

Bond Counsel RFQ

GENERAL INFORMATION

The North Carolina Turnpike Authority (NCTA or Authority) was created in 2002 by the General Assembly in response to concerns about rapid growth, heavy congestion and dwindling resources. The General Assembly has authorized the Authority, now a division of the North Carolina Department of Transportation (NCDOT), to study, plan, develop, construct, operate and maintain up to nine projects. Additional information about the NCTA can be found at <http://www.ncturnpike.org>.

NCTA is seeking proposals for Bond Counsel services in connection with a series of project revenue financing bond issues (the “bond issue” or “bonds”). Proceeds of the bonds will be used to pay capital costs related to the design, engineering, right-of-way acquisition, and construction of various toll highways and bridges, including appropriate reserves and capitalized interest. The Authority’s first issuance of revenue and appropriation bonds was completed in July, 2009 for the Triangle Expressway (TRIEX) project. The Authority will also seek loans from governmental entities, such as US DOT’s TIFIA program, and other innovative financing techniques which may also require participation of Bond Counsel.

The Authority cannot predict the timing or the amount of the bond program at this time. The projects currently being studied by NCTA are the Monroe Parkway, Gaston Garden Parkway and Mid-Currituck Bridge. Each project is estimated to cost between \$700 million and \$1 billion. No assurances can be made at this time, however, that any projects will be determined to be financially feasible or that any bonds would be issued.

SCOPE OF SERVICES

Bond Counsel will work closely with the Authority, its staff, the Authority’s financial advisors and Underwriters. This contract will be for a period of three (3) years, commencing with the date that an award is made. The services to be provided by Bond Counsel will include, but not be limited to, the following activities:

1. Advise the Authority and staff on any legal matters related to the planning for future bond transactions, including the use of any state or local non-toll revenue sources.
2. Attend meetings of the Authority’s governing board to the extent required or requested.

3. Prepare and/or review resolutions, orders, agreements, contracts, and other documents to which the Authority is a party and which will be necessary in connection with the issuance of the bonds.
4. Review any other agreements which may impact the Authority's credit rating, or in any way restrict the Authority's borrowing capacity.
5. Advise and assist the Authority with Bond Validation or similar proceeds as may be required.
6. Assist the Authority in presentations to the major rating agencies in order to obtain credit ratings for the bonds.
7. Render opinions on the legality and taxability of the proposed bond transaction.
8. Prepare non-arbitrage certificates and all other necessary tax documents.
9. Prepare any IRS filings required by federal tax law.
10. Assist in the preparation of specified sections of the Preliminary Official Statement and the Final Official Statement, with the understanding that bond counsel will not be expected to independently verify other data contained in the Official Statement and that the Official Statement may so state.
11. Prepare certain certificates and review such other documents as are customary and necessary in order to structure and issue bonds.
12. Provide advice and counsel on continuing compliance with securities, tax and other applicable law.
13. Supervise the preparation, execution and delivery of the bonds to the purchasers or the Depository Trust Company.
14. Produce bound transcripts of transaction documents.
15. Advise the Authority and staff on any legal matters related to any proposed alternative financing mechanisms including, but not limited to, various governmental loan programs.
16. Advise the Authority and staff on any legal matters related to any proposed alternative financing mechanisms including, but not limited to, Private Investment or Concession agreements.
17. Provide on-going legal support and advice for existing bonds and TIFIA loan as maybe required on the Triangle Expressway Project (TRIEX).
18. Advise the Authority on all other matters necessary and incidental to the issuance of the bonds including interpretation of the enabling legislation.

PROPOSAL SCHEDULE

Request for Proposals distributed:	February 12, 2010
Deadline for Q&A	February 19, 2010
Deadline for submission of proposals:	February 26, 2010
Shortlist of Proposers:	March 12, 2010
Oral Interviews (if necessary):	March 19, 2010
NCTA Recommendation:	April 1, 2010

The Authority may at its sole discretion determine that none of the Statements of Qualifications meet its goals and objectives and may elect to terminate the evaluation process.

During the active RFQ selection process, all communications with the NCTA must be in writing to the following email address: BondcounselRFQ@ncturnpike.org or to:

David C. Miller, Managing Director
Public Financial Management, Inc.
300 South Orange Avenue, Suite 1170
Orlando, Florida 32801

.Failure of any proposer to comply with the written communication requirement will result in the proposal being disqualified. This written requirement extends to all respective board members, employees and advisors to both NCDOT and NCTA participating in this RFQ review and selection process.

