

REQUEST FOR QUALIFICATIONS
FOR BOND COUNSEL AND TAX COUNSEL SERVICES
FOR GENERAL OBLIGATION OR REVENUE BONDS
OF THE STATE OF MISSISSIPPI

September 15, 2017

Department of Finance and Administration

P.O. Box 267

Jackson, Mississippi 39205

INTRODUCTION

The State of Mississippi (the “State”) desires to receive proposals from bond counsel to provide bond and tax counsel services related to the issuance of various forms of indebtedness of the State. Bond counsel will be selected by the State Bond Commission of the State (the “Commission”) and will be expected to provide validity opinions, tax opinions, tax counsel services, and disclosure counsel services related to the State’s preliminary official statement and final official statement, as well as additional special services as may be required from time to time.

Procuring Agencies

The Request for Qualifications (this “RFQ”) is issued on behalf of the Commission by and through the Department of Finance and Administration of the State (“DFA”). DFA is the sole point of contact for the State during the selection process.

Bond Counsel Engagement

Any firm chosen to serve as bond counsel based on this RFQ, will be selected and hired at the discretion of the Commission. DFA will facilitate any bond counsel engagement resulting from the State’s RFQ process on behalf of the Commission. The engagement facilitator will be Laura D. Jackson, Executive Director, Department of Finance and Administration, P.O. Box 267, Jackson, Mississippi 39205, telephone: 601-359-3402.

Clarification of Specifications

If additional information is necessary to assist a respondent to this RFQ (the “Respondent”) in interpreting the requirements of this RFQ, questions should be submitted in writing to the Bond Advisory Division, Department of Finance and Administration, P.O. Box 267, Jackson, Mississippi 39205 or emailed to Steven McDevitt, steven.mcdevitt@dfa.ms.gov.

Due Date

The deadline for submission in response to this RFQ is **4:00 PM Central Time on September 22, 2017**. Telephone or fax responses will not be accepted. Any proposal received after the deadline will not be considered.

Release of Information

Neither the Commission and its representatives nor DFA will release information submitted in response to the RFQ during the proposal evaluation process or prior to an award.

Term of List of Eligible Firms

The list of eligible firms will be approved by the Commission and be effective through December 31, 2019. The Commission reserves the right to amend and/or terminate the list of eligible firms in whole or in part prior to the expiration of the list created by this RFQ. When necessary, the Commission may select (on a competitive or negotiated selection basis) an eligible firm to serve as bond counsel for a specific financing or financing related matter.

BACKGROUND

The State is an issuer, from time to time, of tax-exempt and taxable general obligation bonds and revenue bonds, either for new money projects or to refund (advance and current) outstanding prior obligations of the State, secured by a pledge of the full faith, credit, and taxing power of the State or by a tax revenue pledge. Such bonds bear various call features, maturities, and interest rate contracts. In the past, such bonds have been issued to finance or refinance capital improvements, schools, colleges, universities, and economic development programs and loans. In the State, all debt must be authorized by specific legislation providing for the specific programs or projects to be financed. Such legislation provides the Commission with the authority to approve and authorize the sale and issuance of such bonds.

The Commission is seeking to establish a list of eligible legal firms as outlined in this RFQ to provide specific legal and tax expertise and related services to the Commission regarding new or prospective bond issuances for the State, as well as for such services, as needed, for issues arising in connection with currently outstanding indebtedness of the State, including synthetically hedged bonds and services as may be required in connection with any audit of previously issued bonds of the State.

The Commission is comprised of the Governor of the State as Ex officio Chairman, the Attorney General of the State as Ex officio Secretary, and the State Treasurer of the State as an Ex officio Member.

ELIGIBILITY REQUIREMENTS OF RESPONDENT

To be eligible to respond to this RFQ, a written certification by the Respondent is required to each of the following requirements:

- (a) Must be listed in the section entitled “Municipal Bond Attorneys” in the Mississippi section of the most recent edition of The Bond Buyer’s Municipal Marketplace;
- (b) Must have given solo validity and tax opinions in municipal financing transactions since passage of the federal Tax Reform Act of 1986 or must have served as co-counsel in giving validity and tax opinions in at least four separate municipal financing transactions since passage of the federal Tax Reform Act of 1986;
- (c) In instances for which specialized tax advice beyond normal bond counsel services may be required, must have attorneys who practice full-time in the area of public finance tax law or must be able to identify a sufficient alternative to providing competent specialized tax advice;
- (d) In instances for which specialized securities law services beyond normal bond counsel services may be required, must have attorneys who practice full-time in the area of municipal securities law or must be able to identify a sufficient alternative to providing competent specialized municipal securities law advice;

- (e) Must have no relationships or activities that might present a conflict of interest for the State;
- (f) The lawyer(s) who will be primarily responsible for providing the legal services necessary (i) must be licensed or admitted to practice law in Mississippi, (ii) must satisfy the requirements of (b) above, and (iii) must agree to primarily perform the legal service requested in Mississippi; and
- (g) Must carry a level of malpractice insurance, including deductible, to cover errors and omissions, improper judgment, or negligence appropriate for the magnitude of the issue.

