

REQUEST FOR PROPOSAL

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

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1. INTRODUCTION

The State Environmental Improvement and Energy Resources Authority (“EIERA” or “Authority”), in cooperation with the Missouri Department of Natural Resources (“DNR”), the Clean Water Commission and the Safe Drinking Water Commission, has implemented the Missouri Clean Water and Drinking Water State Revolving Fund Programs (“SRF Loan Programs”). As of the date of this Request for Proposals (“RFP”), approximately \$2.8 billion of State Environmental Improvement and Energy Resources Authority Water Pollution Control Revenue Bonds and Notes (State Revolving Funds Programs) (the “Bonds”) have been issued to finance approximately 570 loans issued to pay for improvements to wastewater treatment and drinking water facilities throughout the State of Missouri (the “State”).

The current SRF Loan Program operates under a cash-flow structure. In this structure, DNR enters into direct loans with program participants at an interest rate equaling 30% of the AAA 25 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 to recapitalize the program or generate state match, the EIERA issues Bonds secured under its 2020 Master Trust and DNR pledges its rights, title and interest in, and the principal and interest payments of, designated participant loans as security for the payment of Bonds. The most recent issue of Bonds was the EIERA’s \$100,760,000 Water Pollution Control and Drinking Water Refunding Revenue Bonds (State Revolving Funds Programs) Series 2020B Bonds. The Official Statement for the 2020B Bonds is available [here](#).

Prior to 2009, the SRF Loan Program utilized a reserve fund model, which provided credit enhancement and the interest rate subsidy for the participants, with the direct loans reserved generally for participants not meeting the SRF Leveraged Program financial standards. A construction loan fund was funded from bond proceeds and disbursed as construction occurred, and contemporaneous with construction draws the reserve fund received deposits of state and/or federal funds in proportion to the construction disbursements. As the principal amount on the Bonds is repaid, a corresponding reserve amount is released from the series reserve accounts into the master trust where it is first available to cure shortfalls on any series of master trust bonds and, if there are no shortfalls, released back to DNR to finance new projects. None of the reserve fund model bonds are left outstanding after the 2020B refunding transaction

Since 2010, the EIERA has issued nine series of Bonds, six of which have been refundings. These transactions have ranged in size from \$29,935,000 to \$205,420,000. New-money transactions occur when DNR needs cash for loans or match to secure federal capitalization

grants from the Environmental Protection Agency. Currently the state match for both the Clean Water and Drinking Water Loan Programs is provided by allocating a portion of the Bonds as state match bonds. The remaining portion is allocated as leveraged bonds. State match may or may not be provided by EIERA Bonds in the future.

The list of future wastewater loan participants is found in DNR's FY2022 Clean Water intended Use Plan, which is available [here](#). The list of future drinking water loan participants is found in the FY2022 Drinking Water Intended Use Plan, which is available [here](#).

DNR also issues small borrower or other direct loans outside of the SRF. Since 2017, DNR has only issued two small borrower direct loans. These loans are equal to or less than \$100,000 each to communities serving a population of less than 1,000. The participants do not issue bonds for these loans. From time to time, DNR may issue direct loans similar to SRF Direct Loans using non-SRF, state funds. These loans involve DNR purchasing bonds from the participant; however, loans are not leveraged or pledged to EIERA Bonds.

II. OBJECTIVE

The EIERA is seeking the services of Bond Counsel primarily in connection with the SRF Programs and DNR direct loan programs on an ongoing basis. In addition to providing Bond Counsel services for future loans originated and Program Bonds (new-money and refundings) issued under the SRF Programs, Bond Counsel will be expected to provide services for any issues relating to the SRF Program or DNR direct loan programs as they may arise.

The EIERA is currently involved in the development of an Energy Infrastructure Bank for the State of Missouri. This bank could play a broad role in the development of a wide range of energy projects from development, generation and transmission to energy efficiency and renewable energy sources. Selected Bond Counsel would also assist in the continued development of this concept.

III. SCOPE OF SERVICES AND PROGRAM REQUIREMENTS

Bond Counsel will provide the following services in connection with the SRF Programs:

1. Prepare and review all SRF Bond financing documentation including all Master Trust documents, supplemental indenture and other documents related to a series of Program Bonds and financing documents related to loans financed through DNR's SRF Programs. This would include but not be limited to: a) SRF Program Bonds base documents including the indenture, any revolving fund agreement, pledge agreement and purchase agreement, b) preparation of closing certificates and tax certificate, c) review of offering documents, d) preparation of summaries of the bond documents for the offering documents, and e) preparation and review of all closing documents and certificates for each series of Bonds.

