and notices of sale. 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, under the same indenture, 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 Authority will provide **minimum** compensation of \$15,000 per issuance and **maximum** compensation of \$125,000 per issuance, including any refunding issues. **The firm's fee proposal must be submitted on Attachment C in a separate sealed envelope. Failure to adhere to these requirements will result in Disqualification of the Response.**

Reservation of Rights

OFM and the Authority 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 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 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 above address no later than **12:00 noon EDT on Monday, July 30, 2012**. Any questions submitted, and answers thereto, may be distributed to all prequalified firms at the discretion of the Selection Committee. Please note that 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. (EDT) on Monday, August 13, 2012. Six (6) hard copies of your proposal, one electronic copy, and all related materials must be received at the following address:

Office of Financial Management
Turnpike Authority of Kentucky
Selection Committee Chairperson
Bond Counsel FY 2013 RFP
702 Capitol Avenue, Suite 76
Frankfort, Kentucky 40601-3453
Phone: (502) 564-2924 Fax: (502) 564-7416
E-mail: marcia.adams@ky.gov

Note: Proposals received after the stated deadline will NOT be accepted. It is NOT the responsibility of 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.

*** Please note that responses to this RFP shall not exceed 50 pages in length and shall not use a font size smaller than 11 point.**

Selection and Notification

The Selection Committee established pursuant to KRS 45A.843 is composed of three (3) OFM staff (voting), two (2) Authority representatives (voting), and one merit employee of the State Auditor of Public Accounts (nonvoting). A majority of the voting members must be merit employees of the Commonwealth. **Proposals will be evaluated for Bond Counsel pursuant to the evaluation criteria outlined on Attachment B.** The Selection Committee will determine whether to hold interviews with proposing firms. The Selection Committee will make a recommendation for selection pursuant to KRS 45A.840 to 45A.879, 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 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 Authority respectfully solicits the submission of a proposal by your firm.

- Attachment A: Outstanding Debt of the Authority as of July 1, 2012
- Attachment B: Evaluation Criteria – Bond Counsel
- Attachment C: Fee Proposal
- Attachment D: Kentucky Preference Laws (KRS 45A.490-494)

ATTACHMENT A

**COMMONWEALTH OF KENTUCKY
FISCAL MANAGEMENT
SCHEDULE OF BONDS OUTSTANDING
7/01/2012**

AGENCY SERIES TITLE	AMOUNT ISSUED	DATE OF ISSUE	MATURITY DATE	PRINCIPAL OUTSTANDING	FISCAL YEAR ENDING 6/30/2013		FISCAL YEAR ENDING 6/30/2014	
					PRINCIPAL	INTEREST	PRINCIPAL	INTEREST
Turnpike Authority Economic Development								
2001A	152,960,000.00	02/2001	06/2015	52,965,000.00	18,650,000.00	1,927,281.26	8,225,000.00	903,256.26
2004B	41,510,000.00	10/2004	06/2015	40,485,000.00	10,815,000.00	1,587,167.50	10,100,000.00	1,038,602.50
2005A	33,330,000.00	04/2005	06/2015	10,695,000.00	2,615,000.00	326,600.00	2,720,000.00	222,000.00
2005B	213,750,000.00	04/2005	06/2025	169,915,000.00	9,140,000.00	7,969,802.50	9,590,000.00	7,522,802.50
2006A	74,605,000.00	03/2006	06/2026	35,795,000.00	6,155,000.00	1,230,980.00	2,875,000.00	984,780.00
2006B	146,630,000.00	06/2006	06/2026	146,630,000.00	3,010,000.00	6,728,865.00	6,685,000.00	6,578,365.00
2008A	195,665,000.00	08/2008	06/2028	195,665,000.00	8,510,000.00	9,416,352.50	8,800,000.00	9,125,527.50
2009A	153,305,000.00	04/2009	06/2029	147,910,000.00	5,845,000.00	6,602,038.76	6,110,000.00	6,336,088.76
2010A	153,260,000.00	06/2010	06/2020	153,260,000.00	5,595,000.00	6,817,281.26	18,465,000.00	6,677,406.26
2010B	187,640,000.00	06/2010	06/2030	187,640,000.00	0.00	6,696,110.92	0.00	6,696,110.92
2011A	115,175,000.00	04/2011	06/2031	115,175,000.00	0.00	5,480,556.26	0.00	5,480,556.26
2012A	218,200,000.00	03/2012	06/2032	218,200,000.00	0.00	10,356,950.00	0.00	10,356,950.00
SERIES TOTAL	1,686,030,000.00			1,474,335,000.00	70,335,000.00	65,139,985.96	73,570,000.00	61,922,445.96
AGENCY TOTAL	1,686,030,000.00			1,474,335,000.00	70,335,000.00	65,139,985.96	73,570,000.00	61,922,445.96

**ATTACHMENT B
EVALUATION CRITERIA**

**Turnpike Authority of Kentucky
Request for Proposals
Bond Counsel
Fiscal Year 2013**

	<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.	Fee Proposal	<u>25%</u>
	Total	100%

**ATTACHMENT B (page 2)
EVALUATION FORM**

**Turnpike Authority of Kentucky
Request for Proposals - Bond Counsel - Fiscal Year 2013**

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 (75 points possible)*: _____

*Scores for fee proposals (25 points possible) will be uniformly assigned by the Committee Chair.

**ATTACHMENT C
FEE PROPOSAL**

**Turnpike Authority of Kentucky
Request for Proposals
Bond Counsel
Fiscal Year 2013**

BOND COUNSEL FEE

Road Fund Supported: Price Per \$1,000 Bond* = _____

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

Minimum fee = \$ 15,000
Maximum fee = \$125,000

*For evaluation purposes assume a single bond issue of \$200 million.

**Note: The Authority will reimburse counsel for necessary overnight mail expenses and for the cost of final transcripts in addition to the quoted fee. Bond advertising will be a pass through expense and will be billed separate of the bond counsel fee.

SIGNED

DATE

FIRM NAME

NOTE: THIS FORM MUST BE USED WHEN SUBMITTING YOUR FEE PROPOSAL FOR BOND COUNSEL AND MUST BE SUBMITTED IN A SEPARATE SEALED ENVELOPE. FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS RFP WILL RESULT IN THE FIRM'S RESPONSE NOT BEING EVALUATED BY THE SELECTION COMMITTEE.

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.

