

Only firms which have been prequalified by the Office of Financial Management to provide Senior Managing Underwriter services for FY 2022 and FY 2023 to the Kentucky Higher Education Student Loan Corporation may submit a response to this Request for Proposal.

May 14, 2021

RE: Request for Proposal (“RFP”) to Serve as Senior Managing Underwriter to the Kentucky Higher Education Student Loan Corporation for Fiscal Year 2022

The Office of Financial Management (“OFM”) of the Finance and Administration Cabinet (the “Cabinet”) of the Commonwealth of Kentucky (the “Commonwealth”), on behalf of the Kentucky Higher Education Student Loan Corporation (the “Corporation” or “KHESLC”), hereby invites proposals for professional services of senior managing underwriter for the Corporation’s student loan financing activities during the fiscal year beginning July 1, 2021 and ending June 30, 2022 (“FY 2022”). The firm selected will serve as senior managing underwriter for any student loan note/bond issuance (excluding transactions drawing on the Corporation’s lines of credit), to be issued by the Corporation during FY 2022. The engagement may be extended for one additional fiscal year at the discretion of OFM and the Corporation.

KHESLC engaged in a multitude of financing activities over the past 18 months that helped to reduce the risk related to KHESLC’s decreasing unrestricted “net position” available for both operations and for contribution as credit enhancement (“CE”) overcollateralization (“OC”) for bond issuances. 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 LFRN transactions.

The Corporation’s financing plans for FY 2022 are dependent on a number of factors including, but not limited to, significant changes to the FFEL program at the federal level, the phase out of LIBOR, market access, market demand for loan products, FFELP loan acquisition opportunities, trends in the market and the availability and cost of financing structures. Bonds may be issued for any of the following purposes:

- Possible restructuring of remaining FRN transactions that do not have appropriately incorporating LIBOR transition language.
- Provide permanent financing for other FFELP student loans that could be acquired during the service period.
- Provide permanent financing for rehabilitated FFELP student loans or FFELP student loans that could be deemed by the U.S. Department of Education to be rehabilitated
- Finance the funding of existing and future non-federal fixed or variable rate supplemental loans, not originated under the federal program, including Advantage Education, Parent, and Refinance Loans (“Advantage Loans”) warehoused by the Corporation.

Currently, KHESLC has four FRN indentures, two of which are Direct Purchase Notes (“DPN”). The two market LFRN transactions that were consummated during KHESLC’s FY 2021 do incorporate certain LIBOR transition language in the underlying documents but the DPNs currently

do not contain such language. In addition, KHESLC has its 2014 and 2018 Master Indentures in support of its supplemental “Advantage” Loan Program. The Corporation may also create new Indentures of trust as needed to finance and/or refinance education loans. The Corporation currently has a \$75 million revolving line of credit (“LOC”) with a maturity of July 2022. As of April 30, 2021, the outstanding LOC was approximately \$17.1 million, leaving approximately \$57.9 million of available draws. That facility may be used by KHESLC to fund FFELP loans (including rehabilitation FFELP loans) and Advantage Loans for which KHESLC intends to obtain subsequent permanent financing. Although KHESLC currently projects that there may be sufficient loan acquisition funding through most of its Fiscal Year Ending June 30, 2022, a significant number of uncertainties remain that could impact issuance strategies and needs. Those uncertainties include the next steps related to a March 30, 2021 U.S. Department of Education (“USDE”) announcement titled “*March 30, 2021 U.S. Department of Education Announcement Expanding Covid-19 Emergency Flexibilities to Additional Federal Student Loans in Default.*”

The primary objectives of the Corporation and OFM in the selection of a senior managing underwriter are as follows:

1. Derive maximum economic benefit from each financing;
2. Minimize borrowing costs and issuance costs;
3. Maximize the amount and level of financial expertise brought to each transaction;
4. Provide continuity to the debt issuance process for each financing.

The Corporation’s objectives, with respect to its Student Loan Finance Program, are as follows:

1. Identify transactions that further the long-term best interests of the Corporation;
2. Select and execute transactions that optimize equity contributions, minimize or reduce financial risk, and provide reasonable profits and positive cash flow;
3. Provide ongoing, relevant program services;
4. When possible, maintain bond ratings on existing debt, obtain ratings on new debt needed to adequately market/place the debt, and strategically respond to bond downgrades, if and as applicable, related to certain rating agencies;
5. Consider FFELP loan portfolio acquisition opportunities;
6. Respond to remaining LIBOR challenges.
7. Respond to other significant changes to the FFEL program that could materially reduce portfolio revenues and/or rapidly and significantly increase demand for capital.