2. Prepare and review all DNR SRF Direct Loan financing documentation including, but limited to: a) preparation or review of participant documents including bond ordinances, parity certifications, resolutions or loan agreements, b) review participant ballot language both pre and post-election, c) review escrow agreements and instruction letters, d) review due diligence questionnaires, e) review and comment on proposed loan maturity schedules to assure compliance with ballot language/ordinances, and f) coordinate the loan closing including consolidation and distribution of final loan documents.
3. Prepare necessary documentation, instruction letters and conduct tax analysis to assure preservation of tax-exempt status of any Bonds in connection with any participant prepayment or other actions of a participant.
4. Draft or review, as requested, the bid specifications for any GIC or other investment vehicles of Bond funds, review bids, assist the Authority in the selection of the investment producing the highest earnings while ensuring compliance with the tax code, and negotiate contracts, as necessary.
5. Conduct and/or assist in negotiations with other parties to the transaction (e.g. the participants, investment agreement provider, rating agencies, credit enhancement providers, trustee, etc.). Assist the Authority with any issue that may arise on an ongoing basis.
6. Render legal opinions on the validity of the SRF Program Bonds, the tax-exempt status of interest thereon from State and Federal income taxation and such other matters as requested by the Authority or DNR in connection with the SRF Programs.
7. Render legal opinions on the validity of the participant bonds unless the participant has secured other acceptable bond counsel to serve as local bond counsel.
8. Bond Counsel will be required to prepare transcripts for any Program Bond issuance and other activities, such as reserve or escrow substitutions or participant prepayments, as necessary.
9. Provide the Authority and DNR with current information regarding changes in tax law and implications for the SRF Programs or outstanding Program Bonds.
10. Attend various meetings as requested or as necessary to further the SRF Programs. These would include but not be limited to Authority Board meetings, due diligence calls, finance team meetings or conference calls, participant meetings (city council, special committees, structuring meetings, etc.) and meetings of the Clean Water or Safe Drinking Water Commissions.
11. Provide timely and comprehensive legal advice to the Authority and DNR on all bond and tax issues that may arise in connection with the SRF Programs.

12. Assist the Authority with any issues relating to the SRF Program, as requested, that may arise on an ongoing basis.
13. Assist the Authority and DNR with implementation of any changes to the leveraged SRF Program structure.
14. Prepare and review all DNR non-SRF direct loan financing documentation including, but not limited to, preparation or review of participant documents.
15. Assist the Authority with tax or bond matters not necessarily related to the SRF Programs such as review and analysis of legislation or proposed financing programs.

As stated above, the EIERA is currently involved in the development of an Energy Infrastructure Bank for the State of Missouri. Bond Counsel would assist in the development of this concept as it relates to the issuance of bonds, and to any other financing mechanisms created to fund energy projects.

IV. PROPOSALS

To be considered, the proposals must address the questions listed below. Any other information that is felt to be relevant or special conditions should be provided as an appendix to the statement of qualifications. Proposals should not exceed 15 pages exclusive of exhibits or appendices.

1. Organizational Structure. Provide a description of your firm with particular emphasis on your bond and tax departments.
2. Bond Counsel Experience. List your firm's experience since January 1, 2017 as Bond Counsel for SRF loan programs and other revolving fund programs, describing your role and responsibility, whether your firm was sole or co-counsel, and the lead attorney assigned to each program. Please describe a recent example of a complex structured tax-exempt or taxable financing or refunding undertaken during this period. Please enclose a copy of a recent bond/tax opinion issued by your firm relating to a municipal water or sewer bond issue.
3. Energy Bond Experience. Describe your firm's experience in providing bond and tax counsel services related to the issuance of energy bonds. Briefly discuss your knowledge of how energy bonds can be used to pay for energy efficiency and renewable energy projects and initiatives. Include any involvement in the concept of an energy bank.
4. Missouri Experience. Describe your firm's experience in providing bond and tax counsel services to entities within Missouri. Briefly discuss your knowledge of Missouri and federal laws and regulations as they relate to obligations of participants in the SRF Programs.

