

**Only firms which have been prequalified by the Office of Financial Management to provide bond counsel services to the Kentucky Public Transportation Infrastructure Authority may submit a response to this Request for Proposals.**

February 11, 2022

**Request for Proposals (“RFP”) to Serve as Bond Counsel to the Kentucky Public Transportation Infrastructure Authority during Fiscal Year 2022. Proposals are due on March 4, 2022.**

### **Introduction**

The Office of Financial Management (“OFM”) of the Finance and Administration Cabinet of the Commonwealth of Kentucky (the “Cabinet”), on behalf of the Kentucky Public Transportation Infrastructure Authority (the “Authority” or “KPTIA”), is requesting proposals from prequalified firms to provide professional services of bond counsel to the Authority. Firm selection will be determined based on the final rankings of this RFP. Pursuant to KRS 45A.850, the Authority seeks to hire **one (1) bond counsel firm** to provide the desired services from the date of acceptance and ending June 30, 2023 (“Fiscal Year 2022 & 2023”), with an option to renew under the same terms and conditions for one additional fiscal year at the discretion of OFM and the Authority.

KPTIA intends to evaluate refunding opportunities for all of its current outstanding debt obligations but is specifically interested in a refunding of the current Transportation Infrastructure Finance and Innovation Act (TIFIA) obligation.

Financial information regarding the Authority, including Annual Financial Reports and Secondary Market Disclosure, are available at its website:

<https://transportation.ky.gov/KPTIA/Pages/default.aspx>

Official Statements for prior transactions may be found at <http://emma.msrb.org/default.aspx>.

### **Description of Issuer**

The Authority was established in 2009 pursuant to KRS Chapter 175B to facilitate the construction, financing, operation, oversight, review and approval of significant transportation projects both intrastate and between the Commonwealth of Kentucky and the state of Indiana. KPTIA is administratively attached to the Kentucky Transportation Cabinet (“KYTC”). The Authority’s outstanding debt was issued in December 2013, June 2017, and October 2021. The purpose of the original financing was to construct the Downtown Crossing Project in Louisville, KY.

In December 2013, the Authority issued \$275,670,369.25 First Tier Toll Revenue Bonds consisting of Current Interest Bonds, Capital Appreciation Bonds, and Convertible Capital Appreciation Bonds (“2013 First Tier Bonds”); \$452,200,000 Subordinate Toll Revenue Bond Anticipation Notes consisting of a tax-exempt series and a taxable series (“2013 Subordinate Notes”); and entered into a TIFIA Loan Agreement for a Third Tier Loan of \$452,200,000 (“2013 TIFIA Loan”). In June 2017, the 2013 TIFIA Loan was drawn upon to retire the 2013 Subordinate Notes. In October 2021, the Authority issued \$185,300,000 First Tier Toll Revenue Refunding Bonds Series 2021 A & B to refund \$179,576,515 of the 2013 First Tier Bonds for economic savings.

The timing of any note or bond issuances for the Authority will depend upon market conditions. There can be no assurance by the Authority that any transactions contemplated in this RFP will be completed during the contract period.

### **Description of Services Sought**

The primary objectives of OFM and KPTIA are to:

- Refund on a negotiated basis and for economic savings, the TIFIA Loan with tax-exempt First Tier Toll Revenue Refunding Bonds.
- Eliminate the requirement of excess revenue sharing with the TIFIA lender.
- Develop goals, strategies, and an implementation process to achieve a ratings upgrade.
- Explore the economics of refunding a portion of the First Tier Toll Revenue Bonds.
- Minimize future administrative requirements and budgetary complications.
- Maximize the amount and level of financial and legal expertise brought to each transaction.

The firm engaged to provide bond counsel services to the Authority will be working with OFM, KPTIA, Public Financial Management (“PFM”) as KPTIA’s external financial advisor, and KYTC staff. A senior managing underwriting firm will also be selected in a similar process as bond counsel. Collectively, OFM, KYTC staff, KPTIA, PFM, and the selected senior managing underwriter firm may be referred to in the RFP as the “Finance Team”.

The firm selected to perform bond counsel 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 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 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 (which does include any work related to prior bonds). Any fees incurred will be payable only upon successful closing of the bond issue.

