

# **Texas Public Finance Authority**

## **REQUEST FOR PROPOSALS FOR BOND COUNSEL SERVICES**

RFP No.: 347-16-0020

RFP Issue Date: September 23, 2015

Response Due Date and Time: October 23, 2015, 5:00 p.m. CT

**TEXAS PUBLIC FINANCE AUTHORITY  
REQUEST FOR PROPOSALS FOR  
BOND COUNSEL**

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**RESPONSES DUE: October 23, 2015**

**Please see SCHEDULE OF EVENTS ON PAGE 4, and TIME SCHEDULE AND SUBMISSION DIRECTIONS ON PAGE 6.**

**PURPOSE**

Pursuant to Texas Government Code, sections 1232.059 and 1201.027, the Texas Public Finance Authority (the "Authority") solicits responses to this Request for Proposals ("RFP") from law firms interested in providing bond counsel services, including services that may be provided exclusively as disclosure counsel, to the Authority during the 2016-2017 biennium. The State fiscal year begins on September 1<sup>st</sup> and ends August 31<sup>st</sup>. The current fiscal biennium began on September 1, 2015 and ends August 31, 2017. It is estimated that contracts resulting from this RFP will begin not earlier than November 2015 for the Authority's bond issues, and related work, undertaken from and after that date through August 31, 2017, or, at the option of the Authority, through August 31, 2019. Based on consideration of the responses to this RFP, the Authority's Board of Directors (the "Board") may either: (1) select one or more firms with which to contract for all bond matters; or (2) pre-qualify firms eligible to be selected for a contract for specific bond issues on a transaction by transaction basis. The time and number of contracts resulting from this RFP, and all procedures relating to such contracts, are within the discretion of the Board, subject to the approval of the Office of the Attorney General. The Authority has determined that this solicitation does not provide subcontracting opportunities for bond counsel services.

It is the policy of the Authority to make a good faith effort to include participation of Historically Underutilized Businesses ("HUB") certified firms in its contracts. A HUB is a for profit business that meets the requirements of Tx. Gov't Code, Chapter 2161 and administrative rules of the Texas Comptroller of Public Accounts in 34 TAC Chapter 20, Subchapter B. (For further information on the State's HUB program, please refer to <http://comptroller.texas.gov/procurement/prog/hub/>.) In order to best comply with the Authority's HUB policy, the Authority may select, from firms responding to this RFP, one or more firms to serve as co-bond counsel. Please indicate in part 1 of your response whether your firm would like to serve as bond counsel only, as co-bond counsel only, or either.

Texas Government Code §402.0212 requires state agencies to submit proposed contracts with outside counsel to the Office of the Attorney General for approval. The template for outside counsel contracts promulgated by the Office of the Attorney General establishes an hourly rate cap at \$525. Further, the statute requires that the Office of the Attorney General review all invoices submitted for payment under an outside counsel contract. In addition, the statute requires that outside counsel remit an administrative fee to the Office of the Attorney General when entering into a contract subject to §402.0212. *See also:* 1 TAC Chapter 57.

**HISTORY OF THE AUTHORITY'S FINANCING PROGRAMS**

The Authority (formerly the Texas Public Building Authority) was created in 1983 by the 68th Legislature. The Authority is authorized to issue revenue bonds and general obligation bonds for the State of Texas to provide funding for purposes authorized by the Legislature. The Authority has issued revenue and/or general obligation bonds on behalf of the following state agencies and universities: the

Department of Agriculture, the School for the Blind and Visually Impaired, the Texas Facilities Commission, the Department of Criminal Justice, certain health and human services agencies, including the Health and Human Services Commission, the Department of State Health Services, and the Department of Aging and Disability Services, the Historical Commission, the Texas Juvenile Justice Department (formerly the Texas Youth Commission and the Juvenile Probation Commission), the Texas Military Department (formerly the Military Facilities Commission and the Adjutant General's Department), the National Research Laboratory Commission, the Parks and Wildlife Department, the State Preservation Board, the Department of Public Safety, the State Technical College System, the Department of Transportation, the Texas Windstorm Insurance Association, the Texas Workers' Compensation Fund, the Workforce Commission, Midwestern State University, Stephen F. Austin University, Texas Southern University, the Texas Military Preparedness Commission; and the Cancer Prevention and Research Institute of Texas.

