



NORTH CAROLINA TURNPIKE AUTHORITY

REQUEST FOR QUALIFICATIONS:

BOND COUNSEL LEGAL SERVICES

Initial Release Date:
September 09, 2024

**NORTH CAROLINA TURNPIKE AUTHORITY
REQUEST FOR QUALIFICATIONS FOR BOND COUNSEL SERVICES**

I. OVERVIEW

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, a part of the North Carolina Department of Transportation (“NCDOT”), to study, plan, develop, and undertake preliminary design work on Turnpike Projects. At the conclusion of these activities, the Turnpike Authority is authorized to design, establish, purchase, construct, operate, and maintain no more than eleven projects. Additional information about NCTA can be found at <https://www.ncdot.gov/divisions/turnpike/Pages/default.aspx>.

The Authority is seeking Statements of Qualifications (“SOQ”) from qualified legal firms (“Firms”) interested in providing bond counsel services to the Authority in response to this Request for Qualifications (“RFQ”). Responses to this RFQ will be used to select bond counsel firm(s) qualified to act as bond counsel on specific issuances, refinancings, or restructuring. Potential work includes bond counsel services relating to the financing, refinancing, or restructuring of the Authority’s debt during the period covered. **The Authority may elect to select more than one qualified firm to act as Bond Counsel for the Authority. If more than one firm is selected, selection for Bond Counsel on specific work lies in the sole discretion of the Authority.**

II. CONTRACT PERIOD

This contract will be for a period of three (3) years commencing on the date that an award is made with the option of two one (1) year extensions. The Authority does not represent or guarantee that any amount of work will be completed. Even though specific DBE/MBE/WBE/VBE goals are not required for this advertisement, the Authority highly encourages participation of these firms in this RFQ process and is committed to providing opportunity for small and disadvantaged businesses. The Authority is seeking firms that can perform the legal services required and are able to demonstrate good corporate citizenship with a commitment to seeking, recognizing, and promoting diverse talents within the organization.

A Firm’s selection by the Authority does not guarantee any work or services contemplated by this RFQ. **Note: The Authority reserves the right to engage counsel services outside this RFQ in special situations (as determined by the Authority) to obtain the most qualified representation warranted for such special situation.**

III. SCOPE OF SERVICES

Bond counsel will work closely with the Authority, the Authority’s Financial Advisors, Authority Consultants and Underwriting Syndicates. Services anticipated to be provided by Bond Counsel may include the following, along with other items deemed necessary by the authority:

- A. 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.
- B. Attend meetings of the Authority’s board of director and committee meetings to the extent requested.

- C. Prepare and/or review resolutions, orders, agreements, contracts, and other documents to which the Authority is involved.
- D. Review any other agreements which may impact the Authority’s credit rating, or in any way restrict the Authority’s borrowing capacity.
- E. Advise and assist the Authority with Bond Validation or similar proceeds as may be required.
- F. Assist the Authority in presentations to the rating agencies and other credit providers.
- G. Render opinions on the legality and taxability of the proposed bond transaction.
- H. Prepare non-arbitrage certificates and all other necessary tax documents.
- I. Prepare Internal Revenue Service (“IRS”) filings required by federal tax law.
- J. 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.
- K. Prepare certain certificates and review such other documents as are customary and necessary to structure and issue bonds.
- L. Provide advice and counsel on continuing compliance with securities, tax and other applicable law.
- M. Supervise the preparation, execution and delivery of the bonds to the purchasers or the Depository Trust Company.
- N. Produce final transcripts of necessary transaction documentation, i.e. Official Statements, Bond Purchase Agreement, etc.
- O. 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.
- P. 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.
- Q. Provide on-going legal support and advice for existing bonds and TIFIA loans.
- R. Advise the Authority on all other matters necessary and incidental to the issuance of the bonds including interpretation of the enabling legislation.

IV. REQUEST FOR QUALIFICATIONS (“RFQ”) SCHEDULE

The Authority anticipates the following schedule for this RFQ. All dates are subject to modification by the Authority.

Event	Responsibility	Date and Time
RFQ Circulated	NCTA	Sept. 9 th
Expression of Interest Due; Deadline to Submit Written Questions	Firm	Sept. 20 th
Provide Response to Questions	NCTA	Sept. 27 th
Submit SOQ	Firm	Oct. 11 th
Interviews (as determined by NCTA)	NCTA & Selected Firm(s)	Week of Oct. 28 th

Selection of Firm(s) by Authority's Governing Board	NCTA	Nov. 21 (Board Meeting)
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The Authority may at its sole discretion determine that none of the SOQs meet its goals and objectives and may elect to terminate the evaluation process.