SELECTION PROCESS

The DFA along with representatives of the Commission, will review all received proposals. Following such response review, the DFA may request certain of the Respondents to make oral presentations. If so, those Respondents will be given not less than three (3) business days' notice, along with the date, time, and place for the oral presentation.

The selection of bond counsel will be accomplished in three phases. Phase I and Phase II will contribute to the establishment of the Commission's list of eligible firms. Phase III will be used to select an eligible firm to serve as bond counsel for a specific financing or financing related matter. The Phases are as follows.

Phase I - The DFA along with representatives of the Commission will review all responses to determine if the Respondent meets the eligibility requirements (see "Eligibility Requirements of Respondent" herein). To be eligible to file a response to this RFQ, a Respondent must satisfy all of the eligibility requirements. All responses that are considered to meet the eligibility requirements will advance to Phase II of the selection process.

Phase II – The DFA along with representatives of the Commission, will review the required proposal content of all responses that met the requirements of Phase I of the selection process. A Respondent must fully respond to all of the proposal content requirements of this RFQ (see "Proposal Content" herein) to advance to Phase III. The responses will be evaluated in a manner consistent with the selection criteria and scoring criteria of this RFQ (see "Selection Criteria" and "Scoring" herein). All responses that receive a score of 85 points or more will be submitted to the Commission for inclusion on the list of eligible firms. The Commission reserves the right to make all final decisions regarding the list of eligible firms. The Commission may accept the submitted list with no changes, accept the list in part or reject the list in its entirety.

Phase III - When necessary, the Commission may select a firm from the list of eligible firms to serve as bond counsel for a specific financing or financing related matter. The selection of bond counsel for a specific financing or financing related matter will be accomplished through a competitive or negotiated selection process.

Under a competitive selection process, firms on the list of eligible firms will receive an additional request for proposal (the “RFP”) related to the specific financing. Evaluation of the additional RFP responses will be based solely on: (1) Fees and expenses; and (2) The ability to provide specialized legal and tax services that may be required for the specific financing for which bond and tax counsel are being sought.

Under a negotiated selection process, the Commission may solicit and negotiate bond counsel services from an eligible firm without the use of an additional request for proposal. When using the negotiated selection process, the reasonableness of bond counsel fees will be evaluated based on the criteria laid out in the American Bar Association’s Model Rules of Professional Conduct Rule 1.5(a).

SELECTION CRITERIA

- (a) The Commission will make its selection based upon its perceptions of the need for services, as well as the demonstrated competence, experience, knowledge, and qualifications of the Respondents. By this RFQ, however, the Commission has not committed itself to employ a bond counsel for any or all of the above-described matters, nor does the suggested scope of services or term of agreement require that a bond counsel should be employed for any of those purposes.
- (b) The Commission reserves the right to make those decisions after the receipt of responses, and the Commission’s decision on those matters is final.
- (c) The DFA and representatives of the Commission will evaluate only those responses meeting the qualifications. Among other things, the evaluation of statements of qualifications will be based on the following criteria:
 - (i) The Respondent’s willingness to follow the guidelines outlined in this RFQ,
 - (ii) Experience and qualifications of both the Respondent and its staff to be assigned to the Commission’s transactions,
 - (iii) The Respondent’s experiences as bond and tax counsel on Mississippi bond transactions,
 - (iv) Involvement and accessibility of staff to be assigned to transactions,
 - (v) The Respondent’s commitment to Mississippi,
 - (vi) The Respondent’s lawyers’ experience as bond and tax counsel on bond transactions exceeding \$100,000,000.00 in par amount,
 - (vii) The Respondent’s lawyers’ experience in handling of post issuance audits of tax-exempt financings, and
 - (viii) Answers to other questions contained in the response to this RFQ.

