

REQUEST FOR PROPOSALS

**TO SERVE AS GENERAL COUNSEL FOR THE STATE
ENVIRONMENTAL IMPROVEMENT AND ENERGY
RESOURCES AUTHORITY**

April 10, 2020

REQUEST FOR PROPOSALS

I. INTRODUCTION

The State Environmental Improvement and Energy Resources Authority of the State of Missouri (the "EIERA") is a governmental instrumentality and body corporate and politic established pursuant to Sections 260.005 to 260.125 RSMo, as amended. The EIERA is authorized to provide for the conservation of air, land, and water resources of the State by the prevention or reduction of pollution, provide for proper methods of disposal of solid waste and sewage, provide for the furnishing of water facilities and resource recovery facilities, provide for the development of the energy resources of the State and to provide for energy conservation, energy efficiency projects and increased energy efficiency in the State. The EIERA is authorized to acquire, construct, and finance projects, to issue bonds and notes, and make loans to pay the costs of the projects. In furtherance of its purposes, the EIERA has established leveraged wastewater and drinking water financing programs (collectively the "SRF Program"), the Market Development Program (the "MMDP"), the Missouri Brownfields Revolving Loan Fund, and works as paying agent with the Department of Natural Resources' Division of Energy and certain investor-owned utilities for the utilities' low income weatherization assistance programs, and with the State Natural Resources Trustee for certain environmental restoration projects. The EIERA will from time to time, modify existing programs and develop new programs. The EIERA is requesting proposals to serve as General Counsel to the EIERA and its programs.

The EIERA is a quasi-governmental body whose employees are not subject to the state personnel law, chapter 36, RSMo. EIERA contributes directly from EIERA funds to State retirement, health insurance, and other benefit programs for its employees, and funds and administers its own payroll and other expenses from EIERA funds. The EIERA currently employs four full time employees and one part-time employee. The primary contact for General Counsel to the EIERA on routine matters is the Executive Director who may designate staff members to be the primary contact for particular issues.

Much of the specialized professional work necessary to the EIERA is performed by firms or individuals selected through competitive processes. Currently, the EIERA has agreements in place for legal, financial advisory, accounting, and auditing services in addition to contractors providing bond counsel, investment banking (underwriting), and trustee services. The terms for these agreements are staggered and run from three to five years, some with the potential for extension.

The EIERA is obligated to operate under applicable state and federal law, executive orders, federal tax code, certain securities and exchange regulations, and any other state or federal regulations governing its administration, financings, and programs.

The SRF Program

The EIERA, in cooperation with the Department of Natural Resources (the "DNR"), the Clean Water Commission, and the Safe Drinking Water Commission, has implemented the SRF Program. As of the date of this Request for Proposals ("RFP"), approximately \$2.37

Billion of EIERA Water Pollution Control and Drinking Water Revenue Bonds and Notes (State Revolving Fund Program) (the "SRF Bonds") have been issued.

The SRF Program currently operates under a cash-flow structure. DNR enters into direct loans with program participants at an interest rate equaling 30% of the AAA 25 year revenue bond index at the time of loan closing. Program participants issue a bond to DNR evidencing their obligation to repay the loan. When additional funds are needed for participant loans, the EIERA issues SRF Bonds secured under its 2010 Master Trust and DNR pledges its rights, title, and interest in and to the principal and interest payments of designated participant loans as security for the payment of SRF Bonds secured by the 2010 Master Trust. The last time EIERA issued new-money bonds under this structure was in October 2018. It is anticipated that another transaction is possible in 2022; however the size and timing is unknown. A copy of the Official Statement of the 2018A SRF Bond transaction is attached hereto and marked "Exhibit A." The 2010 Master Trust provides flexibility to allow other structures (including a return to a reserve fund model), should market conditions allow.

Prior to the 2010B SRF bond transaction, SRF bonds issued by the EIERA were credit enhanced by a reserve fund generally equal to 70% of the amount of the principal of the SRF Bonds and issued under the 2004 Master Trust. The last reserve fund SRF transaction was issued in October of 2008.

