



REQUEST FOR PROPOSALS

LEGAL SERVICES

FOR THE WASHINGTON HIGHER EDUCATION FACILITIES AUTHORITY

FACILITIES FINANCING AND STUDENT LOANS

Deadline for submission:

**Monday, May 21, 2018
3 p.m. prevailing Pacific Time**

Please email to:

Carol Johnson, Manager
carol.johnson@wshfc.org
Washington Higher Education Facilities Authority
1000 Second Avenue, Suite #2700

Request For Legal Services
For the Washington Higher Education Facilities Authority
Facilities Financing and Student Loans

The Washington Higher Education Facilities Authority (the “Authority” or WHEFA) is soliciting proposals for bond counsel, special counsel, and tax counsel services for its Facilities Financing and Student Loan programs.

The Washington Higher Education Facilities Authority was created by the legislature: “. . . to enable the building, providing, and utilization of modern, well–equipped, efficient, and reasonably priced higher educational facilities, as well as the improvement, expansion, and modernization of such facilities, in a manner that will minimize the capital cost of construction, financing, and use of such facilities. The intention of this policy is to improve and ensure the quality and range of educational services available to the citizens of this state. The intent of the legislature is to accomplish these and related purposes, and this chapter shall be liberally construed in order to further these goals.” (RCW Chapter 28B.07.010)

To accomplish this task, the Authority issues tax–exempt, non-recourse revenue bonds and loans the proceeds to qualified not–for–profit higher educational institutions in Washington State. Higher educational institutions may use the bond proceeds for construction, equipment, refinancing of debt, or any other approved purpose.

The Authority first began issuing bonds in 1984. To date, the Authority has completed 91 separate bond financings totaling over \$2.1 billion, of which approximately \$620 million is currently outstanding. Over the last few years, the Authority has averaged about three bond issues per year. Past Authority bond financings have included fixed and variable rate bond financings; stand-alone and credit-enhanced bond issues; and bonds that are direct, private placements with lenders.

In 2007 the Authority received legislative authority to issue taxable and tax-exempt bonds to acquire or originate student loans. The loans would be for the benefit of students attending Washington higher education institutions, including community colleges and trade schools, and for Washington students attending such higher education institutions either within or outside the State of Washington. Disruption in the financial markets for asset backed securities, including student loans, made it difficult to develop a program that met Authority goals. The Authority continues to monitor the situation, keeping abreast of developments effecting higher education finance, student loans, and the bond markets, and developing and implementing a communication strategy with key players in the field. The goal is to position the Authority to issue bonds and offer WHEFA student loans to Washington students when it becomes feasible. Further information about the Authority and its programs can be found on the Authority’s website at www.whefa.org.

Firms may apply to provide a subset of the Authority's legal services. For example, firms may apply to provide tax counsel services only, or for bond counsel services for only one program. Your response should state for which programs you propose to provide services.

The Authority is currently seeking proposals from qualified law firms wishing to be considered in these roles. Counsel will be generally expected to provide the following services:

- Advise the Authority concerning legal requirements applicable to the issuance and sale of bonds;
- Prepare the necessary proceedings, notices and other documents for the issuance and sale of bonds;
- Advise the Authority concerning the requirements of state and federal securities laws relating to the necessary disclosure of factual and legal information with respect to such sales;
- Prepare all necessary closing documents;
- Consult with underwriters and financial advisors in the preparation of official statements in connection with the sale of bonds;
- Assemble transcripts concerning all proceedings and actions taken in connection with the issuance and sale of bonds;
- Provide the bond purchasers with legal opinions concerning the nature of the bonds;
- Advise the Authority regarding relevant laws related to the authority and programs of the Authority
- Advise the Authority regarding amendments to federal tax law, state law and indentures;
- Attend all Authority board meetings and any special meetings with the Authority as the Authority deems necessary; and
- Provide such other legal services as requested by the Authority.

The Authority intends to select a bond counsel, special counsel, and tax counsel to provide services for a maximum term of five years (initial contract term of two years with options to extend). The contract shall commence on, or around, July 1, 2018.

Upon receipt of proposals from interested law firms, the Authority plans to review and evaluate the proposals, and may interview the top two to three candidates on **Thursday, June 14, 2018**.

Final selection will be made at the next Authority Meeting, which will occur on a yet to be determined date in June or July. Please see **Attachment B** for more information regarding the timeline.

Firms submitting proposals are encouraged to consider subcontracting portions of the engagement to women and/or minority owned firms. If you plan to subcontract, clearly identify that fact, and the name of the proposed subcontracting firms, in the proposal. Following the award for the bond counsel contract, no additional subcontracting will be allowed without the express prior written consent of the Authority.

