

# City of Memphis, Tennessee



## **Request for Qualifications For Professional Services Bond Counsel and Disclosure Counsel**

Submittals Due Date: Monday, July 24, 2017

Time: 3:00 p.m., Central Time

# City of Memphis, Tennessee

## Request for Qualifications

### For Bond Counsel and Disclosure Counsel

#### INTRODUCTION

The City of Memphis (City) seeks qualified law firms (Respondents) to provide bond counsel and disclosure counsel services to the City in connection with the issuance of bonds and other debt related matters (Submittals).

#### BACKGROUND

Memphis is one of the largest cities in the State of Tennessee with a population of 653,480 according to the City's most recent CAFR. The City has a strong Mayor-City Council form of government. The City's debt management program is administered under the City's Finance Division and its Chief Financial Officer. The Deputy Director of Finance is responsible for the day-to-day management of the City's debt program. The City manages its debt program pursuant to a debt management policy approved by the Memphis City Council dated April 19, 2016 and Disclosure Policies and Procedures dated October 26, 2016. Copies of the Debt Policy and Disclosure Policies and Procedures are available on the City's website at: <http://www.memphistn.gov/Government/FinanceDivision/DebtManagement.aspx>.

The City is an issuer, from time to time, of tax-exempt and taxable commercial paper, general obligation bonds, enterprise revenue bonds, and special purpose revenue bonds through conduit issuers, among others. As of June 30, 2017, the City currently has \$1.2 billion of general obligation bonds and commercial paper outstanding as well as \$89.2 million of sewer revenue bonds outstanding. Debt issuance through conduit issuers totals \$189.1 million bonds outstanding.

Transaction types, security types and frequency of issuance for the City are:

| <b>Transaction Type</b>               | <b>Security Type</b>                   | <b>Frequency of Issuance</b> |
|---------------------------------------|--|------------------------------|
| Commercial Paper                      | Full faith and credit                  | As needed                    |
| General obligation bonds              | Full faith and credit                  | Every two years              |
| Sewer revenue bonds                   | Users fees                             | Periodically                 |
| Stormwater revenue bonds <sup>1</sup> | Users fees                             | Periodically                 |
| Conduit financings                    | Special tax revenues or dedicated fees | Periodically                 |
| Lease agreements/bank loans           | Annual appropriation                   | Periodically                 |
| Refunding bonds                       | Based on security type                 | Based on market conditions   |

<sup>1</sup> New indenture to be created.

#### **Purpose of the Request for Qualifications (RFQ)**

It is the intention of the City to select several firms to serve in one of the following roles:

- Bond Counsel
- Disclosure Counsel

Respondents may submit responses based on the level of expertise and experience of their respective law firms for either of the slots as outlined above. Firms interested in serving as Disclosure Counsel may not serve as Bond Counsel. Firms may also submit their qualifications based on a single transaction or security type such as general obligation debt only, sewer debt only, etc.

**M/WBE (Minority/Women Business Enterprise) Program**

The City has a Minority/Women Business Enterprise Program that is designed to increase the participation of minority and women owned businesses in the City's contracting activities.

**Minority-owned business enterprise (MBE)** means a business, including, without being limited to, a sole proprietorship, partnership, corporation, joint venture or any other business or professional entity:

1. Which is at least 51 percent owned by one or more minority persons, or, in the case of a publicly-owned business, at least 51 percent of all classes of the stock of which is owned by one or more minority persons;
2. Whose management, policies, major decisions and daily business operations are independently controlled by one or more of such minority persons; and
3. Which performs a commercially useful function.

As used in this definition, the term "minority person" means those persons, citizens of the United States and lawfully admitted resident aliens, who are African American, Hispanic, Asian, or Native American.

**Women business enterprise (WBE)** means a business, including, without being limited to, a sole proprietorship, partnership, corporation, joint venture or any other business or professional entity:

1. Which is at least 51 percent owned by one or more women, or, in the case of a publicly-owned business, at least 51 percent of all classes of the stock of which is owned by one or more women;
2. Whose management, policies, major decisions and daily business operations are independently controlled by one or more of such women; and
3. Which performs a commercially useful function.

As used in this definition, the term "women" means those persons, citizens of the United States and lawfully admitted resident aliens, who are of the female gender, and not otherwise included in one of the specific ethnic minority groups.

