

200 KAR 21:010. Procedure for prequalification of underwriters and bond counsel for state bond issues.

RELATES TO: KRS 11A.001-11A.990, 45A.485, 45A.853, 45A.863, 121.015-121.056, 121.150, 121.310, 121.320, 121.330

STATUTORY AUTHORITY: KRS 45A.879

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.879 requires the Office of Financial Management to promulgate administrative regulations to carry out the provisions of KRS 45A.840 to 45A.879, pertaining to underwriter and bond counsel services. This administrative regulation establishes the procedure for prequalifying underwriting and bond counsel firms.

Section 1. General Requirements for Prequalification of Underwriters and Bond Counsel. (1) The office shall determine, in consultation with each bond issuing agency, the need for issuing requests for proposals for underwriting and bond counsel services for bond issuing agencies.

(2) Based on the determination of need, the office shall draft a request for qualifications for underwriting and bond counsel services for a bond issuing agency which needs the services.

(3) A request for qualifications shall include the following:

(a) A description of the bond issuing agency for which the request for qualifications is being issued;

(b) A requirement that the firm disclose information which would impair the firm's ability to provide the level and type of services needed by the bond issuing agency;

(c) A requirement that the firm certify, by sworn statement, that the firm has complied with campaign finance laws established in KRS 121.015 to 121.056, 121.150, 121.310, 121.320, 121.330;

(d) A requirement that the firm certify that it has complied with and is not prohibited by the Executive Branch Code of Ethics, KRS 11A.001 to 11A.990, from entering into a contract with the Commonwealth of Kentucky;

(e) A requirement that the firm certify that it has complied with KRS 45A.485;

(f) A statement that the firm is not prohibited by KRS 45A.863 from entering into a contract with the Commonwealth of Kentucky;

(g) A statement that the Commonwealth shall not be liable for costs associated with a firm's preparation and submission of a response to a request for qualifications; and

(h) A description of the process by which a response to the request for qualifications shall be evaluated by the office.

Section 2. Request for Qualifications for Underwriter Services. (1) If the nature of the requested underwriting services requires the inclusion of information in addition to the requirements established in Section 1 of this administrative regulation, the following elements shall be included:

(a) A description of the history and organization of the firm and its municipal finance department;

(b) If applicable, a summary of the relevant financial advisory experience of the firm;

(c) The audited financial statements of the firm for the previous fiscal year or years;

(d) A list of the relevant underwriter experience of the firm on negotiated municipal bond transactions of issuers of similar type as that of the state bond issuing agencies;

(e) A list of experience and qualifications of the firm representatives proposed to work on issues of the bond issuing agency;

(f) If applicable, a list of the relevant comanaging underwriter experience of the firm on negotiated municipal bond transactions;

(g) If applicable, identification of the lead banker or contact person at the firm and description of that individual's experience and qualifications;

(h) Identification of the person in the firm proposed to perform cash flow and debt structuring analyses and a description of that individual's experience and qualifications; and

(i) Specific references for the firm's experience and the lead or principal contact person.

(2) If a request for qualifications is for a Kentucky comanaging underwriter, the request for qualifications shall require the firm to:

(a) State the authority of the firm's office located in the Commonwealth to commit capital to an underwriting, independent of some other office of the firm, and the dollar limit, if any;

(b) Identify the firm's underwriter who has responsibility for competitive bond sales in the Commonwealth, and a description of that individual's experience and qualifications;

(c) Specify references for the firm's experience and the underwriter in the office located in the Commonwealth;

(d) Provide evidence that the firm has bid on twenty (20) percent of School Facilities Construction Commission supported debt issues and twenty (20) percent of the 100 percent locally-funded school bond issues, within the previous calendar year; and

(e) Describe the emphasis the firm's office located in the Commonwealth places on selling the Commonwealth's bonds to retail buyers located in the Commonwealth.

Section 3. Request for Qualifications for Bond Counsel Services. If the nature of the requested bond counsel services requires the inclusion of information in addition to the requirements established in Section 1 of this administrative regulation, the following elements shall be included:

(1) A description of the history and organization of the firm and its municipal finance and tax law department;

(2) A statement of the relevant bond counsel experience of the firm in applicable areas of finance as required by the bond issuing agency for which the request for qualifications is being issued;

(3) A statement of the experience and qualifications of the firm's personnel proposed to work on bond issues of the bond issuing agency;

(4) Proof that the firm is listed as a "municipal bond attorney" in the most recently published edition of "The Bond Buyer's Municipal Marketplace";

(5) A statement of professional liability insurance coverage showing the limits of the coverage; and

(6) A statement of specific references for the experience of the firm and personnel proposed to work on the bond issues of the bond issuing agency.

Section 4. Advertisement and Mailing of Requests for Qualifications. (1) The office shall advertise the request for qualifications in a financial newspaper or financial publication with national circulation.

(2)(a) A request for qualifications shall be mailed to:

1. Firms that were prequalified during the prior period; and

2. Firms that have requested, in writing, a request for qualifications from the office.

(b) A firm shall notify the office of a change in mailing address.

(3) An interested firm shall file a written response to the request for qualifications prior to the deadline designated in the request for qualifications. A firm that fails to meet the deadline shall be prohibited from participating in the prequalification process for that qualification period.

(4) The office shall inform each responding firm, in writing, of the results of the prequalification process.

Section 5. Certification of Prequalification. (1) A master list of firms prequalified for providing underwriter and bond counsel services shall be certified and maintained by the office.

(2) The office shall conduct the prequalification process on at least a biennial basis.

(3) The office shall accept prequalification applications for consideration outside of the scheduled prequalification period from a firm that, since the last prequalification period:

(a) Has been newly incorporated; or

(b) Has opened a new office in the Commonwealth. (21 Ky.R. 1985; eff. 3-22-1995; 25 Ky.R. 2648; 26 Ky.R. 41; eff. 6-23-1999; 38 Ky.R. 500; eff. 9-28-2011; Crt eff. 4-8-2019.)