

Only firms which have been prequalified by the Office of Financial Management to provide bond counsel services for FY 2023 to the Kentucky Higher Education Student Loan Corporation may submit a response to this Request for Proposals.

March 21, 2022

Request for Proposals (“RFP”) to Serve as Bond Counsel to the Kentucky Higher Education Student Loan Corporation for Fiscal Year 2023.

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, 2022 through June 30, 2023 (“FY 2023”).

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 2023. The firm chosen pursuant to this RFP will be contracted for FY 2023 with an option to renew under the same terms and conditions for one additional fiscal year at the discretion of OFM and the Corporation.

KHESLC engaged in a multitude of financing activities over the past two years that helped meet several objectives. These activities included successful investor consent solicitations related to KHESLC’s 2010, 2013-1, 2013-2 and 2015 floating rate note (“FRN”) transactions. These four transactions, in addition to KHESLC’s 2016 transaction, were refinanced as part of the November 2020-1 and March 2021-1 FRN transactions. In addition, KHESLC successfully closed on a \$58,450,000 December Series 2021 fixed rate transaction in support of its supplemental Advantage Loan program. The December transaction issued out of KHESLC’s 2014 Master Trust included both taxable and tax-exempt fixed rate issuance that provided KHESLC relief from certain Series 2019 loan limitations that, along with Covid, were restricting KHESLC’s ability to fully utilize the bond proceeds from Series 2019 by the required October 1, 2021 date. Those bond proceeds were for then projected Academic Year (“AY”) 2019-2020 and AY 2020-2021 Advantage Loan volume and now must be fully utilized by October 1, 2022. Along with the aforementioned Series 2019 bond proceeds, KHESLC’s Series 2021 student loan revenue bonds provided KHESLC bond proceeds for the then projected AY 2021-2022 and AY 2022-2023 Advantage Loan volume.

Therefore, from an Advantage Loan program perspective, KHESLC does have a very reasonable amount of proceeds available for Advantage Loan originations and may not need to pursue any sort of combined taxable/tax-exempt fixed rate issuance in FY23 in support of its Advantage Loan program. Although current funding for the Advantage Loan program does seem reasonable, there do remain several challenges associated with the program that are, at least partially, articulated with the following

paradoxical-like questions facing KHESLC's supplemental Advantage Loan program:

- How can KHESLC continue to seek what is best for the Commonwealth of Kentucky?
- How can KHESLC continue to seek ways to grow its student and parent Advantage Loans?
- Should KHESLC pursue any sort of relationship with a loan aggregator for its Advantage Refinance loan program as it did approximately five years ago?
- If the answer to the aggregator question is yes, then how can KHESLC best manage all of the risks, some of which are inversely proportional, related to such an arrangement?
- Those specifically-identified risks include (a) economic risk related to sufficient spread with additional aggregator fees, (b) interest rate risk of increased lending with short-term capital before locking in permanent financing, (c) liquidity risk of not being able to accommodate lending spikes, (d) reputational risk associated with starting/stopping originations due to either underestimated loan demand and/or insufficient short-term liquidity and (e) economic risk of overestimated loan demand.
- In addition to the above specifically-identified risks, how does the current pervasive geopolitical risk, the demands of the digital revolution and stakeholder expectations inform the management of the Advantage Loan program?

As it relates to some of the possible KHESLC financing activities for its Federal Family Education Loan program ("FFELP"), the Corporation currently has preliminary approval through June 30, 2022 to issue up to \$370 million of Student Loan Asset-Backed Notes for the purpose of funding FFELP loans. Such issuance may be on either a fixed interest rate or variable interest rate basis, on either a federally tax-exempt or federally taxable basis, as either senior or subordinate obligations and as publicly offered or privately placed obligations. One of the key and critical aforementioned objectives that has been significantly satisfied with the multitude of KHESLC financing activities over the past two years is KHESLC's response to the replacement of London Interbank Offered Rates ("LIBOR"). Despite KHESLC's successful refinancing of five FRN transactions with new transactions that provide a pathway for replacing LIBOR, KHESLC's Series 2017-1 and 2019-1 transactions on the right side of its balance sheet remain open for evaluation of KHESLC's adoption of GASB Statement No. 93 "Replacement of Interbank Offered Rates." As part of that ongoing evaluation, KHESLC is assessing all of its options that include deferring action until 2023, seeking to amend and add LIBOR transition language, restructuring one or both transactions or pursuing a market transaction to replace the two series and to finance interim FFELP loans.

All said another way as it relates to KHESLC's FFELP and Advantage Loan programs, KHESLC is striving to be nimble, flexible and to evolve to maintain its niche in student loan finance to position itself in the continuously changing student loan and higher education landscape. Please note that financial information regarding

the Corporation and its programs, including the Annual Financial Report and Secondary Market Disclosure, are available at the Corporation's website, www.kheslc.com/kheslcservicing/pages/aboutus.faces. Official Statements for recent transactions may be found at www.MuniOS.com or www.emma.msrb.org. The primary objectives of the Corporation and OFM for the bond financings are to:

1. Maximize the 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, including through FFELP Portfolio acquisition opportunities.
4. Leverage master trust indentures, as applicable, to reduce the amount of overcollateralization credit enhancement required for each transaction.