If it becomes necessary to amend any part of this RFQ, notice of the revision will be posted to the Authority's website (<https://connect.ncdot.gov/business/Turnpike/Pages/default.aspx>). No verbal or written information that is obtained other than by information in this document or addendum to this RFQ shall be binding on the Authority.

V. EXPRESSION OF INTEREST

All Firms desiring to participate in this RFQ process shall submit an Expression of Interest with the NCTA by email directed to David Roy (dwroy@ncdot.gov) and Cheryl Reed (cyreed1@ncdot.gov) with copies to Jacob Vlanich (ext-jvlanich@ncdot.gov) and Tanner Dyer (ext-ctdyer1@ncdot.gov). Only Firms that submit an Expression of Interest by 5 p.m. on September 20th, 2024, will directly receive the Authority's written response to inquiries and other information issued by the Authority regarding this RFQ. Failure to submit the Expression of Interest shall result in elimination from further consideration.

VI. QUESTIONS AND REQUESTS FOR CLARIFICATION

Upon review of the RFQ, Firms may have questions to clarify the RFQ. To accommodate the RFQ Questions process, Firms shall submit any such questions by 5 p.m. on September 20th, 2024.

Any questions concerning this RFQ should be submitted in writing, via email to David Roy (dwroy@ncdot.gov) and Cheryl Reed (cyreed1@ncdot.gov) with copies to Jacob Vlanich (ext-jvlanich@ncdot.gov) and Tanner Dyer (ext-ctdyer1@ncdot.gov) by the date and time specified above. Firms should enter "NCTA RFQ Bond Counsel Services: Questions" as the subject for the email.

NCTA will only respond to those questions that have been submitted in writing by the date and time noted above. Responses to any inquiries regarding this RFQ will be distributed to all firms that have submitted an Expression of Interest via an addendum to the RFQ.

VII. SUBMISSION REQUIREMENTS

The Statements of Qualifications should be prepared in size 12 font, Times New Roman, 8½ x 11-inch page size, and should include responses to the items listed under Section VII. STATEMENT OF QUALIFICATIONS REQUIREMENTS AND CONTENTS. The submittal should be delivered via email (pdf) no later than 5 p.m. on October 11th, 2024. **Submission of the RFQ will be accepted by e-mail only.** No paper submittals will be accepted. Please email to:

Cheryl Reed, Chief Financial Officer
North Carolina Turnpike Authority
cyreed1@ncdot.gov

David Roy, Director of Innovative Finance
North Carolina Turnpike Authority
dwroy@ncdot.gov

with copies to:

Jacob Vlanich, Financial Analyst
ext-jvlanich@ncdot.gov

Tanner Dyer, Financial Analyst
ext-ctdyer1@ncdot.gov

It is the sole responsibility of the Firm to assure that the Authority, prior to the time specified, receives the Statement of Qualifications. Any Statement of Qualifications received after the stated deadline will not be considered. By submitting a response to this RFQ, the submitting Firm unequivocally acknowledges that it has read and fully understands this RFQ, and that the Firm has asked questions and received satisfactory answers from the Authority regarding any provisions of this RFQ with regard to which the Firm desired clarification. The Authority may cancel or re-advertise this procurement, including rejecting any submitted responses, at its discretion at any time in the process.

By submitting a response to this RFQ, the Firm agrees to be bound by the requirements outlined in this RFQ. Responses that are incomplete or received after the deadline will not be considered. However, the Authority reserves the right to consider responses that contain only minor variances from the required content.

VIII. STATEMENT OF QUALIFICATIONS REQUIREMENTS AND CONTENTS

The Statement of Qualifications shall include the following (in the following order and in accordance to the specified page limits, excluding exhibits).

A. General. To be considered for the RFQ, the Proposer must maintain a fully staffed office in the State and have a qualified attorney to provide services whose primary residence and legal domicile are in the State. The qualified attorney must be licensed by, and in good standing with, the North Carolina State Bar. The qualified attorney must be listed in the North Carolina municipal bond attorneys' section of the most recent edition of The Bond Buyer's Municipal Marketplace (Red Book).

B. Title Page. Include the company name, address, phone number and authorized representative's name(s).

C. Cover Letter. Cover letter signed by individual(s) authorized to contractually bind the Proposer.

D. Expertise and Experience. 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. In table or list format, identify comparable legal services where the firm has served as bond and/or public finance counsel during the prior five (5) years identifying the issuer by name and the total amount of the issue, and include a brief description of any matter that called for outside public finance counsel assistance.

