

# **Tobacco Settlement Financing Corporation**

## **Solicitation for Offers for Co-Bond Counsel Services Tobacco Settlement Asset-Based Refunding Bonds, Series 2013-A March 4, 2013**

### **I. Introduction**

The Tobacco Settlement Financing Corporation (the "TSFC") seeks proposals from qualified law firms to serve as co-bond counsel (the "Co-Bond Counsel") for a prospective bond issue of Tobacco Settlement Asset-Backed Refunding Bonds (the "Bonds"). The purpose of this Solicitation for Offers (the "SFO") is to provide the TSFC with a fair and competitive process for the selection of such Co-Bond Counsel. The selected law firms will provide legal services to the TSFC in coordination with the Attorney General's Office in connection with the possible issuance of the Bonds for a period commencing on the date the firm is chosen and continuing until the completion of the financing, including all post closing matters (the "Term"). Within this SFO, law firms responding to this SFO will sometimes be referred to as "proposers", or, when convenient and appropriate, may be addressed in the second person as "you", "your" or "yours".

### **II. Background Information**

The TSFC was created by Act 1145 of the 2001 Regular Session of the Louisiana State Legislature as a special purpose, public corporate entity, and an instrumentality independent of the State.

On November 7, 2001, the TSFC issued Tobacco Settlement Asset-Backed Bonds in the amount of \$282,950,000, Series 2001A (Taxable) and \$919,795,000, Series 2001B (Tax-Exempt). Those bonds were issued to finance the TSFC's purchase of 60% of the State's future receipts from the Master Settlement Agreement ("MSA") with participating cigarette manufacturers. The bonds are secured by the TSFC's claim to 60% of this future receipt. The TSFC has no taxing power and no assets or revenues of the State, or any political subdivision thereof, is or shall be obligated or pledged to the payment of the principal of or interest on the bonds. The Series 2001A Bonds have been paid. As of June 30, 2012, the outstanding principal of the Series 2001B bonds is \$823,100,000. Additional information regarding the TSFC's financial position and the bonds may be found in the latest TSFC annual financial report, which is available online at the following location:

[http://app1.la.state.la.us/PublicReports.nsf/873578DE4088D46B86257AF5004F8BC0/\\$FILE/0002ECFC.pdf](http://app1.la.state.la.us/PublicReports.nsf/873578DE4088D46B86257AF5004F8BC0/$FILE/0002ECFC.pdf)

All Bonds that are proposed to be issued will be tobacco settlement asset-backed refunding bonds of the TSFC, a single-purpose, bankruptcy remote financing entity. The TSFC was authorized and created by the State Legislature, and the State has sold and assigned without recourse a portion (60%) of the State's share of payments under the MSA to the TSFC. The Bonds are payable from and secured solely by a portion of the State's tobacco receipts to be received under the MSA that are sold or assigned to it. The Bonds do not constitute general obligations of the State, and the State's full faith and credit will not be pledged to secure the Bonds.

Offerors responding to this SFO should base their presentations on an issue of Bonds of an aggregate par amount not to exceed approximately \$900,000,000.

### III. Minimum Qualifications.

In order to be considered for appointment as "Co-Bond Counsel", a proposer must demonstrate that it has "substantial experience" (as hereinafter described) in the practice of law related to tobacco settlement asset-backed bonds. For purposes of this SFO, "substantial experience" shall mean that a proposer has at least one partner on staff who has a minimum of ten (10) years of corporate or municipal finance experience as bond counsel and who has been bond counsel for tobacco settlement asset-backed bonds within the past thirteen (13) years. Additionally, all proposers' firms must be listed in "The Bond Buyer's Municipal Marketplace", Municipal Bond Attorneys, Fall 2012 Edition.