All debt issued by the Corporation will be used to finance the acquisition of student loans or to refund or convert bonds previously issued by the Corporation. Offerings will be under the direction of the Corporation and OFM. Offerings are subject to approval by the Corporation’s Board of Directors, the State Property and Buildings Commission, and the Capital Projects and Bond Oversight Committee of the Kentucky General Assembly.

Financial information regarding the Corporation and its programs, including the Annual Financial Report and Secondary Market Disclosure, is available at the Corporation’s web site, www.kheslc.com/kheslcservicing/pages/aboutus.faces. Official Statements for recent transactions may be found at www.MuniOS.com or at www.emma.msrb.org.

Description of Services Sought

The firm engaged to perform senior managing underwriting services to the Corporation will be working with the Corporation, OFM, Hawkins Delafield & Wood LLP as bond counsel, and a financial advisory firm. The engagement will include services for note/bond transactions of the Corporation from July 1, 2021 through June 30, 2022. The appointment may be renewed for one additional fiscal year at the discretion of OFM and the Corporation. This engagement does not include delayed delivery notes or other obligations or any new variable rate bond issues beyond the term of this engagement.

The current plan is for the firm selected to be responsible for services customarily performed by the senior managing underwriter including, but not limited to: structuring the issue(s); providing debt management and marketing services; posting the preliminary (POS/POM) and final official statements/memorandums (OS/OM) on the MSRB's EMMA web site; coordinating the sale and closing of the securities, including any escrow securities, with the trustee and the Corporation; and serving as a point of contact with the rating agencies and any credit enhancements.

KHESLC acknowledges that the selected firm for this engagement will not be acting as a municipal advisor, financial advisor or fiduciary to KHESLC or OFM and that the selected firm will be acting solely as a principal in a commercial arm's length transaction. In addition, this engagement will be neither an expressed nor an implied commitment by the selected firm to purchase or place any securities in connection with any such transaction, which commitment shall only be set forth in a separate underwriting, placement agency or other applicable type of agreement.

Fees and Expenses

Management fees and total expense limits will be established pursuant to KRS 45A.857 (4)(a). A fee proposal for financings during the contract period will be requested in Section III below. A maximum not-to-exceed management fee and expense (excluding underwriter's counsel) proposal must be identified and included in your response. The fee structure requested is a ceiling on the management fee plus all expenses, excluding underwriter's counsel. The amounts proposed shall serve as limits on any financing completed during the contract period. Actual management fees, expenses and takedown will be negotiated prior to the execution of the initial financing for the contract period within the limitations established in your response. Takedown may be further negotiated during the pre-pricing phase of each transaction. Fees will be paid only upon completion and closing of bond issues.

The senior managing underwriting firm selected will engage its own underwriter's counsel. The selected firm will be reimbursed within the expense component of each transaction by the Corporation for underwriter's counsel expenses pursuant to 200 KAR 21:050. The above-referenced statutes and administrative regulations can be viewed at <http://legislature.ky.gov>. Fees are considered part of the overall financing plan and are not weighted separately for calculating each firm's final score (see **Attachment A**).

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).
- C.** List all regulatory fines while engaged in transactions occurring within the last three years, including the amount of the fine and the reason for the fine.
- D.** 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 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.
- E.** Disclose if your firm's proposal has information considered proprietary that you wish to be confidentially disclosed. In the event that your firm chooses to declare the inclusion of proprietary information, please noticeably label such information as described in the "**Proprietary Information**" article of the RFP.

II. Qualifications (60%)

A. Relevant Experience of the Firm (30%)

- 1. Discuss your firm's history and commitment to municipal finance, specifically to higher education finance.
- 2. Provide a discussion of relevant senior managing underwriter experience of the firm in the area of student loan revenue bond financings. Specifically, discuss the firm's experience with the following: A) Municipal fixed rate bonds issued to finance state-based private loan programs, and B) Student Loan Asset Backed Notes and Bonds collateralized with FFELP loans.

3. Provide specific examples of transactions of similar nature and credit for which the firm has served as senior managing underwriter.

B. Relevant Experience and Qualifications of the Representatives of the Firm (30%)

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 will be assigned to work with the Corporation and identify one person who would serve as the lead banker. The Corporation expects the lead banker to be actively involved in all aspects of its financings. Discuss the availability of and the Corporation's access to the lead banker. Please note that any changes made to the representation for the Corporation during any engagement must be approved by the Corporation and OFM.
2. Provide specific references for the firm and lead banker's experience with similar issues. Include names, addresses and telephone numbers.

III. Plan of Finance (40%)

A. Debt Structuring

1. Discuss in general any products, program concepts or financing methods that you consider relevant or useful to the Corporation in meeting its objectives listed on page 2.
2. Depending on next steps associated with the aforementioned March 30, 2021 announcement and also on possible material changes to market demand, during Fiscal Year 2022 the Corporation may possibly issue taxable and/or tax-exempt bonds providing long-term financing for loans originated under the Corporation's Advantage Loan program or providing for financing of certain FFELP loans. Discuss significant financial issues relevant to such financings, major program considerations and your proposed financing recommendation, if any.

