

City of Albany, New York
REQUEST FOR PROPOSALS
FOR THE PROVISION OF
BOND COUNSEL SERVICES

Proposal Number 2012-03
March 19, 2012

SECTION 1: PURPOSE

- 1.1 The City of Albany hereby requests proposals from qualified firms to provide bond counsel services to the City of Albany. The City of Albany has issued and is considering the issuance of general obligation bonds and notes via competitive sale and private sale for various capital projects. The City of Albany seeks to retain bond counsel in connection with such projects which will require long-term financing. Minority Business Enterprises and Women's Business Enterprises are encouraged to submit proposals.

SECTION 2: RECEIPT OF PROPOSALS:

- 2.1 Four (4) copies of the proposal must be received no later than April 9, 2012 at 1:00 p.m. at the following addresses:

with a copy to:

Kathy M. Sheehan
Treasurer
City Hall - Room 109
24 Eagle Street
Albany, New York 12207

Michelina C. Wojton, Esq.
Assistant Corporation Counsel
City Hall - Room 106
24 Eagle Street
Albany, New York 12207

- 2.2 Each proposal submitted will be the document upon which the City of Albany will make its initial judgment regarding each proposer's qualifications, understanding of the City's scope and objectives, methodology, and ability to complete the services contemplated by the City.
- 2.3 Those submitting proposals do so entirely at their own expense. There is no expressed or implied obligation by the City to reimburse any firm or individual for any costs incurred in preparing or submitting proposals, preparing or submitting additional information requested by the City, or participating in any selection interviews.
- 2.4 Submission of any proposal indicates an acceptance of the conditions contained in the RFP unless the submitted proposal clearly and specifically states otherwise.
- 2.5 The City of Albany 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.
- 2.6 The City of Albany reserves the right to award the work contemplated by this RFP, in whole or in part, to one or more firms and individuals.

- 2.7 Any award of a contract shall be conditioned on the later execution of a formal written contract. The City of Albany hereby reserves the right to revoke or rescind any award at any time prior to the full execution of a formal written contract.

SECTION 3: QUALIFICATIONS OF PROPOSER:

- 3.1 Each proposer shall provide a statement of qualifications including:
- a. A brief history and description of the firm.
 - b. Identification of the firm's professional staff members who will be assigned to this engagement if the firm's proposal is selected. Provide details of each professional staff member's qualifications, including 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. Listing of all general obligation bond financings in New York State which the firm has been bond counsel for during the last three (3) years. Indicate the name, date, and the amount of the issue.
- 3.2 Each proposer shall provide at least two (2) references from municipalities for which the proposer has worked on recent financings and at least two (2) rating agency references. All references must include names of contract person(s), addresses and telephone numbers.
- 3.3 Each proposer shall provide 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.
- 3.4 Each proposer may provide any additional information which would serve to distinguish the firm from other firms submitting proposals.
- 3.5 The City of Albany may make such inquiries it deems necessary with regard to the above. Each proposer shall promptly furnish all information and data for this purpose as may be subsequently requested.

SECTION 4: SCOPE OF SERVICES:

- 4.1 The selected proposer will enter into a contract with the City of Albany to perform the following services as requested:
- a) Analyze legal authority for each bond issue to ensure constitutional, statutory, and regulatory compliance and advise the City of Albany as to the selection of the ultimate parameters and structure of each bond issue.
 - b) Advise the City of Albany as to the appropriate steps to validly authorize and issue bonds and work with the City to obtain any required regulatory approvals and to hold any required hearings.

- c) Prepare, review, and deliver all required standard documents and material terms for the issuance of bonds and notes in a timely manner which reserves for the City of Albany the opportunity to review and comment upon those documents. The required documents and their material terms include, but are not limited to, the following:
1. loan agreements and escrow deposit agreements;
 2. documentation relating to tax-exempt status of the bonds;
 3. arbitrage certificates;
 4. closing documentation;
 5. provisions regarding the funds and the accounts which will house bond proceeds;
 6. provisions regarding the pledge of, among other things, assets, revenues, or property as security for re-payment of bonds;
 7. general terms of the bonds such as the medium of payment, date, authentication, and transfer;
 8. redemption provisions;
 9. ability to issue additional bonds;
 10. establishment of additional funds, including the debt service fund, and the application thereof;
 11. general covenants of the issuer;
 12. provisions for supplemental or amendatory resolutions;
 13. remedies upon default;
 14. defeasance and discharge of the lien created by the bond resolution;
 15. letters of credit, re-marketing agreements, and reimbursement agreements for the implementation of a liquidity facility.
- d) Review as needed the official statement.
- e) Render legal advice and any legal opinions necessary with regard to the legal issues related to the structuring of bond financings, the issuance of bonds and, when requested, related to arbitrage, rebate and other tax matters, disclosure requirements, securities transactions, or other matters deemed necessary by the City of Albany. Render legal advice and any legal opinions necessary with regard to present and future alternative financing techniques in light of existing and evolving regulations.