- i. Provide a review and an example within the prior three (3) years of the firm's ability to author agreements with non-governmental entities such as insurance and banking firms.
- ii. Attach as **Exhibit A**, a tabular form listing the number and dollar volume of non-recourse toll revenue bond issues for which your firm has served as bond counsel during the prior five (5) years. Please denote which transactions, if any, are municipal issuances. For each transaction, please include the following information:

❖ Date of transaction

- ❖ Issuer's name
 - ❖ Par amount of borrowing
 - ❖ Description of the project
 - ❖ Name of the attorney within your firm who served as the day-to-day contact for the issuer.
- iii. Attach as **Exhibit B**, a tabular form listing the number and dollar volume of federal financing programs, e.g., TIFIA Loans, for which your firm has served as bond counsel during the prior five (5) years. For each transaction, please include the following information:
- ❖ Date of transaction
 - ❖ Issuer's name
 - ❖ Par amount of borrowing
 - ❖ Description of the project
 - ❖ Name of the attorney within your firm who served as the day-to-day contact for the issuer.
- iv. Identify the attorney(s) to be assigned to the Authority's financing program 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 his/her experience with project revenue bond issues and federal financing programs, with emphasis on the revenue and appropriation bond issues. Provide certification that the lawyers in the firm are licensed to practice law in North Carolina. The Proposer shall not substitute key personnel assigned to the performance of any Contract resulting from this RFQ without prior written approval by the Authority. Proposer shall notify the Authority of any desired substitution, including the name(s) and references of Proposer's recommended substitute personnel. The Authority will approve or disapprove the requested substitution in a timely manner. The Authority may, in its sole discretion, terminate the services of any person providing services under this Contract. Upon such termination, the Authority may request acceptable substitute personnel or terminate the Contract services provided by such personnel.
- v. Provide three client references, including name, telephone number and email address for transactions completed by the attorney designated as the lead for the Authority's proposed financing. The Authority will only check references of the Proposers selected for interviews to determine whether the services provided are substantially similar in scope to those proposed herein, and whether each Proposer's performance has been satisfactory.
- vi. Describe any existing or potential conflict of interest arising from your relationships with or representation of other parties that should be considered as a factor in determining your objectivity, and provide to the Authority sufficient facts, legal implications, and possible effects for the Authority to appreciate the significance of each potential conflict and grant an appropriate waiver, if necessary.
- vii. Provide the limits of Proposer's malpractice coverage. Please state whether Proposer has settled any past claims or has any claims pending against it related to opinions delivered in prior bond issues. **Proposer is required to carry malpractice coverage of at least \$1,000,000 throughout the duration of the Contract.**

viii. Please provide answers to the following:

- (a) Has Proposer or any of its attorneys identified herein been named as a defendant in any malpractice or disciplinary actions? If so, briefly describe any such action and the outcome.
- (b) Has Proposer or any of its officers or directors, or any of its employees or other personnel that will provide services contemplated by this RFQ received a criminal felony conviction, or conviction of any crime involving moral turpitude, including, but not limited to fraud, misappropriation, or deception? If so, briefly describe the action and outcome.
- (c) Has Proposer or any of its officers or directors, or any of its employees or other personnel that will provide services as contemplated herein been the subject of, or is there a pending criminal investigation for, any offense involving moral turpitude, including, but not limited to fraud, misappropriation, falsification or deception? If so, briefly describe such action.
- (d) Has Proposer or any of its officers, directors or its professional employees expected to provide services as contemplated herein had any regulatory sanctions levied against it by any state or federal regulatory agencies (including specifically the North Carolina State Bar, North Carolina Department of Revenue, the Securities and Exchange Commission and the Internal Revenue Service) within the past three years? If so, briefly describe such action and its outcome. As used herein, the term “regulatory sanctions” includes the revocation or suspension of any license or certification, the levying of any monetary penalties or fines, and the issuance of any written warnings.
- (e) Are there any regulatory investigations by any state or federal regulatory agencies pending against Proposer or any of its officers, directors or its professional employees expected to provide services hereunder? If so, briefly describe the action and its outcome.
- (f) Are there any civil litigation or arbitration proceedings or judgments pending against Proposer or any of its officers, directors or its professional employees expected to provide services on this project during the three (3) years preceding submission of this RFQ? If so, briefly describe the action.

