



THE HONORABLE CURTIS M. LOFTIS, JR.
State Treasurer

September 22, 2022

The Honorable William M. "Bill" Hixon
Legislative Oversight Committee
South Carolina House of Representatives
P.O. Box 11867
Columbia, SC 29211

Dear Representative Hixon:

Bill

I am in receipt of the letter, dated September 15, 2022, in which you asked for input "about the process of approving attorneys for certain work." I asked our staff to provide answers to each of the questions you provided. Please find those answers in the attached document.

Please let me know if we can be of further assistance.

Sincerely,

Curtis M. Loftis Jr.

Curtis M. Loftis, Jr.
South Carolina State Treasurer

Enclosures

CML/sbk

Responses to Question Regarding Approval of Bond Counsel and JEDA Trustees

1. Please provide the following information related to the STO's approved list of bond and issuer counsel:

a. Criteria utilized by the STO to determine the quantitative and qualitative strengths of prospective JEDA trustees;

The STO considers the following information when evaluating JEDA trustee requests:

- Credit Rating from Bloomberg (long term debt ratings from Moody's, Fitch, DBRs)
- Statistical Review for last three (3) years - indicating Performance Ratios (ROA, Return on risk-weighted assets), Efficiency Ratio, and Tier Capital Ratio
- Annual Report (most current)
- Trust & Custody Report (SSAE) [Third Party Audit]
- Insurance Certificate – Errors & Omissions, Fiduciary, Other Insurance
- Other Information- Business Profile and any relevant articles about bank

b. Method and timeframe in which attorneys can apply to be added to the (bond counsel) list;

S.C. Code § 1-7-170 provides the mechanism for state agencies to engage attorneys. It provides:

(A) A department or agency of state government may not engage on a fee basis an attorney at law except upon the written approval of the Attorney General and upon a fee as must be approved by him. This section does not apply to the employment of attorneys in special cases in inferior courts when the fee to be paid does not exceed two hundred fifty dollars or exceptions approved by the State Budget and Control Board. This section does not apply to an attorney hired by the General Assembly or the judicial department.

(B) A public institution of higher learning shall engage and compensate outside counsel in accordance with policies and procedures adopted by the State Fiscal Accountability Authority for matters of bonded indebtedness, public finance, borrowing, and related financial matters.

The current process for selection bond counsel dates back to June 29, 2009 when the Budget and Control Board (B&C Board) received the document "*Office of the State Treasurer: Study of Best Practices for the Selection and Engagement of Board Counsel*". (Attachment 1, the "2009 Document"). The minutes of that meeting state that "on June 17, 2008, the Board authorized the State Treasurer to, among other things, undertake a study of best practices for the selection and engagement of bond counsel. . ." (Attachment 1, p. 1). The study was received by the B&C Board and the prudent practice of selection counsel has been in place ever since.

Pursuant to authority delegated by the B&C Board to the State Treasurer, attorneys may request to be added to the bond counsel list by contacting the STO Debt Division. The STO developed an application modeled after the Request for Qualifications (RFQ) utilized in 2008. A copy of the RFQ is attached.

(Attachment 2). Upon receipt of an application, the STO Debt Division will assemble a review team to review the proposal. If the proposal is deemed to meet minimum requirements, that attorney or firm will be added to the list. The STO will notify the SFAA of the addition of the Attorney/firm at the next SFAA meeting. There is no set timeframe for submitting an application and no set time allocated for the review. The STO staff will take the time necessary to ensure due diligence.

c. Minimum qualifications for consideration to the list, if any;

There are no set minimum qualifications for bond counsel; however, the evaluation committee would look for documented bond and public finance experience. The GFOA Recommended Practices for Selecting Bond Counsel are included in the 2009 document. (Attachment 1, p. 37).

d. Information requested and reviewed by the STO to determine which attorneys are added;

A Request for Qualifications was issued in 2009 to seven law firms and all seven firms submitted responses. The responses were reviewed by an evaluation committee. (Attachment 1, p. 9). The RFQ was part of the 2009 Document. (Attachment 1, p. 29).

e. Personnel (i.e., divisions or job title rather than specific names) at the STO who determine which attorneys are added;

The review team includes the Senior Assistant State Treasurer of Debt & Internal Audit; the Director of Debt Management; STO General Counsel's Office; SFAA General Counsel's Office; and the SFAA Secretary.

f. Process utilized by the STO to determine which attorneys remain on the approved list;

A law firm is considered to be in good standing and will remain on the list unless the STO is provided feedback from an agency or entity regarding their performance.

g. Examples of reasons for which attorneys are not selected for inclusion; and

The STO has received informal inquiries in the past and has provided the RFQ packaged but has only received one completed submission, which is currently under review; therefore, the STO does not have any specific examples of reasons why attorneys were not selected.

h. Examples of reasons for which attorneys have been removed from the list.

Firms were temporarily removed from the list several years ago because the firms represented parties in lawsuits filed against the state. Those conflicts were resolved, and the firms were added back to the list.

2. Would the STO have any concerns about publishing online a process flow chart illustrating the process explained in response to question 1, and keeping the information updated.

The STO is willing to develop and publish a document outlining the process for adding trustees and bond counsel to the STO approved lists.

3. Does the STO approve the rates bond and issuer counsel can charge?

Yes, the STO approves the rates bond attorneys charge. The STO uses the guidance set forth in the 2009 Document in determining those rates (see Attachment 1, P. 17-18).

Attachment 1

Minutes of Budget and Control Board Meeting
June 29, 2009 -- Page 4

Information relating to this matter has been retained in these files and is identified as Exhibit 1.

Office of the State Treasurer: Study of Best Practices for the Selection and Engagement of Board Counsel (Blue Agenda #2)

At its meeting on June 17, 2008, the Board authorized the State Treasurer to, among other things, undertake a study of best practices for the selection and engagement of bond counsel; determine the scope of the study, including among others without limitation the assignment of counsel for general obligation, revenue and other securitized debt; determine best practices for bond counsel compensation; develop requests for qualifications or requests for proposals with emphasis on qualifications and value; and solicit qualified firms for response to any request for qualifications or request for proposals.

This study has now been completed and the results have been distributed to Board members.

Mr. Chellis briefly explained the process that was used in the study of best practices for the selection and engagement of bond counsel. Mr. Chellis stated that his office had all of the bond counsel that would possibly participate in the process come in and talk with them about what they thought would be best practices. He said they reviewed other states and areas to put together a package of best practices. He said that generally everything is about the same with the exception that there is possibly a fee change from about 47.5 cents to 50 cents per bond. Rick Harmon with the Treasurer's Office commented that the purpose of the study was to set aside the concept of equitable rotation among the firms and better select firms on merit and expertise. Mr. Harmon noted that there was a team of 10 evaluators across disciplines that helped make the evaluation. He said the process and the document before the Board is to primarily address qualifying firms. He said that once the qualifying firms have been selected each agency, authority, or institution will be allowed to select their own counsel from the list of qualified firms based on what their needs are. He said that the State Treasurer would also be allowed to select counsel for the State on the same basis. Mr. Eckstrom asked how often the list of qualified firms would be refreshed. Mr. Harmon said that once it is known that there are new firms interested in serving, those firms can be put through the same evaluation process. In response to a question

Minutes of Budget and Control Board Meeting
June 29, 2009 -- Page 5

from Mr. Eckstrom, Mr. Harmon stated that firms could be removed from the list if they no longer wanted to be on it or if the dynamics of a firm changed.

In further discussion, Mr. Eckstrom asked with regard to fees whether the only difference was the number of points. Mr. Harmon responded that was correct and that there are provisions in the fee structure to allow for special circumstances that are not contemplated by the fee schedule.

The Board received as information a study from the State Treasurer on the best practices for the selection and engagement of bond counsel.

Information relating to this matter has been retained in these files and is identified as Exhibit 2.

Office of State Budget: Real Property Acquisitions (Blue Agenda Item #3)

Upon a motion by Senator Leatherman, seconded by Mr. Cooper, the Board approved the following real property acquisitions as recommended by the Office of State Budget. Senator Leatherman, Mr. Cooper, and Mr. Chellis voted for the motion. Governor Sanford and Mr. Eckstrom voted against the motion. [Secretary's Note: For the discussion on this item see the discussion for regular session item #3.]

(a)	Agency:	Coastal Carolina University
	Acreage:	10± acres
	Location:	On Highway 544 in Conway near the Coastal Carolina campus
	County:	Horry
	Purpose:	To provide for student recreation and future campus facilities.
	Appraised Value:	\$1,200,000
	Price/Seller:	\$1,200,000 / SC Forestry Commission
	Source of Funds:	Other, Renovation Reserve and Plant Expansion funds
	Project Number:	H17-9563
	Environmental Study:	Approved
	Building Condition Assessment:	N/A
	Additional Annual Op Cost/SOF:	None
	Current Year Property Tax:	N/A
	Approved By:	CHE on 11/18/08; JBRC on 2/18/09
	Additional Information:	This request also includes approval of an

STATE BUDGET AND CONTROL BOARD
MEETING OF June 29, 2009

BLUE AGENDA
ITEM NUMBER 2

AGENCY: Office of the State Treasurer

SUBJECT: Study of Best Practices for the Selection and Engagement of Board Counsel

At its meeting on June 17, 2008, the Budget and Control Board authorized the State Treasurer to, among other things, undertake a study of best practices for the selection and engagement of bond counsel; determine the scope of the study, including among others without limitation the assignment of counsel for general obligation, revenue and other securitized debt; determine best practices for bond counsel compensation; develop requests for qualifications or requests for proposals with emphasis on qualifications and value; and solicit qualified firms for response to any request for qualifications or request for proposals.

This study has now been completed and the results are being distributed to Board members.

BOARD ACTION REQUESTED:

Receive as information.

ATTACHMENTS:

Chellis 6/8/09 letter



STATE OF SOUTH CAROLINA
OFFICE OF THE STATE TREASURER
CONVERSE A. CHELLIS III, CPA

June 8, 2009

Mr. Delbert H. Singleton, Jr.
Executive Secretary
South Carolina State Budget and Control Board
Wade Hampton Office Building, 6th Floor
Columbia, South Carolina 29201

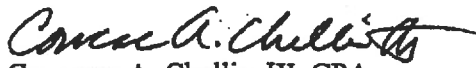
Dear Delbert:

At its meeting on June 17, 2008, the Board authorized the State Treasurer to among other things undertake a study of best practices for the selection and engagement of bond counsel; determine the scope of the study, including among others without limitation the assignment of counsel for general obligation, revenue and other securitized debt; determine best practices for bond counsel compensation; develop requests for qualifications or requests for proposals with emphasis on qualifications and value; and solicit qualified firms for response to any requests for qualifications or requests for proposals. This study has now been completed and the results are being distributed to board members.

A copy of the report is enclosed for inclusion with the official records of the Board. Please include an item on the Blue Agenda documenting the Board's receipt of the report for its information.

Thank you for your assistance in this matter.

Very truly yours,


Converse A. Chellis, III, CPA
State Treasurer



STATE OF SOUTH CAROLINA
OFFICE OF THE STATE TREASURER
CONVERSE A. CHELLIS III, CPA

Report and Recommendation to
The South Carolina State Budget and Control Board
On the Engagement of Bond Counsel, Disclosure Counsel, and Underwriter's Counsel
To the State of South Carolina

Office of State Treasurer
Converse A. Chellis, III, CPA
June 29, 2009

Background. At its meeting on June 17, 2008, the South Carolina State Budget and Control Board (the "Board") authorized the State Treasurer to undertake a study of best practices for the selection and engagement of bond counsel; determine the scope of the study including among others without limitation the assignment of counsel for general obligation, revenue and other securitized debt; determine best practices for bond counsel compensation; develop requests for qualifications or requests for proposals with emphasis on qualifications and value; solicit qualified firms for response to any requests for qualifications or requests for proposals; provide periodic reports to the Board for its consideration and a final report for its approval; and extend the current firm engaged under the present rotation for a transition period not to exceed one year.

Several objectives were identified in the original recommendation by the State Treasurer and approved by the Board:

- Development a policy of engagement that focuses primarily on economic and expert value rather than on equitable distribution;
- Promotion of continuity and other benefits to minimize inherent inefficiencies;
- Adoption of a compensation structure that better recognizes risk, complexity and time requirements and mitigates fluctuations and disparities between value and compensation.

Subsequent to that time, the State Treasurer reviewed recommendations for the engagement of bond counsel prescribed by the Government Finance Officers Association and the National Association of Bond Lawyers, collected and reviewed Requests for Qualification/Proposal from other public entities, and conducted interviews with and solicited written comment from all South Carolina law firms that previously have served the State the role of bond counsel.