The Authority currently administers three commercial paper programs: the Master Lease Purchase Program, which is primarily for financing equipment acquisitions; a General Obligation commercial paper program (Series 2008) for certain general state government construction projects; and the commercial paper program for the Cancer Prevention and Research Institute of Texas.

In 2003, the Authority created a nonprofit corporation, the Texas Public Finance Authority Charter School Finance Corporation, to finance projects for eligible charter schools pursuant to Chapter 53 of the Education Code. Staff of the Authority provides administrative support to the corporation pursuant to contract.

### **DIRECTION AND MANAGEMENT OF THE AUTHORITY**

The Authority is governed by a seven-member Board of Directors, appointed by the Governor with the advice and consent of the Senate for staggered, six-year terms. The current members of the Board are: Billy M. Atkinson, Jr., Chair; Ruth C. Schiermeyer, Vice Chair; Gerald B. Alley, Secretary; Mark W. Eidman, Walker N. Moody, Rodney K. Moore, and Robert T. Roddy, Jr., Members. The Authority operates with a staff of 14 employees, headed by an Executive Director.

### **SCOPE OF SERVICES**

Responses to this RFP should be based upon performance of the following tasks, which will be incorporated into a contract for bond counsel services for each transaction:

- (1) Assisting in making presentations and required submissions and obtaining approval of the Bond Review Board and any other State entity with oversight authority for the issuance of bonds by the Authority, including the Attorney General's Office.
- (2) Preparing all resolutions, agreements, contracts, and other documents to which the Authority is a party and which will be necessary in connection with the issuance of the bonds.
- (3) Attending meetings of the Board and the Bond Review Board to the extent required or requested.
- (4) Attending all document sessions.

- (5) Representing the Authority in the preparation of any bond purchase contracts and insuring that all participants, including underwriters and investment banking firms, whether retained by or contracting with the Authority, disclose all conflicts of interest to and with the Authority and any other parties involved in the bonds.
- (6) Assisting the Authority in presentations to the major rating agencies in order to obtain ratings for the bonds.
- (7) Rendering a legal opinion that the bonds:
  - (a) will be validly issued under Texas law; and
  - (b) the interest on the bonds is excludable from gross income tax under existing federal law.
- (8) Preparing any IRS filings required by federal tax law.
- (9) Rendering such other written opinions of bond counsel pertaining to investment earnings and any amounts required to be rebated to the United States as excess arbitrage earnings, if any, and any other written opinions of counsel which may be required under the terms of the Bond Resolution or under the Internal Revenue Code, as amended.
- (10) Assisting in the preparation of specified sections of the Preliminary Official Statement and the Final Official Statement, including language related to issuer disclosure, with the understanding that bond counsel will not be expected to independently verify other data contained in the Official Statement and that the Official Statement may so state.
- (11) Preparing certain certificates and reviewing such other documents as are customary and necessary in order to structure and issue bonds.
- (12) Rendering advice to the Board, individual Board members, and Authority Staff to the effect that representations or certifications made by the Board, individual Board members and Staff in connection with the issuance of the bonds are authorized or required by law and that bond counsel is not aware of any fact or omission that would make any representation or certification untrue or misleading.
- (13) Providing advice and counsel on continuing compliance with securities, tax, and other applicable law.
- (14) Providing assistance on legislative matters affecting the Authority and its client agencies.
- (15) Supervising the preparation, execution, and delivery of the bonds to the purchasers, the printing and binding of the bond transcripts and provide an electronic copy of the bond transcript.
- (16) Providing advice and counsel on post-issuance compliance with securities, tax and other applicable law related to a transaction as a result of *ad hoc* questions posed by the Authority while the bonds are outstanding.
- (17) All other matters necessary or incidental to the issuance of the bonds.

Contract(s) resulting from this RFP shall be in the form provided by the Office of the Attorney General. With the approval of the Attorney General's office, a contract may include the following sentence or a similar statement: "This contract does not include litigation or contested case services." No other provision relating to the exclusion of services will be accepted. The Authority will be responsible for stating the specific required services and allocating duties and tasks between Bond Counsel and Co-Bond Counsel, if any, commensurate with the negotiated level of compensation.