B. Marketing and Distribution

Please provide an analysis of demand for the Corporation's debt. Discuss your firm's views on municipal markets.

C. Fee Structure

Since the Corporation is engaging a senior managing underwriter for a period of one year and has not specifically identified the timing, structure and amount of its financings, the fee structure requested is a ceiling on the management fee plus all expenses, excluding underwriter's counsel. Also, provide the maximum not-to-exceed amount of takedowns, and any other expenses related to financing. The amounts proposed shall serve as limits on any financing completed during the contract period. Actual management fees, expenses and takedown will be negotiated prior to the execution of each financing during the contract period within the limitations established in your response. Fees and expenses will be paid only upon completion and closing of bond issues.

Although KHESLC's Fiscal Year 2022 bond issuance amounts will depend significantly on the ability to meet its objectives listed on page 2, provide a fee proposal for a bond issuance on a per \$1,000 bond basis including **management fee** (senior manager only), all **expenses** and **takedown** for both a **\$140** million LIBOR Floating Rate Note issue and a **\$70** million Fixed Rate Tax-Exempt Bond issue both with a single delivery and including, but not be limited to, structuring, carrying costs, day loan, Dalcomp, Dalnet, clearance, CUSIP, DTC, PSA, copying, faxing, mailing, telephone, travel and other out-of-pocket expenses, as applicable. Provide an itemization of the components of the total per \$1,000 bond fee proposal. Do **not** include expense components for underwriter's counsel. Underwriter's counsel fees will be determined after bond counsel has been selected pursuant to 200 KAR 21:050. These administrative regulations may be accessed at <http://legislature.ky.gov>.

Please also provide an itemization and an estimate of any expenses to be borne by the Issuer.

Reservation of Rights

OFM and the Corporation 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.
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, less information disclosed and labeled according to the “Proprietary Information” article of this RFP.

Liability

The Corporation and OFM shall not be liable for:

1. Any costs incurred by the proposer 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 by any proposer in response to this RFP.

Questions

All questions concerning this RFP must be submitted by e-mail to the address below by **2:00 p.m. ET on Wednesday, May 26, 2021**. Any questions submitted, and answers thereto, may be distributed to all respondents 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

Due to the extraordinary circumstances brought about by the Covid-19 pandemic, only electronic submissions will be accepted and must be received no later than **2:00 p.m. ET on Thursday, June 3, 2021**. **The Commonwealth email servers filter attachments that approach 10 MB**, so proposals under that limit may be submitted to the email Aubry.McDonald@ky.gov.

Office of Financial Management
Kentucky Higher Education Student Loan Corporation
Selection Committee Chair
Senior Managing Underwriter FY 2022 RFP
702 Capital Avenue, Suite 76
Frankfort, Kentucky 40601-3453
Phone: (502) 564-2924
Email: Aubry.McDonald@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.

Selection and Notification

The Selection Committee is 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 (nonvoting). All voting members of the Selection Committee will review all proposals submitted. Proposals will be evaluated pursuant to the evaluation criteria outlined on **Attachment A** and **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. These statutes may be accessed at <http://legislature.ky.gov>. The scoring of proposals is subject to reciprocal preference for Kentucky resident bidders and preference for a Qualified Bidder. (See Attachment C for KRS 45A.490 to 45A.494 “Kentucky Preference Laws”.)

NOTE: It is your firm's responsibility to notify OFM of any change in your firm's primary contact person's information. Any electronic correspondence returned because of an inaccurate e-mail address will be considered undeliverable and no attempt will be made to contact your firm for a correct address.

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 clearly 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 regarding the RFP, the firm’s response, or the RFP process, from the date of issuance of the RFP until an award of a 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: Kentucky Preference Laws (KRS 45A.490-494)

ATTACHMENT A

EVALUATION CRITERIA

**Kentucky Higher Education Student Loan Corporation
Request for Proposals
Senior Managing Underwriter FY 2022**

	<u>Evaluation Criteria</u>	<u>Weight</u>
1.	Relevant Experience of the Firm	30%
2.	Relevant Experience and Qualifications of the Firm's Representatives	30%
3.	Plan of Finance	<u>40%</u>
Total		100%

ATTACHMENT B

EVALUATION FORM

**Kentucky Higher Education Student Loan Corporation
Request for Proposals
Senior Managing Underwriter FY 2022**

FIRM: _____

REVIEWER ID: _____

Disclosure: _____ Yes _____ No

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

Score (30 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 lead banker, relevance of lead banker's experience, availability of staff, specific lead banker references.)