Following these reviews and interviews, the State Treasurer determined that the scope of this policy should apply to the State, its institutions, agencies and authorities, including without limitation:

The State of South Carolina and its Agencies

All State Institutions of Higher Learning

All Authorities including without limitation the State Education Assistance Authority, the State Housing Finance and Development Authority, the Educational Facilities Authority for Private Nonprofit Institutions of Higher Learning, the Medical University Hospital Authority, and the Tobacco Settlement Revenue Management Authority, but excluding the South Carolina Public Service Authority and the South Carolina State Ports Authority

The South Carolina Jobs Economic Development Authority

The South Carolina Transportation Infrastructure Bank

The State Master Lease Program

Implementation. Following the guidance published the Government Finance Officers Association and the National Association of Bond Lawyers, and in consideration of the recommendations furnished by the South Carolina law firms described above, the State will adopt the following policies and practices for engagement of counsel to the State, its institutions, agencies and authorities.

General Policies. The State will follow the general guidelines published by the Government Finance Officers Association and the National Association of Bond Lawyers.

Framework.

Bond counsel. The State will select one firm to serve as State bond counsel and represent the interests of the State and its agencies, with the exception of the South Carolina Department of Transportation, for a period of three years with options for extension, subject to an affirmative review and decision to extend; provided, however, that the qualification, engagement or selection of any firm may be terminated at any time with or without reason or cause, and the firm shall have no claim or recourse as a result of such termination.

The duties and responsibilities for State bond counsel will extend to those transactional activities described in Appendix A, among others, and may include general legal advice to and representation of the State including by way of example only development and review of legislation affecting the public finance policies of the state, statutory interpretation, maintenance of the state's document repository, documentation review for all transactions undertaken by the State, its agencies, and authorities, and representation for federal tax audits, inquiries and defense. Following the request for qualifications process described below, the State Treasurer will select a single firm to serve as State bond counsel and advise the State Budget and Control Board of the firm so selected.

The South Carolina Department of Transportation and each state institution and authority will be authorized to each select one firm to serve as its bond counsel and represent its interests, selected from a list of firms qualified by the State Treasurer for such engagements for a period of three years with options for extension, subject to an affirmative review and decision to extend, and further subject to the review and approval of the State Treasurer; provided, however, that the qualification, engagement or selection of any firm may be terminated at any time with or without reason or cause, and the firm shall have no claim or recourse as a result of such termination.

The duties and responsibilities for bond counsel will extend to those transactional activities described in Appendix A and may include, subject to the review of and in coordination with the Office of State Treasurer and State bond counsel, general legal advice to and representation of the institution or authority including by way of example only development and review of legislation affecting the public finance policies of the institution or authority, statutory interpretation, and representation for federal tax audits, inquiries and defense. Subsequent to the request for qualifications and evaluation processes described below, the institution or authority will recommend to the State Treasurer a single firm to serve as bond counsel to the institution or authority, and subject to the approval of the State Treasurer, a single firm will be engaged to serve as bond counsel. The State Treasurer will advise the State Budget and Control Board of the firm so selected and approved.

Disclosure Counsel. A single firm will be engaged to serve as disclosure counsel and represent the interests of the State, its institutions, agencies and authorities (including conduit issuers), for a period of three years with options for extension, subject to an affirmative review and decision to extend; provided, however, that the qualification, engagement or selection of any firm may be terminated at any time with or without reason or cause, and the firm shall have no claim or recourse as a result of such termination.

The duties and responsibilities for disclosure counsel will extend to those activities described in Appendix A, among others. It is anticipated that the firm selected to serve as disclosure counsel will not be the same firm selected to serve as State bond counsel; however, this dual representation would not be patently prohibited. Subsequent to the request for qualifications and evaluation processes described below, the State Treasurer will select a single firm to serve as disclosure counsel and advise the State Budget and Control Board of the firm so selected.

Underwriter's Counsel. Where separate underwriter's counsel is appropriate to the transaction, the underwriter must engage a firm to serve as underwriter's counsel from a list of firms qualified by the

State Treasurer for such engagements. The duties and responsibilities of underwriter's counsel will extend to those activities described in Appendix A, among others.

Conduit Finance. The South Carolina Jobs Economic Development Authority, the Educational Facilities Authority for Private Nonprofit Institutions of Higher Learning, and in certain transactions, the State Housing Finance and Development Authority issue conduit bonds. In certain cases, the private beneficiary may have a strong preference to select bond counsel. To ensure compliance with state law and adherence to state debt policy, the private beneficiary must engage a firm to serve as bond counsel from a list of firms qualified by the State Treasurer for such engagements. Unless State bond counsel is engaged as bond counsel to the private beneficiary, State bond counsel will serve as conduit issuer's counsel and will represent the interests of the State, the conduit issuer and any of its governing and approval bodies and boards. Otherwise, the State will engage separate counsel to represent the interests of the State, the conduit issuer and any of its governing and approval bodies and boards. In either event, compensation of conduit issuer's counsel will be at the private beneficiary's expense.

Special Engagements and General Advice. It is anticipated that general advice for matters of public finance typically will be provided to the State by State bond counsel; however certain circumstances will require special and separate engagement for legal services beyond those contemplated and delineated above. Such cases include without limitation certain tax matters, structured investment products, interest rate exchange agreements, and other special circumstances.

Dual Representation and Conflicts of Interest. The State Treasurer, in consultation with the Board's General Counsel, will determine whether or not to approve dual representation or waive conflicts of interest. The State Treasurer will not generally approve dual representation or waive conflicts of interest 1) unless a) it is clearly in the best interest of the transaction to do so and b) the parties' interests are not anticipated to be adversarial under foreseeable circumstances, or 2) the field of firms engaged to the transaction is so limited that the interests of the transaction will be impaired in the absence of approval of dual representation or waiver of a conflict of interest.

Compensation Policy. The State will follow the general guidelines published by the Government Finance Officers Association and the National Association of Bond Lawyers, summarized as follows:

Fee proposals may be solicited but must be considered only after a group of respondents are fully qualified for the various engagements delineated above. The basis of compensation will be determined by soliciting fee quotations covering size of issue, and hourly or blended hourly rates of the lawyers and other professionals to be involved in the various transactions. A uniform compensation structure will be determined on the basis of both proposals offered and the relative value of the services required under and fee proposals submitted for each particular engagement as compared to the services required under and fee proposals submitted for other engagements (i.e., the relative value of bond counsel's services and compensation structure to the relative value of disclosure counsel's services and compensation structure to the relative value of underwriter's counsel's services and compensation structure).

Because the financing structure, market conditions, schedule and time limitations, novelty and complexity of each transaction that will arise during the term of engagement may not be known at the time of engagement, the State will exercise flexibility in modifying compensation arrangements in view of the transaction to be undertaken and circumstances then prevailing. Compensation for additional services, particularly those rendered subsequent to the closing of transactions (such as assistance with arbitrage rebate, continuing disclosure compliance, or responding to IRS or other regulatory examinations or inquiries) will be negotiated based on scope and time requirements for the additional engagement. In any event, compensation for any transaction will be negotiated and agreed upon with a maximum fee determined prior to sale of the bonds or otherwise proceeding with the engagement.

Request for Qualification and Evaluation Process

Request for Qualifications. A Request for Qualifications was mailed to the seven firms listed in Appendix C on April 24, 2009 with a response deadline of May 14, 2009. An Evaluation Committee scored responses on June 1, 2009. All seven solicited firms provided a response to the Request for Qualifications. A copy of the Request for Qualifications is included as Appendix D.

Evaluation Committee. Individuals representing State agencies and authorities as served as evaluators of responses to the Requests for Qualification, as follows:

Rick Harmon, Senior Assistant State Treasurer for Debt Management, representing the State and its agencies, the Tobacco Settlement Revenue Management Authority, and the Master Lease Program;
Ed Evans, General Counsel to the South Carolina State Budget and Control Board, representing the State and its agencies and the Board;
Delbert Singleton, representing the Procurement Office and the Board;
Thomas Stepp, Secretary to the Board of Trustees, University of South Carolina, representing state institutions of higher learning;
Clay Steadman, General Counsel, Clemson University, representing state institutions of higher learning;
Chuck Sanders, representing the State Education Assistance Authority;
Valerie Williams, representing the State Housing Finance and Development Authority;
Mike LeFever, representing the Educational Facilities Authority for Private Nonprofit Institutions of Higher Learning;
Lisa Montgomery, representing the Medical University Hospital Authority;
Harry Huntley, representing the SC Jobs Economic Development Authority; and
Debra Rountree, representing the South Carolina Department of Transportation and the South Carolina Transportation Infrastructure Bank.

Ten completed evaluations were received. Proponent responses were scored by each evaluator on each of eighteen response criteria, using a scale of 1 to 5, where '1' was least qualified and '5' was most qualified. Scores were totaled for each firm, with average and mean scores calculated for each service area. Proponent scores were expressed as a percentage of the mean and median scores and then ranked. A summary of evaluations and median proponent rankings is included as Appendix E.

List of Qualified Firms. The State Treasurer will maintain a list of firms qualified to serve as bond counsel, disclosure counsel, and underwriter's counsel. The list may be modified from time to time.

Analysis of Proposed Compensation. Proponents were directed to provide a separate, sealed fee proposal for each engagement for which the firm wished to be considered. Fee proposals were not considered in evaluating the Request for Qualifications. A separate analysis of fee proposals was completed following evaluation of responses to the Request for Qualifications. The recommended compensation framework is included as Appendix F.

Supporting Details of Analyses. Complete copies of responses to the Request for Qualifications, evaluations and related information are being maintained by and may be inspected in the Office of State Treasurer.

Recommendations. The State Treasurer offers for consideration ratification of the findings of this Report and Recommendation and the following specific recommendations:

1. Approving all firms listed in Appendix C for inclusion in the list maintained by the State Treasurer as firms qualified to serve for the engagements for which they were solicited and to which they responded;

2. Authorizing the State Treasurer to maintain and modify from time to time the list of qualified firms;
3. Adopting the compensation framework reflected in Appendix F;
4. Authorizing each agency, authority, and institution to select its counsel from the list of qualified firms;
5. Authorizing the State Treasurer to select State bond counsel and disclosure counsel; and
6. Approving all other recommendations included in this Report and Recommendation.

Appendix A Service Requirements

Bond counsel. The services expected of the firm(s) qualified or selected for this engagement include, without limitation, rendering the bond counsel opinion regarding the validity and binding effect of the bonds, the source of payment and security for the bonds, and the excludability of interest on the bonds from gross income for federal income tax purposes; preparing and reviewing the necessary proceedings, notices and other documents necessary or appropriate to the authorization, issuance, sale, and delivery of the bonds, coordinating the authorization and execution of these documents, and assembling and filing the transcript; reviewing use of proceeds to ensure compliance with applicable state and federal laws and regulations, particularly arbitrage and rebate compliance; providing ongoing advice with respect to the State's public finance policies and law, and reviewing and, where appropriate, drafting enabling legislation; providing advice regarding amendments to federal and state law and resolutions, indentures or other documents on which financing transactions are based, and assisting in the development of legislative and policy positions; assisting the issuer in seeking from other governmental authorities any approvals, permissions, and exemptions necessary or appropriate in connection with the authorization, issuance, sale, and delivery of the bonds; reviewing legal issues relating to the structure of the bond issue; preparing election proceedings or pursuing validation proceedings; reviewing or preparing those sections of the offering document to be disseminated in connection with the sale of the bonds that relate to the financing documents, the bonds and their security, the bond counsel opinion, and matters of tax exemption and tax implications for the purchaser; assisting the issuer in presenting information to and attending any meetings of approval boards and authorities, bond rating organizations and credit enhancement providers, as deemed necessary and related to legal issues affecting the issuance of the bonds; reviewing or preparing the notice of sale or bond purchase contract for the bonds and reviewing or drafting the continuing disclosure undertaking of the issuer; consulting with other professionals engaged to the transaction; providing such other legal services as requested, and performing such other services as are typically provided or expected to be provided by bond counsel.

To promote uniformity and consistency of legal documentation across issuers, counsel, and transactions, as a part of engagement of state bond counsel only, state bond counsel will be expected to maintain a central repository of standardized, state-approved documentation (including without limitation documents prepared by bond counsel to other State issuers, disclosure counsel, and underwriter's counsel). Documents maintained in this repository must be made available to the State and all other law firms qualified by the State to serve in any of these capacities, who shall be required to use the standardized, State-approved documentation as the basis for any transaction undertaken by the State, its institutions, agencies, and authorities. State bond counsel will be expected to review, and in consultation with the Office of State Treasurer, approve any non-transaction-specific modifications to State-approved documentation and determine whether such modifications will be incorporated as permanent changes.