All debt offerings will be under the direction of the Corporation and OFM as administrative 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, the Corporation's senior managing underwriter, the Corporation's financial advisor, 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), 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 and assistance with the various LIBOR replacements. 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 2023. 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 13, 2021. 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

A. Relevant Experience of the Firm

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

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**

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 FFELP loans with FRNs or direct placement notes (“DPN”), on both a taxable and tax-exempt basis, and (b) the financing of both taxable and tax-exempt 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.
3. Discuss the perceived and real impact of the implications of the COVID-19 pandemic as it relates to the student loans of the education sector. Please include in the discussion significant changes to FFELP noted in Dear Colleague Letter GEN-21-03 and the potential for additional material prospective changes to the FFELP program that may reduce revenues derived from the KHESLC loan portfolio (and the Kentucky Higher Education Assistance Authority collections portfolio). Provide any disclosure recommendations your firm would make regarding the pandemic.
4. As it relates to the Advantage Loan program risks described at the bottom of page one and the top of page two, please discuss any additional legal risks associated with these Advantage Loan program challenges.

III. Fee Proposal (Attachment C)

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 \$220 million issuance of taxable (and possibly tax-exempt) FRNs and/or taxable and tax-exempt DPNs **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 separate \$60 million issuance of fixed rate tax-exempt and taxable bonds. **Minimum and/or maximum fees per issuance are acceptable but must be specifically detailed.**

The Fee Proposal must be submitted in a separate e-mail submission using Attachment C. Failure to adhere to these requirements 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 e-mail to the address below by **1:00 p.m. ET on Monday, March 28, 2020**. 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

In total, submissions of proposals must be below 55 pages (one sided) of materials including attachments.

Only electronic submission materials will be accepted and must be received no later than **1:00 p.m. ET on Monday, April 11, 2022**. The Commonwealth email servers filter attachments that approach 10 MB, so proposals under that limit may be submitted to the email address below:

Office of Financial Management
Selection Committee
Kentucky Higher Education Student Loan Corporation Bond Counsel RFP
200 Mero St, 5th Floor
Frankfort, KY 40622
Phone: (502) 564-2924
E-mail: Debt.OFM@ky.gov

NOTE: It is recommended that receipt of all submissions be confirmed by the submitter. Proposals received after the stated deadline will NOT be accepted.

Scoring, 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 in Attachment A.** The Selection Committee will make a recommendation for selection pursuant to KRS 45A.840 to 45A.879, and KRS 45A.490 to 45A.494. The scoring of proposals is subject to reciprocal preference for a Kentucky resident bidder and preference for a Qualified Bidder. (See Attachment D for enacted KRS 45A.490 to 45A.494 “Kentucky Preference Laws”.)

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

Proprietary Information

The RFP specifies the required components and general content of proposals submitted in response to the RFP. **The Finance and Administration Cabinet will not disclose any portions of the proposals prior to Contract Award to anyone outside the Finance and Administration Cabinet, representatives of the agency for whose benefit the contract is proposed, representatives of the Federal Government, if required, and the members of the evaluation committee.** After a Contract is awarded in whole or in part, the Commonwealth shall have the right to duplicate, use, or disclose all proposal data submitted by firms in response to this RFP as a matter of public record. Although the Commonwealth recognizes the firm’s possible interest in preserving selected data which may be part of a proposal, the Commonwealth must treat such information as provided by the Kentucky Open Records Act, KRS 61.870 et sequitur, which allows for exemptions as provided in KRS 61.870(1)(c).

Pursuant to KRS 61.870(1)(c), informational areas which normally might be considered proprietary shall be limited to **individual personnel data, customer references, selected financial data, formulae, and financial audits** which, if disclosed, would permit an unfair advantage to competitors. If a proposal contains information in these areas that a firm declares proprietary in nature and not available for public disclosure, **the firm shall declare in the Disclosure (See “Required Components of the Proposal,” Section I, Subsection D) the inclusion of proprietary information and shall noticeably label as proprietary each sheet containing such information.** The Cabinet will make all reasonable efforts to maintain the confidentiality of any information provided by the firm, which is identified by the firm as proprietary, provided such designation is reasonable, and subject to the order of the Attorney General or any court directing the Cabinet to release such information.

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 on behalf of the Corporation respectfully solicits the submission of a proposal by your firm.

Attachments:

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

ATTACHMENT A

EVALUATION

CRITERIA

**Kentucky Higher Education Student Loan Corporation
Request for Proposals
Bond Counsel FY 2023**

	<u>Evaluation Criteria</u>	<u>Weight</u>
1.	Relevant Experience of the Firm	20%
2.	Relevant Experience and Qualifications of the Firm's Representatives	20%
3.	Legal Issues	30%
4.	Fee Proposal	<u>30%</u>
	Total	100%

ATTACHMENT B

EVALUATION FORM

**Kentucky Higher Education Student Loan Corporation
Request for Proposals
Bond Counsel FY 2023**

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 (20 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 (30 points possible): _____

Notes: _____

Total Score*: _____

*Scores for fee proposals (30 points possible) will be uniformly determined by the Committee Chair.

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.

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.

(6) The preference for resident bidders shall not be given if the preference conflicts with federal law.

(7) 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.