### IV. Scope of Services

Services to be provided pursuant to this SFO shall include, but not be limited to, the following:

- In coordination with the Attorney General's Office, draft and/or review appropriate statutes, resolutions and other legal documents to ensure that the Bonds are issued in accordance with State and Federal laws and regulations;
- Assist in the preparation of the official statement and other disclosure documents;
- As necessary, and in concert with the Attorney General's Office, resolve legal and tax issues regarding the issuance of the Bonds;
- Review and/or verify the financing plan and cash flows prepared by the underwriting team to ensure compliance with relevant arbitrage restrictions;
- Assist with rating agency presentations;
- In concert with the Attorney General, litigate the legality and validity of the legislation, transfer of MSA payments, the Bonds and/or the security therefore, if necessary;
- Negotiate or assist in the negotiation of credit enhancement arrangements;
- Render an opinion as to the legality and tax status of the Bonds; and
- In concert with the Attorney General's Office, prepare and distribute closing documents (including the arbitrage certificate) to the appropriate parties and coordinate and conduct the closing of the transaction.

### V. Term of Appointment

The law firms chosen as Co-Bond Counsel in connection with this SFO will be appointed to begin work immediately upon notification of their selection and to continue providing the services until the financing is completed. The law firms chosen shall also provide services in connection with any and all post-closing matters relative to the financing. The actual closing date for the Bonds has not yet been established; however, the TSFC reserves the right to adjust

the financing schedule as may be in the best interest of the TSFC. However, for the purposes of the SFO, a proposed financing timetable is included which estimates closing on or before June 1, 2013. The TSFC will not pay any fees or expenses to the firm(s) selected in the event that any anticipated financing is not completed.

VI. Required Information. (Please note: when providing the information requested in this section, please refer to Section VIII, Preparation and Submission of Proposals.)

Each offer for Co-Bond Counsel, intended to be responsive to this SFO, must answer the following inquiries:

1. Information Regarding Your Firm. Please provide the following general information about your law firm as applicable:

a. Company Name, Address, Principal Place of Business, and Years of Experience. Provide your firm's name and business address, date of formation and principal place of business, years in practice and years of corporate and municipal finance experience. PAGE LIMIT: ½ PAGE.

b. Qualifications. Describe the work which best illustrates your firm's expertise as bond counsel with tobacco settlement asset-backed bonds. Describe past performance as bond counsel on tobacco settlement asset-backed bonds. PAGE LIMIT: 2 PAGES.

c. Experience. List the tobacco settlement asset-backed bond transactions for which your firm has served as bond counsel over the past 13 years. PAGE LIMIT: LISTING OF ISSUES CAN BE SHOWN IN APPENDIX AND WILL NOT COUNT AGAINST PAGE LIMIT.

d. Personnel. Please provide brief résumés or curriculum vitae of all attorneys, from partner level to associate, who would be assigned to work on the Bonds. Please provide offices held by attorneys of your firm in state or national legal organizations or activities performed, publications, lectures given or panels or symposia led by attorneys of your firm, or any pertinent information which you think would be of interest to the TSFC in this selection process. PAGE LIMIT: 4 PAGES.

e. Malpractice insurance. Please provide the limits of your firm's malpractice coverage. Please state whether your firm or any of the attorneys who would be assigned to work on the Bonds has any past claims and the disposition of such or has any claims pending against it related to opinions delivered in prior bond issues. PAGE LIMIT: 2 PAGES

f. Give a brief but complete description of any criminal proceeding, criminal investigation, or other oversight entity's investigation of alleged securities laws violations involving your firm (all areas of the firm) or any professionals in your firm who would be involved in this financing. Please cover the period January 1, 2003 through the present. NO PAGE LIMIT. UNLIMITED.

g. Conflicts of Interest. All respondents are requested to include an affirmative statement that no conflicts of interest will result, or appear to result, from its retention as Co-Bond Counsel. Please disclose any conflicts of interest or potential conflicts of interest or ethical

considerations that may arise as a result of your firm being hired for this engagement. NO PAGE LIMIT. UNLIMITED.

h. Please review Rule No. 1993-A of the Commission entitled "Disclosure Agreements Between Financial Professionals for Negotiated Transactions," and provide a statement of your firm's ability to comply therewith. PAGE LIMIT: ¼ PAGE.

i. References. Please list three (3) references, including names, addresses and telephone numbers, of issuer clients which are familiar with your firm's work and qualifications as bond counsel with tobacco settlement asset-backed bonds. (Omit references from Louisiana Treasury Department Staff, State Bond Commission members or staff, State Division of Administration staff, State Attorneys General or staff, and State Legislators and staff). PAGE LIMIT: ½ PAGE.