Bond counsel services will not typically include matters that are not required for bond counsel to render the bond opinion, such as preparation of offering documents (except as described above), IRS ruling requests or blue sky or investment surveys. Further, unless bond counsel is separately engaged to perform such services, bond counsel services will not typically extend to post-closing activities such as responding to IRS examinations and inquiries or SEC investigations, performing rebate calculations, or preparing continuing disclosure documents. The increasing complexity of bond transactions may result in the issuer either engaging bond counsel to perform additional services that range beyond those necessary to give the bond opinion or retaining other counsel, such as issuer counsel, special tax counsel, or disclosure counsel, to provide these additional services. As the engagement evolves, the issuer and bond counsel may amend

the terms of the engagement to expand the services provided by bond counsel or the issuer may retain other counsel to perform such services.

Notwithstanding anything to the contrary, bond counsel will represent solely the interests of the issuer, including without limitation the state, its agencies, institutions, authorities, and their governing and approval bodies and boards.

Disclosure counsel. The services expected of the firms qualified or selected for this engagement include, without limitation, conducting due diligence and drafting and preparing necessary securities offering documents and disclosure documents relating to any previously issued or proposed financing transaction; preparing blue sky and legal investment surveys, as applicable; reviewing audited financial statements and drafting, preparing and filing necessary continuing disclosure documents relating to any previously issued or proposed financing transaction; providing legal services relating to compliance with applicable securities laws and disclosure requirements relating to previously issued or proposed financing transactions; drafting or reviewing necessary documents and handling or participating in legal or administrative proceedings in connection with compliance with applicable disclosure requirements relating to any previously issued or proposed financing transactions; providing ongoing advice with respect to applicable securities laws and other matters relating to the disclosure of factual and legal information; reviewing legislative proposals from a financing and disclosure perspective to assist the issuer in developing appropriate disclosure; preparing and reviewing any transaction documents requisite to the firm's furnishing any standard legal opinion with respect to the disclosure relating to previously issued or proposed financing transactions; assisting the issuer in presenting information to and attending any meetings of approval boards and authorities, bond rating organizations and credit enhancement providers, as deemed necessary and related to issues affecting matters of disclosure; consulting with other professionals engaged to the transaction; providing such other legal services as requested, and performing such other services as are typically provided or expected to be provided by disclosure counsel.

Disclosure counsel will be expected to coordinate documentation review and approval with State bond counsel and the Office of State Treasurer, and to provide final approved documents to State bond counsel for inclusion in the central repository of standardized, State-approved documentation.

Notwithstanding anything to the contrary, disclosure counsel will represent solely the interests of the issuer, including without limitation the state, its agencies, institutions, authorities, and their governing and approval bodies and boards.

Underwriter's counsel. The services expected of the firm(s) qualified or selected for this engagement include, without limitation, reviewing or preparing the notice of sale or bond purchase contract and reviewing or preparing those sections of the offering document to be disseminated in connection with the underwriting and sale of the bonds; reviewing the disclosures and continuing disclosure undertaking of the issuer; preparing and reviewing any transaction documents requisite to the firm's furnishing any standard legal opinion with respect to the underwriting and sale of the bonds; attending and participating in meetings relating to underwriting and sale of the bonds; providing such other services as the underwriting firm shall direct as a part of the engagement; and performing such other services as are typically provided or expected to be provided by underwriter's counsel.

Underwriter's counsel will represent those interests determined by the party by which it is engaged.

Appendix B Summary of General Policies

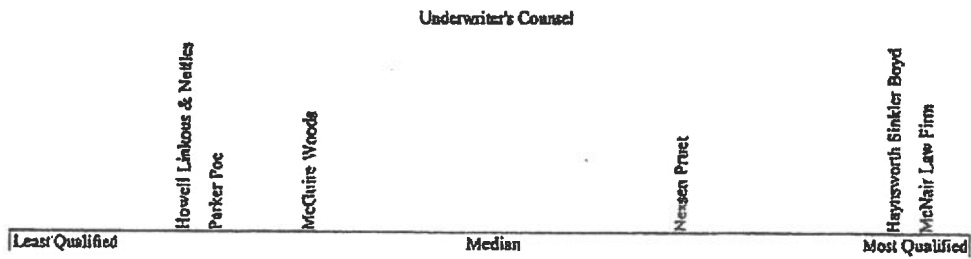
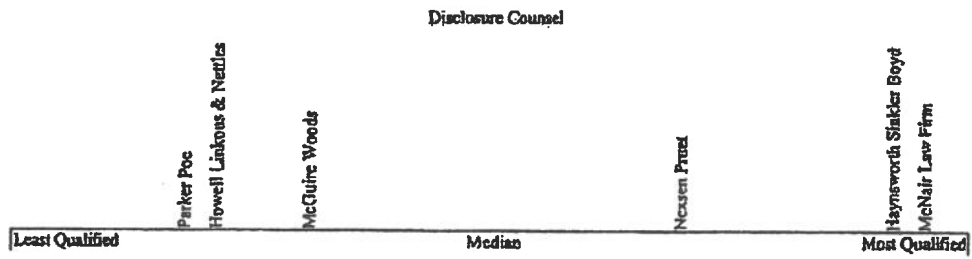
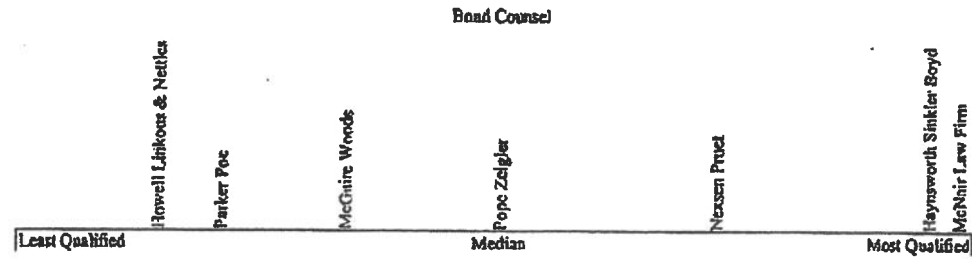
	State Bond Counsel	Bond Counsel	Disclosure Counsel	Underwriter's Counsel
Engagement scope	<p>Single firm engaged for State General Obligation Bonds, excluding State Highway Bonds and State Institution Bonds.</p> <p>Engagement includes development of legislation and general advisory services for matters of public finance and state bond law.</p> <p>Engagement includes tax advisory services for matters of federal and state tax matters with respect to public finance.</p> <p>Maintains statewide document repository and reviews all documents produced by all other engaged parties for conformance with state-approved content and form.</p> <p>Reviews disclosure documents for all transactions.</p> <p>Serves as primary issuer's counsel for conduit finance.</p>	<p>Single firm engaged by each Agency, Institution, or Authority from a list of qualified firms.</p> <p>Engagement includes General Obligation and Revenue Bonds.</p> <p>Engagement includes development of legislation and general advisory services for matters of public finance and state bond law.</p> <p>Engagement includes tax advisory services for matters of federal and state tax matters with respect to public finance.</p> <p>May serve as alternate issuer's counsel for conduit finance.</p>	<p>Single firm engaged to prepare all disclosure documents for the State and its Agencies, Institutions and Authorities.</p> <p>Reviews all documents for adequacy of disclosure.</p> <p>Ensures all disclosure documents are conformed to state approved content and form.</p> <p>Conducts appropriate due diligence for all transactions.</p>	<p>Single firm engaged for each transaction by the underwriting firm from a list of qualified firms.</p> <p>Reviews bond purchase agreement and other contractual matters specific to the bond underwriting.</p>
Term	3 years with extensions.	3 years with extensions.	3 years with extensions.	Duration of transaction.
Compensation	<p>Primary fee based on a fixed dollar amount per million, subject to minimum and maximum fees.</p> <p>Hourly fees for services provided that are not transaction specific.</p> <p>Fixed fee for maintenance of document repository.</p> <p>Hourly fees for document review, with minimum and maximum fees for document review in connection with engagement as issuer's counsel for conduit finance.</p> <p>Fees paid from closing costs of issue. Services that are not transaction specific will be paid by the issuer.</p>	<p>Primary fee based on a fixed dollar amount per million, subject to minimum and maximum fees.</p> <p>Hourly fees for services provided that are not transaction specific.</p> <p>Hourly fees for document review, with minimum and maximum fees for document review in connection with engagement as issuer's counsel for conduit finance.</p> <p>Fees paid from closing costs of issue. Services that are not transaction specific will be paid by the issuer.</p>	<p>Primary fee based on a fixed dollar amount per million, subject to minimum and maximum fees.</p> <p>Fees paid from closing costs of issue.</p>	<p>Primary fee based on a fixed dollar amount per million, subject to minimum and maximum fees.</p> <p>Fee paid by underwriter and included in underwriter's discount.</p>
Conflicts and dual representation	Engaged as described in Appendix A. Dual representation generally will not be permitted if the firm is engaged as underwriter's counsel, borrower's counsel, or is engaged by any other non-state party.	Engaged as described in Appendix A. Dual representation generally will not be permitted if the firm is engaged as underwriter's counsel, borrower's counsel, or is engaged by any other non-state party.	Engaged as described in Appendix A. Dual representation generally will not be permitted if the firm is engaged as underwriter's counsel, borrower's counsel, or is engaged by any other non-state party.	Engaged as described in Appendix A. Dual representation generally will not be permitted if the firm is engaged as state bond counsel, borrower's counsel, or is engaged by any other non-state party.

Appendix C
Law Firms Solicited for Response to Request for Qualifications

1. Haynsworth Sinkler Boyd
2. Howell & Linkous
3. McGuire Woods
4. The McNair Law Firm
5. Nexsen Pruet
6. Parker Poe
7. Pope Zeigler

Appendix D
Request for Qualifications

Appendix E Summary of Evaluations and Median Proponent Rankings



Appendix F

Recommended Compensation Framework

State bond counsel, for all services described in Appendix A, including maintenance of the document repository, but excluding conduit finance, document review in the absence of a bond issue, general advice and development of legislation:

For state general obligation issues: A fee of \$500 per \$1,000,000 or increment thereof face amount of bonds issued, per issue, subject to a minimum fee generally not to exceed \$25,000 per issue and a maximum fee generally not to exceed \$250,000 unless approved in writing by the State Treasurer.

For state revenue issues: A fee of \$1,000 per \$1,000,000 or increment thereof face amount of bonds issued, per issue, subject to a minimum fee generally not to exceed \$25,000 per issue and a maximum fee generally not to exceed \$250,000 unless approved in writing by the State Treasurer.

For maintenance of the document repository: A fee of \$250 per \$1,000,000 or increment thereof face amount of bonds issued, per issue, subject to a minimum fee generally not to exceed \$5,000 per issue and a maximum fee generally not to exceed \$62,500 unless approved in writing by the State Treasurer.

Bond counsel to all other State entities, where bond counsel is not state bond counsel in which event, compensation will be based on the schedule for state bond counsel for state issues:

For general obligation issues: A fee of \$500 per \$1,000,000 or increment thereof face amount of bonds issued, per issue, subject to a minimum fee generally not to exceed \$25,000 per issue and a maximum fee generally not to exceed \$250,000 unless justified by the issuing entity and approved in writing by the State Treasurer.

For revenue issues: A fee of \$1,000 per \$1,000,000 or increment thereof face amount of bonds issued, per issue, subject to a minimum fee generally not to exceed \$25,000 per issue and a maximum fee generally not to exceed \$250,000 unless justified by the issuing entity and approved in writing by the State Treasurer.

Disclosure counsel, for all services described in Appendix A:

For general obligation issues: A fee of \$300 per \$1,000,000 or increment thereof face amount of bonds issued, per issue, subject to a minimum fee generally not to exceed \$25,000 per issue and a maximum fee generally not to exceed \$150,000 unless justified by the issuing entity and approved in writing by the State Treasurer.

For revenue issues: A fee of \$500 per \$1,000,000 or increment thereof face amount of bonds issued, per issue, subject to a minimum fee generally not to exceed \$25,000 per issue and a maximum fee generally not to exceed \$125,000 unless justified by the issuing entity and approved in writing by the State Treasurer.

Underwriter's counsel, for all services described in Appendix A:

A fee of \$250 per \$1,000,000 or increment thereof face amount of bonds issued, per issue, subject to a minimum fee generally not to exceed \$5,000 per issue and a maximum fee generally not to exceed \$62,500 unless justified by the issuing entity and approved in writing by the State Treasurer.