5. Tax Counsel Experience. Provide a description of your tax department, including the number of professionals assigned and discuss any experience since January 1, 2017 in the provision of tax counsel services, particularly with SRF or pooled financings.
6. Key Personnel. Please identify the individual who will be principally responsible for the SRF Programs, the principal in-house tax counsel that will be assigned to the program and all other key individuals providing program services. Provide the address of the office out of which each primarily practices. Please include each individual's resume, their respective roles, their experience with SRF or other complex and/or pooled financings, and their experience with investments of bond proceeds. Briefly describe how your firm's resources will be managed to ensure timely and cost effective deliverables.
7. Innovation. Please provide one case study of a complex or pooled financing and the creative or innovative solutions your firm incorporated into the transaction. If applicable, state the role of the personnel assigned to the SRF Programs played in the creative or innovative solution.
8. Program Structure. Please provide your comments on the current SRF Programs structure and any improvements or innovative ideas you would suggest to enhance the SRF Program.
9. Investigations/Litigation/Compliance. Please indicate whether your firm, any related entity, or any key personnel is or has been the subject of any criminal or regulatory investigation or action with a full description of the matter and resolution. Please indicate any pending or threatened material litigation to which your firm is a party.
10. Firm Listing. Provide the listing of your firm by the Public Securities Association, or other similar listing, in terms of rank as the most active or respected bond counsel firms, as well the Martindale-Hubbell Ratings for both Legal Ability and General Ethical Standards assigned to your designated bond and tax counsel.
11. Missouri Presence. Please describe in detail your firm's presence in the Missouri. Include locations of offices within the state, number of employees by job classification, and a description of the Missouri entities to which you have rendered legal advice as bond counsel since January 1, 2017. Please include any other information descriptive of your presence in the state.
12. Minority/Female Employment Opportunities. Please discuss your firm's commitment to minority and female employment opportunities and the success of those efforts. Please include a copy of your firm's Equal Employment Opportunity (EEO) policy.

13. Conflicts of Interest. Please describe any potential or actual conflicts of interest in connection with your firm's involvement with the State of Missouri (or agency thereof), the SRF Programs or potential participating public entities.
14. Professional Liability Insurance. Describe the type and amount of professional liability insurance your firm carries.
15. Fees, Charges and Expenses. Unless otherwise noted, all fees, charges and expenses of the Bond Counsel for the SRF Programs will be all inclusive and limited to a fixed nominal fee per transaction (not a dollar per bond amount) to be paid at closing from proceeds of a) future Program Bonds, or b) loans as originated.

 - a. SRF or Energy Bonds: Please specify a one-time all-inclusive transaction fee to be paid to you as compensation for providing Bond Counsel services related to each issuance of Bonds. Such amount should include all fees, charges and expenses related to the transaction.
 - b. Direct Participant Loans (other than borrower direct loans): Please specify a one-time all-inclusive transaction fee to be paid to you for each participant loan at the time of origination as compensation for services related to the participant obligations under the SRF Programs. Such amount should include all fees, charges and expenses related to the origination of the participant loan.
 - c. Local Bond Counsel Fees: In the event that a participant under the SRF Programs has not engaged a qualified local bond counsel, Bond Counsel will be required to act as local bond counsel and provide a bond counsel opinion on the participant bonds.
 - d. Small Borrower Direct Loans: Please specify a one-time all-inclusive fee to be paid to you for each small borrower direct loan. Such amount should include all fees, charges and expenses related to the loan.
 - e. Other Services: Please provide a dollar per hour fee schedule for other activities not related to the issuance of SRF Bonds, participant bonds or acting as local bond counsel. Examples of the type of work contemplated are IRS examinations, dealing with participant prepayments, the modification or termination of investment agreements or review of legislation. Any activity related to the Energy Infrastructure Bank could also be included here. Reasonable expenses will be reimbursed on a cost incurred basis.

Due to the individual nature of a refunding transaction, the fees and expenses will be negotiated at the time of transaction.

V. AGREEMENT

Bond Counsel will be required to enter into a written agreement for services with the Authority. The Agreement, with an anticipated effective date of July 1, 2022, shall include, among other provisions, an initial five year term, with an additional two year renewal upon Authority Board approval; termination without cause with thirty (30) days' notice; conflicts of interest certifications; affidavit regarding undocumented workers in accordance with section 285.525 RSMo. and agreement to the Scope of Services in the RFP.

VI. SUBMITTAL REQUIREMENTS

The bid proposal and accompanying transmittal letter signed by an individual authorized to legally bind the firm must be submitted via email (an Adobe PDF formatted attachment, using 8.5" x 11" paper size) sent to eiera@eiera.mo.gov. A confirming email will be sent to the Proposer acknowledging receipt. If you do not receive a confirmation of receipt by noon of the business day following your submittal, contact us at (573) 751-4919.