**RFP SCHEDULE OF EVENTS**

The Authority anticipates that the Bond Counsel RFP process will proceed in accordance with the following schedule:

September 23, 2015	RFP Issued
October 9, 2015	Deadline for submission of written questions, by email (12:00 Noon CT)
October 14, 2015	Deadline for posting of responses to written questions on TPFA website and Electronic State Business Daily (5:00 PM CT)
October 23, 2015	<b>DEADLINE FOR SUBMISSION OF RESPONSES (5:00 PM CT)</b>
Board selection of firm(s)	TPFA Board Meeting tentatively scheduled for November 5, 2015

The Authority reserves the right to change this schedule. Notice of any changes will be posted on the Authority's website.

**FORM OF RESPONSE**

1. **Overview of the Firm**

Provide a brief description of your firm, including the total number of attorneys and employees, the number of attorneys practicing in public finance, and the number of years the firm has been engaged in municipal finance work in Texas. Explain how your firm is organized and how its resources will be applied to the Authority's work. Indicate whether your response to this RFP is to serve as a bond counsel, co-bond counsel, or either. Also, indicate whether your response to this RFP is to serve as bond counsel or disclosure counsel, or either.

2. **Qualifications**

A. List the bond issues closed on or after **January 1, 2013** for which the attorney(s) proposed to be assigned to the Authority (see number 3 *infra*) served as bond counsel, co-bond counsel, underwriter's counsel, special tax counsel, disclosure counsel, or trustee's counsel, by issuer type (e.g., state agency, state institution of higher education, city, county, school district, and other special authority or district). This information must be provided in tabular format, **in an Appendix**, attached to your RFP response, as an **EXCEL** spreadsheet file, in the following format:

Attorney	Issuer Type	Bond Issue Name	Par Amount	Attorney's Role	Fee/basis of compensation

Please report separate series of one transaction as one bond issue: for example, if a transaction includes a tax-exempt series and a small taxable series due to issuance costs,

report the transaction as one bond issue. If, for a specific attorney, you are listing transactions that occurred while that attorney was with another firm, please so indicate and provide the name of the prior firm. Also, please do not report the same issue for more than one attorney unless each attorney performed a substantial amount of work on the issue.

- B. 1) Select and explain **one** transaction from the Appendix provided in response to “A” above that you feel best demonstrates the abilities of your firm to serve as the Authority's bond counsel.
- 2) If applicable, select and explain **one** transaction from the Appendix provided in response to “A” above that you feel best demonstrates the abilities of your firm to serve as the Authority’s disclosure counsel.
- C. Provide a brief narrative updating your firm’s work since **January 1, 2013** assisting clients with post-closing tax compliance including, but not limited, to arbitrage compliance, change of use, audits, and continuing disclosure matters. Address any standard procedures established by your firm such as providing compliance memos, checklists, or other follow-up and remedial work, and specify, where appropriate, the involvement of attorneys to be assigned to the Authority's work.
- D In not more than one 8½ x 11 sheet explain why your firm should be selected to serve as the Authority's bond counsel and/or disclosure counsel.

### 3. Resumes

Provide resumes of the attorneys who would be assigned to serve the Authority, specifically indicating the proposed role of each individual. The resumes must clearly specify the number of years the attorney has been licensed to practice law in Texas, and/or other jurisdictions, and the number of years of experience in public finance. Further, identify who would be assigned as the primary contact for the Authority. (Please list those attorneys who would be assigned to the Authority separately from other attorneys who you may wish to identify as special or *ad hoc* resources, providing complete resumes for those attorneys who would be assigned to the Authority’s work.)