Issuer's counsel for conduit finance:

A fee of \$250 per \$1,000,000 or increment thereof face amount of bonds issued, per issue, subject to a minimum fee generally not to exceed \$5,000 per issue and a maximum fee generally not to exceed \$62,500 unless justified by the issuing entity and approved in writing by the State Treasurer.

For services not described above, including special and separate engagements, document review in the absence of a bond issue, general advice and development of legislation, hourly fees not to exceed the following rates:

Partners	\$350 per hour	Staff	\$75 per hour
Associates	\$250 per hour	Other	\$75 per hour
Paralegals	\$125 per hour		

Appendix G
National Association of Bond Lawyers:
The Selection and Evaluation of Bond Counsel, 1998 Edition
and
Government Finance Officers Association:
Recommended Practice: Selecting Bond Counsel (1998 and 2008)

The Selection and
Evaluation of Bond Counsel

**1998
Edition**

NATIONAL ASSOCIATION OF BOND LAWYERS

NOTICE

Neither the National Association of Bond Lawyers nor its Special Committee on The Selection and Evaluation of Bond Counsel takes responsibility as to the completeness and accuracy of the materials contained herein; accordingly, readers are encouraged to conduct independent research of original sources of authority. This report is not intended to provide legal advice or counsel as to any particular situation. If you discover any errors or omissions, please direct your comments to the President of the Association or to the Chair of the Committee.

**NATIONAL ASSOCIATION OF BOND LAWYERS
1761 S. Naperville Road, Suite 105
Wheaton, IL 60187
630/690-1135
Fax 630/690-1685**

©Copyright 1998-National Association of Bond Lawyers

The Selection and Evaluation of Bond Counsel

TABLE OF CONTENTS

I.	Introduction	1
II.	Role and Services of Bond Counsel.....	2
	A. Need for an Approving Legal Opinion and Its Function.....	2
	B. Role of Bond Counsel	2
	C. Scope of Services	2
	D. Indemnification	3
III.	Duration and Extent of Engagement	4
IV.	Selection Process.....	5
	A. Past Experience with Issuer	5
	B. Recommendations and References	5
	C. Interviews	6
	D. Requests for Proposals; Requests for Qualifications	6
V.	Selection and Evaluation Criteria.....	6
	A. Expertise	6
	B. Experience	7
	C. Service Delivery Capabilities	8
	D. Conflicts of Interest.....	8
	E. Fees.....	9
	F. Requesting Statements of Acceptable Legal Positions	9
	G. Other Criteria	10
VI.	Co-Counsel Relationships	10
	A. Determination of Single or Multiple Counsel in a Particular Transaction.....	10
	B. Establishment of Co-Counsel Relationships and Qualifications	11
	C. Division of Work and Fees	11
	D. Practical Aspects of Co-Counsel Relationship	11
	E. Professional Responsibilities	12
	F. Monitoring and Evaluation of the Co-Counsel Relationship	12
VII.	Conduit Financings	12
VIII.	Evaluation of Engagement.....	13

I.

Introduction

Each year bond counsel assist state and local governments ("Issuers") in raising billions of dollars for a wide range of public purposes. This 1998 edition of *The Selection and Evaluation of Bond Counsel* has been prepared by a special committee of the National Association of Bond Lawyers ("NABL") and its distribution has been authorized by NABL's Board of Directors to provide guidance to Issuers in the selection of bond counsel and evaluation of their services.

The highly specialized professional services rendered by bond counsel are essential to the implementation of Issuers' financing programs. Although there is no single correct approach, the selection and evaluation process should enable an Issuer to identify law firms likely to perform competently and efficiently and thereby protect and promote the Issuer's interests. While price is a factor for Issuers to consider, it should not be the overriding factor, since lack of other qualifications (experience, quality of personnel to handle the matter, etc.) could create unwanted delays and subject the Issuer to unnecessary risks, particularly in light of stepped-up enforcement activities of the SEC and the IRS directed against Issuers. Recent SEC enforcement efforts, while making it clear that a public official's responsibilities and duties do not end when counsel is retained, suggest that reasonable reliance on the advice of competent counsel may provide a defense to a public official in appropriate circumstances.

The traditional function of bond counsel is to render an opinion on the validity and tax-exempt status of all forms of obligations ("bonds") issued by state and local governments. The Issuer also may engage bond counsel to perform a number of other functions that go beyond what is required to render the bond opinion. There also may be other lawyers representing the Issuer, including the Issuer's general counsel, or representing other parties to the transaction. It is important that, at the outset of a financing, the Issuer and the various counsel involved understand the scope of responsibility of each.

The increasing complexity of municipal finance highlights the need for the Issuer and bond counsel to define clearly the scope of the services that bond counsel is to provide. The NABL publication *Model Engagement Letters* provides representative examples of bond counsel engagement letters for different types of bonds as well as useful guidance and insights with regard to the responsibilities of bond counsel.

Susan Weeks, Chair

David A. Caprea, M. Jane Dickey, Richard
S. Fox, Edward S. Sinick, and Paul A.
Webber, Members

NABL Special Committee on *The Selection
and Evaluation of Bond Counsel*

May 1, 1998

The Selection and Evaluation of Bond Counsel

II. Role and Services of Bond Counsel

A. Need for an Approving Legal Opinion and Its Function

Normally, bonds are not marketable without an accompanying opinion of nationally recognized bond counsel that addresses the following subjects: (1) the validity of the bonds and, in some instances, the source of payment or security for the bonds; and (2) the excludability of interest on the bonds from gross income for federal income tax purposes.

The market expects that the bond opinion will reflect the objective judgment of bond counsel, regardless of who is bond counsel's client (typically the Issuer) or who is paying bond counsel's fee (often the beneficiary of the financing in a conduit bond issue); however, the bond opinion does not constitute a guarantee or imply a recommendation concerning the marketability, creditworthiness, or value of the bonds; the likelihood of repayment, the possibility of default, or the eligibility or suitability of the bonds for a particular investor.

B. Role of Bond Counsel

The primary role of bond counsel in a transaction is to provide an expert and objective legal opinion concerning the validity of the bonds and, typically, the excludability of interest on the bonds from gross income for federal income tax purposes. When bond counsel is retained in a transaction, an attorney-client relationship is established (typically with the Issuer). The Issuer and bond counsel should have a clear understanding of bond counsel's role in the transaction and the services to be performed by bond counsel. The services necessary or incidental to rendering the bond opinion generally include those described below, but bond counsel's role or services in a particular transaction may be expanded beyond these activities.

C. Scope of Services

The scope of the services to be provided by bond counsel will be the subject of an understanding, preferably in the form of an engagement letter or other written agreement, between the Issuer and bond counsel. Services that may be performed by bond counsel include the following:

1. rendering the bond counsel opinion regarding the validity and binding effect of the bonds, the source of payment and security for the bonds, and the excludability of interest on the bonds from gross income for federal income tax purposes;
2. preparation and review of documents necessary or appropriate to the authorization, issuance, sale, and delivery of the bonds, coordination of the authorization and execution of these documents, and review and, where appropriate, drafting of enabling legislation;
3. assisting the Issuer in seeking from other governmental authorities any approvals, permissions, and exemptions necessary or appropriate in connection with the authorization, issuance, sale, and delivery of the bonds;
4. reviewing legal issues relating to the structure of the bond issue;

5. preparing election proceedings or pursuing validation proceedings;
6. reviewing or preparing those sections of the offering document to be disseminated in connection with the sale of the bonds that relate to the bonds, financing documents, bond counsel opinion, and tax exemption;
7. assisting the Issuer in presenting information to bond rating organizations and credit enhancement providers relating to legal issues affecting the issuance of the bonds; and
8. reviewing or preparing the notice of sale or bond purchase contract for the bonds and reviewing or drafting the continuing disclosure undertaking of the Issuer.

Bond counsel services typically do not include matters that are not required to render the bond opinion, such as preparation of offering documents (except as described above), IRS ruling requests or blue sky or investment surveys. Further, unless bond counsel is specifically engaged to perform such services, bond counsel services do not typically extend to post-closing activities such as responding to IRS examinations and inquiries or SEC investigations, performing rebate calculations, or preparing continuing disclosure documents.

The increasing complexity of bond transactions often results in the Issuer either engaging bond counsel to perform additional services that range beyond those necessary to give the bond opinion or retaining other counsel, such as Issuer counsel, special tax counsel, or disclosure counsel, to provide these additional services. It is very important that the Issuer and bond counsel have a clear understanding at the beginning of the transaction about the nature of bond counsel's role, the services required to consummate the transaction, which of those services bond counsel will provide, and the fee for the services of bond counsel. An engagement letter or other written agreement with bond counsel provides a vehicle for the Issuer and bond counsel to delineate the scope, nature, and duration of the attorney-client relationship and the services to be undertaken by bond counsel as well as the fee arrangement. As the transaction evolves, it may be appropriate for the Issuer and bond counsel to amend the terms of the engagement to add additional services for bond counsel to perform or for the Issuer to retain other counsel to perform those services.

D. Indemnification

The role of bond counsel does *not* extend to serving as a guarantor of the bond transaction. Some Issuers have attempted to make comprehensive and open-ended indemnification provisions a condition of the retention of bond counsel. Such provisions may seek an agreement of bond counsel to indemnify the Issuer from damages and claims of damages arising from or in connection with bond counsel's performance of its duties without regard to a finding of professional misfeasance. In effect, this makes bond counsel a guarantor of results or an insurer. These indemnification requirements have their origin in state procurement codes for the provision of goods and services (e.g., contracts for the purchase and installation of computer systems or construction contracts) in which the provider is able to obtain insurance to guarantee the performance of its undertaking. In contrast, bond counsel are retained to provide professional services, and there exists a significant body of law that governs the liability of attorneys for their conduct. Far-reaching indemnification requirements may create tension with the ethical obligations of a lawyer to exhibit loyalty, objectivity, and impartiality in the provision of services and advice to a client; such indemnification requirements may have the unintended effect of causing bond counsel to provide overly conservative advice to Issuers rather than their best professional judgment. Bond counsel should expect to be held to the appropriate legal standards for their work, including liability, if appropriately determined, for legal malpractice; they should not be asked to insure results or "guarantee" transactions. It should be noted that an indemnity clause creates potential contractual liability that ordinarily is not covered by bond counsel's professional liability insurance policy.

III. Duration and Extent of Engagement

Prior to the selection process, an Issuer needs to make several basic decisions concerning the engagement of bond counsel, including the duration of the bond counsel engagement, the types of bond issues for which a firm will serve as bond counsel, and whether one or more firms may provide all or part of the bond counsel services or additional services over a particular period of time.

Bond counsel firms may be engaged (1) for all transactions by the Issuer over a period of time, (2) for a series of related transactions, (3) for all transactions of a particular type by the Issuer over a period of time, or (4) for a single transaction. The appropriate length or scope of engagement may vary depending upon factors such as the Issuer's overall financial program or the nature of a particular financing.

Engagement of bond counsel over an extended period of time enables such counsel:

1. to participate knowledgeably in the early planning and legal structuring of the Issuer's financings;
2. to work efficiently and cost-effectively in successive transactions, without duplication of services;
3. to become familiar and maintain familiarity with the unique characteristics of the Issuer, the statutes or charter provisions governing its operations, and the covenants contained in its outstanding bond issues;

4. to be available between financings to answer questions about the application of arbitrage and other federal tax legislation or regulations, the Issuer's obligations contained in covenants securing outstanding bonds or under state or local law, and the application of continuing disclosure and other securities law regulations; and
5. to provide continuity when there are changes in Issuer personnel.

Retaining bond counsel for a series of transactions is appropriate when multiple series of bonds are issued to finance a project that is constructed in phases. Many of the same considerations listed above are equally applicable to such an engagement.

Alternatively, an active Issuer may choose to distribute its work among several bond counsel firms over a period of time based upon the type of bonds to be issued or upon other criteria. When different bond counsel firms have different strengths, an Issuer may choose, for example, to have one firm serve as bond counsel on all tax and revenue anticipation financings and another firm serve as bond counsel for all special assessment bond issues. This approach may offer an Issuer access to more resources than might be available from one firm and may provide flexibility by allowing firms to serve as back-up alternatives to each other.

An Issuer that issues bonds infrequently might select bond counsel for a single transaction. It also may be appropriate for an active Issuer to select bond counsel for a particular transaction:

1. when an unusual or novel financing is undertaken and the bond counsel firm selected has demonstrated special expertise in such financings;
2. when the Issuer is acting as a conduit for financing by others and the Issuer chooses to accept as bond counsel the firm selected by the private beneficiary (see Section VII for a discussion of approaches a conduit Issuer might consider in the selection of bond counsel); or
3. when the Issuer expects to deliver many bond issues in a relatively short time and considers that the work should be shared by several firms of bond counsel to avoid excessive reliance on any one of them.