CONTENTS OF PROPOSAL

The Authority encourages the Proposers to be concise in their proposals. Please limit the proposal to 15 pages (front side only) excluding cover, table of contents, dividers, and exhibit. General marketing publications and materials are discouraged. Please use size 12 font type. Please address the following items in responding to this Request for Proposal.

1. Provide a brief history and description of your firm, with particular emphasis on the firm's public finance practice and experience in the State of North Carolina
2. Provide a statement regarding your understanding of and ability to provide the required scope of services. Include a brief discussion of NCTA's ability to secure bonds with non-toll revenues which may be derived from NCDOT or local sources.
3. Provide a review and examples since January 2008 of the firm's ability to author agreements with non-governmental entities such as insurance and banking firms.
4. Identify in tabular form the number and dollar volume of revenue bond issues such as toll facilities, highways, airport, seaport, transit and other public facilities

for which your firm has served as bond counsel since January 1, 2005. For each transaction, please include the following information: date of transaction, issuer's name, par amount of borrowing, description of the project, and name of the attorney within your firm who served as the day-to-day contact for the issuer. (This may be placed as an exhibit outside the page limit.)

5. Identify in tabular form the number and dollar volume of other bond issues (i.e. appropriation revenue bonds) for which your firm has served as bond counsel since January 1, 2005. For each transaction, please include the following information: date of transaction, issuer's name, par amount of borrowing, description of the project, and name of the attorney within your firm who served as the day-to-day contact for the issuer. (This may be placed as an exhibit outside the page limit.)
6. Identify in tabular form the number and dollar volume of federal participation and innovative financing programs for which your firm has served as bond counsel since January 1, 2005. For each transaction, please include the following information: date of transaction, issuer's name, par amount of borrowing, description of the project, and name of the attorney within your firm who served as the day-to-day contact for the issuer. (This may be placed as an exhibit outside the page limit.)
7. Identify in tabular form the number and dollar volume of North Carolina municipal bond issues for which your firm has served as bond counsel since January 1, 2005. For each transaction, please include the following information: date of transaction, issuer's name, par amount of borrowing, description of the project, and name of the attorney within your firm who served as the day-to-day contact for the issuer. (This may be placed as an exhibit outside the page limit.)
8. Identify the attorney(s) to be assigned to the Authority's financing and provide their resumes. Include only those attorneys who will have a substantive and ongoing role in providing bond counsel services to the Authority. For each attorney and the individual project, summarize their experience with project revenue bond issues, with emphasis on the revenue and appropriation bond issues and issuers listed in your response to 2) and 3) above, and attorney's role in transaction. Provide certification that the lawyers in the firm are licensed to practice law in North Carolina.
9. Provide three client references, including name, telephone number, and e-mail address for transactions completed by the attorney designated as the lead for the Authority's proposed financing.
10. Has your firm ever been involved as a defendant in any action contesting performance? During the previous five years, have there been any investigations or litigation regarding the conduct of your firm, the firm's management, or employees? Describe the resolution of all such investigations, including detailed information regarding any actions taken against your firm or any of its employees. (This may be placed as an exhibit outside the page limit.)

11. A description of the errors-and-omissions insurance coverage carried by your firm that is applicable to services of this nature.
12. A disclosure of any known or foreseeable conflicts of interest which would exist if your firm was selected as bond counsel for the Authority.
13. Fees and expenses for bond transaction may be submitted as either hourly rates, a per bond fee or a fixed fee per transaction. Please indicate a not-to-exceed amount for each transaction. Bond counsel fee will be contingent upon the successful completion and delivery of the proposed bond issue. For other compensation involving early legal work required for beginning the bond transaction, you may propose compensation in the form of a monthly retainer or hourly rate. For the purpose of this RFQ, early work will be limited to activities directly related to the requisite bond work required for a typical bond transaction. Describe clearly how such services and fees would be calculated and how your firm will determine whether those services are outside of the actual bond transaction. The Authority will reimburse approved expenses upon substantiation of actual incurrence. Although you may submit a per bond fee or a fixed fee per transaction, failure by the proposer firm(s) to provide hourly rates will result in proposal being dismissed from consideration in the RFP process. Also, discuss the approach your firm takes to efficiently allocate the legal work assignments to professionals of various levels (e.g., partners, associates, paralegals, etc.)

