

**REQUEST FOR QUALIFICATIONS  
ISSUER & DISCLOSURE COUNSEL AND/OR BOND COUNSEL**

**Relating to:  
General Obligation Bond Issuance and Management  
Ohio Public Facilities Commission**

**STATE OF OHIO**



**April 27, 2023**

**Issued by:**

**Ohio Office of Budget and Management  
Rhodes State Office Tower  
30 East Broad Street, 34<sup>th</sup> Floor  
Columbus, Ohio 43215**

**On Behalf of:**

**The Ohio Public Facilities Commission**

## I. Introduction

The Ohio Public Facilities Commission (OPFC) is soliciting statements of qualifications for issuer and disclosure counsel services and for bond counsel services for the period July 1, 2023 through June 30, 2027, in connection with the issuance and management of certain State of Ohio (the State) general obligation bonds authorized under Chapter 151 of the Ohio Revised Code (ORC) and related laws. The OPFC is a public body and instrumentality of the State consisting of six members—the elective offices of Governor, Attorney General, Auditor of State, Secretary of State, and Treasurer of State, and the appointed Director of the Office of Budget and Management (OBM).

The OPFC may utilize competitive and negotiated methods of sale for bonds issued during the four-year service period covered by this request for qualifications (RFQ). In addition to new money issuances as necessary, refunding obligations may also be issued if determined to be economically advantageous to the State and consistent with the criteria set forth in the State's Debt and Interest Rate Risk Management policy. The OPFC also manages its existing interest rate swap portfolio and may consider entering into new interest rate swaps or derivatives if those transactions are determined to be of a net benefit to the State and consistent with its adopted policies.

The OPFC requests qualifications from law firms interested in providing issuer and disclosure counsel services and/or bond counsel services. Firms responding to this RFQ may apply as follows: (i) to serve as bond counsel—respond to questions 1-14; and/or (ii) to serve as issuer and disclosure counsel—respond to questions 1-18. Firms will only be considered for the position(s) indicated on the enclosed Information Sheet. Joint proposals, i.e., more than one law firm included in one response, will not be considered.

The OPFC will evaluate RFQ responses based on the criteria in Section VI and intends to select a single firm to serve as issuer and disclosure counsel for the stated period and to qualify several firms as part of a qualified bond counsel pool for selection on a deal-by-deal basis. The selected firms will be responsible for notifying the OPFC in writing within 30 days of the occurrence of any: (i) material changes in ownership or ownership structure, organization, personnel, litigation or conflicts, or any other material changes or developments including any subsequent investigation or review for a violation of any state or federal law or regulation that might adversely impact the firm's ability to serve; or (ii) changes related to the Certifications in Section VIII. Once the initial qualified list of bond counsel firms has been established, firms may submit new or updated responses to this RFQ at any time. The OPFC may, at its discretion, add or remove firms from the qualified bond counsel pool at any time.

Responses to this RFQ are the property of the State and will be public records under Ohio law. Responses that are labeled "confidential," or that contain information identified as "confidential," will not be considered by the OPFC.

All questions related to this RFQ must be submitted by e-mail to [OBM.DebtMgmt@obm.ohio.gov](mailto:OBM.DebtMgmt@obm.ohio.gov) with the subject "RFQ - Counsel Questions" by 4:00 p.m. EDT Monday, May 1, 2023. Responded to questions will be posted at: <https://obm.ohio.gov/areas-of-interest/bonds-and-investors/RFQs>. Respondents and their representatives may not communicate about this RFQ with OBM staff, the OPFC members, or any of their designees outside of requests made using the protocol

described above. Any such communication will disqualify the respondent and its proposal from consideration.

This RFQ is not to be construed as an offer of an agreement by the OPFC. Any contractual arrangement for legal counsel services will be evidenced by a separate contract authorized by the OPFC. This RFQ, the resulting agreement with the firm selected, and the rights of the parties involved shall be governed, construed, and interpreted in accordance with the laws of the State of Ohio. The selected firm consents to jurisdiction in a court of proper jurisdiction in Franklin County, Ohio.

