

**ARKANSAS DEVELOPMENT FINANCE AUTHORITY
REQUEST FOR PROPOSALS FROM
BOND COUNSEL
FOR
AMENDMENT 82 BONDS**

SPECIAL NOTE: YOUR IMMEDIATE ATTENTION IS CALLED TO SECTION I.C. YOU NEED TO SEND TO US AN E-MAIL ADDRESS FOR TRANSMISSION OF NOTICES OF INQUIRIES.



April 23, 2013

**Arkansas Development Finance Authority
900 West Capitol, Suite 310
Little Rock, AR 72201
(501) 682-5900**

SECTION I: INSTRUCTIONS TO PROPOSERS/ GENERAL INFORMATION

A. PURPOSE. Act 1084 of the Regular Session of the State of Arkansas 89th General Assembly, Regular Session 2013 declared a \$1.5 billion economic development project to be a qualified Amendment 82 (A.C.A. §15-4-3201 et seq., as amended) project for Phase I of the Big River Steel Mill Project (BRS) located in Osceola, AR, and authorized the issuance of general obligation bonds in an amount not to exceed \$125 million. This is the first use of an Amendment 82 bond issue utilizing full faith and credit general obligation bonds for economic development purposes.

It is currently expected these taxable general obligation bonds will be one issuance comprised of two series of bonds, sold on a negotiated basis. The first series is expected to generate \$75 million in bond proceeds, with no more than a ten year call (without call premium) and will be used for site prep costs, pilings and cost of bond issuance. The second series is expected to generate \$50 million in bond proceeds, with no more than a two year call and will be used for building construction. The second series, although a general obligation of the State of Arkansas, is expected to be repaid by a loan agreement between ADFA and BRS and will also be secured by a real estate mortgage on two buildings with a cost of \$74 million. BRS has an incentivized option to prepay the loan early within four years qualifying them to receive a ten percent (10%) discount of \$5 million on the loan. To be eligible for the discount, BRS must not only prepay the loan but also announce, raise the money and start construction a Phase II \$500 million dollar expansion at the Osceola plant in Mississippi County AR. If not prepaid, the loan balance will be paid out over time.

Prior to the issuance of the bonds by ADFA, BRS must raise \$300 million in private equity capital. After the bonds are issued, proceeds can only be released towards the project once BRS has expended \$250 million of their own capital towards the completion of the project. It is anticipated that a Payment in Lieu of Tax Agreement (PILOT) will be negotiated between BRS and Mississippi County. There is also a commitment of local investment of \$14 million from Mississippi County and \$2.5 million from the City of Osceola.

B. SUBMISSION OF PROPOSALS. Written proposals responding to the questions and requests for information in the manner specified in this Request For Proposal (“RFP”) should be submitted to the following:

rfp@adfa.arkansas.gov

To be considered, one (1) copy of the proposal should be delivered to ADFA not later than May 6, 2013, by 12:00 p.m, via email. Late proposals will not be accepted. ADFA reserves the right to reject any or all proposals.

C. ADDITIONAL INFORMATION. It is the responsibility of the proposer to inquire about and clarify any aspect of the RFP. Questions should be directed to Gene Eagle (gene.eagle@adfa.arkansas.gov), Vice President for Development Finance at 501-682-5905 or Patrick Patton (patrick.patton@adfa.arkansas.gov), Vice President for Internal Audit at 501-682-5902. Substantive questions and answers will be documented in letter form and will be sent by electronic mail to all the proposers who provide us with an e-mail address. IN ORDER TO BE ON THE

DISTRIBUTION LIST FOR INTERNET TRANSMISSION OF ALL RESPONSES TO INQUIRIES, YOU MUST **IMMEDIATELY** ADVISE PATRICK PATTON OF ADFA, THE INTERNET E-MAIL ADDRESS TO WHICH YOU WANT ALL SUCH TRANSMISSIONS SENT.

D. PROPERTY OF ADFA. Any information or materials submitted as a response to this RFP shall become the property of ADFA and will not be returned. All submitted materials will be available for public review.