2. Fee Proposal. Using the Fee Proposal Worksheet attached hereto, please provide your firm's total fixed fee for the Services as Co-Bond Counsel, expressed as an amount per \$1,000 of debt issued. For purposes of this SFO, assume a \$900,000,000 bond issue size. Outline the specific services you expect to provide which will be covered by this fee. Provide a "not to exceed" figure for out-of-pocket expenses. Additional expenses, other than those originally approved by the TSFC, will not be paid unless such expenses were incurred at the TSFC's specific written request. The TSFC will not pay any fees or expenses to the firm(s) selected in the event that any anticipated financing is not completed, and TSFC cannot guarantee that the Bonds will be sold as discussed herein.

Please list any additional services outside those described in the Scope of Services herein from which you think the TSFC would benefit, and a "not-to-exceed" cost for each such additional service. Please provide an hourly rate your firm would charge the TSFC for consultation on such additional services and on any matters unrelated to the Services described herein for which the TSFC may wish to consult your firm during the term of this appointment. It is not anticipated that a bond validation suit will be required for the issue contemplated by this SFO; however, if a bond validation suit is determined to be necessary, state your firm's maximum charge, if any, for such a suit. Please assume a district court level validation proceeding. PAGE LIMIT: ½ PAGE

Reservation of Right to Negotiate Fees and Expenses. The TSFC reserves the right to negotiate all fees and expenses.

VII. Evaluation Process. The TSFC intends to evaluate these proposals for Co-Bond Counsel according to the following criteria:

(80%) Qualifications and breadth of relevant experience of the firm, as well as its individual staff members, in the performance of bond counsel work related to tobacco settlement asset-backed bonds, based upon information contained in the proposal and upon information received from references from comparable past work.

(20%) Cost of services, based upon fee and expense proposal.

## VIII. Preparation and Submission of Proposals.

General. The TSFC reserves the right to reject any and all proposals, to waive any and all informalities outlined in this SFO and in the selection process, and, generally, to make the award which, in its judgment, will best meet the objectives stated in this SFO. Prospective co-bond counsel firms are asked to refrain from contacting State employees, Legislators, or other State or TSFC officials or members regarding the SFO during the proposal review and selection process. Any questions or requests for clarifications of this SFO should be directed, in email form, by 12:00 NOON, Baton Rouge Time (Central time zone), Thursday, March 7, 2013, to Ben Huxen, Assistant Attorney General, at [huxenb@ag.state.la.us](mailto:huxenb@ag.state.la.us). All firms which have submitted questions or requests for clarifications, or which ask to be placed on the list, will receive a copy of the written responses to the questions and requests. The cost related to the preparation, submission and presentation of a response is to be borne entirely by the firm. It is the sole responsibility of each firm to inquire into and clarify any item of this SFO that is not understood. Offerors are solely responsible for both the timely transmission to and receipt of inquiries by the TSFC.

Required Form of Proposal. Information must be presented on letter size paper in the order listed in Section VI. No joint proposals will be allowed. Each page must be numbered, and the number of written pages must not exceed twenty (20), single-spaced letter size pages (or the sum of the various page limits shown herein, whichever is shorter) of not less than 12 font. Further, any appendices or attachments should not be longer than five (5) pages. Each proposal must be bound in a single volume. No proposals submitted by fax will be accepted.