PROPOSAL EVALUATION

Proposals will be evaluated on these factors:

- Dollar volume and number of successfully closed public financing programs for projects in the State of North Carolina
- Estimated total Fees and Expenses for bond issuance program
- Evaluation of conflicts of interest
- Experience in other financing programs that will benefit the NCTA in its financing program

PROPOSAL SUBMISSION

Proposals are due to the Authority by 2:00 pm (EST) on Friday, February 26, 2010. Proposals will be date and time stamped upon receipt. Proposals received after the deadline will not be considered and will be returned unopened.

Address of Proposals: Responses to this Request for Proposals should be sent to:

Original and 10 copies (TOTAL 11):

Mr. David Joyner
Executive Director
North Carolina Turnpike Authority
1501 Mail Service Center

Raleigh, North Carolina 27699-1501

The Authority does not intend to conduct a formal opening of the proposals. Proposals shall be logged for the purpose of certifying that they were submitted in a timely manner, and shall be opened thereafter at staff's earliest convenience.

The Authority does not assume any responsibility for expense incurred in the preparation of proposals. The Authority reserves the right to cancel this solicitation and the right to reject any and all proposals.

Additionally, the Authority reserves the right to:

- a. Waive irregularities in any proposals which are immaterial in nature.
- b. Request clarification of any information submitted.
- c. Request an oral interview with and/or additional information from a firm or firms prior to final selection for the proposed financings.
- d. Select for contract negotiations the offeror's proposal that, in its judgment, best will meet the Authority's needs.
- e. Negotiate with the firm submitting the best proposal to secure more favorable conditions.
- f. Negotiate a contract that covers selected parts of a proposal, or a contract that will be interrupted for a period, or terminated.

EXPERIENCE AND REFERENCE CHECKS

The Authority reserves the right to consider historic information and fact, whether gained from the offeror's proposal, question and answer conferences, references, or any other source, in the evaluation process. Proposer acknowledges (i) that Authority will contact various persons who are familiar with proposer's prior work and related matters, whether such persons are voluntarily disclosed to the Authority in this proposal or not; (ii) that truthful and complete information is necessary for the Authority to make an adequate evaluation; and (iii) that proposer will not take any action against any person who responds truthfully and in good faith to a *bona fide* inquiry by the Authority for purposes of evaluating the proposals received by the Authority under this solicitation.

CLARIFICATIONS and INQUIRIES

The Authority reserves the right, at any time after opening and prior to award, to request from any proposer clarification and address technical questions. Such a process may be used for such purposes as providing an opportunity for the proposer to clarify his

proposal in order to assure mutual understanding and/or aid in determinations of responsiveness or responsibility.

If a proposer finds that he cannot complete a proposal without additional information, he may submit written questions to the persons designated below. All replies to questions will be in writing. All questions and written replies will be distributed to all proposers.

Questions to:

David C. Miller, Managing Director
Public Financial Management, Inc.
300 South Orange Avenue, Suite 1170
Orlando, Florida 32801

Telephone:

Telephone: (407) 648-2208

E-mail:

E-mail: millerd@pfm.com

**SCHEDULE ONE
NORTH CAROLINA TURPIKE AUTHORITY, NORTH CAROLINA
-CERTIFICATE OF NO CONFLICTING RELATIONSHIPS-**

The undersigned hereby certifies that:

- 1) He/she is an officer of the respondent, authorized to commit the respondent to all terms and conditions outlined in this proposal;
- 2) No conflict of interest exists, or is likely to exist, between the respondent and the Authority;
- 3) No relationship exists between the respondent and the Authority or any of its employees that would in any way interfere with fair competition in the selection process;
- 4) There is no relationship, contractual or otherwise, between the respondent and any other individual, firm or organization that may be a party to the contract that may be a conflict of interest or would in any way interfere with the respondent's ability to perform the duties described in the Request for Proposals;
- 5) Except as described in its proposal, the respondent will not receive any compensation, directly or indirectly, in connection with the proposed offering without the prior written approval of the Issuer,
- 6) The respondent will neither make, nor cause to be made, any payment to a third party in connection with the proposed offering, or the investment of the proceeds of the proposed offering, without the prior written approval of the Issuer; and
- 7) The Respondent will not engage in the representation of any party who is, or who has given notice of its intention to become, a party plaintiff in any lawsuits in which the NCTA or NCDOT is or would be a party defendant.

DATE: _____

SIGNATURE: _____

SIGNATURE: _____

SIGNATURE: _____