E. RESPONSE TO REQUEST FOR PROPOSAL. Law firms wishing to respond to this RFP can interact and contact Patrick Patton, Chair of the Staff Professional Selection Committee. **NO CONTACT WITH ADFA BOARD MEMBERS IS ALLOWED AND ANY SUCH CONTACT WILL BE GROUNDS FOR IMMEDIATE REJECTION OF A FIRM'S PROPOSAL.**

F. PROPOSAL TIMETABLE.

April 23, 2013	Request for Proposal Issued
May 6, 2013	Proposals Due @ 12:00 p.m.
TBA	Oral Presentations (if necessary)
May 16, 2013	Board Action (Appoint/ratify appointment of bond counsel, authorizes the President of ADFA to negotiate fees)
TBD	Submission to Legislative Committee for contract review (if required)

G. SELECTION PROCESS. The ADFA Staff Professional Selection Committee will review the submitted proposals. Proposals will be evaluated based on responses to specifics outlined in the Proposal Format section of this RFP and based upon the selection criteria. Proposals which omit any of these items may be rejected as non-responsive. From this review, a select group of firms may be chosen for oral interviews. All proposing firms will be advised of the firms selected for oral interviews, if necessary. After interviewing, the Board of Directors Professional Selection Committee will make its decision on a recommendation for selection, which will be reported to the Board of Directors of the Authority at its regular meeting. The final selection will be made by a vote of Board members.

ADFA may at any time prior to the selection of bond counsel reject any and all proposals and cancel this RFP, without liability therefor, upon finding that there is good cause for rejecting all proposals and that it would be in its interest to cancel the solicitation. Further, ADFA shall under no circumstances be responsible for any proposer costs and expenses incurred in submitting a response to this RFP. Each proposer who submits a response does so solely at the proposer's cost, risk and expense. ADFA accepts no responsibility for the return of successful or unsuccessful proposals. This RFP in no way obligates ADFA to select a firm.

Any firm selected will be required to complete a disclosure form in compliance with Governor's Executive Order 98-04.

H. SELECTION CRITERIA. The Staff Professional Selection Committee, composed of selected members of ADFA, will review the proposals. The committee generally will use the following

criteria to rank all acceptable proposals and to develop recommendations to be presented to the ADFA Board Professional Selection Committee; however, the Committee reserves the right to evaluate proposals based upon factors beyond the listed criteria.

Criteria

1. Firm's recent experience as bond counsel:
 - a. Prior experience with municipal bond issues
 - b. Size and number of prior bond issues and experience in complex bond financings similar to or related to this proposed financing
2. Organization, size and structure of firm:
 - a. Number of employees currently engaged in municipal bond transactions
 - b. Response to Arkansas presence issue including relevance of presence to this transaction
3. Qualifications of staff to be assigned; including the team members demonstrated ability, years and type of experience
4. Responsiveness of written proposals to the purpose and scope of services
5. Responsiveness of proposal on fee issue

SECTION II: SCOPE OF SERVICES AND REQUIREMENTS

The bond counsel will be expected to perform all the normal duties associated with being bond counsel for the issuer of municipal bonds, including but not limited to:

- A. Attend all ADFA subcommittees or staff meetings when such meetings include matters directly or indirectly related to the proposed bond issue.
- B. Provide advice and assistance in structuring the financing and in planning for the sale of the debt obligations, including consultation with the underwriters and their counsel as well as issuer's counsel. Underwriter's counsel will be primarily responsible for preparation of the preliminary official statement, official statement, bond purchase agreement, blue-sky memorandum and legal investment memoranda, but the bond counsel shall be available for consultation in the preparation of these documents if necessary.
- C. Prepare the borrowing resolutions and documentation, program administration agreement, bond resolutions, trust indenture, real estate and security documents, closing documents and certificates, including arbitrage certificate and tax regulatory agreement, to the extent such documents are required to acquire and construct the projects and to

issue the bonds. Borrowing documentation may include loan or lease documents and/or bond anticipation notes.

- D. Ensure the bond transaction and related documents adhere to the legislation authorizing the bonds, including not only the legislation outlined in Section I. A., but also the related Amendment 82 Agreement between the State of Arkansas and Big River Steel, LLC and any other documents relative to the transaction.
- E. Provide assistance in selecting a registrar, trustee and paying agent and preparation of any related communication required by the registrar, trustee and paying agent, as needed.
- F. Supervise and contract for the printing and delivery of bonds, if required.
- G. Issue approving opinions for borrowings, and issue final approving opinions with respect to any debt obligations, as required, concerning matters of legality and tax exemption, and any supplemental opinion requested as to the bonds under federal and state tax laws.
- H. Assist ADFA as needed to advertise and conduct a public hearing for each bond issue, prepare minutes of the Public Hearing, deliver the minutes to the Office of the Governor and obtain the Governor's Proclamation for the issuance of the bonds.
- I. Provide assistance and preparation for rating agency hearings, if desired, including attendance at meetings and follow-up on any detailed information requested.
- J. Provide any required legal research, correspondence, and preparation of memoranda or other documents related to the issuance of any debt obligations, as required.
- K. Consult with the provider of any credit enhancement and its counsel concerning any such credit enhancement and documentation.
- L. Assist the underwriter with the flow of funds relative to the state meeting the debt service obligations of the bonds and then being repaid by the company the same day or the following day, assuring compliance with the legislation that 1) authorizes these bonds and 2) appropriates the funds for the state's debt service of the bonds.
- M. Any additional legal services necessary to issue these debt obligations and the related borrowing arrangement with the company.