SCORING

Responses will be evaluated using the following scoring:

Expertise doing state financings	40%
Tax expertise	20%
Availability and experience of lawyers	30%
Experience in handling IRS audits	5%
Experience of lawyers in handling VRD financings, hedges, and derivatives	<u>5%</u>
	100%

SCOPE OF SERVICES

The Respondent selected by the Commission will be required to perform all legal services and duties customarily and usually performed by bond and tax counsel with respect to the issuance of general obligation bonds, revenue bonds, limited tax bonds, refunding obligation, and other valid evidences of indebtedness, including variable rate borrowing structures. These services will be required from time to time on an ongoing and continual basis during the term of this engagement. The following are to be included in the specific tasks to be performed with respect thereto. However, this shall in no way be considered as a complete list of tasks.

- (a) Preparation of all resolutions, indentures, and other bond security documents for consideration and adoption by the Commission;
- (b) Preparation of all notices of sale, bid forms, and other materials necessary to market the bonds;
- (c) Assistance in the preparation of the State's preliminary official statement and final official statement, including, but not limited to, those sections related to the legality and tax-exempt status of the interest on the bonds;
- (d) Assistance in continuing disclosure compliance responsibilities;
- (e) Assistance in structuring of the bonds, i.e., maturities, terms, etc.;
- (f) Delivery of opinions with respect to the bonds to the effect that (i) such bonds constitute valid obligations of the State, (ii) interest on the bonds is excluded from gross income for federal income tax purposes under existing statutes, regulations, rulings, and court decisions (for federal tax-exempt bonds), and (iii) in their participation in the preparation of the preliminary official statement and the final official statement related to the bonds,

nothing has come to their attention that would give them a reason to believe that such documents (except for the financial statistical data included therein as to which no view need be expressed) contained any untrue statement of a material fact or omitted to state any material fact that was required to be stated therein or necessary to make the statements contained therein, in light of the circumstances under which they were made, misleading;

- (g) Preparation of the form of the bonds;
- (h) Verification of bids and computation of yields;
- (i) Preparation of all closing documents, including tax and arbitrage certificates, and refunding escrow agreements, as applicable, and assistance in the execution thereof;
- (j) Preparation of closing transcripts;
- (k) Regular communication with the Commission, DFA, the Office of the State Treasurer, the Office of the Attorney General and other State staff as required both prior to and following the issuance and sale of the bonds;
- (l) The study of applicable federal and state laws and local resolutions to assure that the Commission has the legitimate power to authorize such indebtedness and the associated compliance therewith;
- (m) The review of those same laws and resolutions to certify that the Commission indeed has the authority to issue bonds of which interest on the bonds is includable in or exempt from taxation to the purchasers of those securities as appropriate;
- (n) Drafting and examination of documents and procedures related to the bond issue to maintain compliance with all relevant laws dictating proper procedures;
- (o) Participation in activities associated with rating agency review of documentation;
- (p) Assistance to the Commission in preparing its resolutions and indentures for, among other things, rating agency review requests and other special needs;
- (q) Assistance to the Commission, its financial advisory, and underwriters in other matters as necessary to ensure the successful marketing, sale, and closing of the bonds; and
- (r) Handling of post issuance compliance matters, including any audits by the Internal Revenue Service.

CONDITIONS OF SUBMITTING RESPONSES

As a condition of submitting a response to this RFQ, the following are incorporated by reference in each response.

Response Preparation

The detailed requirements stated under “Eligibility Requirements of Respondent” and “Proposal Content” of this RFQ are mandatory. Failure by the Respondent to respond to a specific requirement may be the basis for elimination from consideration during the evaluation process.

Response Submission

In order to facilitate the evaluation process, please submit six (6) copies of your response packaged, sealed, and showing the following information on the outside of the response: Respondent’s name and address and “Proposal for Providing Bond Counsel and Tax Counsel Services for the State of Mississippi.”

Deadline for Response

All responses must be delivered to Steven McDevitt, Director of Bond Advisory, Department of Finance and Administration, P.O. Box 267, Jackson, Mississippi 39205 on or before the stated deadline. Hand delivery is acceptable and should be delivered to 501 North West Street, Suite 1300-A, Jackson, Mississippi 39201 on or before the stated deadline.

Costs

The State is not responsible for any cost incurred by a Respondent in replying to this RFQ.

Public Record Requests

The proposer should mark any and all pages of the proposal considered to be proprietary information which may remain confidential in accordance with Mississippi Code Annotated §25-61-9 and §79-23-1 (1972, as amended). **Each page of the proposal that proposer considers confidential shall be on a different color paper than non-confidential pages and be marked in the upper right hand corner with the word “CONFIDENTIAL.” Please see *Mississippi Public Records Act/Confidentiality of Proposals, found in Section XII-14.***

Terms of Engagement

The terms of any engagement resulting from a response to this RFQ will contain, by reference, the terms of this RFQ and the Respondent’s response thereto.