## **II. Minimum Qualifications**

The law firm responding to this RFQ must meet the following minimum requirements:

- Have and maintain an office in the State of Ohio;
- Served as lead bond counsel, issuer's counsel, or underwriter's counsel on a minimum of four federally tax-exempt bond issuances, each having a par amount of at least \$50,000,000, for the State of Ohio or any Ohio regional or local government bond issuing authority since January 1, 2020; and
- Be listed in the latest edition or current online version of The Bond Buyers Municipal Marketplace Directory (Red Book).

## **III. Scope of Services**

The law firm responding to this RFQ will be asked to provide or assist in the provision of the following services:

### ***Bond Counsel***

- Advise the State in structuring general obligation issuances including tax-exempt and taxable financings, credit-enhanced financings, and financings that incorporate derivative structures. Structures must be consistent with applicable constitutional requirements, laws, and other applicable standards.
- Render an objective legal opinion addressing the valid, legal, and binding nature of the OPFC's obligations, their source of payment and security, and the excludability of interest on the bonds from gross income for federal and state income tax purposes.
- Assist in the preparation and review of preliminary and final official statements, particularly those sections relating to the legality of the bonds, financing structure, security, tax matters, and continuing disclosure.
- Prepare and assist in the preparation and execution of documents necessary or appropriate to the authorization, issuance, and delivery of the bonds, including, but not limited to, the notice of sale and bid specifications, tax compliance certificates, and escrow agreements.
- Review documents necessary or appropriate to the authorization, issuance, and delivery of the bonds, including, but not limited to, bond resolutions, bond purchase agreements, and continuing disclosure certificates/agreements.
- Provide expert legal advice on federal tax matters, including private activity, arbitrage, rebate, reimbursement of prior expenditures, determination of the initial reoffering price, investment and expenditure of bond proceeds, and the investment

and application of monies used to pay debt service on the obligations.

- Analyze and advise on legal issues arising from federal law, state law, and rulings and findings of federal and state regulatory agencies, including, but not limited to, the Internal Revenue Service, the U.S. Securities and Exchange Commission, and the Municipal Securities Rulemaking Board that impact the OPFC's financings or its post issuance compliance.
- Participate in meetings with rating agencies, credit enhancement providers, investors, underwriters, financial advisors, and other parties as deemed necessary by the OPFC.
- Prepare closing documents and compile transcripts, in both electronic and hard copy format, as requested.
- Provide timely legal services, as requested, on other topics relating to the OPFC's financings.

### ***Issuer and Disclosure Counsel***

- Serve as counsel to the OPFC, including preparation of bond resolutions, motions, meeting notices, agendas, and minutes.
- Render an objective legal opinion addressing the valid, legal, and binding nature of the OPFC's actions with respect to the bonds and related documents or agreements. The specific form of the opinion and statements included therein will be as mutually agreed upon by the OPFC and the selected issuer and disclosure counsel.
- Prepare or assist in the preparation and execution of documents necessary or appropriate to the authorization, issuance, and delivery of the bonds, including, but not limited to, preliminary and final official statements, notices of sale and bid specifications, bond purchase agreements, certificates of award, tax compliance certificates, and continuing disclosure certificates/agreements.
- Assist in the preparation, review, and updating of "Information Concerning the State of Ohio" (Appendix A) that is provided in each State bond sale official statement to comply with federal disclosure requirements.
- Assist in the preparation and submission of the State's annual information and any material event notices that may be required to comply with federal continuing disclosure regulations.
- Draft and review constitutional amendments for bond-funded programs.
- Draft and review legislation implementing State bond-funded programs.
- Assist in the preparation of bond authorization, debt service, and capital project related language for inclusion in the biennial operating budget and capital budget bills.
- Analyze and provide guidance with respect to ensuring and documenting the proper use, change and reuse of bond proceeds to maintain the exclusion of interest from gross income or other tax status for federal income tax purposes.
- Analyze and advise on legal issues arising from federal law, state law, and rulings and findings of federal and state regulatory agencies, including but not limited to, the Internal Revenue Service, the U.S. Securities and Exchange Commission, and

the Municipal Securities Rulemaking Board that impact the OPFC's financings or its post issuance compliance.