Provide a specific plan or your firm's policy that supports the City's efforts.

### **SUBMITTAL REQUIREMENTS**

Submittals must be addressed and submitted to the following parties and provide the indicated number of hard copies no later than 3:00 p.m., Central Time, Monday, July 24, 2017:

André D. Walker  
Deputy Director of Finance  
City of Memphis,  
125 N. Main Street, Room  
Memphis, Tennessee 38103  
Three (3) hard copies

Pamela Z. Clary  
Executive Vice President  
ComCap Partners  
1708 Monroe Avenue  
Memphis, Tennessee 38103  
One (1) hard copy

Also please submit a copy of your response via email or electronic delivery no later than 3:00 p.m., Central Time, Monday, July 24, 2017 to the following parties:

André D. Walker  
Pamela Z. Clary  
Cheryl Hearn

Deputy Director of Finance  
ComCap Partners  
Assistant City Attorney

Andre.Walker@memphistn.gov  
pclary@comcap-partners.com  
Cheryl.Hearn@memphistn.gov

### **Inquiries**

The City will accept written questions and inquiries concerning the services described in this RFQ. Submit all questions to Pamela Z. Clary via email. The deadline for submission of written questions and inquiries is Tuesday, July 18th, 3:00 pm., Central Time. Responses to communications shall not be considered binding upon the City. The City will make efforts to provide courtesy notices, reminders, addendums and similar announcements directly to interested firms. The City will make this available on the City website at: <http://memphistn.gov>. Go to the Home, Business, RFPs & RFQs.

### **Submittal Format**

The responses should be organized in the exact order in which the requirements are presented in the RFQ. Responders are strongly encouraged to adhere to the following general instructions in order to bring clarity and order to the submittal and subsequent evaluation process. The response should be complete and comprehensive, with corresponding emphasis on being concise and clear. It is strongly advised to limit the response to no more than 25 pages.

### **Cost of Submittals**

The City will not reimburse the Respondents to this request for any costs involved in the preparation and submission of responses, or for preparation of and attendance at any oral interviews or presentations.

### **Rejection of Submittals**

The City reserves the right, at its sole discretion, to reject any and all submittals received in response to this RFQ, to cancel this RFQ and/or to waive any technicality in entirety as determined to be in the best interests of the City.

Any submittals received which does not meet the requirements of this RFQ, may be considered to be non-responsive, and the submittals may be rejected. Respondents must comply with the terms of this RFQ and all applicable federal, state and local laws and regulations.

**Preliminary Schedule**

|  |                         |
|--|-------------------------|
| Request For Qualifications released..... | Thursday, July 13, 2017 |
| Deadline for written questions.....      | Tuesday, July 18, 2017  |
| Responses to questions posted.....       | Thursday, July 20, 2017 |
| Submittals due to the City.....          | Monday, July 24, 2017   |

**SCOPE OF SERVICES**

The Respondents selected by the City will be required to perform all legal services and duties customarily and usually performed with respect to the issuance of general obligation, revenue and special revenue debt obligations. The following are to be included in the specific tasks to be performed with respect thereto. However, it is not to be considered as a complete list of tasks.

**Bond Counsel**

- Prepare authorizing documents and any other documents needed in connection with the issuance of bonds or other debt, including any transcripts and closing papers;
- Provide an unqualified legal opinion with respect to the authorization and issuance of debt obligations and whether interest paid is tax-exempt under federal and/or state laws and regulations;
- Render tax opinion on tax status of the bonds whether taxable, non-taxable or subject to alternative minimum tax;
- Provide assistance seeking approvals and authorizations from other governmental entities;
- Review of legal issues relating to the structuring of bonds;
- Review of offering and sale documents;
- Keep the City informed of rulings issued by federal and state regulatory agencies including, but not limited to the, U.S. Securities Exchange Commission, Internal Revenue Service and Municipal Securities Rulemaking Board, which may impact the issuance of the bonds and/or administration of the City's debt bond program;
- Provide tax certificate for each bond transaction;
- Insures use of bond proceeds meets all Internal Revenue Service Code regulations;
- Review use of proceeds (capital improvement projects) to ensure compliance with applicable state and/or federal law and regulations;
- Participate in meetings, as requested, related to the issuance of bonds or notes;
- Provide representation in the event of an IRS audit; and
- Provide other legal opinions or advice as required.

