

**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY REIMBURSEMENT
REVENUE BONDS**

**REQUEST FOR PROPOSALS
FOR
BOND COUNSEL**

**RFP DISTRIBUTION DATE: June 15, 2009
PROPOSALS DUE: July 10, 2009
Prior to 2:00 p.m. EDST**

RFP NUMBER 2009-2

NOTICE

A LIMITATION ON THE LENGTH OF RESPONSES TO CERTAIN QUESTIONS IN THIS RFP IS CONTAINED ON PAGE 6. FAILURE TO COMPLY WITH THIS LIMITATION MAY RESULT IN ALL OR PART OF ONE OR MORE RESPONSES BEING DISREGARDED IN THE SCORING OF YOUR PROPOSAL.

TABLE OF CONTENTS

| | | |
|-------|---|----|
| I. | GENERAL INFORMATION..... | 2 |
| II. | PROCEDURES AND PROVISIONS | 2 |
| III. | SCOPE OF SERVICES | 3 |
| IV. | CORRECTIONS AND CHANGES | 4 |
| V. | CERTIFICATION | 4 |
| VI. | INFORMATION TO BE PROVIDED IN PROPOSAL | 5 |
| VII. | EVALUATION PROCESS | 8 |
| VIII. | COMPENSATION | 9 |
| IX. | BOND COUNSEL CONTRACT | 10 |

I. GENERAL INFORMATION

Section 215.616, Florida Statutes, authorizes the issuance of revenue bonds secured by federal-aid highway reimbursement funds received by the State of Florida Department of Transportation (the "Department of Transportation"), for the purpose of financing or refinancing the construction, reconstruction, and improvement of projects that are eligible to receive federal-aid highway reimbursement funds. The State of Florida Division of Bond Finance (the "Division") is authorized to issue these bonds upon the request of the Department of Transportation, in compliance with the provisions of Section 11, Article VII of the State Constitution and the State Bond Act.

The State of Florida has not previously issued revenue bonds secured by federal-aid highway reimbursement funds. The initial series of these bonds is expected to be issued late 2009 or early 2010. Approximately \$325 million of these bonds is expected to be issued in three series over the next five years, although the principal amount and number of series are subject to change. Additional bonds may be issued in subsequent years. The bonds are required to be validated. The Division expects to issue fixed rate bonds.

The purpose of this Request For Proposals (the "RFP") is to provide the Division with information concerning firms which are qualified and interested in being selected by the Division as bond counsel for the proposed issuance of federal-aid highway reimbursement revenue bonds.

II. PROCEDURES AND PROVISIONS

- A. An original and five copies of a firm's proposal must be submitted in a sealed envelope marked "Proposal For Bond Counsel." The envelope should indicate the name of the firm and that the proposal is being submitted in response to RFP 2009-2. Proposals should be delivered no later than 2:00 p.m. EDST on July 10, 2009, to:

BY OVERNIGHT DELIVERY OR CERTIFIED MAIL:

Florida Division of Bond Finance
Raymond K. Petty
1801 Hermitage Boulevard, Suite 200
Tallahassee, Florida 32308
Telephone number: (850) 488-4782

BY U.S. MAIL:

Florida Division of Bond Finance
Raymond K. Petty
Post Office Box 13300
Tallahassee, Florida 32317-3300

- B. Proposals which do not comply with the conditions specified herein may be rejected.
- C. The Division is not responsible for expenses incurred in connection with the selection process or the cost of any services performed by any firm prior to the execution of a contract.
- D. Any information submitted in response to this RFP is a public record pursuant to Chapter 119, Florida Statutes, and is available for public inspection.
- E. The Division may reject a proposal which does not include all requested information.