Rejections and Additional Information

The Commission reserves the right to reject any and all responses and to request clarification of information from any Respondent.

Non-Discrimination

There shall be no discrimination as to race, sex, color, creed, national origin, or disability in the operations proposed to be conducted under the contracts arising out of the responses to this RFQ.

Joint Proposals

Although it is the desire of the Commission that the Respondent is able to provide all services required of bond counsel and tax counsel, the Commission may entertain joint proposals as long as such services are primarily performed in Mississippi.

Other RFQ Terms and Conditions

- (a) The Commission will make its selection based upon its perceptions of the need for services, as well as the demonstrated competence, experience, knowledge, and qualifications of the Respondents. By this RFQ, however, the Commission has not committed itself to employ a bond counsel for any or all of the above-described matters, nor does the suggested scope of services or term of agreement require that a bond counsel should be employed for any of those purposes. The Commission reserves the right to make those decisions after the receipt of responses, and the Commission's decision on those matters is final.
- (b) The Commission reserves the right to negotiate all elements that comprise the information of the Respondent(s) to ensure that the best possible considerations are afforded to all concerned, and to waive any irregularities.
- (c) The Commission reserves the right to select Respondent(s) for specific purposes or for any combination of specific purposes, and to defer the selection of any Respondent(s) to a time of the Commission's choosing. The Respondent must have a full-service office located within the State of Mississippi.

Software/Computer Capability

The preliminary official statement and final official statement must be received by the State of Mississippi DFA Bond Division from bond counsel in a manner consistent with the format established by the State of Mississippi DFA Bond Division or its designee.

Supplementation

Each Respondent must supplement its response to this RFQ within seven (7) days of any change to the information contained in its response.

PROPOSAL CONTENT

1. Name and address of firm of attorneys, including the number of lawyers practicing in the area of Public Finance.
2. Eligibility Certification (see "Eligibility Requirements of Respondent" herein).

3. Name and telephone number of person(s) responsible for the response who may be contacted in the event of questions or notification.
4. Name of the attorney(s) who will be primarily responsible for this work. Please provide a brief resume and background for each attorney.
5. Name of any other attorney(s) who will assist the primary attorney(s). Please provide a brief resume and background for each attorney.
6. Name of attorney(s) who will be providing tax services. Please provide a brief resume and background for each attorney.
7. Brief Description of the firm's Public Finance library and any other practice tools available to these attorneys to assist in their Public Finance practice.
8. Details of Public Finance experience concerning variable rate demand bond structures and derivative products used in connection with municipal bond hedges, and dedication to federal tax expertise related to municipal obligations.
9. A list, including name(s), address(es), and telephone number(s), for references of investment bankers who have underwritten bond issues for which the firm has provided bond counsel and tax opinions or served as underwriter's counsel in the last four (4) years.
10. Details of all bond issues for which firm's lawyers acted as sole bond and tax counsel in the last four (4) years for bonds issued by or on behalf of the State and its political subdivisions in excess of \$25,000,000.00.
11. Description of resources available within the firm to provide technical arbitrage yield calculations and bid verifications.
12. The type of malpractice insurance the firm carries, the name of the carrier, and the limits of coverage for bond and tax counsel work.
13. Description of how the firm is organized to facilitate coordination of the various specialists who will be performing the several aspects of the required legal services.
14. Description of the availability of the assigned individuals to the staff of DFA and the Commission or its representatives as needs and questions arise both before and after the sale and issuance of the bonds.

15. Description of the quality control and due diligence policies and procedures of the firm.
16. A list of all malpractice litigation or claims made against your firm, within the past five (5) years, and the disposition of same.
17. Information concerning the type of word processing system used by your firm and its compatibility with the software and computers used by State of Mississippi DFA Bond Division.
18. Information concerning the audits by the Internal Revenue Service that your firm has handled for clients during the preceding four (4) years.
19. Information on relationships and/or activities that might present a conflict of interest for the State.
20. Any additional information which you feel would be of assistance in evaluating your firm's ability to serve as bond and tax counsel.

ADDITIONAL INFORMATION

Any or all Respondents may be asked to appear before the Commission. Such oral presentation, if required, shall be for clarification purposes only.

The Commission reserves the right to deviate from or to modify the selection process provided for by this RFQ for financings of the State that the Commission determines require a different manner of selection because of their complexity or the specific nature of the service required of bond and tax counsel.

The Commission reserves the right to reject any and all responses to this RFQ, with or without cause.