Score (30 points possible): _____

Notes: _____

3. **PLAN OF FINANCE** - (Capability of the proposed debt structure to meet the Corporation's financing objectives, depth and quality of discussion, demonstration of understanding of the student loan industry and the Corporation's financing programs, marketing and distribution, and fee components.)

Score (40 points possible): _____

Notes: _____

Total Score: _____

ATTACHMENT C

Kentucky Preference Laws (KRS 45A.490-494)

The scoring of bids/proposals is subject to Reciprocal preference for Kentucky resident bidders and preferences for a Qualified Bidder. *Vendors not claiming resident bidder or qualified bidder status need not submit the corresponding affidavit.

Reciprocal preference for Kentucky resident bidders

KRS 45A.490 Definitions for KRS 45A.490 to 45A.494.

As used in KRS 45A.490 to 45A.494:

- (1) "Contract" means any agreement of a public agency, including grants and orders, for the purchase or disposal of supplies, services, construction, or any other item; and
- (2) "Public agency" has the same meaning as in KRS 61.805.

KRS 45A.492 Legislative declarations.

The General Assembly declares:

- (1) A public purpose of the Commonwealth is served by providing preference to Kentucky residents in contracts by public agencies; and
- (2) Providing preference to Kentucky residents equalizes the competition with other states that provide preference to their residents.

KRS 45A.494 Reciprocal preference to be given by public agencies to resident bidders -- List of states -- Administrative regulations.

- (1) Prior to a contract being awarded to the lowest responsible and responsive bidder on a contract by a public agency, a resident bidder of the Commonwealth shall be given a preference against a nonresident bidder registered in any state that gives or requires a preference to bidders from that state. The preference shall be equal to the preference given or required by the state of the nonresident bidder.
- (2) A resident bidder is an individual, partnership, association, corporation, or other business entity that, on the date the contract is first advertised or announced as available for bidding:
 - (a) Is authorized to transact business in the Commonwealth; and
 - (b) Has for one (1) year prior to and through the date of the advertisement, filed Kentucky corporate income taxes, made payments to the Kentucky unemployment insurance fund established in KRS 341.490, and maintained a Kentucky workers' compensation policy in effect.
- (3) A nonresident bidder is an individual, partnership, association, corporation, or other business entity that does not meet the requirements of subsection (2) of this section.
- (4) If a procurement determination results in a tie between a resident bidder and a nonresident bidder, preference shall be given to the resident bidder.
- (5) This section shall apply to all contracts funded or controlled in whole or in part by a public agency.

(6) The Finance and Administration Cabinet shall maintain a list of states that give to or require a preference for their own resident bidders, including details of the preference given to such bidders, to be used by public agencies in determining resident bidder preferences. The cabinet shall also promulgate administrative regulations in accordance with KRS Chapter 13A establishing the procedure by which the preferences required by this section shall be given.

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

(8) Any public agency soliciting or advertising for bids for contracts shall make KRS 45A.490 to 45A.494 part of the solicitation or advertisement for bids.

The reciprocal preference as described in KRS 45A.490-494 above shall be applied in accordance with 200 KAR 5:400.

Determining the residency of a bidder for purposes of applying a reciprocal preference

Any individual, partnership, association, corporation, or other business entity claiming resident bidder status shall submit along with its response the attached Required Affidavit for Bidders, Offerors, and Contractors Claiming Resident Bidder Status. The BIDDING AGENCY reserves the right to request documentation supporting a bidder's claim of resident bidder status. Failure to provide such documentation upon request shall result in disqualification of the bidder or contract termination.

A nonresident bidder shall submit, along with its response, its certificate of authority to transact business in the Commonwealth as filed with the Commonwealth of Kentucky, Secretary of State. The location of the principal office identified therein shall be deemed the state of residency for that bidder. If the bidder is not required by law to obtain said certificate, the state of residency for that bidder shall be deemed to be that which is identified in its mailing address as provided in its bid.

REQUIRED AFFIDAVIT FOR BIDDERS, OFFERORS AND CONTRACTORS
CLAIMING RESIDENT BIDDER STATUS

FOR BIDS AND CONTRACTS IN GENERAL:

The bidder or offeror hereby swears and affirms under penalty of perjury that, in accordance with KRS 45A.494(2), the entity bidding 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:

1. Is authorized to transact business in the Commonwealth;
2. Has for one year prior to and through the date of advertisement
 - a. Filed Kentucky income taxes;
 - b. Made payments to the Kentucky unemployment insurance fund established in KRS 341.49; and
 - c. Maintained a Kentucky workers' compensation policy in effect.

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.

Signature

Printed Name

Title

Date

Company Name _____

Address _____