- F. The Division may investigate the qualifications of a firm, negotiate modifications to any items proposed in a proposal, request additional information, reject any or all proposals if in the best interest of the Division, or waive any irregularities which do not interfere with the Division's decision making process.
- G. The Division retains the discretion to not utilize the services of any selected firm or to terminate any selected firm without cause and without penalty.
- H. The Division does not anticipate conducting oral interviews although they may be scheduled at the option of the Division.
- I. Firms are prohibited from engaging in activities in connection with services for the Division which produce direct or indirect financial gain for the firm other than for agreed upon compensation without the Division's written consent after being fully informed of such activities in writing.
- J. Joint proposals are permitted. Firms submitting joint proposals are subject to all other requirements of this RFP. The participating firms may only submit a single, joint proposal, which is subject to the other requirements of this RFP. No additional compensation will be allowed due to the participation of more than one firm in a proposal. Each firm participating in a joint proposal must provide the information requested, and execute the certification contained in Section VI, subsection C, paragraph 4 of this RFP.
- K. All questions regarding this RFP should be directed to Raymond K. Petty at (850) 488-4782, by mail at the address provided in Section II, subsection A of this RFP, by fax at (850) 413-1315 or by e-mail at ray.petty@sbafla.com.

III. SCOPE OF SERVICES

The function of bond counsel shall include, but shall not necessarily be limited to, the following:

- A. Legal services relating to the planning and development of any proposed bond issues and the tax implications of the use of the proceeds of such bonds, including the tax implications of the use of the projects being financed by the issuance of such bonds;
- B. Attendance and participation in meetings for the development or sale of the bonds, or the dissemination of information in connection therewith, if determined by the Division to be necessary;
- C. Drafting or reviewing necessary documents and, if determined by the Division to be necessary, handling or participating in legal or administrative proceedings in connection with the authorization, sale, issuance and delivery of the bonds to ensure compliance with appropriate federal and state laws;

- D. Furnishing the approving legal opinion, acceptable to the Division and the purchasers of the bonds, setting forth a description of the bonds and an opinion as to the validity of the bonds, the lien on the revenues pledged to the bonds, the exclusion of interest on the bonds for federal income tax purposes, the exemption of the bonds from taxes of the State of Florida, and other matters customarily covered by such approving legal opinion;
- E. Furnishing a supplemental bond counsel opinion regarding the fairness and accuracy of certain information in the Preliminary Official Statement and Official Statement regarding the description of the bonds, the security for the bonds and the tax exemption of the bonds and interest thereon.
- F. Other related legal services as may be requested from time to time.

IV. CORRECTIONS AND CHANGES

Any corrections or changes to this RFP will be issued and specifically identified as a correction or change by the Division. Any correction or change shall be posted on the Division of Bond Finance internet web site (www.sbafla.com/bond) under the heading “DBF News – Recent Notices and Updates.” Corrections or changes made in any other manner will not be binding. It is the responsibility of the respondent to obtain all corrections and changes.

V. CERTIFICATION

(DO NOT REPRODUCE THE LANGUAGE OF THIS SECTION IN THE PROPOSAL)

By inclusion and execution of the certification provided in Section VI, subsection C, paragraph 4 of this RFP, each firm shall be deemed to have certified that:

- A. The proposal is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a proposal for the same services, and is in all respects fair and without collusion or fraud.
- B. The firm is in compliance with Rule 19A-6.004, Florida Administrative Code, which requires that the firm (and the agents, officers, principals, and professional employees thereof) have not and will not:
 - (1) make contributions in excess of \$100 per election to or participate in the management of fund raising for or on behalf of any candidate for Governor or for a Cabinet position in Florida during the period beginning November 5, 2002, and ending:
 - (a) (for firms not selected as bond counsel) on the date on which the Division selects bond counsel; or

- (b) (for any firm selected as bond counsel) 2 years after the expiration of any contract with bond counsel or at the next general election in Florida after the expiration of any contract with bond counsel, whichever occurs last; and
- (2) participate in any prohibited business solicitation communication.

A prohibited business solicitation communication is a written or verbal communication during a selection period;

- (a) **between a member of the governing board of the Division (the Governor and Cabinet) or an employee of any such member and the firm or its lobbyist or representative regarding the qualifications, ranking or selection of the firm, or**
- (b) **between a Division employee and a person who is not a Division employee regarding the merits of the firm or whether the Division should select or retain the firm. The “selection period” for this RFP began on June 15, 2009, and will continue until a firm is selected by the Division.**

VI. INFORMATION TO BE PROVIDED IN PROPOSAL

In providing the following information, **restate each item in its entirety, limit your proposal to one bound volume and do not include material outside of such volume.** Proposals should restate each question, and the responses to the questions should be included immediately after the restated question without reference to any appendix. **Materials in appendices or outside of the bound volume will not be included in the evaluation.**

A. Basic Information Requirements

Provide the name of the firm, the mailing address, the telephone number, and fax numbers of the firm. Also include the name, address, email address and telephone number of the individual who will be the firm’s primary contact.

