

MASSACHUSETTS STATE COLLEGE BUILDING AUTHORITY

REQUEST FOR QUALIFICATIONS

COUNSEL SERVICES: General Counsel, Bond Counsel, and Project Counsel

February 14, 2024

I. INVITATION

The Massachusetts State College Building Authority (the Authority) seeks proposals from qualified and recognized law firms demonstrating their qualifications to serve as General Counsel, Bond Counsel, or Design & Construction Counsel to the Authority. Firms may provide one proposal for one, two, or all three, counsel opportunities.

The term of the engagement shall be for three years (May 1, 2024 – April 30, 2027) with an option to be exercised at the discretion of the Authority to extend the term of engagement for three additional years through April 30, 2030. The Authority reserves the right to terminate the contract at any time with thirty (30) days written notice. The Authority also intends to use the RQF to identify a pre-approved pool of legal firms in case conflicts a selected firm has with other existing clients arise during the term of the engagement, or other types of services needed.

Law firms interested in being considered by the Authority should submit their proposal and supporting information, together with a Disclosure Statement (see Attachment 1), no later than 2:00 PM on March 13, 2024 to Jadea Simmons, Administrative Assistant, via email electronically to jsimmons@mscba.org.

II. INTRODUCTION

The Massachusetts State College Building Authority was established by and operates under its enabling legislation, Chapter 703 of the Acts of 1963 of The Commonwealth of Massachusetts (“The Commonwealth”), as amended (the “Enabling Act”). The purposes of the Authority, among others, are to finance, construct and maintain revenue-financed facilities, including residence and dining hall facilities for students attending the Commonwealth’s nine state colleges and fifteen community colleges. The Authority has developed, and continues to improve, facilities, that provide residence and dining accommodations for a design occupancy of up to 16,616 students.

Under a Contract with the Massachusetts Board of Higher Education, the Authority oversees operations and maintenance expenditures and is responsible for setting rents for the residence halls, with Board of Higher Education approval. Rent revenues are pooled for payment of debt service, contributions to a Debt Service Reserve Fund and Authority operating and capital expenses.

The Authority is governed by nine Members appointed by the Governor, three of whom also serve on the Board of Higher Education, (BHE). The Authority has 14 full-time employees. The Authority maintains an office at 10 High Street, Suite 201, Boston, MA 02110.

Law firms desiring to review the statutory provisions governing the Authority are referred to the following:

- Legislation establishing the Authority, Chapter 703 of the Acts of 1963, as amended by Chapter 290 of the Acts of 1998 and Chapter 193, Section 30 of the Acts of 2004;
- Legislation regulating competitive bidding and construction contracts for public construction M.G.L. Chapter 149, Sec. 44; M.G.L. Chapter 30, Section 39M;
- Legislation further regulating public construction, M.G.L. Chapter 193 of the Acts of 2004;
- Legislation relative to project development: Chapter 579 of the Acts of 1980, as amended, and Chapter 484 of the Acts of 1984, as amended;
- Legislation regulating the purchase of goods and services, M.G.L. Chapter 30B;
- Legislation providing for the public higher education capital improvement needs of the Commonwealth, Chapter 258 of the Acts of 2008;
- Legislation regulating alternative delivery methods for public construction: M.G.L. Chapter 149A.

The Authority is responsible for providing the following functions and services in support of new projects and existing facilities:

- administers, directs, contracts, schedules, and coordinates with the respective state colleges, and others, the development process for new projects, i.e., real estate feasibility analysis, financing, design, environmental permitting, furnishings procurement, and occupancy;
- administers and directs strategic real estate planning for its current facilities;
- undertakes each year a multimillion-dollar capital improvements program to maintain the soundness, marketability, and code compliance of its facilities in conjunction with campus partners;
- coordinate and performs centralized purchasing of furnishings, equipment, insurance, and maintenance services for the regular inspection and testing of building life safety systems, i.e., fire alarm detection equipment, sprinkler systems, emergency power generators, and elevators;
- establishes the rents and charges for its projects with the approval of the Board of Higher Education, collects revenues from the state universities, oversees the investment and expenditure of these revenues consistent with the terms of the First Amendment to the Contract for Financial Assistance, Management and Services with the BHE; and
- administers and assures compliance with the covenant requirements of the Trust Agreements with bondholders related to the Authority's bond issues.

As of February 1, 2024, the Authority had 24 bond issues outstanding totaling approximately \$1.1 billion. The Authority typically issues new money bonds to finance requested capital projects (typically every year or two) and sells refunding bonds when it is economically compelling. The Authority's outstanding debt is 100% fixed rate with no associated swaps

or derivative products. The Authority is rated Aa2 and AA by Moody's and S&P, respectively.