Funds in the reserve accounts and those in repayment accounts, prior to bond/interest payment dates, are invested in collateralized guaranteed investment contracts or repurchase agreements with various investment providers. Many of those investment providers' credit ratings have decreased over time. When the credit quality of those providers pose a threat to the rating of the EIERA's SRF bonds, efforts are made to favorably terminate the agreements. A list of the current investment agreements is attached hereto and marked "Exhibit B".

From time to time, the EIERA issues revenue bonds to refund previous SRF transactions. In March 2020, the EIERA issued \$74,110,000 in SRF refunding bonds. A copy of the Official Statement of the 2020A SRF Refunding Bond transaction is attached hereto and marked "Exhibit C."

Conduit Financings

The EIERA also issues Private Activity Bonds (PABs) for the financing of certain Missouri facilities pursuant to Sections 260.005 to 260.125, RSMo, in cooperation with the Missouri Department of Economic Development. Conduit financings may be accomplished through taxable or tax-exempt financing. These issues are regulated by federal and state laws and may consist of floating or fixed-rate notes, short to intermediate term bonds, or long-term bonds.

Since the EIERA's inception, approximately \$2.5 Billion in debt has been issued through conduit financings. EIERA has issued conduit debt on behalf of 30 different entities in over 100 separate financings. The last conduit transaction that the EIERA issued was for the Tri-County Water Authority in the amount of \$38,600,000 in 2015. (A copy of the Official Statement for the 2015 Tri-County Water Authority transaction is attached hereto and marked "Exhibit D.")

It is the EIERA's policy to pay for a portion of EIERA Counsel fees relating to a PAB transaction, not to exceed the lesser of \$10,000 or 80% of the issuance fee. The balance of the EIERA Counsel fees relating to a transaction is the responsibility of the borrower.

The Missouri Market Development Program

The EIERA, in cooperation with the DNR and the Missouri Department of Economic Development, administers the Missouri Market Development Program (MMDP) to encourage the development and maintenance of markets for recovered materials.

The MMDP receives \$800,000 annually from the state's Solid Waste Management Fund in accordance with Section 260.335, RSMo. This fund is capitalized with a per ton fee levied at sanitary landfills, demolition landfills, and on solid waste transported out of the state through transfer stations. The program provides a broad range of technical and financial services.

The MMDP offers direct financial assistance to Missouri businesses, governments, and organizations to develop and expand manufacturing capacity in the state by assisting businesses with the purchase of equipment needed to enable manufacturing facilities to use recovered materials as feedstocks. Approved financial assistance projects usually involve an agreement between the EIERA and the project with a term of approximately three years. During this time, the EIERA retains a primary security interest in the equipment purchased with program funds and may or may not have priority over other liens. Since its formation in 1992, the MMDP has awarded over \$13.9 million in financial assistance through 214 projects. During the past five fiscal years, the MMDP has awarded financial assistance to 23 recipients.

The Missouri Brownfield Revolving Loan Program

The EIERA receives grant funds from the United States Environmental Protection Agency to capitalize a program to fund the cleanup of hazardous substance and petroleum contamination on brownfields (properties that are un- or under-utilized due to contamination). The grant also allows the cleanup of mine-scarred lands and property contaminated by controlled substances. To date, the EIERA has received \$4.77 million in federal funds for the program and provided \$722,600 in match from EIERA funds.

Funds may be loaned to private or public entities and, in limited circumstances, granted to public and non-profit entities for cleanup activities. Approved project participants enter into an agreement with the EIERA with variable terms. All loans are secured with appropriate instruments, generally deeds of trust. Agreements also contain provisions in which the participant certifies they will meet or have met federal grant terms and conditions. In the last five years, the EIERA has entered into agreements with 8 participants. There has been one loan default. There are approximately \$200,000 in unobligated cleanup funds. The EIERA has applied for additional funding for this program; however, it is unknown whether additional funds will be awarded or, if so, in what amount.

II. OBJECTIVE

The EIERA is seeking proposals from experienced and qualified law firms to serve as General Counsel to the EIERA in connection with the above described financings and programs and requirements described in "scope of services and program requirements" below. It is anticipated that the selection will be made by June 4, 2020.

