

**ARKANSAS DEVELOPMENT FINANCE
AUTHORITY
REQUEST FOR PROPOSALS FROM
BOND AND PROGRAM COUNSEL
FOR
ARKANSAS NATURAL RESOURCE COMMISSION
STATE REVOLVING FUNDS**

**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.**



January 3, 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. The Arkansas Development Finance Authority (ADFA) and the Arkansas Natural Resources Commission (ANRC) are requesting proposals for Bond and Program Counsel services for the Clean Water Revolving Loan Fund and the Drinking Water State Revolving Fund, collectively known as the SRFs. ADFA and ANRC currently operate the SRFs to provide capital for construction of infrastructure to further the purposes of the Clean Water and Safe Drinking Water Acts, including when necessary the issuance of leverage bonds.

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 January 23, 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 Dave Fenter (Dave.Fenter@arkansas.gov), Finance Manager for the SRFs at 501-682-0543, Leigh Ann Biernat (leighann.biernat@adfa.arkansas.gov), Vice President for Finance and Administration at 501-682-5995 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 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 WILL BE GROUNDS FOR IMMEDIATE REJECTION OF A FIRM’S PROPOSAL.**

F. PROPOSAL TIMETABLE.

January 3, 2013	Request for Proposal Issued
January 23, 2013	Proposals Due @ 12:00 p.m., via email

TBA	Oral Presentations (if necessary)
February, 21, 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 Staff Professional Selection Committee, comprised of both ADFA and ANRC staff, 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. 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. More than one firm may be selected to perform duties as outlined in this RFP.

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 and ANRC, will review the proposals. The committee generally will use the following criteria to evaluate 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 experience with state revolving funds and their attendant federal regulations and pooled loan programs.
2. Firm's recent experience as bond counsel:
 - a. Prior experience with municipal bond issues
 - b. Size and number of prior bond issues
 - c. Experience directly related to SRF financing in Arkansas or other states and
 - d. Experience in complex bond financings.

3. Firm's recent experience as tax counsel, including a description of issues addressed relative to the Tax Increase Prevention and Reconciliation Act.
4. 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
5. Qualifications of staff to be assigned; including the team members demonstrated ability, years and type of experience
6. Responsiveness of written proposals to the purpose and scope of services
7. Responsiveness of proposal on fee issue

SECTION II: SCOPE OF SERVICES AND REQUIREMENTS

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

- A. Attend all ADFA and ANRC subcommittees or staff meetings when such meetings include matters directly or indirectly related to any program or bond issues. Attend all meetings with the United States Environmental Protection Agency (EPA) when approval of EPA is sought for program or bond issues.
- B. Provide advice and assistance in the financing and any bond issuance, including consultation with the financial advisor, underwriters and their counsel. Bonds may be issued by competitive or negotiated sale.
- 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 interim loan documents and/or bond anticipation notes. Depending upon the structure and type of sale, the bond counsel may be responsible for any of the following: notice of sale, preparation of the preliminary official statement, official statement, bond purchase agreement, blue-sky memorandum and legal investment memoranda, but at a minimum the bond and program counsel shall be available for consultation in the preparation of these documents.
- D. Consult with ADFA and ANRC and prepare any new legislation or amendments to existing legislation relating to the SRFs.
- 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 the approval of ADFA and ANRC before performing any compensable work relating to the proposed engagement.

In addition, the bond and program counsel will be expected to provide services on a continuing basis that include:

- a. Review of selected bond documents of borrowers to assure conformity with the SRF Programs,
- b. Consultation with staff on topics that relate to the SRFs, such as proposed new state of federal rules or regulations that will impact the SRFs, and
- c. Consultation with staff on proposed projects to determine if the project will comply with SRF and tax law.
- d. Create standardized documents for this program, which will reflect aspects particular to certain types of financings under the program.

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 and Program Counsel for the Arkansas Natural Resources Commission State Revolving Funds". 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. **Counsel Team and Personnel.** Describe the manner in which you would organize your firm's resources to serve as bond and program counsel for ADFA and ANRC. In doing so, please address the following questions or issues:
 1. Identify the individual who will lead the ADFA – ANRC representation 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 and ANRC. What is this person's availability for representation and what other commitments does he or she have that would limit this representation?
 2. Identify the professional from your firm who will be able to provide the services required when the primary person is absent. What is that person's availability for representation and what other commitments does he or she have that would limit this representation?
 3. 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 any proposed financing and the services you propose to perform on a continuing basis. 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, 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 and program 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. **Counsel Fee Determination.** Selection of 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.

**BOND COUNSEL
TO RECEIVE RFP'S**

Contact/ Firm	Email Address
Shep Russell, Esq. Friday, Eldredge & Clark	russell@fec.net Rbowman@fridayfirm.com
Jane Dickey, Esq. Rose Law Firm	jdickey@roselawfirm.com kburns@roselawfirm.com
Jim Hathaway Kutak Rock	jim.Hathaway@kutakrock.com jill.speed@kutakrock.com Gordon.wilbourn@kutakrock.com
David Menz Williams & Anderson	dmenz@williamsanderson.com jwilliams@williamsanderson.com
John Tisdale, Esq. Wright, Lindsey & Jennings	jtisdale@wlj.com wmcspadden@wlj.com ctbohannon@wlj.com
Anne Parker, Esq. Mitchell, Williams, Selig, Gates & Woodyard	aparker@mws gw.com mallgood@mws gw.com
Glenn Weinstein Pugh Jones and Johnson	gweinstein@pjlaw.com ltyson@pjlaw.com spugh@pjlaw.com
Don Jack Jack Nelson & Jones, P.A.	dtj@jacknelsonjones.com jbryant@jacknelsonjones.com
Richard Van Dusen Hawkins, Delafield & Wood LLP	rvandusen@hawkins.com korlandi@hawkins.com
Jim Dowden Dowden Law Firm	jfdowden@gmail.com jfdowden@swbell.net