

ALBANY MUNICIPAL WATER FINANCE AUTHORITY

REQUEST FOR PROPOSALS FOR THE PROVISION OF ALBANY MUNICIPAL WATER FINANCE AUTHORITY BOND COUNSEL SERVICES

SECTION 1: PURPOSE

- 1.1 The Albany Municipal Water Finance Authority (hereinafter "Authority") hereby requests proposals from qualified law firms in connection with providing bond counsel services for the refunding and issuance of approximately sixty-five million dollars in Water and Sewer System Revenue Bonds. The Authority in association with the Albany Water Board operates the City of Albany water supply system, and the sanitary, stormwater and combined sewer collection systems. The Authority expects to refund and issue debt in 2010-2011. Minority Business Enterprises and Women's Business Enterprises are encouraged to submit proposals.

SECTION 2: RECEIPT OF PROPOSALS:

- 2.1 Three (3) copies of the proposal must be received no later than Tuesday, November 30, 2010 at 10:00 a.m. at the following address:

Corporation Counsel
Attn: Bradford D. Burns, Assistant Corporation Counsel
City of Albany
24 Eagle Street
Albany, New York 12207

- 2.2 The proposals submitted will be the documents upon which the Authority will make its initial judgment regarding each proposer's qualifications, methodology, and ability to provide the services contemplated by the contract.
- 2.3 Those submitting proposals do so entirely at their own expense. There is no expressed or implied obligation by the Authority to reimburse any firm or individual for any costs incurred in preparing or submitting proposals, preparing or submitting additional information requested by the Board, or participating in any selection interviews.
- 2.4 Submission of any proposal indicates an acceptance of the conditions contained in this Request for Proposals (RFP) unless the submitted proposal clearly and specifically states otherwise.

- 2.5 The Authority reserves the right to accept or reject any and all proposals in whole or in part, to waive any and all informalities and to disregard all non-conforming, non-responsive or conditional proposals.

SECTION 3: QUALIFICATIONS OF PROPOSER:

- 3.1 Each proposer shall provide a statement of bond counsel qualifications including:
- a. A brief history and description of the firm submitting the proposal.
 - b. Identification of the firm's professional staff members who will be assigned to this engagement if the firm's proposal is selected. Include a resume for each such professional staff member that details qualifications, years and types of experience, education, accomplishments, etc. Specify the extent of the availability and commitment of each such professional staff member who will be assigned to this engagement if the firm's proposal is selected.
 - c. Identification of a project team manager or point of contact.
 - d. At least three (3) references, including addresses and telephone numbers.
 - e. A signed cover letter from a person within the firm who is authorized to make representations on behalf of the firm and to bind the firm.
 - f. A summary of similar projects or work undertaken by the firm and the experience on similar projects or work of each of the firm's professional staff members who will be assigned to the engagement if the firm's proposal is accepted.
 - g. Disclose any material financial relationships that your firm or any firm employee has with any financial advisory firms, investment banks or law firms or other persons or entities that may create a conflict of interest or the appearance of a conflict of interest in becoming a bond counsel for the Authority, and any other matter that your firm believes may create a conflict of interest or the appearance of a conflict of interest in becoming an underwriter for the Authority.
 - h. Any additional information which would serve to distinguish the firm from other firms submitting proposals such as examples of work on projects similar to the project contemplated by this RFP, any special expertise or experience of the firm, etc.

- 3.2 The Authority may make such inquiries it deems necessary to determine the ability of each proposer to perform the services contemplated by this RFP. Proposers shall promptly furnish all information and the Authority may subsequently request data for this purpose.

SECTION 4: SCOPE OF SERVICES:

- 4.1 The Albany Municipal Water Finance Authority requests proposals from a single law firm that is interested in being selected to provide bond counsel and related services to the Authority. The firm selected will be expected to act as bond counsel for the Authority on and for all aspects of the refunding and issuance of approximately sixty-five million dollars in Water and Sewer System Revenue Bonds. It is expected that the refunding and issuance will begin on or about December 1, 2010 and be completed before the end of the year ending December 31, 2011. Such services would be expected to include, but need not be limited to:
- (a) Negotiating, preparing, reviewing, and delivering any documents related to financings, including but not limited to project financing agreements, participation agreements, trust indentures, bond purchase agreements, and tax regulatory agreements, and advising on appropriate covenants for inclusion in agreements between the Authority and the other involved parties.
 - (b) Preparing or reviewing preliminary official statements, official statements, and other disclosure documents necessary or appropriate to the authorization, issuance, sale, or delivery of bonds.
 - (c) Rendering an objective opinion with respect to any authorization and issuance of bonds; the delivery of new or revised credit facilities; refinancings; appointment of trustees, and other parties to a bond issue; and amendment of related documents, including required bond counsel opinions on the exclusion of interest paid on the bonds from gross income for federal income tax purposes and for state and local income tax purposes, as appropriate.
 - (d) Advising on federal and state tax and securities law matters and changes thereto, the investment and expenditure of bond proceeds, and the collection, investment, and application of monies used to pay debt service on bonds.
 - (e) Preparing, reviewing, or advising the Authority with regard to resolutions, notices, and other documents or procedures required in connection with financings.
 - (f) Advising on federal tax law arbitrage rebate requirements, as appropriate.
 - (g) Drafting, analyzing, advising, or commenting on federal and state legislation,

regulations and rules, Authority guidelines, and other matters which may have an impact on the financing program.

(h) Participating in meetings with potential borrowers, rating agencies, underwriters, the Authority's Members (board of directors) and Audit and Finance Committee, and other parties, as necessary or appropriate.

(i) Assisting with preparation of schedules for the issuance of bonds and assignment of responsibilities of involved parties.

(j) Providing any other legal services, advice, or opinions as requested relating to the Authority's financing program.

SECTION 5: CONTRACT:

- 5.1 Any award of the work contemplated by this RFP shall be conditioned on the later execution of a formal written contract. The Authority reserves the right to revoke or rescind any award at any time prior to the full execution of a formal written contract.
- 5.2 The selected proposer(s) will be required to execute a contract with the Authority. A sample Professional Services Agreement is available upon request.

SECTION 6: COST PROPOSAL:

- 6.1 State the specific maximum overall dollar limit which the firm would accept on fees and expenses for each of two hypothetical individual bond issues: one a new money issue and the other a refunding issue, each in the principal amount of \$65 million. Indicate the projected number of hours of involvement by partners, associates, etc. The proposal must, however, provide a guarantee that no additional fees will be charged to the Authority without prior written consent by the Authority.

SECTION 7: PROPOSAL EVALUATION:

- 7.1 Proposals shall remain valid until the execution of a contract by the Albany Municipal Water Finance Authority.
- 7.2 Proposals shall be examined and evaluated by a committee. A recommendation will be made to the Authority for a contract award based on the following criteria: (a) the proposer's demonstrated capabilities, professional qualifications, experience, and track record in similar water and sewer underwritings; (b) the wherewithal of the proposer to render the requested services to the Authority in a

timely fashion; (c) the completeness of the proposal; and (d) the total proposed cost.

SECTION 8: ALTERNATIVES:

- 8.1 Proposals may include alternative matters or items not specified or requested in this RFP. However, all such alternative matters or items must be listed separately from the proposal and the cost(s) thereof must be separate and itemized.

SECTION 9: INDEMNIFICATION:

- 9.1 The selected proposer will be required to defend, indemnify and save harmless the Authority and its members and officers, and City of Albany and its officers, employees, and agents, from and against all claims, damages, losses and expenses (including without limitations, reasonable attorney's fees) arising out of, or in consequence of, any negligent or intentional act or omission of the selected proposer, its employees or agents, to the extent of its or their responsibility for such claims, damages, losses and expenses.

SECTION 10: SPECIFICATION CLARIFICATION:

- 10.1 All inquiries with respect to this Request for Proposals shall be directed to the individual referenced in Section 2.1 above.
- 10.2 All questions about the meaning or intent of the specifications shall be submitted in writing to the individual referenced above in Section 2.1. Replies will be issued by Addenda mailed or delivered to all parties recorded as having received the proposal documents. Questions received less than four (4) days prior to the date of submission of proposals will not be answered. Only questions answered by formal written Addenda will be binding. Oral or other interpretations or clarifications will be without legal effect.

SECTION 11: MODIFICATION AND WITHDRAWAL OF PROPOSALS:

- 11.1 Proposals may be modified or withdrawn by an appropriate document duly executed (in the manner that a proposal must be executed) and delivered to the place where proposals are to be submitted at any time prior to the opening of proposals.
- 11.2 If within twenty-four (24) hours after the proposals are opened, any proposer files a duly signed written notice with the Authority and promptly thereafter demonstrates to the reasonable satisfaction of the Authority that there was a material and substantial mistake in the preparation of his proposal, that proposer

may withdraw his proposal. Thereafter, that proposer will be disqualified from further proposal on the work.