Prior to the selection process the Issuer also needs to decide whether one or more firms will provide all or part of the bond counsel services in a particular transaction. See Section VI for a discussion of the factors the Issuer may consider in determining whether to divide bond counsel's responsibilities for a particular transaction between two or more firms and the establishment, structuring and practical aspects of a co-bond counsel relationship.

IV. Selection Process

Selecting a lawyer or firm as highly specialized as bond counsel can be an exacting task for an Issuer. In addition to following an Issuer's adopted hiring procedures, state and local laws need to be examined to determine what requirements of any general procurement laws may be applicable. Existing financial covenants or contractual obligations may also place constraints on the hiring process.

Described below are a variety of selection processes. The best selection process would be to combine the elements of each, as they may be appropriate for the Issuer.

A. Past Experience with Issuer

The knowledge gained through working with a bond counsel firm allows an Issuer to judge, independently, a firm's abilities and quality of work. Representatives of the Issuer will have had an opportunity to judge such subjective factors as thoroughness, creativity, integrity, motivation, service, timeliness, ability to work with others, response to pressure and other intangibles, as well as being able to assess the knowledge, expertise, and technical competence of the bond counsel firm.

B. Recommendations and References

An Issuer that has not had direct experience with particular bond counsel may consider recommendations by other lawyers or experts working in the financial community of the Issuer, such as financial advisors, underwriters, attorneys, or the chief financial officers of other local governments, who are trusted and respected by the Issuer. References by and discussions with individuals who have been involved with bond counsel in similar financings may serve as a reasonable substitute for direct experience. In reviewing such references, consideration should be given to the comparability of services previously provided with those being sought by the Issuer.

C. Interviews

The Issuer's general counsel, chief financial officer, or a selection committee may interview prospective bond counsel. Such interviews may be helpful in discerning the expertise of the prospective bond counsel firms and whether bond counsel and the involved Issuer personnel will be able to develop a compatible working relationship. An appropriate selection committee might include Issuer personnel from affected departments (such as legal, finance, management, and public works) and the Issuer's general counsel.

D. Requests for Proposals; Requests for Qualifications

Another technique for selecting bond counsel is the use of a request for proposals ("RFP"). The RFP can be published and distributed generally, or it can be targeted to firms with credentials known to the Issuer. The RFP process should be combined with consideration of the Issuer's past experience, recommendations from reliable experts and knowledgeable public officials, and individual interviews in order to avoid undue reliance upon a simplistic comparison of fee quotations.

One alternative to RFPs is to use a Request for Qualifications ("RFQ"). This enables the Issuer to receive from bond counsel firms statements of their qualifications and defers fee considerations until after a careful and studied evaluation of qualifications. After a group of well-qualified bond counsel firms has been chosen from the original responses, the Issuer may solicit more specific proposals from those firms addressing fees, financing structure, staffing, and other terms for the particular engagement.

V. Selection and Evaluation Criteria

The matters discussed in the following sections may serve as the basis for the RFP or RFQ or questions to be asked of prospective bond counsel.

A. Expertise

One of the primary criteria in evaluating prospective bond counsel is the level of expertise of the firm and of the individual lawyers under consideration for a particular engagement.

Expertise is the successful combination of the knowledge, experience, skills, and motivation needed to perform effectively the services required by the Issuer. Bond counsel must be familiar with (or involve other lawyers who are familiar with) those areas for which bond counsel will accept responsibility in the engagement. These may include complex federal tax law and regulations, issues of securities law, and the principles of law affecting state and local governmental affairs. Depth of knowledge and experience can be revealed not only by sheer numbers of transactions completed by the firm, but also by the variety and complexity of transactions in which the firm has participated.

Evaluation of expertise should include a review of the types of municipal financings or related transactions in which a firm has been involved, the experience and skills of the individual lawyers, and the firm's areas of practice. A description of such expertise could be elicited by asking the following:

Briefly describe the firm's practice in public finance and related areas of law and give a brief history of the firm. Provide a firm résumé, if available.

Confidence of the professional community in a particular lawyer or firm is often an indication of expertise. The confidence and stature that a firm commands may be determined by asking members of the legal or public finance community about the reputation of a firm and the experience they have had with the firm in the past. An Issuer could ask:

Name not more than five issuers' counsel, financial advisors, investment bankers, or representatives of financial institutions with which the firm has worked on public finance or related transactions. Provide the names and telephone numbers of individuals who may be contacted as references.

The Issuer may also ask other members of the public finance community about their experiences with bond counsel firms.

B. Experience

Experience, to some extent, can be quantified. The number of transactions in which specific lawyers have participated is relevant, especially transactions similar in structure to the

transaction then being contemplated by the Issuer. A demonstrated record of accomplishment in related practice areas may also be significant.

In the course of the selection process, an Issuer should determine the experience level of prospective bond counsel (as bond counsel or as other counsel) in the particular type of financing to be undertaken. An Issuer could ask:

Identify and briefly describe comparable financings in which the firm has served as bond counsel or other counsel during the past two years. If you have noted unique, complex, or challenging issues in connection with the proposed financing, indicate how the experience and expertise of your firm will be utilized to complete the necessary legal work.

Also relevant are the various types of issuers (including the prospective Issuer) represented by the firm as bond counsel or in other capacities. A municipality, for instance, might look for a firm that has represented similar municipalities. If a firm has already represented the same Issuer in the past, it will be familiar with the Issuer's charter or other organizational documents and financing needs, as well as the procedures and the individuals involved.

An Issuer could ask:

Name not more than five issuers represented by the firm that are similar to the Issuer, describe the nature of the representation, and for each issuer list the address and telephone number of an official who may be contacted as a reference.

C. Service Delivery Capabilities

A bond counsel firm should have the capability and the availability of personnel and technology to provide service in a timely and efficient manner. The firm should assign sufficient personnel so that it can complete its tasks within the designated time frame. The individual lawyers participating in a transaction, as well as the firm as a whole, should have sufficient expertise and capacity to recognize the relevant legal issues, prepare the documents, handle the negotiations, and complete the steps necessary for an orderly closing.

An Issuer could evaluate the proposed staffing on a transaction and the abilities of the lawyers involved by asking the following:

Give brief résumés of the lawyers in the firm's public finance department who would be assigned to work with the Issuer during this engagement. Describe the anticipated division of duties among partners, associates, and paralegals. If any additional lawyers with your firm may be available for consultation, even though they are not assigned to work with the Issuer, identify them and their specialized expertise.

The Issuer might also ask prospective bond counsel firms about their ability to undertake any additional services requested by the Issuer or to provide legal advice in connection with functions that may be performed by other parties.

D. Conflicts of Interest

Bond counsel is typically retained by the Issuer to render the bond counsel opinion and must, prior to accepting any engagement as bond counsel, make a determination under the rules regulating lawyers' conduct whether any current or past client relationship or other interests will or may give rise to a conflict of interest that either disqualifies bond counsel or requires the informed consent of the Issuer or other clients.

It is possible that over a period of time bond counsel may assume a variety of counsel roles in an Issuer's bond financings or in other financings involving participants in the transaction, for example: bond counsel, special tax counsel, underwriter counsel, Issuer counsel, Issuer disclosure counsel, trustee counsel, or conduit beneficiary counsel (see Section VII). With respect to a particular bond issue, bond counsel may represent more than one party to the transaction when permitted under applicable ethical rules. The NABL publications *Function and Professional Responsibilities of Bond Counsel* and *Model Engagement Letters* discuss the application of these ethical rules to bond counsel.

During the selection process, the Issuer should state its position, if any, on conflicts and could ask bond counsel the following:

Describe any existing or potential conflict of interest arising from your relationships with or representation of other parties that should be considered as a factor in determining your objectivity, and provide to the Issuer sufficient facts, legal implications, and possible effects in order for the Issuer to appreciate the significance of each potential conflict and grant an appropriate waiver, if necessary.

The Issuer may also want to designate the official(s) responsible for receiving information concerning the conflict and the waiver of any conflict (if permitted by the laws of the Issuer's jurisdiction), and may also adopt procedures designed to prevent conflicts of interest in the future.

E. Fees

As a criterion for selection of bond counsel, fees should be considered only after the Issuer has selected a group of applicants who are fully qualified. The Issuer should consider specifying the basis of bond counsel compensation since prospective bond counsel firms may respond with a variety of fee arrangements, making it difficult for the Issuer to compare and evaluate the fee proposals. Several bases could be used for establishing fees: the size and type of the issue, hourly rates, "blended" hourly rates of the several lawyers to be involved, a set maximum fee, or a combination of any of these. Requiring that fee proposals be made on the same basis will allow the Issuer to make a valid comparison, so long as it is based upon the same services for the same period of time.

Usually only the type and estimated amount of bonds are known at the time of engagement of bond counsel. At such an early stage, it may be difficult to predict the schedule, structure, time limitations, or the novelty or difficulty of the questions involved or the complexity of the transaction; therefore, the Issuer should adopt procedures for periodic reporting, consultation, and modification of fee arrangements. If there is some uncertainty about the appropriate type or amount of bonds to be issued, the scope of the transaction, or the Issuer's program, consultation with bond counsel could be most helpful prior to the time when the Issuer will be required to finalize the scope and terms of the financing. In such situations the Issuer may prefer to request one type of fee arrangement to apply during the consultation phase and another kind of fee arrangement to apply when the scope and terms of the financing have been determined.

Additional services (for example, those rendered subsequent to the closing of transactions, such as assistance with arbitrage rebate or continuing disclosure compliance or responding to IRS examinations or inquiries or SEC investigations) require additional compensation that, if requested, should also be specified in the engagement letter or other written agreement with bond counsel.

F. Requesting Statements of Acceptable Legal Positions

The ultimate goal of the selection or evaluation process is to retain the most qualified bond counsel. Because certain bond transactions require unique knowledge within the speciality of bond law, it may be desirable for an Issuer to ask prospective bond counsel to discuss a proposed financing in some detail for the purpose of determining whether a bond counsel firm, in fact, possesses the requisite degree of expertise.

In recent years, some Issuers have provided a detailed description of the proposed financing and have required prospective bond counsel to respond in writing with an analysis of the applicable state law, securities law, and federal income tax restrictions. In many cases, the description of the financing is accompanied by a list of questions - in effect asking prospective bond counsel to give a legal opinion as to whether certain features of the financing plan comply with applicable state law and federal tax law, or in some cases seeking disclosure of information or techniques that may be proprietary to other clients.

While it may be reasonable for an Issuer to ask prospective bond counsel to state their position on certain legal issues, it is not reasonable to require that the financing be researched,

analyzed, and "approved" prior to the establishment of the attorney-client relationship. Aside from the obvious hardship imposed, these requests create the impression of "opinion shopping" by the Issuer. Ultimately, of course, bond counsel's opinion will be dependent upon the facts and circumstances in effect at the actual date of delivery of the bonds.

G. Other Criteria

In some cases criteria in addition to those discussed above may facilitate the selection process. Whatever the criteria the Issuer intends to use, it should so advise prospective bond counsel prior to beginning the selection process.

VI. Co-Counsel Relationships

A. Determination of Single or Multiple Counsel in a Particular Transaction

For a variety of reasons, an Issuer may decide to divide bond counsel's responsibilities for a particular transaction between two or more firms. An Issuer may choose to retain co-bond counsel (hereafter referred to as "co-counsel") in a particular transaction to gain the additional experience or capabilities that a second firm may provide. For example, an Issuer might request two firms to serve as co-counsel where one has a particularly thorough knowledge of state law and the other has significant experience in the chosen financing structure or specialized expertise in a particular area of law. If special expertise is required, then in addition to bond counsel an Issuer might retain, for example, special tax counsel to render an opinion on selected tax aspects of the bond issue. In this arrangement, each firm may take sole responsibility for a portion of the work and render an opinion covering the subject matter for which it is responsible, and one or both firms may rely on the other's opinion.

Some Issuers also have chosen to utilize co-counsel where two firms combine their efforts as bond counsel, sharing the work and responsibilities. In such event, both firms generally give identical opinions. For instance, certain Issuers have structured co-counsel relationships between established bond counsel firms and minority or women-owned or local or regional law firms as a means of furthering the opportunities in public finance law for such firms. The stated goals often are to encourage development of expertise in minority, women-owned, or local or regional firms by lowering barriers to entry to the field. Whatever the Issuer's goals may be in selecting co-counsel, those goals must be communicated clearly to each firm in order to ensure that the Issuer's objectives are attained and that co-counsel are able to effectively serve the Issuer.