SECTION 5: TERM OF CONTRACT:

- 5.1 The term of the contract will be three (3) years.
- 5.2 The selected proposer will be required to execute a contract with the City of Albany. A sample City of Albany professional services contract is available upon request.

SECTION 6: COST PROPOSAL:

- 6.1 The cost proposal may state an "hourly" fee for the services contemplated herein.
- 6.2 The cost proposal may alternatively state a "flat" fee and/or a "percentage of each issue" fee.
- 6.3 The cost proposal must provide a guarantee that no additional fees beyond those proposed will be charged to the City of Albany without the City's prior written consent.

SECTION 7: PROPOSAL EVALUATION:

- 7.1 Proposals shall remain valid until the execution of a contract by the City of Albany.
- 7.2 Proposals shall be examined and evaluated by the City to determine whether each proposal meets the requirements of this RFP. A recommendation will be made to the Treasurer for a contract award based on the following criteria: (a) the proposer's demonstrated capabilities and professional qualifications; (b) the completeness of the proposal; and (c) the total proposed cost.
- 7.3 The selection of a proposal will not be based solely on a monetary evaluation. There will also be an evaluation of each proposer's understanding of the work required and approach to this project with considerable weight being given to experience in the areas required and the track record of each proposer.

SECTION 8: ALTERNATIVES:

- 8.1 Each proposer may include in its proposal items not specified in this RFP which the proposer considers pertinent. All such alternatives shall be listed separately from the proposal and the cost thereof shall be separate and itemized.

SECTION 9: INDEMNIFICATION:

- 9.1 The selected proposer will be required to defend, indemnify, and save harmless the City of Albany, its 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 City of Albany Treasurer's Office as follows:

Kathy M. Sheehan
Treasurer
City Hall - Room 109
24 Eagle Street
Albany, NY 12207

- 10.2 All questions about the meaning or intent of the specifications shall be submitted in writing to the individual referenced above in Section 10.1. Replies will be issued by Addenda mailed or delivered to the party submitting the inquiry(ies) and all questions and answers will be posted on the City's website at <http://www.albanyny.org/home.aspx>. 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 deadline for the submission of proposals set forth in Section 2.1 above any proposer files a duly signed written notice with the City and promptly thereafter demonstrates to the reasonable satisfaction of the City that there was a material and substantial mistake in the preparation of its proposal, that proposer may withdraw its proposal. Thereafter, that proposer will be disqualified from further proposal on the work.

SECTION 12: INSURANCE REQUIREMENTS:

- 12.1 The selected proposer will be required to procure and maintain at its own expense the following insurance coverage:
 - (a) Workers' Compensation and Employer's Liability Insurance: A policy or policies providing protection for employees of the selected proposer 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 \$2,000,000.
 - (c) Professional Malpractice Insurance: A policy or policies with limits of not less than \$3,000,000. The professional malpractice 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".
- 12.2 Each policy of insurance required shall be in form and content satisfactory to the Corporation Counsel, and shall provide that:
 - (a) The City of Albany is named as an additional named insured on a primary and non-contributing basis.
 - (b) The insurance policies shall not be changed or cancelled until the expiration of thirty (30) days after written notice to the City of Albany Corporation Counsel's Office.
 - (c) The insurance policies shall be automatically renewed upon expiration and continued in force unless the City of Albany Corporation Counsel's Office is given sixty (60) days written notice to the contrary.
- 12.3 No work shall be commenced under the contract until the selected proposer has delivered to the Corporation Counsel or his designee proof of issuance of all policies of insurance required to be procured by the selected proposer. If at any time any of said policies shall be or become unsatisfactory to the City, the selected proposer shall promptly obtain a new policy and submit proof of insurance of the same to the City for approval. Upon failure of the selected proposer to furnish, deliver, and maintain such insurance as above provided, the contract may, at the election of the City, 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 _____, 2012, 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, she, or they severally acknowledged to me that he/she/they executed the same.

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

If Corporation:

STATE OF _____)
COUNTY OF _____) SS.:

On this _____ day of _____, 2012, before me personally appeared _____ to me known, who, being by me sworn, did say that he resides at (give address) _____; that he/she is the (give title) _____ of the (name of corporation) _____, the corporation described in and which executed the above instrument; that he/she 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 board of directors of the corporation, and that he/she signed his/her name thereto by like order.

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

If Partnership:

STATE OF _____)
COUNTY OF _____) SS.:

On this _____ day of _____, 2012, 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 _____