Proposer’s responses to these requests shall be considered to be continuing representations, and Proposer’s failure to notify the Authority within thirty (30) days of any regulatory or criminal litigation, investigation or proceeding involving Proposer or its then current officers, directors or persons providing services under any Contract that results from this RFQ during such Contract’s term shall constitute a material breach of said Contract. The provisions of this paragraph shall also apply to any subcontractor utilized by Proposer to perform services under said Contract.

E. Pricing. Proposers should include a cost proposal outlining fees and expenses for bond transactions, any proposed retainers, and hourly rates. 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 proposals including a per bond fee or a fixed fee per transaction, please distinguish among project toll revenue bonds, refunding toll revenue bonds, TIFIA loans, state appropriation revenue bonds and state appropriation revenue refunding bonds.

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. Although you may submit a per bond fee or a fixed fee per transaction, Proposer firm(s) shall also include hourly rates.

F. Certification of Financial Condition. Please complete the certificate in **Exhibit C**.

G. Certification of No Conflicting Relationships. Please complete the certificate in **Exhibit D**.

IX. EVALUATION AND AWARD

A. Method of Award. All qualified proposals will be evaluated and awards will be based on the criteria identified below as applied to each proposal. Awards will be made to Proposers meeting the RFQ requirements and providing the best value to the Authority as described below.

B. Confidentiality And Prohibited Communications During Evaluation. During the evaluation period—from the date proposals are opened through the date the Contract is awarded—each Proposer submitting a proposal (including its representatives, sub-contractors and/or suppliers) is prohibited from having any communications with any person inside or outside the NCDOT, NCTA, other government agency office, or body (including the contact person named above, agency head, NCDOT or NCTA Board members, members of the General Assembly and/or Governor’s office), or private entity, if the communication refers to the content of Proposer’s proposal or qualifications, the contents of another Proposer’s proposal, another Proposer’s qualifications or ability to perform the Contract, and/or the transmittal of any other communication of information that could be reasonably considered to have the effect of directly or indirectly influencing the evaluation of proposals and/or the award of the contract. A Proposer not in compliance with this provision shall be disqualified from Contract award, unless it is determined in the Authority’s discretion that the communication was harmless, that it was made without intent to influence and that the best interest of the Authority would not be served by the disqualification. A Proposer’s proposal may be disqualified if its sub-contractor and supplier engage in any of the foregoing communications during the time that the procurement is active (i.e., the issuance date of the procurement to the date of Contract award). Only those discussions, communications or transmittals of information authorized or initiated by the Authority for this RFQ or general inquiries directed to the purchaser regarding requirements of the RFQ (prior to proposal submission) or the status of the Contract award (after submission) are excepted from this provision.

X. PROPOSAL EVALUATION PROCESS

A. The Authority will review all Proposer responses to this RFQ to confirm that they meet the specifications and requirements of the RFQ. The Authority reserves the right to waive any minor informality or technicality in proposals received, and to reject any proposals that do not meet the specifications and requirements of this RFQ.

B. All intended proposers are required to submit an expression of interest by 5 p.m. September 20th, 2024, in the form of a brief email to David Roy (dwroy@ncdot.gov) and Cheryl Reed (cyreed1@ncdot.gov) with copies to Jacob Vlanich (ext-jvlanich@ncdot.gov) and Tanner Dyer (ext-ctdyer1@ncdot.gov) expressing their intent to submit a proposal.

C. All proposals must be received via email by the NCTA no later than the date and time specified in section VII. SUBMISSION REQUIREMENTS. The submissions containing the proposals from each responding Proposer will be reviewed and a determination made which ones meet the specifications and requirements of this RFQ. Such qualified proposals will be provided to the members of the NCTA's evaluation team for consideration. The NCTA's evaluation team will be composed of NCTA/NC DOT employees and other contracted staff, as requested by NCTA, to support the associated procurement.

D. Qualified proposals will be evaluated generally according to strengths and weaknesses, completeness, content, ability, experience with similar projects, past performance of the Proposer and its staff and cost, all as demonstrated in the contents of the Proposer's proposal. Specific evaluation criteria and weighting are listed in XI. EVALUATION CRITERIA, below. The evaluation team will evaluate the responses based on the criteria and, by consensus, determine which firms to invite for interviews; thereafter, invitations to interview may be extended.

E. At the discretion of the Authority the evaluation team will conduct interviews with the invited firms. The interviews will allow further evaluations of proposals and will assist the evaluation team in determining whether the prospective bond counsel and the Authority personnel will be able to develop compatible working relationships. The interviews shall not be used as an opportunity to modify the Proposer's initial proposal. After the interviews are completed, the evaluation team will check references for all interviewees and determine by consensus which proposal best meets the requirements of the RFQ and afford the best value to the NCTA.