A decision to use more than one bond counsel firm in a specific transaction or to use different bond counsel firms in different types of bond issues should balance the benefits derived from the distribution of work with the possible duplication of services of bond counsel and potential overall higher fees. A decision to use one or more bond counsel firms needs to be made prior to the selection process. It should be implemented in a manner that will allow an Issuer to retain qualified bond counsel as well as meet its goals in using more than one firm.

Whether an Issuer utilizes one or more bond counsel firms, an engagement letter or other written agreement with each firm will enable the Issuer to delineate clearly the scope, nature, and

duration of bond counsel services to be performed as well as the division of responsibilities in the event that more than one firm is retained.

B. Establishment of Co-Counsel Relationships and Qualifications

Issuers may choose to establish a co-counsel relationship by soliciting joint-venture proposals or by independently selecting two firms and directing that they work together as co-counsel. The qualifications for the co-counsel firms, either individually or together as a team, should be based upon the selection criteria discussed above in Section V, adapted as necessary to meet the Issuer's particular goals and objectives in retaining co-counsel.

C. Division of Work and Fees

The co-counsel firms, together with the Issuer, should agree in writing to the expected division of the legal services required and the allocation (and method of determination) of fees. Depending on the Issuer's objectives and the relative skills of the firms, each co-counsel firm might take primary responsibility for certain portions of the transaction, such as drafting financing documents, drafting Issuer approval proceedings, attending meetings of the Issuer's governing body, drafting portions of the offering document relating to the bonds, tax analysis and documentation of the transaction, preparation of closing documents, and review and comment on underwriting documents.

In many cases, each firm is expected to render the identical approving legal opinion. Alternatively, if consistent with the Issuer's objectives, one or both firms may render an opinion that is limited to certain legal issues. For example, one firm might render the federal tax opinion while the other firm might address matters of applicable state law. To the extent that one firm is relying on the opinion of the other firm as to certain legal matters, that reliance must be expressly stated. The Issuer and each firm should clearly agree at the beginning of the transaction as to allocation of responsibilities, including opinion matters, and as to the appropriate division of fees for the work performed and for the opinions rendered, with due regard to applicable ethical requirements.

D. Practical Aspects of Co-Counsel Relationship

Each co-counsel firm should manage the practical aspects of the co-counsel relationship in a manner that is intended to meet the Issuer's needs. The Issuer may designate one of the co-counsel firms as primarily responsible for coordination of the bond counsel activities. The co-counsel relationship is most likely to be successful if there is prompt and accurate exchange of information between co-counsel, which should include: the scheduling and holding of all meetings regarding the transaction, distribution of all documents to co-counsel, reports on meetings attended by only one firm, discussion of applicable legal issues, and updating information between co-counsel.

E. Professional Responsibilities

The establishment of a co-counsel arrangement in no way diminishes the professional responsibilities of either co-counsel. The Issuer must recognize that in a co-counsel relationship the aggregate time spent by both firms likely will be greater than the time that would have been spent by a single firm acting as sole bond counsel. The nature of the co-counsel relationship entails a certain amount of overlap of effort and time by both firms. Each co-counsel must do sufficient work, independently, to support its opinion and generally both firms will attend meetings and review some or all of the documentation. Each co-counsel firm must perform its work with the highest level of skill and diligence in fulfilling the professional responsibilities owed to the Issuer, as the client, as well as to investors and to the other co-counsel.

F. Monitoring and Evaluation of the Co-Counsel Relationship

The Issuer should monitor and evaluate the co-counsel relationship to determine whether its goals are being achieved. In particular, the Issuer periodically should review the efficacy of its selection, monitoring and evaluation procedures, the direct and intangible costs to the Issuer of the co-counsel relationship, and whether the selection of co-counsel has resulted in the effective delivery of the highest quality services while furthering the Issuer's goals and objectives. Absent the periodic review and evaluation of the co-counsel relationship by the Issuer, it may prove difficult for co-counsel to ascertain whether the Issuer's goals have been achieved or whether the co-counsel relationship should be modified to better serve the Issuer.

VII. Conduit Financings

"Conduit bonds" are obligations issued by an Issuer for the benefit of a private beneficiary, such as a for-profit corporation or a non-profit organization. Typically, Issuers are not obligated to repay conduit bonds from their own resources; instead debt service is paid solely by the private beneficiary.

In a conduit financing, bond counsel fees generally are paid by the private beneficiary. For that and other reasons (e. g., when the private beneficiary is undertaking a number of conduit financings throughout the country) the private beneficiary may want to select bond counsel. Issuers, on the other hand, often want to use their existing bond counsel, who will provide continuity and who will be responsible to the Issuer and serve the Issuer's interests.

The following are alternative approaches a conduit bond Issuer might consider:

1. Engage Issuer-designated bond counsel on all conduit issues. In special circumstances, allow the beneficiary to engage a bond counsel firm to produce the basic documentation to be reviewed by the Issuer's bond counsel.

2. Permit the private beneficiary to select any bond counsel that, after review of its qualifications, is found to be acceptable to the Issuer.
3. Provide an approved list of bond counsel and allow private beneficiaries to select from that list.

While an Issuer of conduit bonds is not obligated to repay those bonds from its own resources, it could be subject to costs of defense and may suffer damage to its reputation in the event of an IRS examination or inquiry or SEC investigation or enforcement action, or a private action under the securities laws relating to the conduit bonds, and a conduit Issuer, its officers, or employees may have potential liability in the event of an adverse ruling or judgment in such a proceeding. Even if the Issuer does not participate in any way or review the selection of bond counsel for conduit issues, it is important that it have its general counsel or special Issuer counsel participate in the transaction to ensure that the limited role of the Issuer is recognized, that the Issuer is appropriately protected, and that the Issuer is participating only in transactions in which applicable standards of competence and disclosure are met.

VIII. Evaluation of Engagement

It is appropriate for the Issuer to evaluate the quality of services rendered by bond counsel. Taking the time to make a meaningful evaluation will improve the quality of service because the Issuer can identify specific areas in which it seeks improvements and assist bond counsel in determining which areas of service the Issuer values most.

Evaluations should be made soon after a bond closing by the Issuer's representatives who worked closely with bond counsel during the course of the year or during the transaction and should measure bond counsel's performance in light of the services agreed upon. In order for an evaluation to be effective, it is necessary that the results be communicated to bond counsel.



Recommended Practice

Selecting Bond Counsel (1998 and 2008) (DEBT)

Background. An essential member of a governmental issuer's bond financing team is bond counsel. Bond counsel renders an opinion on the validity of the bond offering, the security for the offering, and whether and to what extent interest on the bonds is exempt from income and other taxation. The opinion of bond counsel provides assurance both to issuers and to investors who purchase the bonds that all legal and tax requirements relevant to the matters covered by the opinion are met. An issuer should assure itself that its bond counsel has the necessary expertise to provide an opinion that can be relied on and will be able to assist the issuer in completing the transaction in a timely manner.

Recommendation. The Government Finance Officers Association (GFOA) recommends that issuers select bond counsel on the basis of merit using a competitive process and review those relationships periodically. A competitive process using a request for proposals (RFP) or request for qualifications (RFQ) permits issuers to compare qualifications of firms and select a firm or firms that best meets the needs of their community and the type of financing being undertaken. The RFP or RFQ should clearly describe the scope of services desired, the length of the engagement, evaluation criteria, and the selection process. Issuers should have a clear understanding of their service needs (single transaction, multiple transaction, or establishment of a qualified pool of firms) and develop the RFP/RFQ to meet these needs. Additionally, issuers should carefully develop an RFP that complies with state and local procurement requirements.

A RFP or RFQ should require firms proposing to serve as bond counsel to submit information that permits the issuer to evaluate the following factors, at a minimum:

1. Experience of the firm with financings of the issuer or comparable issuers, and financings of similar size, types and structures, including financings in the same state.
2. In preparing the RFP the issuer should determine whether specialized tax advice beyond normal bond counsel services is required. In those instances, the firm's experience in tax matters and the attorneys who practice full time in the area of public finance tax law should be identified in detail. If the firm has no attorneys who specialize in public finance tax law, the response should indicate how the firm intends to provide competent tax advice.
3. Experience of the firm with and its approach to applicable federal securities laws and regulations. In preparing the RFP the issuer should determine whether specialized securities law services beyond normal bond counsel services is required. In those instances, the firm's experience in municipal securities law matters and the attorneys who practice full time in the area of municipal securities law should be identified in detail. If the firm has no attorneys who specialize in municipal securities tax law, the response should indicate how the firm intends to provide competent municipal securities law advice.
4. Knowledge and experience of the attorneys that would be assigned to the transaction, particularly the individual with day-to-day responsibility for the issuer's account.
5. Ability of the firm and assigned personnel to evaluate legal issues, prepare documents, and complete other tasks of a bond transaction in a timely manner.
6. Relationships or activities that might present a conflict of interest for the issuer.

7. Level of malpractice insurance carried, including the deductible amount, to cover errors and omissions, improper judgments, or negligence.

Individuals in the organization with experience in public finance and/or responsible for debt management activities should be involved in the RFP or RFQ development and response review. This may include representatives from the finance department and internal counsel. To remove any appearance of a conflict of interest resulting from political contributions or other activities, elected officials should not be part of the evaluation and/or selection team. In reviewing and evaluating the RFP or RFQ responses, evaluation procedures and a systematic rating process should be established which consider the following:

1. The use of oral interviews of proposers, in which the attorney who would have day-to-day responsibility for the issuer's account should be asked to assume the lead role in presenting the qualifications of the firm.
2. The selection should not be driven solely by proposed fees. The experience of the firm with the type of transactions and the ability to deliver the required legal services in a timely manner are the most important factors in the selection of bond counsel.
3. For issuers that have ongoing needs of a similar nature, continuity should be considered an important factor in the evaluation process.
4. Different fee arrangements are possible depending on the type and nature of the engagement. Fee arrangements include both fixed fee and hourly which may or may not include a cap on the total compensation. Additionally, fees may also be paid contingent on the sale of bonds. Generally bond counsel fees should not be paid on a contingent basis to remove the potential incentive for bond counsel to render legal or tax options that would result in the inappropriate issuance of bonds. However, this may be difficult given the financial constraints of many issuers; in the case of contingent fee arrangements (as well as other fee arrangements), issuers should undertake ongoing due diligence to ensure the bond issue and structure remains appropriate for their organization. Fees and method of compensation (fixed fee, hourly, or retainer) should appropriately reflect the complexity and scope of the services to be provided.
5. Before making a final selection, the issuer should check the references furnished by the prospective bond counsel and determine the outcome of examinations by the IRS or other regulatory agencies of transactions in which the prospective bond counsel was involved. Where practical, one individual should check all references using a standard set of questions to promote consistency.

The issuer may also choose to include a "Form of Contract" in the RFP or RFQ package, which incorporates elements and provisions conforming to prevailing law and procurement processes. The RFP or RFQ should require respondents to comment on the acceptability of the Form of Contract. The comments on the acceptability of the Form of Contract should be part of the evaluation process. The contract development process should allow for reasonable negotiation over the final terms of the contract and/or engagement letter. A final negotiated contract or the engagement letter should make clear those services that will be included within the basic bond counsel fee and any services or reimbursable expenses that might be considered separately billable.

If co-bond counsels are being engaged, the issuer should:

1. delineate in the RFP or RFQ or engagement letter the roles and responsibilities of each firm;
2. assign discrete tasks to each firm in order to minimize cost duplication; and
3. exercise appropriate oversight to ensure coordination of tasks undertaken by the firms.

If co-bond counsels are engaged or if bond counsel firms are rotated, the issuer should:

1. evaluate whether higher costs for legal services will result because of the need for two or more firms to familiarize themselves with the issuer; and

2. consider the possible need to resolve differing viewpoints of each bond counsel.

Throughout the term of the engagement, the performance of bond counsel should be evaluated in relation to the stated scope of services and any areas where service needs to be improved should be communicated to the lead attorney. Ongoing contracts should be reviewed regularly and resubjected to competitive selection periodically.

References

- GFOA Recommended Practice; *Preparing RFPs to Select Financial Advisors and Underwriters*, 1997.
- Patricia Tighe, *A Guide to Selecting Financial Advisors and Underwriters: Writing RFPs and Evaluating Proposals*; GFOA, 1997.
- "Model Engagement Letters," National Association of Bond Lawyers, 1998.
- "The Selection and Evaluation of Bond Counsel," National Association of Bond Lawyers, 1998.

Approved by the GFOA's Executive Board, February 22, 2008.