Law firms desiring to review information on the Authority and its debt, see Bonds, Documents, Resources | Massachusetts State College Building Authority | BondLink (mscbabonds.com)

III. GENERAL COUNSEL SERVICES

Upon request, the General Counsel shall advise the Authority and provide legal services on any item of business under consideration by the Authority. General Counsel services shall include, but not necessarily be limited to, the following services:

- A. Advise the Executive Director and staff on all matters relating to legal requirements for Authority operation, human resources/personnel matters; public meetings, notice and disclosure requirements; current bylaws and proposed amendments thereof; and procurement of goods, services, design, and construction as well as other contracts not covered by Project Counsel or Bond Counsel.
- B. Attend Authority meetings, generally six times per year, and upon request, attend special meetings of the Authority or a subcommittee of the Authority to provide governance oversight and legal advice as may be necessary and to report on any legal matters or concerns before the Authority.
- C. Represent and defend the Authority before the courts, hearings, or any other inquiry on issues related to the business of the Authority and its employees, including coordination with other counsel, such as insurance providers, who are engaged in legal processes involving the Authority.
- D. Review, revise, and update by-laws, operating procedures, and policy and procedure manuals.
- E. Prepare interagency agreements and Memoranda of Understanding for collaborative management or financing arrangements between or among state colleges and universities or other state entities.
- F. Draft leases, license agreements, and easements by and between the Authority state college and university campuses, other state entities, public utilities, vendors, and/or tenants.
- G. Advise the Authority on legislation, regulations, labor contracts, and agreements or procedures which may impact on its governance and the construction and maintenance of its project facilities. Prepare and negotiate employment and separation agreements.
- H. Prepare documents and assist in the negotiation, purchase, lease, or sale of any real property by the Authority.
- I. Provide oral and written opinions, reports, testimony, or other appropriate responses to agencies of the Federal Government, Legislative Committees, and Executive Offices of the Commonwealth of Massachusetts, including the Offices of the Treasurer, Auditor, and Secretary of State.
- J. Issue opinions and Certificates in connection with tax exempt bond issues and the Authority's annual financial audits.
- K. Upon request, consult with Legislative Committees and the Executive Offices of the Commonwealth and draft legislation, regulatory procedures, and Memoranda of Understanding which pertain to the Authority and the conduct of its business.
- L. Coordinate, as necessary, with the Authority's Project Counsel and Bond Counsel.

IV. BOND COUNSEL SERVICES

Upon request, the Bond Counsel shall advise the Authority and provide legal services on any item of business under consideration by the Authority. Bond Counsel services shall include, but not necessarily be limited to, the following services:

- A. Rendering bond opinions with respect to the validity of bonds and other subjects, particularly the tax treatment of interest on the bonds.
- B. Rendering other opinions on related matters, as requested.
- C. Assisting in preparation of documents necessary or appropriate for the authorization, issuance, sale, and delivery of bonds, coordination of the enactment and execution of such documents, and where appropriate, drafting or reviewing enabling legislation or amendments.
- D. Assisting in evaluating the structure of a bond issue.
- E. Assisting in preparing or reviewing the official statement, continuing disclosure, and other related documents.
- F. Assisting in obtaining such approvals, rulings, permissions, and exemptions as are necessary or appropriate in connection with the bonds.
- G. Assisting in structuring or evaluating the legal structure for investment of bond proceeds pending their expenditure that comply with state limitations and federal requirements.
- H. Assisting in structuring or evaluating the legal structure of derivative agreements to hedge interest rate risk or investment agreements or other related agreements to the bonds.
- I. Providing advice with regard to ongoing obligations with respect to bonds, including post-issuance compliance and assistance with IRS examinations, if any.
- J. Assisting in interpreting trust agreement or other related bond documentation.
- K. Pursuing validation proceedings or participating in relevant dispute resolution proceedings, including litigation.
- L. Assisting in presenting information to rating agencies and other market participants.
- M. Providing other related advocacy services, as requested.

V. PROJECT (DESIGN & CONSTRUCTION) COUNSEL SERVICES

Upon request, the Project Counsel shall advise the Authority and provide legal services on any item of business under consideration by the Authority. Project Counsel services shall include, but not necessarily be limited to, the following services:

- A. Review, revise, and update contract forms, maintenance and service agreements, legal correspondence, and contract documents.
- B. Coordinate, as necessary, with the Authority's General Counsel, as requested by the Authority.
- C. Represent and defend the Authority before the courts, hearings, or any other inquiry on issues related to the Authority's design and/or construction contracts, including competitive bidding procedures, protests, contract awards, and resolution of disputes, claims, findings or fines against the Authority, including coordination with other counsel, such as insurance providers, who are engaged in legal processes involving the Authority.
- D. Providing other related advocacy services, as requested.

