

**CITY OF AUSTIN PURCHASING OFFICE
REQUEST FOR QUALIFICATIONS NO.JSD0510
FOR BOND COUNSEL SERVICES
SECTION 0500: SCOPE OF WORK**

A. PURPOSE

Pursuant to Texas Government Code, Sections 1201.027 and 2254.003, the City of Austin, through its City Attorney's Office, seeks responses to this Request for Qualifications (RFQS) from qualified law firms to act as Bond Counsel for the purpose of providing legal opinions and advising the City in matters pertaining to the issuance, approval, sale, delivery of, and other special issues that may arise from, municipal bonds and other debt instruments authorized by the City of Austin or its instrumentalities.

The Austin City Council may select one or more firms with which to contract for the City's bond matters. The City's practice has been to use certain firms for particular types of debt (e.g., General Obligation Bonds, Revenue Bonds, Airport financing, Housing financing) with each firm having expertise both in the types of financing and in tax issues relating to that financing. The number of contracts resulting from this RFQS, the determination of whether the contract should be awarded to one or more bond counsel firms, and the type of bond issues assigned to the various bond counsel are matters within the discretion of the City.

The City has ongoing projects related to, and requiring, the issuance of bonds and similar public finance instruments. The City may therefore request that firms to whom a contract is awarded bring in as co-counsel attorneys who have done preliminary work on these projects for efficient transition purposes.

B. BACKGROUND

Austin is the state capital of Texas and is the hub of a metropolitan area that includes Travis, Hays, and Williamson counties. The City of Austin was chartered in 1839 and utilizes a Council-Manager form of government. Six councilmembers and a Mayor are elected at large for staggered three-year terms. The City Council appoints a City Manager who is responsible for the management of all City employees and for administering all affairs of the City. Pursuant to the City Charter, the City Attorney is appointed by the City Manager and is responsible for the legal affairs of the City.

The City provides a full range of municipal services including police, fire, emergency medical service, parks, libraries, public health, social services, public improvements, planning and zoning, and general administrative services. In addition, the City of Austin owns and operates Electric, Drainage, Water and Wastewater Utilities, a Municipal Airport, and a Convention Center.

In an effort to stimulate economic and residential development, the City has established Tax Increment Financing Districts, Enterprise Zones, and Public Improvement Districts.

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agent during the no-contact period about this solicitation, the respondent is in jeopardy of being disqualified for consideration if he or she makes any representation in response.

3. Qualified Responses. All responses must be submitted on 8 ½ x 11 bound pages. Responses must address every element of the RFQS. Any additional support or background material required should be attached. When answering the questions in the RFQS, cross-reference by section number where appropriate. A total of ten complete sets (one original and nine complete copies) must be submitted.
4. Deadline. All responses must be in a sealed envelope and clearly marked in the lower left corner: "Sealed Response – Bond Counsel Services, RFQS No JSD0510". **Responses must be delivered to the Purchasing Office at 124 W. 8th Street, 3rd Floor, Austin, Texas, 78701 prior to 2:00 p.m. on February 23, 2012 ("Response Submission Date")**. The responsibility for timely delivery of the response rests with the sender, not with the U.S. Mail or any other courier. Responses submitted after the submission deadline will not be considered.
5. Notification to Finalists. If the City chooses to conduct detailed assessment activities, the buyer (Jeffery Dilbert) will notify firms that have been selected and will establish the time for those appointments.
6. Additional Information. The City reserves the right to request clarification of information submitted, and to request additional information of any respondent.
7. Response Withdrawal. Any response may be modified or withdrawn up until the submission date.
8. Contract Term. The City intends to enter into a three year contract with an option to extend the contract for an additional two years, at the discretion of the City. The City reserves the right to negotiate any and all terms of the contract. The successful respondent will be required to sign the City's contract form which shall include language acknowledging that the City is a client of the firm and an attorney-client relationship will exist between the firm and the City.
9. Costs of Response. All costs directly or indirectly related to preparation of a response to the RFQS, including any oral presentation the City may require to supplement and/or clarify a response, are the sole responsibility of the offeror.

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and other documentation as required by the City, the Attorney General of Texas, the Texas Bond Review Board, the Texas Comptroller of Public Accounts, the rating agencies, insurance providers, and applicable Federal agencies. All documents prepared by Bond Counsel shall follow the drafting guidelines contained in the Law Department's Ordinance Drafting Handbook.