F. The Authority reserves the right to select for contract negotiations the proposal that, in its judgment, will best meet the Authority's needs and negotiate with the firm submitting the best proposal to secure more favorable conditions. The Authority also reserves to right to establish a pool of eligible counsel to select from for various transactions.

G. Proposers are cautioned that this is a request for offers, not an offer or request to contract, and the Authority reserves the right to reject any and all offers at any time if such rejection is deemed to be in the best interest of the Authority.

H. Award of a Contract to any Proposer does not mean that the other proposals lacked merit, but that, all factors considered, the selected proposals were deemed most advantageous and represented the best value to the State.

XI. EVALUATION CRITERIA

The evaluation team will utilize evaluation criteria divided into three primary categories with weighing in parenthesis:

- Technical Capability
- Managerial Capability
- Cost Proposal

NCTA is not required to select the lowest cost proposal but can select the proposal(s) that meet the requirements of this RFQ and demonstrate the best value overall to NCTA.

Technical Capability includes but is not limited to:

- A. Experience with similar legal services, particularly of the assigned attorneys
- B. Experience with North Carolina state statutes and law
- C. Experience in other financing programs that will benefit the NCTA in financing projects
- D. Experience with federal tax and securities law pertinent to NCTA

Managerial Capability includes but is not limited to:

- A. Qualifications of attorneys, particularly those who will serve as the contract lead attorneys
- B. Dollar value and volume of successfully closed public financing with emphasis on projects in North Carolina
- C. Ability to support NCTA on time sensitive documents and opinions

XII. PROPOSER REPRESENTATIONS

A. Proposer warrants that qualified personnel shall provide services under this Contract in a professional manner. "Professional manner" means that the personnel performing the services will possess the skill and competence consistent with the prevailing business standards in the industry. Proposer agrees that it will not enter any agreement with a third party that might abridge any rights of the Authority under this Contract. Proposer will serve as the prime Proposer under this Contract, and Proposer shall be legally responsible for the performance and payment of any subcontractor(s) that may be approved by the Authority. Names of any third-party Proposers or subcontractors of Proposer may appear for purposes of convenience in Contract documents; and shall not limit Proposer's obligations hereunder. Proposer will retain executive representation for functional and technical expertise as needed in order to incorporate any work by third party subcontractor(s).

B. If any services, deliverables, functions, or responsibilities not specifically described in this Contract are required for Proposer's proper performance, provision and delivery of the service and deliverables under this Contract, or are an inherent part of or necessary sub-task included within such service, they

will be deemed to be implied by and included within the scope of the Contract to the same extent and in the same manner as if specifically described in the Contract. Unless otherwise expressly provided herein, Proposer will furnish all of its own necessary management, supervision, labor, facilities, furniture, computer and telecommunications equipment, software, supplies and materials necessary for the Proposer to provide and deliver the Services and Deliverables.

C. Proposer warrants that it has the financial capacity to perform and to continue to perform its obligations under the Contract; that Proposer has no constructive or actual knowledge of an actual or potential legal proceeding being brought against Proposer that could materially adversely affect performance of this Contract; and that entering into this Contract is not prohibited by any contract, or order by any court of competent jurisdiction.

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Proposer: _____

EXHIBIT C: CERTIFICATION OF FINANCIAL CONDITION

Name of Proposer: _____

The undersigned hereby certifies that: [check all applicable boxes]

- The Proposer is in sound financial condition and received an unqualified audit opinion for the latest audit of its financial statements.

Date of latest audit: _____

- The Proposer has no outstanding liabilities to the Internal Revenue Service or other government entities.
- The Proposer is not the subject of any current litigation or findings of noncompliance under federal or state law.
- The Proposer has not been the subject of any past litigation or findings of any past litigation or findings of noncompliance under federal or state law that may impact in any way its ability to fulfill the requirements of this Contract.
- He or she is authorized to make the foregoing statements on behalf of the Proposer.

If any one or more of the foregoing boxes is NOT checked, explain the reason in the space below:

Signature

Date

Printed Name

Title

[This Certification must be signed by an individual authorized to act for the Proposer]

Proposer: _____

EXHIBIT D: CERTIFICATION 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.

Signature

Date

Printed Name

Title

[This Certification must be signed by an individual authorized to act for the Proposer]