B. Substantive Scored Questions

NO MORE THAN 8 PAGES SHOULD BE USED IN ANSWERING THESE “SUBSTANTIVE SCORED QUESTIONS.” ADDITIONAL PAGES WILL NOT BE INCLUDED IN THE EVALUATION OF YOUR RESPONSE. YOU WILL RECEIVE NO POINTS FOR MATERIAL IN EXCESS OF THE 8 PAGE LIMIT.

1. Describe: (a) the firm and its capabilities, including the size of the tax-exempt bond department, (b) the firm’s expertise on legal issues relating to tax-exempt bonds, and (c) the firm’s expertise on Florida municipal finance law.
2. Describe the experience and expertise of specific individuals within the firm who would perform the services outlined in this RFP and the name of the responsible service partner for the relationship, if selected. Specifically address the experience of such individuals with tax-exempt transportation financing programs, including specifically experience financing transportation projects secured by federal-aid highway funds.
3. Describe your firm’s experience with tax-exempt transportation financing programs, including specifically experience financing transportation projects secured by federal-aid highway funds, and how this experience qualifies you to provide the legal services for this financing program.
4. Describe your firm’s experience in developing and implementing innovative financing techniques or bond programs which might be applicable to this financing program. Also, describe your firm’s experience with Build America Bonds.
5. Describe the firm’s experience in matters relating to compliance with the Internal Revenue Code, and related regulations and rulings, regarding tax exempt financing and arbitrage compliance. Include in your discussion any arbitrage related issues or other tax issues. Describe a specific transaction, a tax issue encountered, and any solution developed to address the tax issue which best demonstrates your firm’s tax expertise.
6. Describe any particular issues or concerns which the firm has regarding the financing program which is the subject of this RFP and make recommendations on how to address or resolve any such issues or concerns.

C. Information for Qualifications/ Conflicts of Interest/Certification

1. (a) Provide information on any litigation or administrative proceeding in which the firm was a party in any matter related to the professional activities of the firm involving the issuance of securities by a governmental entity during the five years prior to the date of this RFP.

- (b) Provide information on any pending litigation, investigation or proceeding in which a court or regulatory body is addressing any question relating to the professional activities of the firm in relation to the issuance of bonds by a governmental entity.
 - (c) Provide information on any fines paid or settlement agreements entered into in the five years prior to the date of this RFP with state or federal regulatory bodies regarding the public finance business.
- 2.
- (a) Will the selection of the firm result in any current or potential conflict of interest? Should any potential or existing conflict be known by the firm, specify the party with which the conflict exists or might arise, the nature of the conflict and whether the firm would step aside or resign from the engagement creating the conflict.
 - (b) Does your firm have any arrangement with any individual or entity with respect to the sharing of any compensation, fees or profit received from or in relation to acting as bond counsel for the Division or whose compensation is based in whole or in part on compensation for acting as bond counsel for the Division? If so, provide a copy of any contract relating to the arrangement and describe in detail the nature of the arrangement and the method of computing compensation.
 - (c) Has your firm retained any person or firm for the purpose of seeking to be selected as bond counsel pursuant to this RFP? Will your firm pay or be obligated to pay any firm or an individual who is not a full time employee of your firm if you serve as bond counsel for the Division? If so, identify the individual or firm, provide specific information relating to compensation paid or to be paid, and provide a copy of any written contract relating to such arrangement.
 - (d) Has your firm, or any member or employee of your firm, engaged any person or entity in connection with being hired for tax-exempt local bond issues in Florida? If yes, identify the person or entity engaged, the nature of the representation and the compensation arrangement.
3. The State supports and encourages diversity and the participation of small and minority business enterprises in State contracting. In order to identify minority or woman-owned businesses or other firms which actively pursue providing opportunities to women and minorities, please provide the following information. Indicate if your firm is a minority-owned business or a women-owned business and identify the principal shareholders which qualify your firm as a minority or woman-owned business. Indicate what percentage of professionals within your firm are minorities or women and list the number and positions of such professionals. Provide a list of the names and positions of any minority professionals who will be

working under this contract. Provide a brief description of your firm’s minority hiring/affirmative action program. Responses to these questions and whether a firm has partnered with a small or minority firm will be considered as a tie-breaker in ranking respondents.