III. SCOPE OF SERVICES AND PROGRAM REQUIREMENTS

The contracted General Counsel will provide the following services in connection with the programs and responsibilities of the EIERA:

1. Attend all Board meetings. The Board convenes regularly scheduled meetings, as needed, at least quarterly. Approximately six meetings are held each year. Meetings are held in various locations around the state, but most are held in Jefferson City. Occasionally, meetings are held by teleconference.
2. Prepare or review all resolutions and motions for consideration by the Board at the request of staff.
3. Assist staff in preparing for the Board meetings. This includes review of some staff memoranda and meeting agendas, review and analysis of applications for financing and assistance, determination of project eligibility, and miscellaneous consultation and advice to staff, all as requested.
4. Prepare drafts of closed meeting minutes, legal opinions, and certificates relating to the Board proceedings as requested or necessary.
5. Assist the Board or others in obtaining from governmental authorities such approvals, rulings, permissions, and exemptions as Counsel determines are necessary or appropriate with respect to the programs, actions and services of the Board.
6. Assist the Board and staff in complying with all laws and executive orders governing the conduct of the Board's business, including laws and executive orders covering open records, open meeting laws, and other required disclosures.
7. Assist in the process of planning and structuring bond financings and Authority programs.
8. Examine applicable law as it relates to the authorization and execution of documents to be executed by the Board or staff in connection with its programs, financings and services.
9. Attend meetings and conferences related to the financings, programs and services of the Board as requested and advise the Board and staff in connection therewith.

10. Advise the Board and staff regarding the impact of state or federal laws, legislation or regulations impacting the Board, its programs, projects and financings and assist in preparation or review of legislation or proposed regulations.
11. Advise the Board and staff with respect to any threatened or pending litigation or regulatory actions including those involving EIERA financings, programs and service providers regardless of whether the EIERA is a named party. Advise the Board members and staff and evaluate the Board's legal position with respect to potential litigation or other proceedings. Represent the Board in litigation and regulatory proceedings as requested.
12. Provide general advice and counsel to the Board members and staff regarding establishing and implementing policies and adhering to the special requirements imposed on public bodies. If requested, draft or assist in the drafting of policies or procedures.
13. Research and deliver opinions on operations and administrative matters that arise from time to time, including the rights and obligations of the Board or staff under existing laws and outstanding agreements.
14. Advise the Board members and staff on legal aspects in a variety of administrative matters, including personnel issues and applicable labor law. If requested, draft or assist in the drafting of policies, procedures, and/or administrative rules.
15. Advise the Board and staff concerning the legal requirements applicable to the issuance and sale of revenue bonds or other obligations, and review and draft documents as necessary.
16. Attend sale or closing of bond financings and provide representation of the Board at all meetings and conferences relating to transactions as necessary.
17. Consult with the Board's staff regarding proceedings relating to the issuance of revenue bonds or other obligations.
18. Review all documents required for financings and provide comments and suggestions on behalf of the Authority.
19. When needed, render a legal opinion on financing transactions as counsel to the Board as issuer.
20. Advise the Board and staff on matters relating to federal and other grant conditions and requirements.
21. Advise the Board and staff on and prepare, as requested, contracts with program participants, financial assistance recipients, service providers or others, including appropriate security agreements or filings such as deeds of trust or UCC filings.
22. Participate in or lead negotiations as requested.

23. Any and all other services necessary in connection with the financings, programs or operations including IRS (or other regulatory body) filings, negotiations, audits and examinations.

24. Perform such other legal functions as the Board may require.

IV. AGREEMENT

The selected contractor will be required to enter into a written Agreement for Services with EIERA. The Agreement will include, among other provisions, an initial term of five years with an additional two-year renewal; immediate termination for cause; termination by either party without cause with sixty days prior written notice; provisions for changing personnel assigned from those stated in the firm's proposal; requirements concerning general liability and bodily injury as well as professional liability/errors and omissions insurance coverage acceptable to the EIERA; and certifications regarding conflict of interest and the employment of unauthorized workers.

V. PROPOSALS

Neither the offeror nor its principals shall be debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this contract by any federal or state department or agency. A signed and dated statement to this effect shall be included in the submitted proposal package.

By submitting a proposal, each offeror is representing to the EIERA that it has undertaken a conflict of interest check, and, that if selected as General Counsel to the EIERA, it will have no actual conflict of interest or the appearance of a conflict of interest in undertaking this representation, and will agree not to undertake any representation that may create an actual conflict of interest or give the appearance of a conflict of interest during the performance of services rendered, without prior written waiver by the EIERA. The agreement to provide legal services will obligate the contractor to provide the EIERA with written notice of any representation that the firm desires to undertake that may present a conflict of interest or the appearance of a conflict of interest.