SECTION 12: INSURANCE AND SECURITY REQUIREMENTS:

- 12.1 The selected proposer will be required to procure and maintain at its expense the following insurance coverage:
- (a) Workers' Compensation and Employer's Liability Insurance: A policy or policies providing protection for the proposer's employees in the event of job-related injuries.
 - (b) General Liability Insurance: A policy or policies of comprehensive general liability insurance with limits of not less than \$1,000,000.
 - (c) Professional Malpractice Insurance: A policy or policies with limits of not less than \$1,000,000.
- 12.2 All insurance must be issued by an insurer licensed to do business in the State of New York and must have an A.M. Best rating of not less than "A". Each policy of insurance shall be in form and content satisfactory to the Authority's Counsel, and shall provide that: (a) the Authority and the City of Albany are named as an additional named insureds, on a primary and non-contributing basis; (b) the insurance policies shall not be changed or cancelled until thirty days after the Authority receives written notice of such change or cancellation; and (c) the insurance policies shall be automatically renewed upon expiration and continued in force unless the Authority is given thirty days written notice to the contrary.
- 12.3 No work shall be commenced under the contract until the selected proposer has delivered to the Authority's Counsel proof of issuance of all policies of insurance required by the contract to be procured by the selected proposer. If at any time, any of said policies shall be or become unsatisfactory to the Authority, the selected proposer shall promptly obtain a new policy and submit proof of insurance of the same to the Authority for approval. Upon failure of the selected proposer to furnish, deliver and maintain such insurance as above provided, this contract may, at the election of the Authority, be forthwith declared suspended, discontinued or terminated. Failure of the selected proposer to procure and maintain any required insurance, shall not relieve the selected proposer from any liability under the contract, nor shall the insurance requirements be constructed to conflict with the obligations of the selected proposer concerning indemnification.

SECTION 13: NON-COLLUSIVE PROPOSAL CERTIFICATE & ACKNOWLEDGMENT:

- 13.1 Each proposer shall complete and submit with its, his, or her proposal the “Non-Collusive Proposal Certificate” and the “Acknowledgment” found on the two (2) pages which follow this page.

**NON-COLLUSIVE PROPOSAL CERTIFICATE
PURSUANT TO
NEW YORK STATE
GENERAL MUNICIPAL LAW SECTION 103-D**

By submission of this proposal, each proposer and each person signing on behalf of any proposer certifies, and in the case of a joint proposal each party thereto certifies as to its own organization, under penalty of perjury, that to the best of knowledge and belief:

- (1) The prices in the proposal have been arrived at independently, without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other proposer or with any competitor;
- (2) Unless otherwise required by law, the prices which have been quoted in this proposal have not been knowingly disclosed by the proposer and will not knowingly be disclosed by the proposer prior to the opening, directly or indirectly, to any other proposer or to any competitor; and
- (3) No attempt has been made or will be made by the proposer to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

(date)

(signature)

(name and title)

(name of firm)

ACKNOWLEDGMENT BY PROPOSER

If Individual or Individuals:

STATE OF _____)
COUNTY OF _____) SS.:

On this _____ day of _____, 2010, before me personally appeared _____ to me known and known to me to be the same person(s) described in and who executed the within instrument, and he (or they severally) acknowledged to me that he (or they) executed the same.

Notary Public, State of _____
Qualified in _____
Commission Expires _____

If Corporation:

STATE OF _____)
COUNTY OF _____) SS.:

On this _____ day of _____, 2010, before me personally appeared _____ to me known, who, being by me sworn, did say that he resides at (give address) _____; that he is the (give title) _____ of the (name of corporation) _____, the corporation described in and which executed the above instrument; that he knows the seal of the corporation, and that the seal affixed to the instrument is such corporate seal; that it was so affixed by order of the Authority of directors of the corporation, and that he signed his name thereto by like order.

Notary Public, State of _____
Qualified in _____
Commission Expires _____

If Partnership:

STATE OF _____)
COUNTY OF _____) SS.:

On this _____ day of _____, 2010, before me personally came _____, to me known to be the individual who executed the foregoing, and who, being duly sworn, did depose and say that he/she is a partner of the firm of _____ and that he/she has the authority to sign the same, and acknowledged that he/she executed the same as the act and deed of said partnership.

Notary Public, State of _____
Qualified in _____
Commission Expires _____