

Texas Public Finance Authority

REQUEST FOR QUALIFICATIONS FOR BOND COUNSEL SERVICES

RFQ No.: 347-24-0033

RFQ Issue Date: September 25, 2023

Response Due Date and Time: October 16, 2023, 3:00 PM CT

**TEXAS PUBLIC FINANCE AUTHORITY
REQUEST FOR QUALIFICATIONS FOR
BOND COUNSEL**

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Please see SCHEDULE OF EVENTS ON PAGE 4, and TIME SCHEDULE AND SUBMISSION DIRECTIONS ON PAGES 6-7.

PURPOSE

Pursuant to Texas Government Code, Sections 1232.059 and 1201.027, the Texas Public Finance Authority (the "Authority") solicits responses to this Request for Qualifications ("RFQ") from law firms interested in providing bond counsel services, including disclosure counsel services, to the Authority for the period beginning December 1, 2023. It is anticipated that contracts resulting from this RFQ will begin not earlier than December 1, 2023 for the Authority's bond issues, and related work, undertaken from and after that date through August 31, 2025, or, at the option of the Authority, through August 31, 2027. Based on consideration of the responses to this RFQ, the Authority's Board of Directors (the "Board") may either: (1) select one or more firms with which to contract for all bond matters; or (2) pre-qualify firms eligible to be selected for an engagement for a specific bond issuance. The number of contracts resulting from this RFQ, and all procedures relating to such contracts, are subject to the discretion of the Board. The Authority has determined that this solicitation does not provide subcontracting opportunities for bond counsel services.

It is the policy of the Authority to make a good faith effort to include participation of Historically Underutilized Business ("HUB") certified firms in its contracts. A HUB is a for-profit business that meets the requirements of Tex. Gov't Code [§2161.001\(2\)](#). Responses should provide a statement as to whether the firm is currently certified as a HUB pursuant to Tex. Gov't Code [§2161.061](#) and 34 TAC Chapter 20, [Subchapter D](#), and, if applicable, attach a copy of your current HUB certificate to your response. You may also attach any other similar certificate(s) issued by a jurisdiction other than the State of Texas. (For further information on the State's HUB program, please refer to <https://comptroller.texas.gov/purchasing/vendor/hub/>.) In order to support the Authority's HUB policy, the Authority may select, from firms responding to this RFQ, one or more firms to serve as co-bond counsel. Please indicate in Part 1 of your response whether your firm would like to serve as bond counsel only, as co-bond counsel only, or in either capacity.

Contracts resulting from this RFQ are subject to approval by the Office of the Attorney General ("OAG"). Texas Government Code [§402.0212](#) requires a state agency to submit proposed contracts with outside counsel to the OAG for approval. The OAG has established an hourly rate cap at \$525. Further, the statute requires that the OAG review all invoices submitted for payment under an outside counsel contract. In addition, the statute requires that outside counsel remit an administrative fee to the OAG when entering into a contract subject to §402.0212. *See generally:* [1 TAC Chapter 57](#) and <https://www.texasattorneygeneral.gov/divisions/general-counsel/outside-counsel-contracts>.

The Authority will not participate in any programs, nor will it conduct business with any entity that is found to knowingly discriminate against persons on the basis of race, color, gender, age, national origin, religion, or physical or mental disability.

HISTORY OF THE AUTHORITY'S FINANCING PROGRAMS

The Authority was created in 1983 by the 68th Legislature. The Authority is authorized to issue revenue bonds and general obligation bonds for the State of Texas to provide funding for purposes authorized by the Legislature. Bonds issued by the Authority include fixed rate bonds, variable rate bonds, and other debt obligations. The Authority has issued revenue bonds and/or general obligation bonds on behalf of the following state agencies and universities: the Department of Agriculture, the School for the Blind and Visually Impaired, the Texas Facilities Commission, the Department of Criminal Justice, certain health and human services agencies, including the Health and Human Services Commission, the Department of State Health Services, and the Department of Aging and Disability Services, the Historical Commission, the Texas Juvenile Justice Department, the Texas Military Department, the Texas Department of Motor Vehicles, the National Research Laboratory Commission, the Parks and Wildlife Department, the State Preservation Board, the Department of Public Safety, the State Technical College System, the Department of Transportation, the Texas Windstorm Insurance Association, the Texas Workers' Compensation Fund, the Workforce Commission, Midwestern State University, Stephen F. Austin University, Texas Southern University, the Texas Military Preparedness Commission, and the Cancer Prevention and Research Institute of Texas ("CPRIT").

The Authority currently administers three commercial paper programs, namely: a lease-revenue commercial paper program, which is available for financing equipment acquisitions and for the construction or renovation of buildings; a general obligation commercial paper program for CPRIT; and a revenue commercial paper program for the Texas Facilities Commission.