Attachment A details the qualifications required of firms who wish to respond to this Request for Legal Services.

RFP SUBMISSION REQUIREMENTS

Interested proposers must submit their proposals no later than **3:00 p.m. prevailing Pacific Time on Monday, May 21, 2018.**

Proposals must be submitted via email to carol.johnson@wshfc.org

All materials must be submitted electronically. No Facsimile (FAX) transmitted proposals will be accepted.

Proposals must be limited to 12 pages with single spaced text no smaller than 12 pt. The 12 page limit includes attachments.

To avoid conflict of interest, the Authority may require the selected bond counsel, special counsel, and tax counsel to discontinue the provision of legal services to Authority clients and other parties involved in Authority transactions. The Authority also reserves the right to appoint counsel with respect to a particular bond issue or issues.

No proposal conference to discuss this RFP will be held. Proposing firms with questions concerning this RFP may submit their questions via e-mail **no later than 3:00 p.m. prevailing Pacific Time on Thursday, May 10, 2018.**

Questions must be submitted via email to carol.johnson@wshfc.org

Oral questions will not be accepted. By the end of the day on Friday, May 11, 2018, all questions received and answers provided will be emailed to all known proposing firms and posted on the Authority website at www.whefa.org for all potential bidders to see.

Apart from written questions as described immediately above, there shall be no *ex parte* communications concerning this RFP or the selection process between any proposing firm and any board member, staff member, or others aiding in the selection process. Any such *ex parte* communications shall be grounds for disqualification of a proposing firm and its proposal.

Late Submissions: A proposal shall be considered late if received at any time after 3:00 p.m., Prevailing Pacific Time, May 21, 2018. Proposals received after the specified time WILL NOT be given further consideration.

Prior to the date and time designated for receipt of proposals, any proposal may be modified or withdrawn by email notice to carol.johnson@wshfc.org. Such notice shall be delivered on or before the date and time set for receipt of proposals.

CRITERIA FOR EVALUATING PROPOSALS

The Authority reserves the right to award this contract to the firm or firms which will best meet these requirements. The Authority reserves the right to reject any or all proposals prior to execution of the contract, with no penalty to the Authority. All respondents will be notified by email of the selection.

A review committee will evaluate the proposals according to these principal considerations:

- Demonstrated technical competence, expertise and innovative ability
- Demonstration of depth of experience in municipal finance
- Familiarity with higher education issues and practice
- The cost in fees and expenses
- Reputation for services
- Qualifications of the individuals to be assigned to serve the Authority
- Compatibility of the individuals assigned to work with the Authority and its staff.
- Accessibility of the Bond Counsel personnel to the Authority and its staff.

CONTRACT GENERAL TERMS AND CONDITIONS

The successful applicant will be expected to enter into a contract generated by the Authority in accordance with guidelines provided by the State of Washington, including its general terms and conditions and other standard provisions customary to such services agreements. In no event is the applicant to submit its own standard terms and conditions in response to this procurement. The applicant may submit exceptions to the general terms and conditions. The Authority will review requested exceptions and accept or reject the same in its sole discretion.

Insurance Coverage

The selected contractor is to furnish the Authority with a certificate(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth below.

The contractor shall, at its own expense, obtain and keep in force insurance coverage that shall be maintained in full force and effect during the term of the contract. The contractor shall furnish evidence in the form of a Certificate of Insurance that insurance has been provided, and a copy shall be forwarded to the Authority within fifteen (15) days of the contract effective date.

Liability Insurance

Contractor shall maintain commercial general liability (CGL) insurance and, if necessary, commercial umbrella insurance, with a limit of not less than \$1,000,000 per each occurrence. If CGL insurance contains aggregate limits, the General Aggregate limit shall be at least twice the "each occurrence" limit. CGL insurance shall have products-completed operations aggregate limit of at least two times the "each occurrence" limit. All insurance shall cover liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and contain separation of insured's (cross liability) condition.

Additionally, the contractor is responsible for ensuring that any sub-contractors provide adequate insurance coverage for the activities arising out of subcontracts. In the event that services delivered pursuant to this contract involve the use of vehicles, either owned or unowned by the contractor, automobile liability insurance shall be required. The minimum limit for automobile liability is:

- \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

The insurance required shall be issued by an insurance company/ies authorized to do business within the state of Washington, and shall name the state of Washington, its agents and employees as additional insureds under the insurance policy/ies.

All policies shall be primary to any other valid and collectable insurance. Contractor shall instruct the insurers to give the Authority thirty (30) calendar days advance notice of any insurance cancellation.