Proposals must be submitted prior to 12:00 p.m. (noon) Central Time on June 3, 2022. Any proposals received after this deadline will be rejected.

If you have any questions regarding this solicitation, please e-mail them to eiera@eiera.mo.gov. All questions must be submitted by noon, Central Time on May 20, 2022. Questions submitted after the deadline will not be answered. Written responses to questions will be available for viewing as soon as practical, but no later than noon, Central Time on May 24, 2022 via a link on the Authority's website at www.eiera.mo.gov.

Should a revision to this RFP be needed, notice will be available for viewing via a link from the Authority's website at www.eiera.mo.gov by 12:00 p.m. (noon) on May 24, 2022.

It is the responsibility of each potential proposer to check the Authority website for responses to questions and RFP revisions. We will not be sending questions and responses or RFP revisions to individual firms.

The proposals will remain confidential until the EIERA has selected bond counsel. All proposals become the property of the EIERA and shall not be returned to the firm 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 a firm as public information following the conclusion of the selection process unless the firm properly requests that information be treated as confidential at the time of submitting the proposal. Any request for

confidential treatment of information must be included in the transmittal letter with the firm's proposal. In addition, the firm must enumerate the specific legal grounds for such request. If the firm designates any information in its proposal as confidential the firm must also submit by email one (1) copy of the proposal form 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.

DO NOT CONTACT THE MEMBERS OF THE EIERA BOARD, EIERA STAFF, DNR STAFF, THE CLEAN WATER COMMISSION OR THE SAFE DRINKING WATER COMMISSION REGARDING THIS RFP. FAILURE TO COMPLY WITH THE SUBMITTAL REQUIREMENTS MAY RESULT IN THE SUBMISSION BEING DEEMED NON-QUALIFYING.

VII. CRITERIA FOR SELECTION

All qualifications and performance data received will be evaluated by the Authority for the purpose of selecting the qualification or qualifications which best meet the requirements of the Authority. The following will be evaluated in the selection process:

1. Experience with SRF and pooled programs. This refers to the proposer's experience with those activities described in the Scope of Services in this RFP; experience relevant to the needs of the Authority and DNR in connection with the SRF Programs; and experience with matters similar in nature and complexity to the SRF Programs.
2. Proposer Qualifications. This refers to the ability of the proposer to meet the needs of the Authority and DNR in the administration of the SRF Programs as described in this RFP, experience providing bond counsel services for SRF programs or other complex revolving fund or environmental programs, and knowledge and experience as bond counsel and in-house tax counsel in complex multiple participant financings.
3. Personnel. This refers to the ability, experience and commitment of professional personnel who will be assigned to the Authority, and likelihood that assigned resources are adequate to provide the Scope of Services in a timely and professional manner. This includes experience with those activities described in the Scope of Services in this RFP; experience relevant to the needs of the Authority and DNR in connection with the SRF Programs, and; experience with matters of similar nature and complexity of the SRF Programs.
4. Cost. This consideration will be an important, but not the sole, determining factor in evaluating the qualifications.
5. Missouri Preference. Chapter 34.073 RSMo. provides that: "In letting contracts for the performance of any job or service, all agencies, departments, institutions, and

other entities of this state and of each political subdivision of this state shall give preference to all firms, corporations, or individuals doing business as Missouri firms, corporations, or individuals, 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.”

VIII. CONFLICT OF INTEREST

By submitting your qualifications your firm represents to the Authority that it has undertaken a conflict of interest check and that if selected as Bond Counsel to the Authority 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 under an agreement to provide bond counsel services without prior written waiver by the Authority. The agreement to provide bond counsel services will obligate the firm to provide the Authority 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.

IX. ACCEPTANCE OR REJECTION OF PROPOSALS

All submissions shall be valid for a minimum period of ninety (90) calendar days following the date established for submittal.

The Authority reserves the right to accept, reject or request changes in the submitted proposal as deemed in the best interest of the Authority, and negotiate a contract or contracts accordingly. The Authority may request additional information and/or an interview with individuals or firms prior to selection of Bond Counsel.

The Authority is not obligated to provide a debriefing for unsuccessful applicants. The Authority is not liable for any costs incurred by any parties related to the preparation and submission of a response to this request. The Authority may waive any technicalities and make any award(s) that it determines is in the Authority’s best interest.

It is anticipated that selection of Bond Counsel will occur prior to June 30, 2022.

THANK YOU FOR SUBMITTING YOUR PROPOSAL TO SERVE AS BOND COUNSEL.