In 2003, the Authority created a nonprofit corporation, the Texas Public Finance Authority Charter School Finance Corporation, to finance projects for eligible charter schools pursuant to Chapter 53, Texas Education Code. Further, in 2021, the Authority created a nonprofit corporation, the Texas Natural Gas Securitization Finance Corporation, to issue customer rate relief bonds to recover the extraordinary natural gas cost associated with the 2021 Winter Storm Uri, pursuant to H.B.1520, 87th Leg., R.S. (2021).

DIRECTION AND MANAGEMENT OF THE AUTHORITY

The Authority is governed by a seven-member Board of Directors, appointed by the Governor with the advice and consent of the Senate for staggered, six-year terms. The current members of the Board are: Billy M. Atkinson, Jr., Chair; Ramon Manning, Vice Chair; Jay A. Riskind, Secretary; Larry G. Holt; Shanda G. Perkins; Ben Streusand; and Lance S. Etcheverry.

The Authority operates with a staff of up to 17 employees, and is headed by an Executive Director.

SCOPE OF SERVICES

Responses to this RFQ should be based upon performance of the following tasks, some or all of which will be incorporated into a contract for bond counsel services for each transaction:

- (1) Assisting in making presentations and required submissions and obtaining approval of the Bond Review Board and any other State entity with oversight authority for the issuance of bonds by the Authority, including the OAG.
- (2) Advise on the legality of: i) proposed debt restructuring techniques and ii) the initial structuring and implementation of new funding programs.

- (3) Preparing all resolutions, agreements, contracts, and other documents to which the Authority is a party, and which will be necessary in connection with the issuance of the bonds.
- (4) Attending meetings of the Board and the Bond Review Board to the extent required or requested.
- (5) Attending all document sessions.
- (6) Representing the Authority in the preparation of any bond purchase contracts and ensuring that all participants, including underwriters and investment banking firms, whether retained by or contracting with the Authority, disclose all conflicts of interest to and with the Authority and any other parties involved in the bonds.
- (7) Assisting the Authority in presentations to the major rating agencies in order to obtain ratings for the bonds.
- (8) Rendering a legal opinion that the bonds:
 - (a) will be validly issued under Texas law; and
 - (b) the interest on the bonds is excludable from gross income tax under existing federal law.
- (9) Preparing any IRS filings required by federal tax law.
- (10) Rendering such other written opinions of bond counsel pertaining to investment earnings and any amounts required to be rebated to the United States as excess arbitrage earnings, if any, and any other written opinions of counsel which may be required under the terms of the Bond Resolution or under the Internal Revenue Code, as amended.
- (11) Assisting in the preparation of specified sections of the Preliminary Official Statement and the Final Official Statement, including language related to issuer disclosure, with the understanding that bond counsel will not be expected to independently verify other data contained in the Official Statement and that the Official Statement may so state.
- (12) Preparing certain certificates and reviewing such other documents as are customary and necessary in order to structure and issue bonds.
- (13) Rendering advice to the Board, individual Board members, and Authority staff to the effect that representations or certifications made by the Board, individual Board members and Authority staff in connection with the issuance of the bonds are authorized or required by law and that bond counsel is not aware of any fact or omission that would make any representation or certification untrue or misleading.
- (14) Providing advice and counsel on continuing compliance with securities, tax, and other applicable law.
- (15) Providing assistance on legislative matters affecting the Authority and its client agencies.
- (16) Supervising the preparation, execution, and delivery of the bonds to the purchasers, the printing and binding of the bond transcripts and providing both an electronic copy, in a

bookmark searchable PDF format or as a “PDF Portfolio”, and a hard-cover original of the bond transcript. (Note: The Authority prefers either “Chicago screw binding” or similar screw & post binding for the hard-cover original. The hard copy original should be labeled on the spine only.)

- (17) Providing advice and counsel on post-issuance compliance with securities, tax and other applicable law related to a transaction in response to *ad hoc* questions posed by the Authority while the bonds are outstanding.
- (18) All other matters necessary or incidental to the issuance of the bonds.

Contracts resulting from this RFQ shall be in the form required by the OAG. With the approval of the OAG, a contract may include the following, or similar, statement: "This contract does not include litigation or contested case services." No other provision relating to the exclusion of services will be accepted. The Authority will be responsible for stating the specific required services and allocating duties and tasks between bond counsel and co-bond counsel, if any, commensurate with the negotiated level of compensation.