### 4. Business Practices

- A. Participation of minorities and women.
- (1) Describe your previous experience and involvement working with HUB certified firms (if your firm is not HUB certified) or as a HUB certified firm in a co-bond counsel relationship. Please describe your firm’s approach to working with co-bond counsel, including level of effort, division of duties and providing opinions.
- (2) Describe efforts made by the firm to encourage and develop the participation of minorities and women (Minority Business Enterprise or “MBE”), and service-disabled veterans (Disable Business Enterprise or “DBE”) in the provision both of the firm’s legal services generally and bond matters in particular. Specify whether the firm has adopted formal Equal Employment Opportunity and

Affirmative Action policies, and provide a summary of the firm's hiring and promotion statistics for women, minority, and service-disabled veteran attorneys from January 1, 2013 to date. Complete the grid describing workforce composition of your firm, which is attached as Exhibit A.

**5. Conflicts of Interest**

Please disclose any actual or potential conflicts of interest. In addition, identify each matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the Authority or to State of Texas, or any of its boards, agencies, commissions, universities, or elected or appointed officials.

**6. References**

Please provide names, addresses, and phone numbers of three references. Firms desiring to serve solely as Co-Bond Counsel may, but are not required to, include as one of the three references an attorney with a firm that you have previously worked with as Co-Bond Counsel.

**RESPONSE MODIFICATION**

Any response to this RFP may be modified or withdrawn at any time prior to the response due date. No changes will be allowed after the expiration of the response due date. The Authority reserves the right to make amendments to this RFP by giving written notice to all firms to which it has mailed this RFP, whether by US Postal Service or electronic mail, and by posting notice thereof on the Authority's website at <http://www.tpfa.state.tx.us/rfp.aspx> and the Electronic State Business Daily ("ESBD") at <http://esbd.cpa.state.tx.us/>.

**TIME SCHEDULE AND SUBMISSION DIRECTIONS**

Responses are due no later than **5:00 PM (CT), October 23, 2015**. Responses must be submitted electronically *and* in paper hard copy. Submit one copy electronically to: [RFP@tpfa.state.tx.us](mailto:RFP@tpfa.state.tx.us) with an **Adobe digital signature** of a firm representative authorized to submit offers and bind the firm to a contract. Submit four (4) bound copies and one electronic copy that is searchable and unprotected on a CD or flash drive to:

Kevin Van Oort  
General Counsel  
Texas Public Finance Authority  
Delivery Address: 300 W. 15th St., Room 411, Austin, Texas 78701  
-OR-  
Mailing Address: P.O. Box 12906, Austin, Texas 78711-2906

NOTE: the Excel file containing the TABLE of experience, which must be submitted as an Appendix (see question 2.A. above) and the EEO grid required under question 4.A.(2) above, must also be emailed to: [RFP@tpfa.state.tx.us](mailto:RFP@tpfa.state.tx.us).

Clearly mark the transmittal as "RESPONSE TO RFP FOR BOND COUNSEL." All responses become the property of the Authority. Responses must set forth accurate and complete information as required by this RFP. Oral instructions or offers will not be considered. **Contact with Board members**

**regarding this RFP is prohibited and will result in disqualification of your firm from consideration.**

Any questions regarding this RFP should be submitted, in writing, by electronic mail to [RFP@tpfa.state.tx.us](mailto:RFP@tpfa.state.tx.us) by **12:00 PM (Noon) on October 9, 2015**. Questions submitted by that date and time and the Authority's responses will be posted on the Authority's website at <http://www.tpfa.state.tx.us/rfp.aspx> and the ESD by **5:00 PM, October 14, 2015**. Questions submitted later than 12 p.m. (Noon) October 9, 2015, will not be answered.

### **CONTRACT FORMATION AND CONTRACT ADMINISTRATION INFORMATION**

The Authority has the sole discretion and reserves the right to reject any and all responses to this RFP and to cancel this RFP if it is deemed in the best interest of the Authority to do so. Issuance of this RFP in no way constitutes a commitment by the Authority to award a contract or to pay for any expenses incurred either in the preparation of a response to this RFP or in the production of a contract for legal services. Firms responding must maintain a Texas office staffed with personnel who are responsible for providing legal services to the Authority.

In accordance with Texas Government Code, sections 1201.027 and 2254.003, the Authority will evaluate responses to this RFP to identify the most highly qualified firm or firms for bond issues to be undertaken during for fiscal years 2016 and 2017. The Board's determination(s) will be based solely on demonstrated competence and qualifications. Fees may not be considered and may not be indicated in responses to this RFP.