5. Render an opinion that the City's bonds are binding obligations of the City and are validly issued under Texas law and that the interest on the bonds is excludable from gross income tax under federal law. Render additional opinions as required for debt issuance.
6. Produce and provide multiple copies of all bond transcripts, as requested, for Attorney General approval and City use.
7. Provide legal advice concerning restrictions on the expenditures of City bond funds. Keep the City abreast of federal and state law and federal tax developments which might be applicable to the City's financing program or tax exempt status of City's proposed and outstanding bonds. This may include assistance in the development of alternative financing programs for potential capital projects, working with citizen committees, evaluating state and federal legislation for the City, and other tasks as required.
8. Request and obtain approval of bond issues from the Public Finance Division of the Office of the Attorney General (consistent with 1 Tex. Admin. Code § 53.1 (1976)(Office of the Atty. Gen, Approval of Municipal Securities).
9. Review the bond proofs and supervise the execution and delivery of the bonds or other debt instruments.
10. Assist in the preparation of a No-Arbitrage certificate for the City in connection with its debt issuances and any other required IRS filings.
11. Provide legal assistance relating to bond elections if requested.
12. Assist in presentations to Moody's Investors Service, Fitch Ratings, and Standard and Poor's Rating Services in order to obtain ratings for the City's securities if requested.
13. All other matters necessary or incidental to the issuance of debt.

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- b. Demonstrated competence and experience in the practice of public finance law and securities law. Reputation and acceptance of firm's opinions by industry will be considered.
- c. Qualifications of public finance staff (i.e., education, positions held in firm, and years and type of experience) assigned to City financings.
- d. Capacity of firm to handle City's public finance work and stability of firm. Additional areas of relevant practice the firm provides may be considered.
- e. Satisfaction of references with firm's work.

H. RESPONSE TO REQUEST FOR QUALIFICATIONS

1. Response Format and Required Information

In addition to the instructions and other information provided in the cover letter, Respondents must comply with the following requirements:

- a. Respond specifically to all information requested in the Request for Qualifications *or* indicate why no response is given.
- b. Limit your response to relevant material; additional information must be submitted in the form of an attachment or appendix.
- c. Identify the question being answered in the introduction to each response.
- d. Identify the name, address, telephone number, email address, and facsimile number of the person in your firm authorized to negotiate terms and make decisions concerning your proposal.
- e. If the firm is to be considered as a Minority Owned Business Enterprise or Woman Owned Business enterprise (MBE/WBE), the firm must be certified by the City of Austin Small and Minority Business Resources Department (SMBR) at the time of response. For additional information concerning certification, call SMBR at (512) 974-7600.
- f. Complete the City's non-discrimination certificate.

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tax counsel, disclosure counsel, or trustee's counsel, by issuer type (cities, counties, school districts, junior colleges, and other special authorities and districts). This information must be provided in tabular format, in an Appendix, separately attached to your RFQS response, as an excel spreadsheet file, in the following format:

Attorney	Issuer Type	Bond Issue Name	Attorney's Role	Fee

Report separate series of one transaction as one bond issue: for example, if a transaction includes a tax-exempt series and a taxable series due to issuance costs, report the transaction as one bond issue. Also, do not report the same issue for more than one attorney unless each attorney performed a substantial amount of work on the issue.

- i. Select one transaction from the list provided above and explain how it best demonstrates the abilities of the firm to serve as Bond Counsel for the City of Austin.
- ii. Provide a brief narrative outlining your firm's work since **JANUARY 2010** to assist clients with post-closing tax compliance, such as, but not limited to, arbitrage compliance, change of use, audits, Build America Bonds, and continuing disclosure matters. Address any standard procedures established by your firm such as providing compliance memos, checklists, or other follow-up and remedial work, and specify, where appropriate, the involvement of attorneys to be assigned to the City's work.
- iii. Describe the firm's experience with major rating agencies, bond insurers, and credit enhancers during the past three years. Indicate if the firm's opinions have been accepted by major rating agencies and bond insurers.
- iv. Describe the firm's experience in obtaining Attorney General approval of debt issuances. Indicate if the firm's opinions have been accepted by relevant governmental entities.
- v. Describe the firm's experience pursuing legislative issues related to public finance matters at the state and federal level.

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work with its own forces; no subcontracting opportunities have been established for this solicitation. However, if bond counsel identifies opportunities, the City encourages the use of MBE/WBEs to perform the identified scopes of work, and a MBE/WBE availability list will be provided by SMBR. No Compliance Plan is required.