Attachment 2

OFFICE OF THE STATE TREASURER

STATE OF SOUTH CAROLINA

BOND COUNSEL, DISCLOSURE COUNSEL, UNDERWRITER'S COUNSEL, ISSUER'S COUNSEL, AND LEGAL SERVICES RELATED TO PUBLIC FINANCE

The State Treasurer Curtis M. Loftis Jr., on behalf of the State of South Carolina (the "State"), its institutions, agencies, and authorities, provides this guidance to attorneys and firms seeking approval for inclusion on the State's approved bond counsel list. The attorneys or firms seeking approval must demonstrate requisite experience and expertise in serving issuers of public indebtedness in one or more areas of bond counsel, disclosure counsel, underwriter's counsel, issuer's counsel, and other legal services ancillary thereto. This document provides the information relevant to this process, the specific duties of the aforementioned legal services, the qualifications required for such service, and the process by which the selection of counsel shall be conducted by this Office.

Debt of the State. The South Carolina General Assembly has, by statute, authorized eight categories of general obligation State bonds described below.

State School Bonds. Title 59, Chapter 71, Article 5 of the South Carolina Code contains provisions relating to general obligation State School Bonds. The authorization provided in these provisions expired in 1991, however it may be renewed by subsequent legislation.

State Capital Improvement Bonds. Act No. 1377 of the Acts and Joint Resolutions of the General Assembly of the State of South Carolina for the year 1968, as amended, as continued and amended by Section 11-27-30 of the South Carolina Code, authorizes the issuance of general obligation State Capital Improvement Bonds for State capital projects generally, specific capital projects for various institutions and agencies and for refunding prior bonds.

State Highway Bonds. Title 57, Chapter 11, Article 3 of the South Carolina Code, as supplemented by Section 11-27-30 of the South Carolina Code, authorizes the issuance of general obligation State Highway Bonds for highway construction and related purposes. State Highway Bonds are additionally secured by a pledge of so much of the revenues as may be made applicable by the General Assembly for State highway purposes from any and all taxes or licenses imposed upon individuals or vehicles for the privilege of using the public highways of the State.

State Institution Bonds. Title 59, Chapter 107 of the South Carolina Code, as continued and amended by Section 11-27-30 of the South Carolina Code, authorizes the issuance of general obligation State Institution Bonds for permanent improvements and related purposes at State-supported institutions of higher learning. State Institution Bonds are additionally secured by the respective special funds created at each State institution of higher learning from the tuition fees imposed at such institution.

State School Facilities Bonds. Title 59, Chapter 146 of the South Carolina Code authorizes the issuance of general obligation State School Facilities Bonds for the purpose of assisting school districts in the State to provide adequate educational facilities. The authorization to issue bonds under the School Facilities Bond Act has been exhausted, except for the purpose of refunding State School Facilities Bonds, and there remains no principal amount authorized for issuance thereunder.

State Transportation Infrastructure Bonds. Article 5 of Title 11, Chapter 43 of the South Carolina Code authorizes the issuance of general obligation Transportation Infrastructure Bonds for highways and transit projects. Transportation Infrastructure Bonds may be further secured by a pledge of so much of the revenues as may be made available to the South Carolina Transportation Infrastructure Bank.

State Economic Development Bonds. Title 11, Chapter 41 of the South Carolina Code authorizes the issuance of general obligation bonds to provide infrastructure for economic

development within the State, including costs of land acquisition, site preparation, road and highway improvements, rail spur construction, water service, wastewater treatment, employee training, environmental mitigation, training and research facilities and the necessary equipment therefor, and buildings that are associated with an economic development project that includes air carrier hub terminal facilities (as defined under South Carolina law) or that are located on land that is owned by the State or a political subdivision thereof.

State Research University Infrastructure Bonds. Title 11, Chapter 51 of the South Carolina Code authorizes the issuance of general obligation debt to advance economic development and create a knowledge-based economy, thereby increasing job opportunities, or to facilitate and increase externally funded research at the research universities, including but not limited to land acquisition, acquisition or construction of buildings, equipment, furnishings, site preparation, road and highway improvements, and water and sewer infrastructure.

In addition to general obligation debt, there are presently outstanding various types of revenue bonds and notes issued by various State agencies and authorities for which the full faith, credit and taxing power of the State are not pledged. These bonds and notes, the purposes for which they have been issued and the sources of payment thereof are described below.

State Transportation Infrastructure Revenue Bonds. The General Assembly, pursuant to the South Carolina Transportation Infrastructure Bank Act, created the South Carolina Transportation Infrastructure Bank (the "SCTIB") to assist government units and private entities in constructing and improving highway and transportation facilities necessary for public purposes, including economic development, by providing loans and other financial assistance. Under Article 3 of the South Carolina Transportation Infrastructure Bank Act, the SCTIB is authorized to issue revenue bonds for such purposes. Such revenue bonds are payable from System and Series Payments, as those terms are defined in the Master Revenue Bond Resolution adopted on September 21, 1998, as amended.

Auxiliary Revenue Bonds and Notes for Institutions of Higher Learning. Auxiliary revenue bonds are secured by and payable from revenues derived from student or user fees associated with the various auxiliary facilities at the particular institution of higher learning. The various types of revenue debt included are Higher Education Facilities Revenue, Student and Faculty Housing, Housing and Auxiliary Facilities, Plant Improvement, Athletic Facilities, Auxiliary Facilities, Stadium Improvement, and Parking Facilities Revenue Bonds and Notes.

State Education Assistance Authority Guaranteed Student Loan Revenue Bonds. The State Fiscal Accountability Authority (SFAA), acting as the State Education Assistance Authority, is authorized to issue revenue bonds for the purpose of obtaining monies to lend to South Carolina students pursuing courses in higher education. Education Assistance Authority Guaranteed Student Loan Revenue Bonds are payable from revenues derived by way of repayment of such students' loans, which loans are insured as provided in the Higher Education Act of 1965.

The Medical University of South Carolina Hospital Facilities Revenue Bonds. The Medical University Hospital Authority issues revenue bonds payable from revenues derived from the operation of the hospital facilities of the Medical University of South Carolina for the purpose of providing such facilities.

State Housing Finance and Development Authority Revenue Bonds. The State Housing Finance and Development Authority provides financing for housing for qualifying persons of low to moderate income. Its bonds are payable from amounts received on loans made or mortgages purchased with bond proceeds.

Educational Facilities Authority for Private Nonprofit Institutions of Higher Learning. The State Fiscal Accountability Authority (SFAA), acting as the Educational Facilities Authority for Private Nonprofit Institutions of Higher Learning, is authorized to issue revenue bonds for the purpose of providing facilities for use by private, nonprofit institutions of higher learning. Such revenue bonds are payable solely from revenues derived from the leasing and sale of such facilities or loaning the proceeds of such bonds to such institutions.

Heritage Trust Revenue Bonds. The board of the Department of Natural Resources, in its role as the trustee of the South Carolina Heritage Trust, acting through and in accordance with the terms of the Heritage Trust Program, is authorized to incur indebtedness to acquire, restore, improve, and manage

additional properties suitable for inclusion in the Heritage Trust Program. Such indebtedness is secured by and payable from the revenues derived from that portion of the State deed recording feededicated to the Heritage Land Trust Fund.

Tobacco Settlement Asset-Backed Bonds. Pursuant to Title 11, Chapter 49 of the South Carolina Code, the State transferred to the Tobacco Settlement Revenue Management Authority all of its right, title, and interest in payments due to the State after June 30, 2001, under the Master Settlement Agreement, entered into among the participating cigarette manufacturers, 46 states, and six other U.S. jurisdictions on November 23, 1998, in connection with the settlement of certain smoking-related litigation, including the State's rights to receive certain payments to be made under the Master Settlement Agreement. On March 18, 2001, the Authority issued Tobacco Settlement Asset-Backed Bonds pursuant to an indenture between the Authority and United States Trust Company of New York (subsequently acquired by The Bank of New York), as Trustee, and the Tobacco Settlement Revenue Management Authority Act. On June 26, 2008, the Authority defeased the outstanding principal amount of the Series 2001 Bonds by depositing a portion of the proceeds of Tobacco Settlement Revenue Management Authority Tobacco Settlement Revenue Asset-Backed Refunding Bonds, Series 2008, together with other available monies, with The Bank of New York Trust Company, N.A., as Trustee for the Series 2001 Bonds pursuant to the terms of an irrevocable Escrow Agreement dated June 26, 2008, by and between the Authority and the Trustee. The Series 2008 Bonds are secured by and payable from payments under the Master Settlement Agreement and all investment earnings on and amounts on deposit in certain accounts established under the indenture.

Lease Revenue Bonds. The State Fiscal Accountability Authority (SFAA) is empowered by Act No. 497 of the Acts and Joint Resolutions of the General Assembly for the year 1994, Part II, Section 139 and Act No. 145 of the Acts and Joint Resolutions of the General Assembly for the year 1996, Part II, Section 72, to issue lease and installment purchase revenue bonds. Such authorization was amended in certain particulars by Act No. 184 of Acts and Joint Resolutions of the General Assembly for the year 2004, Section 10. These bonds are payable from the lease and installment purchase revenues provided by the facilities purchased with the proceeds of such bonds.

Availability of Documents. The audited financial statement of the State may be accessed on the website of the South Carolina Office of Comptroller General at <https://cg.sc.gov/financial-reports/annual-comprehensive-financial-reports-acfrs>. Various audited financial statements of the State institutions and authorities described above may be accessed on the website of the South Carolina Office of State Auditor at <https://www.osa.sc.gov/reports/>. Other information may be made available by contacting Robert Macdonald, CPA, CGFO, Debt Management Division Director, 122 Wade Hampton Office Building, Capitol Complex, Columbia, South Carolina 29201, telephone (803) 734-2377, email: robert.macdonald@sto.sc.gov.

Service Requirements. Respondents will be expected to provide a comprehensive array of legal services in connection with the State's public finance activities. The firms qualified will demonstrate experience and expertise in serving issuers of public indebtedness in one or more areas of bond counsel, disclosure counsel, underwriter's counsel, issuer's counsel, and other legal services ancillary thereto. Firms qualified for one or more of these engagements must be prepared to provide the services described herein.

Bond counsel. The services expected of the firm(s) qualified or selected for this engagement include, without limitation, rendering the bond counsel opinion regarding the validity and binding effect of the bonds, the source of payment and security for the bonds, and the excludability of interest on the bonds from gross income for federal income tax purposes; preparing and reviewing the necessary proceedings, notices and other documents necessary or appropriate to the authorization, issuance, sale, and delivery of the bonds, coordinating the authorization and execution of these documents, and assembling and filing the transcript; reviewing use of proceeds to ensure compliance with applicable state and federal laws and

regulations, particularly arbitrage and rebate compliance; providing ongoing advice with respect to the State's public finance policies and law, and reviewing, where appropriate, drafting enabling legislation; providing advice regarding amendments to federal and state law and resolutions, indentures or other documents on which financing transactions are based, and assisting in the development of legislative and policy positions; assisting the issuer in seeking from other governmental authorities any approvals, permissions, and exemptions necessary or appropriate in connection with the authorization, issuance, sale, and delivery of the bonds; reviewing legal issues relating to the structure of the bond issue; preparing election proceedings or pursuing validation proceedings; reviewing or preparing those sections of the offering document to be disseminated in connection with the sale of the bonds that relate to the financing documents, the bonds and their security, the bond counsel opinion, and matters of tax exemption and tax implications for the purchaser; assisting the issuer in presenting information to and attending any meetings of approval boards and authorities, bond rating organizations and credit enhancement providers, as deemed necessary and related to legal issues affecting the issuance of the bonds; reviewing or preparing the notice of sale or bond purchase contract for the bonds and reviewing or drafting the continuing disclosure undertaking of the issuer; consulting with other professionals engaged to the transaction; providing such other legal services as requested, and performing such other services as are typically provided or expected to be provided by bond counsel.

Bond counsel services will not typically include matters that are not required for bond counsel to render the bond opinion, such as preparation of offering documents (except as described above), IRS ruling requests or blue sky or investment surveys. Further, unless bond counsel is separately engaged to perform such services, bond counsel services will not typically extend to post-closing activities such as responding to IRS examinations and inquiries or SEC investigations, performing rebate calculations, or preparing continuing disclosure documents. The increasing complexity of bond transactions may result in the issuer either engaging bond counsel to perform additional services that range beyond those necessary to give the bond opinion or retaining other counsel, such as issuer counsel, special tax counsel, or disclosure counsel, to provide these additional services. As the engagement evolves, the issuer and bond counsel may amend the terms of the engagement to expand the services provided by bond counsel or the issuer may retain other counsel to perform such services. The bond counsel shall owe the issuer and/or the affiliated state agency or authority the full measure of the duty of care owed under the attorney-client relationship as set forth in the South Carolina Rules of Professional Responsibility, Rule 407.