After the Board makes its determinations, the Authority will attempt to negotiate a contract at a fair and reasonable price with such firm(s) deemed to be most highly qualified. If a satisfactory contract cannot be negotiated, the Authority will proceed with another firm.

The Board reserves the right to negotiate all elements of the contract for legal services and to approve all personnel assigned to the Authority's work. If a firm contemplates changing the assigned attorneys after a contract is executed, the firm must submit resumes of the additional assigned attorneys. The addition of such names to the contract will be subject to the Authority's approval.

Further, the Board reserves the right to terminate a resulting contract for legal services, for any reason, subject to thirty (30) days prior written notice, and upon payment of earned fees and expenses accrued as of the date of termination.

Any contract resulting from this RFP must be approved by the Office of the Attorney General.

### **COST INCURRED IN RESPONDING**

All costs directly or indirectly related to preparation of a response to this RFP or any supplemental information required to clarify your original response shall be the sole responsibility of, and shall be borne by, the Respondent.

### **RELEASE OF INFORMATION AND OPEN RECORDS**

Upon submission, all responses shall be deemed to be the property of the Authority. Information



submitted in response to this RFP will not be released to the public by the Authority during the response evaluation process or prior to Board's contract award. After the evaluation process is completed by the Board's award of a contract, responses and the information included therein may be subject to public disclosure under the Public Information Act, Texas Government Code, Ch. 552 (the "PIA"). Respondents have the right to assert the confidentiality of financial and trade information. Any information considered by Respondent to be confidential under the PIA must be clearly marked in bold text, as indicated below, on each page, and only those pages, where such information appears:

**“CONFIDENTIAL PURSUANT TO [CITE TO THE RELEVANT  
EXCEPTION TO DISCLOSURE UNDER THE PIA].”**

The Authority is not responsible for the release of confidential information after the award of a contract made pursuant to this RFP if the document is not clearly marked as required. If a request for disclosure of a response is made for information marked confidential in accordance with this section, the Authority will notify the Respondent and give it an opportunity to present its argument and evidence for protection from disclosure to the Office of the Attorney General, in accordance with the provisions of the PIA.

**Exhibit A**

**TEXAS PUBLIC FINANCE AUTHORITY  
REQUEST FOR PROPOSALS  
FOR BOND COUNSEL SERVICES**

The Texas Public Finance Authority will not participate in any programs, nor will it conduct business with any entity that is found to knowingly discriminate against persons on the basis of race, color, gender, age, national origin, religion, or physical or mental disability.

Please use this form to provide us with a breakdown of your firm's workforce.

**Males**

	<b>Year</b>	<b>White</b>	<b>Black</b>	<b>Hispanic</b>	<b>Asian</b>	<b>Disabled</b>	<b>Other</b>	<b>Total</b>
Executives	2013							-
	2014							-
Professionals	2013							-
	2014							-
Subtotal Executives and Professionals	2013							-
	2014							-

	<b>Year</b>	<b>White</b>	<b>Black</b>	<b>Hispanic</b>	<b>Asian</b>	<b>Disabled</b>	<b>Other</b>	<b>Total</b>
Clerical/Technical	2013							-
	2014							-

**Females**

	<b>Year</b>	<b>White</b>	<b>Black</b>	<b>Hispanic</b>	<b>Asian</b>	<b>Disabled</b>	<b>Other</b>	<b>Total</b>
Executives	2013							-
	2014							-
Professionals	2013							-
	2014							-
Subtotal Executives and Professionals	2013							-
	2014							-

	<b>Year</b>	<b>White</b>	<b>Black</b>	<b>Hispanic</b>	<b>Asian</b>	<b>Disabled</b>	<b>Other</b>	<b>Total</b>
Clerical/Technical	2013							-
	2014							-

Do you have an Equal Opportunity/Affirmative Action Plan? Yes \_\_\_ No \_\_\_

What percentage of your firm is minority owned? \_\_\_\_\_\*\*

What percentage of your firm is women owned? \_\_\_\_\_\*\*

\*\*If your firm is HUB-certified as defined by TX Gov't Code 2161.001(2), submit a copy of your certification and any other MBE or DBE certification.