

**ARKANSAS DEVELOPMENT FINANCE AUTHORITY
REQUEST FOR PROPOSALS FROM
BOND COUNSEL
FOR
Arkansas Department of Environmental Quality Building Financing
+/- \$17,500,000**



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.

October 12, 2004

**Arkansas Development Finance Authority
423 Main Street, Suite 500
Little Rock, AR 72201
(501) 682-5900**

SECTION I: INSTRUCTIONS TO PROPOSERS/ GENERAL INFORMATION

A. PURPOSE.

The Arkansas Development Finance Authority (ADFA) and the Arkansas Department of Environmental Quality (ADEQ) are requesting proposals from bond counsel firms to serve as the counsel for the issuance of state agency revenue bonds to provide financing for the construction and acquisition of a new office building (90,000 sq. ft.), a new laboratory (10,000 sq. ft.), and a technical shop for a boat and other storage needs. The project will allow ADEQ to move from outdated facilities that are currently being leased. The projected capital costs for the project are expected to be approximately \$17,500,000. The facilities will be located in central, Arkansas.

The Department of Environmental Quality (ADEQ) (established by ACT 1219, of 1997) works to protect and enhance the state's environment through proactive regulatory, technical assistance, and educational programs. The ADEQ is organized into thirteen divisions that focus on protecting Arkansas' priceless natural resources – its air, water and land- as well as providing a strong foundation for environmental awareness and activity to safeguard the future of these resources and the people of the State of Arkansas.

The repayment on the bonds is expected to come from several sources. ADEQ has funds derived from fees charged to the regulated community for permitted environmental activities. Another major source of revenue is derived from the ADEQ's reimbursement of indirect costs associated with grants received from the federal government agencies, primarily the Environmental Protection Agency (EPA). Specific attention should be paid to the ADEQ's ability to pledge these revenues derived through statutory and regulatory authority. After discussion with ADEQ's Chief Deputy Director, the availability of qualified cash funds must be assessed to determine ability to be pledged. After Counsel's assessment of revenue flows, please advise as to the necessity of any additional legislation, which may be required to accomplish the financing through either the use of provisions provided in the State Facilities Acquisition Act (22-3-1409), or any new legislation creating unqualified cash funds.

The Arkansas Building Authority (ABA) will be performing site, land purchase and construction reviews for this project. A general contractor and architect team has been selected for this project.

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:

ppatton@adfa.state.ar.us

To be considered, one (1) copy of the proposal should be delivered to ADFA not later than November 2, 2004, by 12:00 p.m., via email. All proposals shall be time and date stamped upon receipt. 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 (geagle@adfa.state.ar.us), Vice President for Development Finance at 501-682-5905, or Mary Leath (leath@adeq.state.ar.us), Chief Deputy Director of ADEQ at 501-682-0959, or Tom Geis (tgeis@adfa.state.ar.us), Governmental Finance Specialist at 501-682-5907, or Patrick Patton (ppatton@adfa.state.ar.us), Vice President for Internal Audit at 501-682-5902. Substantive questions and answers will be documented in letterform and will be sent by electronic mail to those 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 SHALL BE GROUNDS FOR IMMEDIATE REJECTION OF A FIRM'S PROPOSAL.**

F. PROPOSAL TIMETABLE.

October 12, 2004	Request for Proposal Issued
November 2, 2004	Proposals Due @ 12:00 p.m., via email
TBA	Oral Presentations (if necessary)
November 18, 2004	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, working with representatives from its project partners, the Arkansas Department of Environmental Quality (collectively, the "Review 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, in consultation with the Review Committee, will make its decision on a recommendation for selection, which will be reported to the Board of Directors of the Authority at its November 18, 2004, 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.

H. SELECTION CRITERIA. The proposals will be reviewed by the Review Committee. The committee may use the following criteria to evaluate all acceptable proposals and to develop recommendations to be presented to the ADFA Board Professional Selection Committee, although ADFA and the Review Committee reserve the right to consider factors beyond those mentioned below and to follow a process of selection that involves means other than ranking based on such criteria.

Factor

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 and ADEQ 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. Upon discussion with the underwriter and ADFA concerning the need for separate underwriter's counsel, bond counsel may be engaged to be responsible for disclosures and for the preparation of the preliminary official statement, official statement, bond purchase agreement, blue-sky memorandum and legal investment memorandum.
- 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.
- D. Consult with ADFA and ADEQ about proposed revenue streams available for debt service on the bonds, and in conjunction with the agencies, prepare any new legislation or amendments to existing legislation if necessary relating to the issuance of any debt obligations and the revenues pledged to those obligations; and will determine if any further clarification is required from federal funding sources or state officials on the use of indirect cost as a pledged revenue source.
- 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. Provide assistance and preparation for rating agency hearings, if desired, including attendance at meetings and follow-up on any detailed information requested.
- I. Provide any required legal research, correspondence, and preparation of memoranda or other documents related to the issuance of any debt obligations, as required.
- J. Consult with the provider of any credit enhancement and its counsel concerning any such credit enhancement and documentation.
- K. Any additional legal services necessary to issue any debt obligations.

- L. Prepare an engagement letter for ADFA President's approval before performing any compensable work relating to the proposed engagement.
- M. Consult with Arkansas Building Authority (ABA) concerning their role in the bond issue if any.

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 original and required copies of the proposal.

B. PROPOSAL. The proposal should be labeled "Proposal to serve as Bond Counsel for the Arkansas Department of Environmental Quality Building Financing". The proposal must contain sufficient information to enable the Review 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 that 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 that might lead to a potential conflict in performing any services for ADFA or for ADEQ. 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, e.g., three (3) past deals as bond counsel (indicating the date of issue, issuer, credit description, size and method of sale) and summarize their similarity to this program and their 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. **Acceptance.** Submission of proposals, in response to this Request for Proposal, constitutes acceptance of all conditions, requirements and limitations described in this document.

**BOND COUNSEL
TO RECEIVE RFP'S**

Contact/ Firm	Email Address
Tom Leggett, Esq. and Shep Russell, Esq. Friday, Eldredge & Clark	leggett@fec.net russell@fec.net
George E. Campbell, Esq. and M. Jane Dickey, Esq. Rose Law Firm	gcampbell@roslawfirm.com jdickey@roslawfirm.com
Jim Hathaway Kutak Rock	James.Hathaway@kutakrock.com
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