- 4. The following shall be repeated in your proposal and signed by an individual authorized to bind your firm.

“I agree to abide by all conditions of RFP 2009-2 and Rule 19A-6.004 of the Florida Administrative Code and certify that all information provided in this proposal is true and correct, that I am authorized to sign this proposal for the respondent and that the respondent is in compliance with all requirements of the RFP, including but not limited to, certification requirements.

Authorized Signature (Manual)

Name and Title (Typed)

Date”

VII. EVALUATION PROCESS

The responses to this RFP will be independently evaluated by a selection committee. As indicated below, points will be assigned to certain of the items presented in the RFP. Those items without points assigned will not be used in computing the score received but will be used for informational purposes or as a basis for possible disqualification. The selection committee members will evaluate the responses to this RFP by reviewing the responses to each of the items and assigning points up to the maximum points allowed for each item. Each committee member will rank each respondent based upon total points assigned to each respondent by that committee member. The ranking by each member of the selection committee will be aggregated to establish an overall ranking by the committee. The highest ranked firm will be recommended for selection as bond counsel. The points available for each of the items being evaluated are as follows:

(Remainder of page intentionally left blank)

| <u>ITEM REFERENCES</u> | <u>MAXIMUM POINTS</u> |
|----------------------------------|-----------------------|
| VI. B. 1. | 10 |
| 2. | 10 |
| 3. | 20 |
| 4. | 20 |
| 5. | 20 |
| 6. | 10 |
| VIII. Compensation | <u>10</u> |
| Total Available Points | 100 |

VIII. COMPENSATION

- A. Compensation for services as bond counsel shall not exceed the amount specified below for the drafting or reviewing of all documents required for the issuance of bonds of the Division; representing or assisting the Division in any validation of the bonds pursuant to Chapter 75, Florida Statutes, if necessary; services listed in Section III of this RFP; and any other services traditionally performed by bond counsel which are necessary or desirable in the issuance of any bonds for this program.

- B. Each proposal must include a proposal for a method of compensation of bond counsel, level of compensation, and overall cap on compensation not in excess of the cap specified herein. If the fee proposed is on an hourly basis, the proposal should include an hourly rate and an estimated number of hours required to complete the engagement. The method and level of compensation will be a factor but not the sole determinate in the selection of bond counsel by the Division. Total fees paid by the Division for services provided for the initial financing under this program will not exceed \$40,000, excluding permitted out of pocket expenses. Fees for subsequent financings may not exceed \$20,000 per financing, with a cap of \$40,000 per fiscal year, excluding permitted out of pocket expenses. Any ongoing fees must be included in the appropriate compensation cap. Reaching the compensation cap based on the method of compensation proposed will not excuse the selected firm from performing all duties provided for under this RFP and the selected firm will be required to specifically agree to complete all anticipated services notwithstanding the cap on compensation. The Division reserves the right to negotiate compensation at or below the amount set forth in any proposal submitted. The payment of all fees and expenses shall be contingent upon the sale and delivery of each series of the bonds.

- C. Fees for any additional services, not otherwise stated herein, shall be set by mutual written agreement of the firm and the Division prior to the commencement of any such services, and shall be in addition to compensation paid pursuant to paragraph B above.

- D. In addition to compensation paid pursuant to paragraphs B and C above, bond counsel may also be reimbursed for any reasonable expenses incurred in connection with its services to the Division. Bond counsel selected for this engagement will be reimbursed for out of pocket

expenses incurred in connection with the engagement at charges and rates mutually agreed upon by the Division and the selected firm. Expenses for travel must be specifically authorized in writing by the Division. Reimbursement of expenses shall be subject to applicable Florida laws and regulations.

IX. BOND COUNSEL CONTRACT

Upon approval by the Governing Board, the selected bond counsel shall perform legal services in accordance with the terms and conditions of a bond counsel contract to be entered into by and between the Division and the selected bond counsel.