VI. PROPOSAL REQUIREMENTS

Responses to this Request for Proposal shall be submitted electronically through email, including any attachments to Jadea Simmons at jsimmons@mscba.org by no later than 2:00 PM on March 13, 2024.

The issuing office for this request for qualifications is:
Massachusetts State College Building Authority
10 High Street, Suite 201
Boston, MA 02110

The Authority reserves the right to reject any or all responses to this RFQ and to waive any minor defects. All proposals must respond to the overall proposal questions, and are limited to a total of 20 pages. Each firm must also submit responses to the specific counsel type they are pursuing by answering the following questions which will be used to evaluate the qualifications of the firms responding to this RFQ.

Proposal Components:

Provide a cover letter, which shall be considered an integral part of the proposal, signed by the individual or individuals authorized to bind the proposer contractually. This cover letter must indicate the signer is authorized and the title or position the signer holds in the proposer's firm. An unsigned proposal shall be rejected. The cover letter must also contain the following:

- a. The firm's name, address, telephone number;
 - b. A statement that the firm is willing to perform all services described by this RFQ, or which may otherwise become necessary, that are appropriately performed by Counsel;
 - c. Name and resume of the individual within the firm who will be the primary contact concerning the proposal;
 - d. The identity and resume(s) of the partner(s) and associates who will be assigned to fulfill the responsibilities of this contract; and
 - e. Describe your firm's proposed fee structure for this engagement, including any cap or discount to be provided. Include hourly rates for each team member. Please provide information on standard reimbursable expense charges. Additionally, if you are interested in serving as bond counsel, please provide a table for the potential fees based on par amount, and estimate your firm's total fees relating to a hypothetical \$25 million, new-money, fixed-rate bond issue and the assumptions used to arrive at the estimate.
 - f. Specify the specific counsel service(s) the firm is proposing; General, Bond, Design & Construction.
1. Provide a general background of your firm, its history, significant changes in its makeup over the last three years, the scope of the law practice, and the services provided.
 2. Identify your firm's experience in providing legal services as Counsel to other clients for each of the proposed counsel types and your firm's philosophy concerning its proposed relationship with the Authority and its staff.

3. Describe your firm's public and private real estate development experience, particularly in areas of nonprofit or institutional housing development, environmental permitting, real property leasing and acquisition, design and construction contracting, and dispute resolution.
4. Describe your firm's experience with clients who are Authorities of the Commonwealth and how this experience is relevant to this assignment.
5. Please state any other relevant experience your firm has with respect to the Authority's statutory mission. Describe any experience that indicates your firm's familiarity with statutory requirements and processes for competitive bidding and construction of public projects in the Commonwealth.
6. Identify the key personnel who would provide counsel services for the Authority, provide a brief description of their professional experience and their role in the engagement. Provide resumes of the particular professionals who are being proposed to work on Authority matters.
7. Note that if your firm intends to use the services of other firms, please provide details regarding such arrangements. Indicate the nature of such arrangements and the names and resumes of any such consultants.
8. Provide details as to the nature and amounts of your firm's professional liability insurance.
9. Attach your firm's policies with regard to affirmative action and equal opportunity policies and, in addition, describe the number of and the positions held by women and minorities in your firm (in relation to the overall numbers and positions of employees in your firm) and the expected participation of women and minorities in rendering services to the Authority.
10. Include with your response a separate Disclosure Statement in response to the items in the attached disclosure letter.
11. Summarize the general experience of your firm. Summarize the experience of your firm's work with Massachusetts issuers, quasi-governmental authorities, the higher education sector and revenue bond issuers.
12. Provide a case study of a General Counsel, Bond Counsel, or Project Counsel engagement that showcases why your firm and your team are the superior choice for the Authority in terms of professionalism, expertise, responsiveness, creativity, problem-solving, etc.
13. Describe your firm's affirmative action and equal opportunity policies and describe the numbers of and the positions held by women and minorities in your firm (in relation to the overall numbers and positions of employees in your firm) and the expected participation of women and minorities in a bond counsel engagement with the Authority.
14. Identify any material litigation, administrative proceedings or investigations regarding your firm or team member that is ongoing or has been settled or otherwise concluded during the past five years that relates to your firm's counsel practice. Identify any conflicts of interest that may exist or arise by providing counsel services to the Authority.