Contractor shall submit to the Authority within fifteen (15) calendar days of the contract effective date, a certificate of insurance that outlines the coverage and limits defined in the Insurance section. Contractor shall submit renewal certificates as appropriate during the term of the contract.

Employers Liability (“Stop Gap”) Insurance

In addition, the contractor shall buy employers liability insurance and, if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

Additional Provisions

Above insurance policy shall include the following provisions:

1. **Additional Insured.** The Washington Higher Education Facilities Authority, its elected and appointed officials, agents and employees shall be named as an additional insured on all general liability, excess, umbrella and property insurance policies. All insurance provided in compliance with the contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the Authority.
2. **Cancellation.** Washington Higher Education Facilities Authority shall be provided written notice before cancellation or non-renewal of any insurance referred to therein, in accord with the following specifications. Insurers subject to 48.18 RCW (Admitted and Regulation by the Insurance Commissioner): The insurer shall give the State forty-five (45) days advance notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, the State shall be given ten (10) days advance notice of cancellation. Insurers subject to 48.15 RCW (Surplus lines): The State shall be given twenty (20) days advance notice of cancellation. If cancellation is due to non-payment of premium, the State shall be given ten (10) days advance notice of cancellation.
3. **Identification.** Policy must reference the State’s contract number and the agency name.
4. **Insurance Carrier Rating.** All insurance and bonds should be issued by companies admitted to do business within the state of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best’s Reports. Any exception shall be reviewed and approved by Washington Higher Education Facilities Authority. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC.

5. Excess Coverage. By requiring insurance herein, the State does not represent that coverage and limits will be adequate to protect contractor, and such coverage and limits shall not limit contractor's liability under the indemnities and reimbursements granted to the State in this contract.

PROPRIETARY INFORMATION / PUBLIC DISCLOSURE

All proposals will become the property of the Authority and will not be returned to the proposer.

All proposals received shall remain confidential until the contract is awarded. If any contract resulting from this RFP is signed by the Executive Director of the Authority and the apparent successful contractor, the proposals shall be deemed public records as defined in RCW 42.17.250 to 42.17.340, "Public Records."

Any information in the proposal that the contractor desires to claim as proprietary and exempt from disclosure under the provisions of RCW 42.17.250 to 42.17.340 must be clearly designated. The page must be identified and the particular exception from disclosure upon which the contractor is making the claim. Each page claimed to be exempt from disclosure must be clearly identified by the word "Confidential" printed on the lower right-hand corner of the page.

The Authority will consider a contractor's request for exemption from disclosure; however, the Authority will make a decision predicated upon Chapter 42.17 RCW and Chapter 143-06 of the Washington Administrative Code. Marking the entire proposal exempt from disclosure will not be honored. The contractor must be reasonable in designating information as confidential. If any information is marked as proprietary in the proposal, such information will not be made available until the affected proposer has been given an opportunity to seek a court injunction against the requested disclosure.

A charge will be made for copying and shipping public records, as outlined in RCW 42.17.300. No fee shall be charged for inspection of contract files, but twenty-four (24) hours' notice to the RFP Coordinator is required. All requests for information should be directed to the RFP Coordinator.

PROTEST PROCEDURES

All protests, either against the solicitation of the RFP and/or the award of the contract, must be in writing and contain the original signature of the protesting party or an authorized agent. Such protests must state all facts and arguments on which the protesting party is relying as the basis for its action.

Copies of the protest must be mailed or hand delivered to Kim Herman, Executive Director, Washington Higher Education Facilities Authority at, 1000 Second Avenue, Suite 2700, Seattle, Washington 98104-3601.

Protests against the solicitation must be received by the Authority in writing no later than 5:00 PM Prevailing Pacific Time two (2) business days prior to the date proposals are due. Filing of a protest against the solicitation does not entitle the protesting party to an extension of time for submitting its proposal.

Protests involving the rejection of a proposal must be received by the Authority in writing no later than 5:00 PM Prevailing Pacific Time on the fifth (5th) business day following the interested applicant(s)'s receipt of the notice of rejection, whether oral or written, or the announcement of the apparent successful interested applicant(s), whichever occurs first. Only those who are eligible to submit a proposal under the criteria established by the Authority may protest the rejection of a proposal.

The Executive Director of the Authority will consider the record and all the facts available and issue a decision **within five business days of receipt of the protest unless** additional time is required, in which case the protesting party will be notified by the Authority. The Executive Director's decision will be final.

AUTHORITY PERSPECTIVE

The Authority reserves the right to request additional information from any applicant to assist the Authority in understanding or clarifying the terms of any proposal.

The Authority reserves the right to obtain from any and all sources information concerning a proposing institution's products, services, personnel or subcontractors that the Authority deems pertinent to this RFP and to consider such information in evaluating the institution's proposal.