- f. Conflicts of Interest
 - i. Conflicts Policy. Provide a copy of the firm's conflicts policy. Identify and discuss any client representation which might conflict with representing the City of Austin. In addition, identify each matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the City of Austin.
 - ii. Conflicts of Interest Questionnaire. In addition to application of the Texas Disciplinary Rules of Professional Conduct provisions relating to conflicts of interest, this RFQS requires respondents to comply with Chapter 176, Texas Government Code by completing a conflict of interest questionnaire that reflects any actual or potential conflict(s) of interest existing between a city official, employee, or agent, and any member of the firm's bond counsel team.
- g. References. Provide names, addresses, and phone numbers of three client references.
- h. Innovative Financing Techniques. Provide two examples of an innovative financing technique, suggestion, or idea which would be relevant to the City of Austin. If any were used in an actual transaction, indicate the individuals who were involved in the transaction. If you reference an actual transaction in your response, provide the name, title, organization, address, and telephone number of a reference for the issuer of this transaction. If the issuer is rated by a rating agency, indicate the impact, if any, that this innovative financing had on the issuer's bond ratings.

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To assess Respondent's experience with Texas municipalities' general obligation, utility system and revenue bond issues. **(15 points)**

To assess Respondent's experience with the City of Austin's general obligation, utility system and revenue bond issues and in other types of public financings. **(10 points)**

Additional areas of relevant practice the firm provides may be considered. **(5 points)**

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The City reserves the right to negotiate the actual contract scope of work and cost after submission.

J. SCHEDULE OF EVENTS

The City anticipates that the selection of Bond Counsel and execution of the Contract(s) will proceed according to the following approximate schedule:

Issuance of RFQS	<u>01/30/12</u>
Pre-Proposal Meeting	<u>02/09/12</u>
Deadline for Submission of Questions	<u>02/16/12</u>
Response Submission Date (Late responses will not be considered)	<u>02/23/12</u>
Detailed Assessment Activities at discretion of City Attorney	<u>03/22/12</u>
City Council Action	<u>04/26/12</u>
Contract Negotiation/Execution	<u>05/25/12</u>
Commencement of Bond Counsel Service	<u>06/01/12</u>

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All other Sections may be viewed at: http://www.austintexas.gov/financeonline/vendor_connection/index.cfm

RETURN THE FOLLOWING DOCUMENTS WITH YOUR OFFER**

- Cover Page Offer Sheet
- Section 0600 Proposal
- Section 0605 Local Business Presence Identification Form
- Section 0700 Reference Sheet (if required)
- Sections 0800 - 0835 Certifications and Affidavits (return all applicable Sections)
- Section 0900 MBE/WBE Procurement Program Package or No Goals Utilization Plan
- Proposal Guaranty (if required)

**** See also Section 0200, Solicitation Instructions, Section 0400, Supplemental Purchase Provisions, and Section 0500, Scope of Work/Specification, for additional documents that must be submitted with the Offer.**

The Vendor agrees, if this Offer is accepted within 120 calendar days after the Due Date, to fully comply in strict accordance with the Solicitation, specifications and provisions attached thereto for the amounts shown on the accompanying Offer.

*** INCORPORATION OF DOCUMENTS.** Section 0100, Standard Purchase Definitions; Section 0200, Standard Solicitation Instructions; and Section 0300, Standard Purchase Terms and Conditions are hereby incorporated into this Solicitation by reference, with the same force and effect as if they were incorporated in full text. The full text versions of these Sections are available, on the Internet at the following online address http://www.austintexas.gov/financeonline/vendor_connection/index.cfm#STANDARDBIDDOCUMENTS.

If you do not have access to the Internet, you may obtain a copy of these Sections from the City of Austin Purchasing Office at the address or phone number indicated on page 1 of this Offer Sheet. Please have the Solicitation number available so that the staff can select the proper documents. These documents can be mailed, expressed mailed, or faxed to you.

It is the policy of the City of Austin to involve certified Minority Owned Business Enterprises (MBEs) and Woman Owned Business Enterprises (WBEs) in City contracting. MBE and WBE goals for this Solicitation are contained in Section 0900.

All Contractors and Subcontractors should be registered to do business with the City prior to submitting a response to a City Solicitation. In the case of Joint Ventures, each individual business in the joint venture should be registered with the City prior to submitting a response to a City solicitation. If the Joint Venture is awarded a contract, the Joint Venture must register to do business with the City. Prime Contractors are responsible for ensuring that their Subcontractors are registered. Registration can be done through the City's on-line vendor registration system. Log onto http://www.austintexas.gov/financeonline/vendor_connection/index.cfm and follow the directions.