Notwithstanding anything to the contrary, bond counsel will represent solely the interests of the issuer, including without limitation the state, its agencies, institutions, authorities, and their governing and approval bodies and boards.

Disclosure counsel. The services expected of the firms qualified or selected for this engagement include, without limitation, conducting due diligence and drafting and preparing necessary securities offering documents and disclosure documents relating to any previously issued or proposed financing transaction; preparing blue sky and legal investment surveys, as applicable; reviewing audited financial statements and drafting, preparing and filing necessary continuing disclosure documents relating to any previously issued or proposed financing transaction; providing legal services relating to compliance with applicable securities laws and disclosure requirements relating to previously issued or proposed financing transactions; drafting or reviewing necessary documents and handling or participating in legal or administrative proceedings in connection with compliance with applicable disclosure requirements relating to any previously issued or proposed financing transactions; providing ongoing advice with respect to applicable securities laws and other matters relating to the disclosure of factual and legal information; reviewing legislative proposals from a financing and disclosure perspective to assist the issuer in developing appropriate disclosure; preparing and reviewing any transaction documents requisite to the firm's furnishing any standard legal opinion with respect to the disclosure relating to previously issued or proposed financing transactions; assisting the issuer in presenting information to and attending any meetings of approval boards and authorities, bond rating organizations and credit enhancement providers, as deemed necessary and related to issues affecting matters of disclosure; consulting with

other professionals engaged to the transaction; providing such other legal services as requested, and performing such other services as are typically provided or expected to be provided by disclosure counsel.

Disclosure counsel will be expected to coordinate documentation review and approval with Bond counsel and the Office of State Treasurer, and to provide final approved documents to Bond counsel for inclusion in the central repository of standardized, State-approved documentation.

Notwithstanding anything to the contrary, disclosure counsel will represent solely the interests of the issuer, including without limitation the state, its agencies, institutions, authorities, and their governing and approval bodies and boards. However, the interests of the issuer shall extend to the duty of proper disclosure legally required of the issuer towards the related bondholders, to the extent such duty exists and applies to the particular bond issuance.

Underwriter's counsel. The services expected of the firm(s) qualified or selected for this engagement include, without limitation, reviewing or preparing the notice of sale or bond purchase contract and reviewing or preparing those sections of the offering document to be disseminated in connection with the underwriting and sale of the bonds; reviewing the disclosures and continuing disclosure undertaking of the issuer; preparing and reviewing any transaction documents requisite to the firm's furnishing any standard legal opinion with respect to the underwriting and sale of the bonds; attending and participating in meetings relating to underwriting and sale of the bonds; providing such other services as the underwriting firm shall direct as a part of the engagement; and performing such other services as are typically provided or expected to be provided by underwriter's counsel.

Underwriter's counsel will represent those interests determined by the party by which it is engaged.

Issuers Counsel is involved in the financing team with special expertise with state and local bond authorization statutes and rules. Issuers Counsel is to provide assurance that all legally required steps prior to the issuance of bonds, including compliance with state and local election, meeting, filing, disclosure laws, and other regulations or actions related to the borrowing have been followed to include but not limited to, review disclosure, bond sale, and other legal documents associated with transactions to ensure that the representations, commitments, and obligations in the bond documents do not conflict with the issuer's other policies and rules and to assist the issuer in determining the accuracy and completeness of material information. Issuer Counsel in concert with recognized bond counsel, advises in a legal capacity prior to the actual issuance of a legal opinion on bond issues. While issuer's counsel may perform many of the same or similar legal functions of bond counsel, they do not act as recognized bond counsel. In cases where an issuer does not have an issuer's counsel, recognized Bond Counsel may be required to perform these duties for the jurisdiction.

Response Requirements. Each firm submitting a response must include the following information and data:

- The name of the firm, address of office responding, telephone number, fax number and contact information including title and email address of the person with whom discussions with respect to the firm's proposal will be conducted.
- A discussion of the firm's corporate presence in and economic commitment to the State of South Carolina, including whether or not the firm is based, maintains offices, or otherwise maintains a presence in the State, along with a brief description of its corporate investment in the State to include at a minimum three years' history of the number of offices located within the State, the number of and associated payroll for employees who are South Carolina residents, and any future plans affecting corporate commitment to or employment within the State of South Carolina.
- A brief description of the firm's practice in public finance and related areas of law, including a brief history of the firm and a firm résumé, if available.
- The scope of services for which the firm seeks selection or qualification, ordered by the firm's preference and unique qualifications to provide any of the services contemplated by this Request

for Qualifications and for which the firm is seeking selection or qualification.

- The name and credentials of the lead attorney to which relationship management of this engagement will be assigned, including the attorney's telephone number, fax number, and e-mail address. Any attorney assigned to any engagement contemplated by this Request for Qualifications must be a practicing member in good standing of the South Carolina Bar.
- The number of attorneys and professionals on staff who have worked with assignments of this scope, particularly those who have expertise in each of the areas of the engagement for which the firm seeks selection or qualification. Include the name and a short biographical sketch of each attorney and professional the firm would potentially assign to this relationship if awarded this engagement. Describe the anticipated division of duties among partners, associates, and paralegals. If any additional lawyers with your firm may be available for consultation, even though they are not assigned to work directly under the engagement, identify them and their specialized expertise.
- With relative specificity but without disclosure of proprietary client information, a summary of each attorney's and professional's portfolio within the context of the facts provided in this Request for Qualifications including number of clients served, average number and size of transactions in which the attorney is engaged within the course of one year, the average number and size of transactions on which that attorney is likely to be working at any period of time, and the relative position of this relationship within the attorney's present portfolio of relationships;
- The firm's experience in tax matters and the attorneys who practice full time in the area of public finance tax law, including their credentials and certifications. Briefly describe your firm's experience with and approach to applicable federal securities laws and regulations. Describe the outcome of any examination by the IRS or other regulatory agencies of transactions in which your firm has been involved.
- A discussion of any services required under this engagement that will be provided through a co-counsel, partnership, or other contractual relationship. Provide specific details of the delineation of responsibilities between the two firms and describe how the firm will manage the delivery of those services in a way that does not require the State to manage multiple provider relationships. Disclose the terms and conditions of any agreements with other service providers that the firm will engage to provide any portion of the Services.
- An overview of relationships maintained by the firm with national professional organizations and a description of the firm's approach to maintaining an awareness of general developments in its areas of practice and expertise, particularly as they relate to public finance.
- A description of comparable financings in which the firm has served as bond counsel or other counsel during the past two years, and a list of five references, including names, titles, addresses, and telephone numbers of issuers' counsel, financial advisors, investment banks, or representatives of financial institutions with which the firm has worked on public finance or related transactions, who can attest to the firm's professional reputation and services.
- A description of any other relevant experience that would be of benefit in performing this engagement.
- A statement that the firm meets the qualifications and criteria established for the engagement, and has the professional credentials, legal authority and in all other respects the professional capabilities to provide the services described in this Request for Qualifications.
- A description of any existing material relationships with the State of South Carolina, any South Carolina state agency, authority, instrumentality or political subdivision, any commission member, director or employee of any of these entities, or any related entity where a conflict of interest or ethics violation might be asserted. Describe any existing or potential conflict of interest arising from your relationships with or representation of other parties that should be considered as a factor in determining your objectivity, and provide sufficient facts, legal implications, and possible effects necessary for an appreciation of the significance of each potential conflict.
- An affirmation that the firm will bill in accordance with the SFAA fee guidelines, attached hereto.

- An itemization of the types of actual costs and expenses for which the firm would expect reimbursement;
- Evidence of the amount of general, professional liability or malpractice insurance carried to cover errors and omissions, improper judgments, or negligence, including the deductible amount; and any other data necessary to clearly establish the firm's financial strength and ability to assume performance liability for the scope, complexity and size of this engagement.
- A statement of the firm's affirmative action and anti-discrimination policies.

Other. The qualification, engagement or selection of any firm may be terminated at any time with or without reason or cause, and the attorney(ies) or firm shall have no claim or recourse as a result of such termination. Furthermore, it shall be the policy of the State Treasurer to remove from the list of approved counsel any firm or attorney who undertakes a representation that is adversarial to the SFAA, its members, and its various divisions and offices, including but not limited to the Insurance Reserve Fund Division. Any letters of engagement or contractual agreements will be subject to, governed by, and construed in accordance with the laws of the State of South Carolina.

Content of Response. Respondents may seek selection or qualification for any or all of these services in a single proposal. The State deems this Request for Qualifications to be comprehensive and sufficient to make an informed decision for award of the engagement. Accordingly, the State requests that respondents provide information that is succinct, germane, and specifically requested within this Request for Qualifications, following the order of the requested information as closely as possible. The State will not evaluate superfluous information, and specifically requests that it be excluded. Any such information provided by a respondent will be deemed to be non-responsive and will be excluded from evaluation.

Questions and Additional Information. Any requests for additional information, clarification or other questions concerning this Request for Qualifications should be made in writing and directed via e-mail to:

Robert Macdonald, CPA, CGFO
 Email:
robert.macdonald@sto.sc.gov
 Phone (803) 734-2677

Submittal of Proposals. The proposal must be saved in pdf format and emailed to Robert Macdonald at robert.macdonald@sto.sc.gov.

Confidentiality. In accordance with South Carolina's Freedom of Information Act, all proposals will be considered a matter of public record and may be made available for public inspection or duplication upon reasonable request. Any portion of a proposal deemed to be proprietary should be separated and specifically identified as such in the proposal; in that event the State will use reasonable efforts to redact such portions prior to public inspection or duplication. The State is unable to treat an entire proposal as confidential or proprietary.

Evaluation Process. Successful respondents will demonstrate exceptional credentials, expertise and depth of talent necessary to provide the requested services, and will assign those attorneys and professionals employed by the firm who are best suited to meet the needs of the State as described in this Request for Qualifications. Successful respondents will further demonstrate exceptional experience with State law, municipal bond law, securities law, tax law, the trial and appeal of bond validation actions and the issuance of municipal bonds and notes. Qualified respondents must also demonstrate their ability to maintain availability and meet the time demands imposed by the State, its agencies, institutions and authorities.

The STO staff will review and evaluate any proposal received. The STO staff review will culminate in recommendations to the State Treasurer regarding the selection and qualification of firms whose proposals are determined to be most responsive to this request. Any award will be based on:

- An indication that the firm has a clear understanding of the services and requirements of this Request for Qualifications;
- The firm's experience and with engagements of this magnitude and complexity; and

- The experience and qualifications of personnel assigned to this engagement.

The State follows the general guidelines published by the Government Finance Officers Association and the National Association of Bond Lawyers, summarized as follows:

Because the financing structure, market conditions, schedule and time limitations, novelty and complexity of each transaction that will arise during the term of engagement may not be known at the time of engagement, the State anticipates adopting procedures that provide for flexibility to modify compensation arrangements in view of the transaction to be undertaken and circumstances then prevailing. The State anticipates that compensation for additional services, particularly those rendered subsequent to the closing of transactions (such as assistance with arbitrage rebate, continuing disclosure compliance, or responding to IRS or other regulatory examinations or inquiries), will be negotiated based on scope and time requirements for the additional engagement. In any event, compensation for any transaction will be negotiated and agreed upon with a maximum fee determined prior to sale of the bonds or otherwise proceeding with the engagement.

Acknowledgements. By responding, the respondent represents that its proposal is not made in connection with any competing respondent submitting a separate response to this Request for Qualifications and is in all respects fair and without collusion or fraud. It is further represented that the respondent did not directly or indirectly induce any party to submit a false or sham proposal or to refrain from proposing. In addition, the respondent represents that it did not participate in the development process for this Request for Qualifications, had no knowledge of the specific contents thereof prior to its issuance, and that no employee of the State, its institutions, agencies or authorities participated directly or indirectly in the respondent's proposal preparation. All proposals submitted in response to this Request for Qualifications are at the sole expense of the respondent and, by providing its response, the respondent acknowledges its responsibility for all costs associated with the preparation of its proposal, presentation and any travel expense incurred in connection with any interviews conducted during the evaluation process described above. In addition, submission of a response will be deemed to be the respondent's conclusive agreement with all other terms and conditions of this Request for Qualifications.

If you have any questions, please direct them to Robert Macdonald, CPA, CGFO, Debt Management Division Director, 1200 Senate Street, Suite 214, Wade Hampton Building, Columbia, SC 29201, telephone (803) 734-2677, email: robert.macdonald@sto.sc.gov.