Joint proposals are not acceptable. Offerors are prohibited from contracting or subcontracting with other legal professionals for the purpose of delivering any of the services contemplated under this request for proposals without the prior written approval of the EIERA.

Qualifying proposals will include a description of the offeror's business organization, including the name and address of the firm, year established, number of employees, and descriptive breakdown of staff and types of services provided. The proposal should note whether the offeror is a minority or women owned enterprise. The offeror should identify key personnel assigned to this project and should provide their location and resumes. Qualifying proposals should also describe the qualifications of the offeror to perform work described in Section III of this RFP, entitled "Scope of Services and Program Requirements". Specifically, proposals should include the following information:

1. Provide a brief description of the firm; its history, organizational structure or Martindale-Hubbell ratings, and areas of expertise. Provide a particular emphasis on the firm's municipal and governmental law expertise.
2. For each of the last five calendar years, list each financing completed for any Missouri governmental entity for which the firm has (a) acted as counsel to the issuer (b) provided the approving opinion or (c) served in any role, indicating the issuer, date of issue, issue name, role of your firm and attorney who was primarily responsible for the work.
3. Describe the experience of the firm's attorneys who practice municipal law and municipal finance or who have experience serving as general counsel to a governmental body with the power to issue bonds.
4. Describe the experience of the firm's attorneys in the area of state and federal tax and securities law as it relates to governmental entities and/or municipal obligations.
5. Describe the experience of the firm's attorneys as it relates to representing State Agencies or quasi-governmental entities.
6. Describe the experience of the firm's attorneys in the area of personnel and labor law.
7. Describe the experience of the firm's attorneys in the areas of drafting and negotiating agreements and secured transactions.
8. Describe the experience of the firm's attorneys in the area of development/redevelopment/real estate law; environmental law, bankruptcy and in federal grant terms and conditions.
9. Provide a brief resume and Martindale-Hubbell Peer Review ratings for the attorney(s) who will be primarily responsible for serving as EIERA Counsel and discuss their experience applicable to the EIERA. Provide a statement as to availability and accessibility of the attorney(s) and primary office location(s).
10. Provide a brief resume and Martindale-Hubbell Peer Review ratings for key professional staff (attorneys, paralegals, etc.) who will be assigned to provide services to the EIERA and discuss their experience applicable to the EIERA. Describe how coordination/oversight will be handled between professionals providing services to the EIERA and what steps will be taken to provide cost effective services.
11. Describe how matters outside the specific expertise of key professional staff assigned to the EIERA will be handled, including the general type and level of professional to be involved and how coordination/oversight will be handled and what steps will be taken to provide cost effective services.
12. Describe any unique qualifications or resources of the firm that might assist you in providing legal services to the EIERA.

13. Provide a description of the firm's malpractice coverage, including whether such policy contains a security law endorsement, or excludes securities law coverage.
14. Describe any potential or actual conflicts of interest that may result from the firm serving as EIERA Counsel.
15. Discuss the firm's commitment to minority and female employment opportunities and the success of those efforts. State whether the firm is an M/WBE firm. Please provide a copy of the firm's EEO policy and Affirmative Action policy.
16. Indicate whether the firm, its attorneys or any related entity is or has been the subject of any criminal or regulatory investigation or action with a full description of the matter and its resolution.
17. Describe any pending or threatened litigation against the firm.
18. Provide a detailed description of the firm's presence in the state of Missouri. Include locations of offices and number of employees within the state.
19. Provide the names, addresses and telephone numbers of three references.
20. Provide a complete and detailed description of all fees and expenses that will be payable in connection with the performance of the firm's duties as General Counsel to the EIERA. Note that fees and expenses will be paid in the following format and should be proposed as such:

Fees:

Dollar Per Bond basis

- All bond transactions, **except** PAB transactions, will be paid in a dollar per bond amount. Please provide any applicable scale, minimum or maximum.

Dollar Per Hour basis:

- All general legal services.
- Non-transactional work relating to SRF or other bonds.
- Issuer counsel fees relating to PAB transactions.