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- ii. Commercial General Liability Insurance. The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injury).
- (1) The policy shall contain the following provisions:
- (a) Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
- (b) Contractor/Subcontracted Work.
- (c) Products/Completed Operations Liability for the duration of the warranty period.
- (d) If the project involves digging or drilling provisions must be included that provide Explosion, Collapse, and/or Underground Coverage (X,C,U).
- (2) The policy shall also include these endorsements in favor of the City of Austin:
- (a) Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage
- (b) Thirty (30) days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage
- (c) The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage
- iii. Business Automobile Liability Insurance. The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.
- (1) The policy shall include these endorsements in favor of the City of Austin:
- (a) Waiver of Subrogation, Endorsement TE 2046A, or equivalent coverage
- (b) Thirty (30) days Notice of Cancellation, Endorsement TE 0202A, or equivalent coverage
- (c) The City of Austin listed as an additional insured, Endorsement TE 9901B, or equivalent coverage.
- C. Endorsements. The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

4. INVOICES and PAYMENT (reference paragraphs 12 and 13 in Section 0300)

- A. Invoices shall contain a non-duplicated invoice number and the information required in Section 0300, paragraph 12, entitled "Invoices." Invoices received without all required information cannot be processed and will be returned to the vendor.

Invoices shall be mailed to the below address:

	City of Austin
Department	Austin Water Utility
Attn:	Accounts Payable
Address	625 W. 10 th Street, STE 500
City, State Zip Code	Austin, Texas 78701

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- iii. a statement certifying that the employee is offered a health care plan with optional family coverage.

Employee Certifications shall be signed by each employee directly assigned to the contract.

- A. Contractor shall submit employee certifications quarterly with the respective invoice to verify that employees are paid the Living Wage throughout the term of the contract.
- G. The Department's Contract Manager will periodically review the employee data submitted by the Contractor to verify compliance with this Living Wage provision. The City retains the right to review employee records identified in paragraph D above to verify compliance with this provision.

6. NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING

- A. On November 10, 2011, the Austin City Council adopted Ordinance No. 20111110-052 amending Chapter 2.7, Article 6 of the City Code relating to Anti-Lobbying and Procurement. The policy defined in this Code applies to Solicitations for goods and/or services requiring City Council approval under City Charter Article VII, Section 15 (Purchase Procedures). During the No-Contact Period, Offerors or potential Offerors are prohibited from making a representation to anyone other than the Authorized Contact Person in the Solicitation as the contact for questions and comments regarding the Solicitation.
- B. If during the No-Contact Period an Offeror makes a representation to anyone other than the Authorized Contact Person for the Solicitation, the Offeror's Offer is disqualified from further consideration except as permitted in the Ordinance.
- C. If a Respondent has been disqualified under this article more than two times in a sixty (60) month period, the Purchasing Officer shall debar the Offeror from doing business with the City for a period not to exceed three (3) years, provided the Respondent is given written notice and a hearing in advance of the debarment.
- D. The City requires Offerors submitting Offers on this Solicitation to provide a signed Section 0810, Non-Collusion, Non-Conflict of Interest, and Anti-Lobbying Affidavit, certifying that the Offeror has not in any way directly or indirectly made representations to anyone other than the Authorized Contact Person during the No-Contact Period as defined in the Ordinance. The text of the City Ordinance is posted on the Internet at:
<http://www.ci.austin.tx.us/edims/document.cfm?id=161145>

7. WORKFORCE SECURITY CLEARANCE AND IDENTIFICATION (ID)

- A. Access to the Austin Water Utility Department building by the Contractor, all subcontractors and their employees will be strictly controlled at all times by the City. Security badges will be issued by the Department for this purpose. The Contractor shall submit a complete list of all persons requiring access to the Austin Water Utility building at least thirty (30) days in advance of their need for access. The City reserves the right to deny a security badge to any Contractor personnel for reasonable cause. The City will notify the Contractor of any such denial no more than twenty (20) days after receipt of the Contractor's submittal.
- B. Where denial of access by a particular person may cause the Contractor to be unable to perform any portion of the work of the contract, the Contractor shall so notify the City's Contract Manager, in writing, within ten (10) days of the receipt of notification of denial.
- C. Contractor personnel will be required to check in at the security desk when entering or leaving the Austin Water Utility building and security badges must be on display at all times when in the building.