RFQ SCHEDULE OF EVENTS

The Authority anticipates that the Bond Counsel RFQ process will proceed in accordance with the following schedule:

September 25, 2023	RFQ Issued
October 2, 2023	Deadline for submission of written questions, by email (12:00 Noon CT)
October 5, 2023	The Authority will post responses to written questions on its website no later than 5:00 PM CT
October 16, 2023	DEADLINE FOR SUBMISSION OF RESPONSES (3:00 PM CT)
Board selection of firm(s)	Board meeting tentatively scheduled for November 2, 2023

The Authority reserves the right to change this schedule. Notice of any changes will be posted on the Authority’s website at <http://www.tpfa.texas.gov/rfp.aspx>.

FORM OF RESPONSE

1. Overview of the Firm

Provide a brief description of your firm, including the total number of attorneys and employees, the number of attorneys practicing in public finance, and the number of years the firm has been engaged in public finance work in Texas. Explain how your firm is organized and how its resources will be applied to the Authority’s work. Indicate whether your response to this RFQ is to serve as bond counsel, co-bond counsel, disclosure counsel, or in any capacity.

2. Qualifications

- A. List, by “issuer type” (e.g., state agency, state institution of higher education, city, county, school district, and other special authority or district), the bond issues closed on or after **January 1, 2021** for which the attorney(s) proposed to be assigned to the Authority (see number 3 *infra*) served as bond counsel, co-bond counsel, underwriter’s counsel, special tax counsel, disclosure counsel, or trustee’s counsel. Column 4, “Bond Issue Name” should include the name of the issuer. This information must be provided in

an **Excel spreadsheet**, in tabular form, as an **Appendix** to your RFQ response, in the following format:

Attorney	Dated Date	Issuer Type	Bond Issue Name	Par Amount	Attorney's Role	Basis of Compensation

Please report separate series of one transaction as one bond issue: for example, if a transaction includes a tax-exempt series and a small taxable series due to issuance costs, report the transaction as one bond issue. If, for a specific attorney, you are listing transactions that occurred while that attorney was with another firm, please so indicate and provide the name of the prior firm. Also, please do not list the same issue twice. If more than one attorney with your firm performed a substantial amount of work on an issue, list all primary attorneys.

- B. Select and explain **one** transaction from the Appendix provided in response to “A” above that you feel best demonstrates the abilities of your firm to serve as the Authority's bond counsel, if applicable.
- C. Select and explain **one** transaction from the Appendix provided in response to “A” above that you feel best demonstrates the abilities of your firm to serve as the Authority's disclosure counsel, if applicable.
- D. Provide a brief narrative updating your firm's work since **January 1, 2021** assisting clients with post-closing tax compliance including, but not limited to, arbitrage compliance, change of use, IRS audits, and continuing disclosure matters. Address any standard procedures established by your firm, such as providing compliance memos, checklists, or other follow-up and remedial work. Further, please specify, where appropriate, the involvement of attorneys to be assigned to the Authority's work.
- E. In a separate section of your response, concisely explain why your firm should be selected to serve as the Authority's bond counsel, co-bond counsel, and/or disclosure counsel.

3. Resumes

Provide the resume of each attorney who would be assigned to serve the Authority, specifically indicating the proposed role of each individual. The resumes must clearly specify the number of years the attorney has been licensed to practice law in Texas, as well as any other jurisdictions, and the number of years of experience in public finance. Further, identify the attorney that would be assigned as the primary contact for the Authority. In addition, provide a separate listing of those attorneys which you would identify as special or *ad hoc* resources potentially assignable to the Authority's work, along with their resumes.

4. Business Practices

- A. Participation of economically disadvantaged persons.
 - (1) Describe your previous experience and involvement working with HUB certified firms (if your firm is not HUB certified) or as a HUB certified firm in a co-bond counsel relationship. Please describe your firm's approach to working with co-

bond counsel, including level of effort, division of duties, and providing opinions.

- (2) Describe efforts made by the firm to encourage and develop the participation of economically disadvantaged individuals, including service-disabled veterans, in the provision of the firm's legal services generally and public finance matters in particular. *See:* Texas Government Code [§2161.001\(3\)\(A\)](#). Provide a statement as to whether the firm is a minority-owned business; a woman-owned business; or owned by service-disabled veterans as defined by Texas Government Code [§2161.001\(3\)\(A\)\(vi\)](#). Specify whether the firm has formally adopted an Equal Employment Opportunity policy and provide a summary of that policy.

5. Conflicts of Interest

Please disclose any actual or potential conflicts of interest that could be created by the firm's representation of the Authority. In addition, identify each matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the Authority or to State of Texas, or any of its boards, agencies, commissions, universities, or elected or appointed officials.

6. References

Please provide names, addresses, and phone numbers of three references. Further, a firm desiring to serve solely as co-bond counsel may, but is not required to, include as one of the three references an attorney with a firm that you have previously worked with as co-bond counsel.