The Authority reserves the right to waive minor deficiencies in a proposal. The decision as to whether a deficiency will be waived or will require the rejection of the proposal will be solely within the discretion of the Authority. Applicants are cautioned that failure to comply with or respond to any part of this RFP that requires a response may result in rejection of proposals.

The Authority reserves the right to investigate references and past performance of any proposing agency with respect to its performance of similar services, compliance with the RFP and contractual obligations, and its lawful payment of suppliers, subcontractors and workers. The Authority may postpone award or execution of the contract after the announcement of the apparent successful proposing agency in order to complete an investigation. The Authority reserves the right to reject any proposal at any time prior to execution of a contract.

The Authority has the sole discretion and reserves the right to reject any and all proposals received in response to this RFP and to cancel this solicitation if it is deemed in the best interest of the Authority to do so. Issuance of this RFP in no way constitutes a commitment by the Authority to award a contract, or to pay an applicant's costs incurred either in the preparation of a response to this RFP or during negotiations for services. The Authority also reserves the right to make amendments to this RFP by giving written notice to applicants, and to request clarification, supplements and additions to the information provided by an applicant.

By submitting a proposal in response to this solicitation, applicants understand and agree that any selection of an applicant or any decision to reject any or all responses shall be at the sole discretion of the Authority. Additionally, by submitting a proposal, applicants agree that they waive any claim against the Authority, the State of Washington, and their respective officers, employees, and agents for the recovery of any costs or expenses incurred in preparing and submitting a proposal.

The Authority shall not be required to accept any proposal solely on the basis that it contains the lowest price for completion of the work contemplated by this RFP and the Authority reserves the right to negotiate the final contract price.

Thank you for your interest in working with the Authority.

ATTACHMENT A

QUALIFICATIONS OF PROSPECTIVE COUNSEL

I. Give name, address, email, phone and fax numbers of firm.

II. Municipal finance practice

- A. Describe your firm's general background and experience in municipal finance.
- B. List the number of individuals in your firm specializing in municipal finance expressed as:
 - 1. an absolute number; and,
 - 2. a percentage of the total number of attorneys in the firm.

III. Higher education facilities finance experience.

- A. Describe your firm's background and experience in higher education finance, as bond counsel, underwriters counsel and borrower's counsel, in the last two years. List the type and size of each issue.
- B. List the number of attorneys in the firm specializing in higher education facility finance.

IV. Student Loan finance experience.

- A. Describe your firm's background and experience in student loan finance, as bond counsel and as underwriters' counsel in the last two years. List the type and size of each issue.
- B. List the number of attorneys in the firm specializing in student loan finance.

V. Detail the proposed working team for Washington Higher Education Facilities Authority matters.

- A. List the names, background, and experience of each attorney.
- B. List any other individual who would be assigned to the Washington Higher Education Facilities Authority account.
- C. State the approximate work allocation among attorneys by stating the approximate time each attorney would contribute to the total work provided for the Authority.

VI. Fee proposals

- A. Describe specifically the fee structure and scope of services the firm would provide as bond counsel for one program if a second firm is selected for the other program. The proposal should state separately the fees for (a) legal services for higher education facilities financing, including for privately-placed STEP (Streamlined Tax-Exempt Placement) program financing; and (b) legal services for student loans. If the fee structure would be different, in the event the firm is retained as counsel for both areas, describe the difference. State what costs are included in the bond counsel services fee (for example, printing and reproduction, travel and other reimbursable expenses).
- B. Please outline your fee proposal for any other projects, as special counsel to the Authority.
- C. Please clarify if there is a separate charge for attendance at Authority meetings which are not part of an otherwise specific Authority engagement.

VII. References

- A. List at least three references for the firm's bond and tax counsel work specifically related to:
 - 1. Higher education facilities finance;
 - 2. Student Loans and,
 - 3. Municipal finance in general.

VIII. Additional information

- A. Please provide any additional information which you feel may be helpful to the Authority in evaluating your proposal to serve as bond counsel to the Washington Higher Education Facilities Authority.

Attachment B

Timeline for Legal Services Selection – 2018

Action	Date Due
RFP for Legal Services Released	May 3, 2018
Written questions due	May 10, 2018
Responses to questions posted on agency website at www.whefa.org and emailed to known parties	May 11, 2018
Proposals due	May 21, 2018
Authority evaluation of proposals	May 21 – May 28
Notification of firms selected as finalists	May 28, 2018
Conduct final interviews, if necessary	June 14, 2018
Authority Board Meeting – Authority Board Approval of Staff Recommendations	June/July 2018 TBD
Notification of board decision	June/July 2018 TBD
Contracting	July 2018 TBD