- Assist in the preparation of and advise the OPFC in responding to standard IRS audit inquiries regarding the OPFC's outstanding obligations.
- Assist the OPFC in the preparation, review, and implementation of policies and training materials for post-issuance compliance with state law and federal tax and securities laws.
- Provide timely legal services, as requested, on other topics relating to the OPFC's financings.

#### **IV. Submission of Responses**

Interested firms must respond to this RFQ in all applicable respects. Responses are strictly limited to a total of 12 pages at no smaller than 12-point font. This 12-page limit does not include requested attachments which consist of: (i) the resumes of proposed attorneys (Section VII, question 3); (ii) a tabular listing of transactions (Section VII, question 6); (iii) the enclosed Information Sheet identifying the primary contact person and the type of counsel services for which the firm is submitting its qualifications; and (iv) the enclosed Certifications page signed by an individual who is authorized to legally bind the responding firm. Please restate each question and sub-question in the response.

A single page cover letter may be submitted with the proposal at the discretion of the responding firm and will not count toward the 12-page limit. Information contained in the cover letter will not be used to evaluate the response. Responses must be electronically submitted to [OBM.DebtMgmt@obm.ohio.gov](mailto:OBM.DebtMgmt@obm.ohio.gov) in PDF searchable format no later than 1:00 p.m. EDT Friday, May 12, 2023. The responding firm bears full responsibility for the timely delivery of its response. Responses received after the time and date listed above will not be considered. Each responding firm will receive a confirmation receipt by noon of the following business day.

#### **V. Compensation**

The OPFC will separately compensate the selected issuer and disclosure counsel and the selected bond counsel. The compensation will be a flat rate of \$0.40 per \$1,000 bond for up to the first \$50,000,000 in par amount issued and \$0.25 per \$1,000 bond for the par amount in excess of \$50,000,000, all subject to a minimum fee of \$20,000 and a maximum fee of \$60,000 per issuance. These fees are inclusive of expenses. Only the two largest series by par amount will be compensated as separate sales when three or more series of bonds are sold on the same date. Compensation for each additional series of bonds sold on that same date will reflect the minimum fee. The OPFC may adjust the above fee schedule to reflect special circumstances that increase the volume or complexity of the work performed. For interest rate swap/derivative transactions and responses to IRS audits and examinations, the OPFC intends to negotiate a fee with the selected firms based on factors such as the size, complexity, and term of the transaction.

#### **VI. Evaluation Criteria**

The statement of qualifications received will be evaluated on several factors, including but not limited to:

- Capability of the firm to perform the required scope of services, including:

- Experience with the OPFC or comparable state-level issuer financings of similar size, credit, and structure;
  - Knowledge of options and processes for ensuring compliance with federal tax and securities laws;
  - Adequacy of process and procedures for identifying, maintaining, and/or resolving conflicts of interest and potential conflicts of interest;
  - For issuer and disclosure counsel: (i) knowledge of the State’s constitutional and statutory provisions relating to the authorization, issuance, and management of the OPFC’s bonds and swaps/derivatives; and (ii) experience serving as issuers counsel and/or disclosure counsel for entities similar to the OPFC.
- Knowledge, education, and relevant experience of the personnel that would be assigned, particularly the lead attorney(s) with day-to-day responsibility for the OPFC.
  - Commitment to Ohio:
    - Experience with Ohio issuers; and
    - Physical presence within the State.

At its discretion, the OPFC may conduct interviews with one or more responding firms. The OPFC reserves the right to reject all responses or to solicit additional information regarding a firm’s participation in debt issuances that occur subsequent to its response to this RFQ. The OPFC may consider information not requested in this RFQ or included in the statements received.

## **VII. Information to be Provided by Responding Firms**

1. Overview and Organizational Structure:
  - i. Provide a brief overview of the firm and its areas of business. Identify ownership and legal organization (e.g., corporation, partnership);
  - ii. Confirm that the firm meets the minimum qualifications set forth in Section II of this RFQ;
  - iii. Describe the firm’s commitment to public finance counsel services, including the number of dedicated public finance attorneys; and
  - iv. Indicate if the firm is a women business enterprise (WBE), minority business enterprise (MBE), or disadvantaged business enterprise (DBE) and describe how the firm qualifies as a WBE, MBE, or DBE.
2. Footprint:
  - i. Provide the total number and location(s) of the firm’s offices;
  - ii. Provide the total number of employees and number of attorneys;
  - iii. State the location of offices in the State and the number and type of employees at each office; and
  - iv. Discuss significant changes in staffing levels and number of offices since January 2020.
3. Staffing Plan:
  - i. Identify the lead attorney with day-to-day responsibility for the OPFC and each attorney who would be directly assigned to the OPFC by name, title, position,