Ten (10) copies of the proposal must be submitted in a sealed envelope and identified with a label reading as follows: "Proposal to provide bond counsel services to the Tobacco Settlement Financing Corporation, in accordance with the Solicitation for Offers dated March 4, 2013. Please include Name of Firm, Name, Address & Telephone of Contact Person. The sealed envelope should be sent to: Ben Huxen, Assistant Attorney General, 1885 North Third Street, 6<sup>th</sup> Floor, Baton Rouge, Louisiana 70802. Two (2) additional copies must also be sent at the same time and with the same deadline to Elizabeth Murrill, Executive Counsel to the Commissioner of Administration, 1201 North Third St., Suite 7-210, Baton Rouge, LA 70802. Proposals which do not follow this format and these instructions may be subject to disqualification.

Time of Submission of Proposal. Proposals must be received by both addressees at both of the above addresses no later than 12:00 NOON Baton Rouge Time on Tuesday, March 12, 2013.

## IX. Basis of Award

The TSFC's decision will be made on the basis of the "best proposal". Please be advised that the TSFC intends to hire a minimum of two (2) and a maximum of three (3) co-bond counsel firms. The TSFC also reserves the right to reject any or all proposals and to waive any irregularity contained in any proposal received. The TSFC further reserves the right to negotiate fees. It is anticipated that final counsel selection will be made by the TSFC at a date yet to be determined. The TSFC may request oral interviews for certain prospective counsel as part of the selection process; however, the TSFC reserves the right to select counsel without engaging in interviews or other discussions with offerors. Therefore, all offers should be submitted on the most favorable terms. However, if oral presentations are required, 75% of the total grade will be assigned to the written proposal as outlined above and 25% to the oral presentation.

The TSFC may reject any and all offers, may require additional technical and background information during the evaluation period, and/or negotiate all elements, including fees, which are contained in or which relate to any offer. By submitting an offer, the offeror agrees to these terms.

X. Costs Incurred In Preparation of Offer

All costs directly or indirectly related to preparation of an offer responding to this SFO, any oral presentations required to supplement and/or clarify an offer, and any reasonable appearance which may be required in connection with this SFO, shall be the sole responsibility of the offeror. The TSFC shall not be liable for any expenses incurred by the offerors in the preparation and presentation of the offers and may terminate the selection process at any time without prior notice. All offers submitted pursuant to this SFO will become the property of the TSFC. The TSFC will not pay any fees or expenses to the firm(s) selected in the event that any anticipated financing is not completed. The TSFC reserves the right to waive any informalities in any offer.

**PROJECTED TIME TABLE**

**Monday, March 4, 2013: Email Distribution of SFO**

**Thursday, March 7, 2013: Inquiries Due by NOON BATON ROUGE TIME  
(Central Standard Daylight Savings Time)**

**Friday, March 8, 2013: Answers to Inquiries Emailed**

**Tuesday, March 12, 2013: Proposals Due Noon BATON ROUGE TIME (Central  
Standard Daylight Savings Time)**

**Thursday, March 14, 2013: Selection Recommendation by Executive Evaluation  
Committee**

**Friday, March 15, 2012: TSFC Board Meeting to confirm Executive Committee  
Selection**

FEE PROPOSAL WORKSHEET  
 ASSUMING A \$900,000,000 BOND ISSUE

	<u>\$/1000</u>	<u>Estimated Hours</u>
All Bond Counsel and Bond Issue Services (per \$1,000 of debt issued)	\$ _____	_____
Estimated fee for bond validation suit	\$ _____	_____
Out-of-Pocket Expenses (itemized)* (must provide a cap)	\$ _____	_____
Other Services (itemized)* (must provide a cap)	\$ _____	_____

*\*Please note the cap will be used as the figure for evaluating your proposal.*

THE FOLLOWING ITEMS WILL NOT BE USED TO RANK FEE PROPOSALS

Hourly Rate to be Charged for Unrelated Services                      \$ \_\_\_\_\_