## **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 I, 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. Disclose any potential conflicts of interest with representing the Commonwealth in this matter, including: potential conflicts of interest of employees assigned to this project, potential conflicts with any Authority members, KYTC or OFM staff. 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 with TIFIA loans, refinancing TIFIA loans with tax-exempt bonds, or experience with other direct federal loan programs.
- 3. Provide a discussion of relevant bond counsel experience of the firm for both appropriation and stand-alone, dedicated revenue bonds. The Commonwealth's preference is experience specifically related to tax-exempt, dedicated toll revenue bond transactions since January 1, 2018, but other complex, dedicated revenue experience will be considered. Highlight both taxable and tax-exempt experience. Please indicate the date of each relevant transaction.
- 4. Provide a discussion of relevant bond counsel experience of the firm in the area

of Kentucky law and how that is applicable to the issuance contemplated under KRS Chapter 175B.

5. 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 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 That May Impact the Issuance of Debt by the Authority (25%)**

1. Review of governing structure of the toll system to ensure it will have minimal impact on bond issuance, particularly the extent to which KPTIA can commit to control actions taken by that governing structure.
2. Review of Tolling Body Resolution TB 2016-1 covenants to KPTIA bond holders and a determination as to whether those covenants need to be amended as a result of a future bond issuance.

**III. Fee Proposal (Attachment B) (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 \$450 million revenue refunding bond issue. Fee proposals will be evaluated utilizing the per-bond fee.** 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, 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. 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 B 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 and score sheets available for Open Records requests pursuant to KRS 61.870 to KRS 61.884.

### **Liability**

**OFM and the Authority 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 materials 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 no later than **12:00 pm (ET) on February 18, 2022**. 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**

Only electronic submissions will be accepted and must be received no later than **2:00 p.m. (ET) on March 4, 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  
KPTIA  
Selection Committee Chairperson  
Bond Counsel FY 2022 RFP  
200 Mero Street, 5<sup>th</sup> Floor  
Frankfort, Kentucky 40622  
Phone: (502) 564-2924 Fax: (502) 564-2970  
E-mail: [Debt.OFM@ky.gov](mailto: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.**

**\* Please note that responses to this RFP shall not exceed 50 pages in length, exclusive of cover letter and any attached schedules or certifications. The RFP 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 or staff to the Authority (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 A.** The Selection Committee will determine whether to hold interviews with proposing firms. The Selection Committee will make a recommendation for selection pursuant to KRS 45A.840 to 45A.879, and KRS 45A.490 to 45A.494. The scoring of proposals is subject to reciprocal preference for a Kentucky resident bidder. (See Attachment C 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 public disclosure pursuant to the Kentucky Open Records Act.

The Office of Financial Management and the Authority respectfully solicit the submission of a proposal by your firm.

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

**ATTACHMENT A  
EVALUATION CRITERIA**

**Kentucky Public Transportation Infrastructure Authority  
Request for Proposals  
Bond Counsel  
Fiscal Year 2022**

	<b><u>Evaluation Criteria</u></b>	<b><u>Weight</u></b>
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 A (page 2)  
EVALUATION FORM**

**Kentucky Public Transportation Infrastructure Authority  
Request for Proposals - Bond Counsel - Fiscal Year 2022**

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 needs)

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 B  
FEE PROPOSAL**

**Kentucky Public Transportation Infrastructure Authority  
Request for Proposals - Bond Counsel - Fiscal Year 2022**

Per Bond Fee is inclusive of all expenses including copying, faxing, telephone, travel and other out-of-pocket expenses, except as noted below\*\*. The per bond fee quoted will be applicable to all financings completed during the contract period subject to the minimum and maximum fees stated below.

Minimum fee for any issuance:                   \$ 15,000  
Maximum fee for any issuance:                 \$125,000

**Bond Counsel Fee                   Price Per Bond \$ \_\_\_\_\_**

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

\*\*\*\*\*

\_\_\_\_\_  
SIGNED

\_\_\_\_\_  
DATE

\_\_\_\_\_  
NAME OF FIRM

**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 C

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

The scoring of bids/proposals is subject to Reciprocal preference for Kentucky resident bidders. **Vendors not claiming resident 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.

### **Pursuant to 200 KAR Title 5.400(4)**

In awarding a contract, resident bidders shall only receive preference against nonresident bidders residing in a state that gives a preference to bidders from that state. This preference shall not be applied against nonresident bidders residing in states that do not give preference against Kentucky bidders.

**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 corporate income taxes;
  - b. Made payments to the Kentucky unemployment insurance fund established in KRS 341.490; 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 \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Subscribed and sworn to before me by \_\_\_\_\_ (Affiant) \_\_\_\_\_ (Title)  
of \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
(Company Name)

\_\_\_\_\_  
Notary Public  
[seal of notary] My commission expires: \_\_\_\_\_