- role (lead bond, tax, disclosure, etc.), office location, time in current position, time in the firm, and time in the public finance practice;
  - ii. Include, as an attachment, brief resumes of each of the identified attorneys; and
  - iii. Confirm that the identified attorneys are members of the firm and admitted to practice in the State with an active license status.
- 4. Provide an overview of the firm's practice and experience in public finance, including tax, securities, and related areas of law, particularly as they relate to the scope of services solicited by the OPFC.
- 5. Describe the firm's experience serving as lead bond counsel or as issuer's counsel for:
  - i. State-level general obligation issuers;
  - ii. Other state-level issuing authorities in Ohio;
  - iii. Ohio regional or local government bond issuers; and
  - iv. Any other experience the firm believes demonstrates its capacity to perform the scope of services for the OPFC.
- 6. As an attachment, provide a tabular listing of transactions since January 1, 2020 with a par amount of \$50,000,000 or more for each of the issuer categories listed in question 5. Include in the summary table, the issuer's name, the purpose and type of the obligation, the bond series designation, the par amount, closing date, method of sale, whether the interest was fixed or variable, and the role of the firm (i.e., bond counsel, issuer and/or disclosure counsel, or underwriter's counsel).
- 7. Describe the firm's experience and expertise with respect to the issuance of variable rate debt, and the execution of interest rate swaps and other derivatives, including preparation and review of swap/derivative agreements. Identify any swaps or derivatives entered into by governmental issuers in Ohio for which the firm served as counsel.
- 8. Provide two references from public issuers, including at least one in the State, to which the firm or individuals from the firm has/have provided bond, issuer, underwriter, or disclosure counsel services since January 2020. The references must be able to be contacted by the OPFC during this RFQ process. Identify the primary contact (name, title, address, telephone, and e-mail) and describe the nature and term of the representation.
- 9. For work outside the scope of services of this RFQ, please provide an hourly fee/rate for each of the individuals to be assigned.
- 10. Describe any existing or potential conflict of interest under the Ohio Rules of Professional Conduct arising from the firm's relationship with or representation of other parties and, if selected, potential conflict between other parties and the OPFC. Explain the firm's processes and procedures for identifying conflicts, providing timely notice of any conflicts to the OPFC, and managing or resolving them, to the extent possible. *[Note: Given the nature of public finance business, for purposes of this RFQ the OPFC does not consider it a "conflict" under the Ohio Rules of Professional Conduct if a firm represents an investment banking firm or swap counterparty in one or more unrelated transactions while simultaneously representing the OPFC in a*

*bond counsel capacity in a OPFC transaction involving that investment banking firm or counterparty.]*

11. Describe any investigation, review, enforcement or disciplinary action, or litigation regarding a violation or alleged violation by the firm of any state or federal securities, investment advisor, or tax law or regulation relating to tax-exempt or taxable financings that is currently pending or that was concluded since January 1, 2020.
12. Describe any official investigation or review, or litigation regarding a violation or alleged violation by the firm of any State of Ohio ethics (ORC Chapter 102 and Sections 2921.42 and 2921.43), campaign financing (ORC Chapter 3517), lobbying (ORC Sections 101.70 et seq., 101.90 et seq., and 121.60 et seq.), and non-discrimination (ORC Section 125.111) laws or rules that is currently pending or concluded since January 1, 2020.
13. Please provide evidence of and the level of the firm's current professional liability/malpractice insurance.
14. How does the firm differentiate its services from other Issuer & Disclosure Counsel and/or Bond Counsel providers?