RESPONSE MODIFICATION

Any response to this RFQ may be modified or withdrawn at any time prior to the response due date. No changes will be allowed after the expiration of the response due date. The Authority reserves the right to make amendments to this RFQ by posting notice thereof on the Authority's website at <http://www.tpfa.texas.gov/rfp.aspx> and the Electronic State Business Daily ("ESBD") at <http://www.txsmartbuy.com/sp>.

TIME SCHEDULE AND SUBMISSION DIRECTIONS

Responses are due no later than **3:00 PM (CT) on October 16, 2023, to be delivered to the Authority via email addressed to: RFQ@tpfa.texas.gov**. The electronic submission must be signed by an authorized representative of the Respondent and be in a searchable and unprotected format.

NOTE: the Excel file containing the TABLE of experience, which must be submitted as an Appendix (see question 2.A. above), as well as the Respondent's current HUB certificate, if applicable, must be included in the Response. The Excel file should be in an unprotected format.

Clearly mark the transmittal as "RESPONSE TO RFQ FOR BOND COUNSEL." All responses become the property of the Authority. Responses must set forth accurate and complete information as required by this RFQ. Oral instructions or offers will not be considered. **Contact with Board members regarding this RFQ is prohibited and will result in disqualification of your firm from consideration.**

Any questions regarding this RFQ should be submitted by electronic mail to RFQ@tpfa.texas.gov by **12:00 PM (Noon) on October 2, 2023**. Submitted questions and the Authority's responses will be

posted on the Authority's website at <http://www.tpfa.texas.gov/rfp.aspx> and the ESB by **5:00 PM, October 5, 2023**. Questions submitted after the submission deadline will not be answered.

CONTRACT FORMATION AND CONTRACT ADMINISTRATION INFORMATION

The Authority has the sole discretion and reserves the right to reject any and all responses to this RFQ and to cancel this RFQ if it is deemed in the best interest of the Authority to do so. Issuance of this RFQ in no way constitutes a commitment by the Authority to award a contract or to pay for any expenses incurred either in the preparation of a response to this RFQ or in the preparation of a contract for legal services. Firms responding must maintain a Texas office staffed with personnel who would be responsible for providing legal services to the Authority.

In accordance with Sections [1201.027](#) and [2254.003](#) of the Texas Government Code, the Authority will evaluate responses to this RFQ to identify the most highly qualified firm or firms for bond issuances to be undertaken during fiscal years 2024 and 2025. The Board's determinations will be based solely on demonstrated competence and qualifications. Fees may not be considered and should not be indicated in a response to this RFQ.

After the Board appoints a firm for a specific transaction or other matter, the Authority will attempt to negotiate a contract at a fair and reasonable rate with the appointed firm. If a satisfactory contract cannot be negotiated, the Authority will proceed with another firm.

The Board reserves the right to negotiate all elements of the contract for legal services and to approve all personnel assigned to the Authority's work. If a firm contemplates changing the assigned attorneys after a contract is executed, the firm must submit resumes of the additional assigned attorneys. The addition of such attorneys to the contract will be subject to the Authority's approval.

Further, the Board will reserve the right to terminate a resulting contract for legal services for any reason, subject to written notification.

COST INCURRED IN RESPONDING

All costs directly or indirectly related to preparation of a response to this RFQ, or any supplemental information required to clarify your original response, shall be the sole responsibility of, and shall be borne by, the Respondent.

RELEASE OF INFORMATION AND OPEN RECORDS

Upon submission, all responses shall be deemed to be the property of the Authority. Information submitted in response to this RFQ will not be released to the public by the Authority during the response evaluation process or prior to the Board's contract award. After the evaluation process is completed by the Board's award of a contract, responses and the information included therein may be subject to public disclosure under the Public Information Act, Texas Government Code, [Ch. 552](#) (the "PIA"). Respondents have the right to assert the confidentiality of financial and trade information. Any information considered by Respondent to be confidential under the PIA must be clearly marked in bold text, as indicated below, on each page, and only those pages, where such information appears:

**“CONFIDENTIAL PURSUANT TO [CITE TO THE RELEVANT
EXCEPTION TO DISCLOSURE UNDER THE PIA].”**

Further, if the Respondent does assert that certain information in its response is confidential under the PIA, the response to this RFQ must contain the follow statement at or near the bottom of the cover page:

**“THIS DOCUMENT CONTAINS CERTAIN ITEMS OF INFORMATION FOR
WHICH THE RESPONDENT HAS ASSERTED CONFIDENTIALITY UNDER
THE TEXAS PUBLIC INFORMATION ACT”**

The Authority is not responsible for the release of confidential information after the award of a contract made pursuant to this RFQ if the document is not clearly marked as specified above. In accordance with the PIA, if a request is made for disclosure of information marked confidential in accordance with this section, the Authority will notify the Respondent so that the Respondent may present argument and evidence to the OAG for protection from public disclosure.