**Disclosure Counsel**

- Prepare and review of the preliminary and final official statement that relate to the bonds;
- Prepare and review of the notice of sale or bond purchase contract for the bonds;
- Review information presented to bond rating organizations and credit enhancement providers relating to legal issues affecting the issuance of the bonds;
- Participate in meetings, as requested, related to the issuance of bonds or notes;
- Review and draft the continuing disclosure document;

- Provide a "10b-5" negative assurance opinion with respect to the official statements;
- Provide post issuance advice;
- Provide representation in the event of an IRS audit; and
- Continuing disclosure/bond covenant compliance.

**Additional Ongoing Disclosure Counsel Services**

- Advise the City's internal Disclosure Management Group (DMG);
- Participate in quarterly DMG meetings (via conference call or in person); and
- Provide periodic training on relevant disclosures as needed and necessary.

**MINIMUM QUALIFICATIONS**

**Public Finance Experience**

- The firm, or its attorneys designated to work on the City's financing transactions, must have a minimum of three (3) years of experience serving as bond counsel and/or disclosure counsel on publicly offered tax-exempt/taxable municipal bond transactions.

**Licensed in the State of Tennessee**

- The firm must have attorneys licensed to practice law in the State of Tennessee who will be primarily responsible for providing or supervising the services to be rendered under the engagement.

**Malpractice Insurance**

- The firm must maintain adequate malpractice insurance coverage with either a securities transaction rider or coverage without exclusion for securities transactions. The selected Respondents will be required to adhere to the City's standard contracting policies and procedures, located on the City's website at: [http://www.memphistn.gov/Portals/0/pdf forms/Purchasing-Policies-and-Procedures-Manual-2016.pdf](http://www.memphistn.gov/Portals/0/pdf%20forms/Purchasing-Policies-and-Procedures-Manual-2016.pdf).

**Local Office in Shelby County, Tennessee**

- The firm(s) must have an office located in Shelby County, Tennessee.

## REQUIRED SUBMITTAL CONTENTS

### Letter of Transmittal

- Provide a cover letter on the firm's letterhead, signed by an authorized representative, highlighting the key points of the firm's statement of qualifications. The cover letter should include the name, title, address, email address and telephone number of the contact person for this engagement.

### Firm Experience

- Briefly describe the firm's public finance experience and qualifications including history of the firm, number of years in business and the size of the firm.
- Identify the headquarters, the nearest office and the office which will serve as the managing office for the services to be provided.
- Provide a three-year history of relevant bond transactions based on the transaction and security types as shown under "Background" and "Purpose for the Request for Qualifications" since July 1, 2014. Please provide the date, name of issuer, size of transaction, security type, method of sale and your firm's role: bond counsel, co-bond counsel, disclosure counsel, etc.
- Describe the firm's procedures for keeping abreast of changes in federal and Tennessee tax, securities, and municipal bond issues, including statutory and regulatory changes and judicial or administrative actions.
- Describe any other service or experience of the firm, which you deem beneficial in acting as Bond Counsel or Disclosure Counsel to the City.

### Staff Experience

- Please provide biographies, including experience, of the proposed team of partners, associates and paralegals who would participate in the legal work as requested. In the proposed staffing plan, please include the prior related experience of all team members.
- If the firm does not have in-house tax expertise, but would like to propose a potential joint venture with an outside tax attorney, please describe that joint venture relationship and identify the attorney.
- Please provide assurance that at least one member of the Respondent's proposed team is currently licensed to provide legal services within the State of Tennessee and that neither the Respondent nor any subcontractor or partner is currently suspended or debarred from providing legal services within the State.
- If the Respondent is a partnership or a joint venture, provide comparable information as required above for each member of the partnership or joint venture.
- Please list three (3) issuers who may be contacted as a reference. Please provide the organization, contact person, title and telephone number.

**Legal and Firm Issues**

- Please disclose and explain any significant negative events in your firm's recent history including criminal charges, civil litigation, or administrative actions involving allegations of securities law violations by your firm or its employees during the past five years.
- Please provide assurance that there are no known conflicts of interest that would prohibit the Respondent from entering into a contract with the City related to the requested Scope of Services.