SECTION III: STATEMENT OF QUALIFICATIONS

An updated statement of qualifications should be maintained on file at ADFA for all firms submitting proposals as bond counsel.

SECTION IV: PROPOSAL FORMAT

A. **TRANSMITTAL LETTER.** A brief transmittal letter prepared on the proposer's business stationery should accompany the submitted proposal.

B. **PROPOSAL.** The proposal should be labeled "Proposal to serve as Bond Counsel for Amendment 82 Bonds". The proposal must contain sufficient information to enable the ADFA Staff Professional Selection Committee to evaluate the proposal. It should be prepared in a clear and precise manner and should address all appropriate subsections.

1. **Bond Counsel Team and Personnel.** Describe the manner in which you would organize your firm's resources to serve as bond counsel for the proposed financing. In doing so, please address the following questions or issues:
 1. Identify the individual who will manage this financing on a day-to-day basis. Define this individual's position within the firm and indicate the degree to which he or she will be able to commit the firm's resources to ADFA. What is this person's availability for this financing and what other commitments does he or she have?
 2. Identify other professionals from your firm who will be assigned to work on this project, their roles and responsibilities and relevant aspects of their background. How will these individuals work with the other members of the financing team?
2. **Bond Counsel Opinion.** Confirm whether your firm can issue opinions necessary for the issuance of debt instruments under existing law. If legislative action is needed before an opinion can be given, provide a brief summary of such legislation. Describe any other legal issues which must be resolved before the financing program can be completed.
3. **Comments on Scope of Services.** Elaborate on the services you propose to perform as bond counsel for the proposed financing. In what way do you expect the scope of services to differ from those listed in Section II?
4. **Arkansas Presence.** Please explain your firm's presence within Arkansas and describe how that presence is relevant to the proposed transaction.
5. **Potential Conflicts.** List any relationship which might lead to a potential conflict in performing any services for ADFA. Please list specifically any conflicts resulting from material adverse matters, as distinguished from the conduct of business as usual. Indicate what steps would be taken to eliminate any such conflict.
6. **Rationale for Appointment and Proposal Summary.** This section of the proposal should be used by each proposer to present the case for its appointment to the position sought. It is not necessary for you to recite comprehensively your firm's qualifications and experience, which should be on file with ADFA in your current Statement of Qualifications, but it would be useful for you to describe how your qualifications and

experience is relevant to the proposed transaction. In particular, you may want to select, a past deal as bond counsel (indicating the date of issue, issuer, credit description, size and method of sale) and summarize its similarity to this program and its successfulness.

7. **Malpractice Insurance.** Acknowledge that if selected as bond counsel, your firm will provide to ADFA proof of malpractice insurance covering, among other things, securities-related claims. Please list any pending claims or disputes relating to prior opinions as bond counsel.
8. **Bond Counsel Fee Determination.** Selection of a bond counsel will not be based on a competitive bid. ADFA will attempt to negotiate with the top ranked firm to establish a fair and reasonable fee. If an agreement cannot be reached with the top ranked firm, negotiations will be attempted with the lower ranked firms in order of their rankings.

Provide the basic assumptions on which your firm's fee would be predicated and any factors that would change the actual fee. State what you consider to be the most appropriate method for determining a reasonable attorney fee for this representation, and state your rationale.

9. **Equal Opportunity Statement.** Please submit your Equal Opportunity Policy to ADFA in accordance with Arkansas Act 2157 of 2005. This act requires any firm wishing to respond to an RFP or submit a proposal or statement of qualifications to provide ADFA with your Equal Opportunity Policy.
10. **Acceptance.** Submission of proposals, in response to this Request for Proposal, constitutes acceptance of all conditions, requirements and limitations described in this document.