Expenses:

- Bond transaction expenses: Normal operating expenses such as travel, meals, telephone and postage related to bond transactions will not be reimbursed (through bond proceeds or otherwise). Extraordinary expenses may be reimbursed solely from bond proceeds, subject to approval before the expense is incurred and with appropriate back-up documentation.
- General legal expenses will be reimbursed. Expenses incurred in the provision of general legal work must be necessary and reasonable in relation to providing legal services to a governmental entity.

The Agreement between the selected contractor and the EIERA will require the contractor to submit all Fees and expenses in a format clearly indicating the subject

matter for which they were incurred, the service performed, and the staff member providing the service. All invoices will be subject to review and approval by the EIERA Treasurer and/or staff. Certain expenses will require back-up documentation in a format acceptable to the EIERA. Billing is expected to be received monthly. Payment will be made by the EIERA as soon as practical and can generally be anticipated within three weeks from receipt of a complete invoice.

VI. SELECTION CRITERIA

The EIERA will evaluate each offeror's proposal and the contract will be awarded to the responsible offeror whose proposal is most advantageous to the program, with price and other factors considered. Proposals from responding offerors will be evaluated by the following criteria:

1. Expertise, experience and resources related to the business of the EIERA.
2. The experience and qualifications, relating to the scope of services, of those assigned as the primary contact(s) and key personnel.
3. Demonstrated ability to understand and meet the needs of the EIERA.
4. The firm's commitment to and demonstrated success in minority and female employment opportunities.
5. Fees and costs for legal services.

EIERA intends to adhere to Section 34.073 (1), RSMO., which provides that in the letting of contracts for the performance of any service, preference shall be given to bidders doing business as Missouri firms or which maintain Missouri offices or places of business when "the quality of performance promised is equal or better and the price quoted is the same or less."

VII. SUBMISSION OF PROPOSALS

To be considered, proposals must be received electronically by no later than 5:00 p.m. CST on **May 1, 2020**. Proposals should not exceed 25 pages (inclusive of cover pages, tables of contents, introductory letters, appendices and all other items) and should be e-mailed to: EIERA@eiera.mo.gov. If you do not receive a confirmation of receipt by noon of the business day following your submittal, contact EIERA at (573)751-4919.

EIERA reserves the right to cancel this RFP, accept, reject, or request changes to any or all proposals, or to make inquiries of responding offerors and their references and clients regarding qualifications or information submitted as part of this solicitation. EIERA may request additional information and/or an interview with individuals or entities prior to selection. EIERA is not obligated to provide a debriefing for unsuccessful offerors. EIERA is not liable for any costs incurred by any parties submitting proposals.

If you have any questions regarding this solicitation, please e-mail them to EIERA@eiera.mo.gov or use the "Contact Us" link on the right hand side of EIERA's website (<http://eiera.mo.gov>). Any questions must be submitted by 5:00 p.m. CST on **April 17, 2020**, and the responses will be available for viewing no later than noon on April 22, 2020, via a link on the Authority's website, <http://eiera.mo.gov>. Questions submitted after the deadline will not be answered.

Should a revision to this RFP be needed, notice will be available for viewing via a link on the Authority's website at <http://eiera.mo.gov> by noon on April 22, 2020.

It is each potential proposer's responsibility to check the website for such items. EIERA will not be sending questions and responses or RFP revisions to individual firms. Questions and answers may be posted prior to April 22, 2020.

Do not contact EIERA Board Members or Staff directly.

All proposals will remain confidential until the EIERA has selected the contractor. All proposals become the property of the EIERA and shall not be returned unless all proposals are rejected or the RFP is cancelled. Otherwise, the contents of all proposals will be in the public domain and be open to inspection by interested parties subject to exceptions provided in Missouri law. The EIERA may treat all information submitted by an offeror as public information following the conclusion of the selection process unless the offeror properly requests that information be treated as confidential at the time of proposal submission. Any request for confidential treatment of information must be included in the transmittal letter with the offeror's proposal. In addition, the offeror must enumerate the specific legal grounds for such request. If the offeror designates any information in its proposal as confidential, the offeror must also submit by email, a copy of the proposal from which confidential information has been excised. The confidential material must be excised in such a way as to allow the public to determine the general nature of the material removed and to retain as much of the proposal as possible.