**Responses to questions 15-18 are required only of firms applying to serve as issuer and disclosure counsel.**

15. Describe the firm's experience in the drafting of constitutional and/or statutory provisions relating to bond programs backed by state revenue.
16. Describe the firm's experience serving as issuer counsel for any commission, board, or authority that authorizes or approves the issuance of municipal debt obligations.
17. Describe the firm's experience with respect to developing post-issuance compliance procedures and related guidance/training materials with respect to the allowable use of bond proceeds and the allowable use, management, and disposition of bond-financed facilities all as necessary to maintain the exclusion of interest from gross income or other advantaged tax status for federal income tax purposes.
18. Describe the firm's experience with respect to developing disclosure policies and procedures and related guidance/training materials with respect to primary offering disclosures and continuing disclosure requirements.



## VIII. Certifications

In addition to responding to the foregoing items, this firm certifies that:

1. The firm's position as issuer and disclosure counsel or as bond counsel to the OPFC in the proposed project will not create any conflict of interest for the firm or any of its assigned personnel and it will promptly disclose to OBM any potential conflict of interest if, as, and when it arises and is known to the firm. (If the firm believes that any conflict of interest may exist, the nature of the conflict must be described in response to Part VII, question 10).
2. All of the assigned personnel of the firm who are not United States citizens will have executed a valid I-9 form and have valid employment authorization documents.
3. The firm is an independent contractor and neither the firm nor its personnel shall at any time, or for any purpose as a result of the transactions, be considered as agents, servants, or employees of OBM or the State of Ohio, or as public employees for the purpose of Ohio Public Employees Retirement Systems benefits.
4. The firm is not currently in violation of or under any investigation or review for a violation of any state or federal law or regulation that might have a material adverse impact on the firm's ability to serve.
5. The firm is and will during the period from the below date through June 30, 2027 remain in compliance with all applicable federal, state, and local laws, including, but not limited to, the applicable provisions of the following for which it also makes the following related certifications:
  - i. Non-discrimination of employment (Section 125.111 of the Ohio Revised Code). The firm is an equal opportunity employer that does not and will not discriminate against applicants or employees on the basis of race, color, religion, sex, age, disability, military status, national origin, or ancestry. In addition, in compliance with such provisions, the firm has a written affirmative action program for the employment and effective utilization of economically disadvantaged persons and will annually report such progress.
  - ii. Drug Free Workplace. The firm will comply with all applicable federal, state, and local laws regarding smoke-free and drug-free work places and will make good faith efforts to ensure that all of its employees will not have or be engaged in the purchase, transfer, use, or possession of illegal drugs, influence of alcohol, or abuse prescription drugs in any way while providing services to the State of Ohio.
  - iii. Ethics, Campaign Financing, and Lobbying (Chapter 102 and Sections 2921.42 and 2921.43, Chapter 3517, and Sections 101.70, 101.90, and 121.60 et seq. of the Ohio Revised Code). The firm affirms compliance with these provisions of law and will notify OBM of any applicable noncompliance.
  - iv. Findings for Recovery (Section 9.24 of the Ohio Revised Code). The firm is not subject to an "unresolved" finding for recovery under that section.
  - v. Debarment (Sections 153.02 and 125.25 of the Ohio Revised Code). The firm is not debarred from consideration for contract awards by the Executive Director of the Ohio Facilities Construction Commission or the Director of the Department of Administrative Services.

- vi. Qualifications to Do Business. The firm certifies that it has all of the approvals, licenses, or other qualifications needed to conduct business in Ohio and that all are current and if selected, will immediately notify OBM of any applicable noncompliance.
  - vii. Boycotting (Section 9.76 of the Ohio Revised Code). The firm is not boycotting any jurisdiction with whom the State of Ohio can enjoy open trade, including Israel, and if selected, will not do so during the term any resulting agreement.
6. The firm will be responsible for notifying the OPFC, in writing, within 30 days of the occurrence of any changes related to the certifications in this section.

Firm: \_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## Information Sheet

### Ohio Public Facilities Commission Request for Qualifications for Issuer & Disclosure Counsel and/or Bond Counsel

Name of Firm: \_\_\_\_\_

Primary Contact: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

Qualification Categories:

\_\_\_\_\_ Bond Counsel (Questions 1-14)

\_\_\_\_\_ Issuer and Disclosure Counsel (Questions 1-18)

*[Note: Firms may apply for both "bond counsel" and "issuer and disclosure counsel" positions.]*