15. Provide contact information (name, title, street address, telephone number and e-mail address) for three references of clients or other entities that are familiar with your firm and team members' counsel work.
16. Provide completed Certification Form (see Attachment 2).

VII. QUESTIONS REGARDING THIS RFQ

Any questions concerning this RFQ may be directed to Jadea Simmons at jsimmons@mscba.org.

No other employee or agent of the Authority (including existing counsel, financial advisor, rating agencies and trustee) and no member of the Authority's Board or employee of the State Universities or Community Colleges should be contacted about this RFQ until the RFQ process has concluded and firms have been notified of the outcome. Failure to adhere to this may result in disqualification.

VIII. SCHEDULE OF SELECTION PROCESS

The following is the anticipated schedule for this Request for Proposals selection process.

RFQ Issued	...	February 14, 2024
Deadline for Questions	...	March 7, 2024 (by 4 PM)
Proposals Due	...	March 13, 2024 (by 2 PM)

Note: If deemed necessary, interviews will be scheduled on a date to be determined.

IX. EVALUATION CRITERIA

Evaluation and selection will be based on written qualifications and oral presentations, if deemed necessary, with emphasis on the following general criteria:

1. Demonstrated relevant experience of the firm and team members.
2. Capacity of the firm and team members to provide services as described herein.
3. Overall responsiveness to RFQ.
4. References.
5. Fee proposal.

X. OTHER INFORMATION

1. The selection of counsel may be subject to Authority Board approval.
2. The Authority reserves the right to seek additional information from any responding party and to schedule interviews with one or more of the responding firms.
3. The Authority reserves the right to reject any and all proposals, to waive any minor informality in the proposals or to enter into any engagement deemed by the Authority to be in its best interest.
4. The Authority reserves the right to amend this RFQ any time and negotiate the scope of services and/or fee terms with one or more of the responding firms.

MASSACHUSETTS STATE COLLEGE BUILDING AUTHORITY

**REQUEST FOR PROPOSALS
BENEFITS CONSULTING SERVICES
ISSUED DECEMBER**

DISCLOSURE STATEMENT

The following disclosures are required of all respondents to the Request for Proposals of the Massachusetts State College Building Authority (the "Authority") from firms to provide benefits consulting services for the Authority.

Please submit your response to the following with your response to the Request for Proposals.

1. State your firm's name and address.
2. State the name and position of the partner or other authorized person completing this Disclosure Statement.
3. Describe your firm's organizational structure (e.g., partnership, corporation, etc.) Also list any subsidiaries, joint ventures, consultants, lobbyists, subcontractors, agents, or any other persons or entities that have relationships with your firm and relate in any way to your proposed business with the Authority (other than any of the foregoing providing routine administration services such as the operation of the mail room or copy services).
4. Did your firm or will your firm (or any employee of your firm), or any of its related entities or any individual listed in response to question 1.d. above, provide, agree to provide, or arrange to provide any compensation or benefit, direct or indirect, to any individual or entity, including without limitation, lobbyists, consultants, or agents, whether related or unrelated to your firm, for their services in your firm's obtaining its engagement for the provision of services to the Authority?

If the answer is "yes," please provide the name and address of such individual or entity and a description of the services performed by them and the compensation or benefit.

5. Did your firm or will your firm (or any employee of your firm), or any of its related entities or any individual listed in response to question 1.d. above, provide, agree to provide, or arrange to provide any compensation or benefit, direct or indirect, to any individual or entity, including without limitation, lobbyists, whether related or unrelated to your firm, for services provided to your firm in support of your firm's performing services pursuant to an engagement with the Authority?

If the answer is “yes,” please provide the name and address of each such individual or entity and a description of the services performed by them and the compensation or benefit.

6. Has your firm (or any employee of your firm), or any of its related entities or any individual listed in response to question 1.d. above, shared any fees with any person or entity, whether related or unrelated, with respect to your firm’s proposed engagement with the Authority? Please describe such arrangements, whether or not any fees have actually been shared.
7. Does your firm (or any employee of your firm), or any of its related entities or any individual listed in question 1.d. above, have any ongoing arrangement with any unrelated individual or entity with respect to sharing of fees that would be received from services provided to the Authority? Please describe such arrangements.

This Request for Disclosure Statement serves as notice to your firm that all future relationships like those described in this questionnaire be disclosed in writing to the Authority at such time such agreement is entered into.

This Request for Disclosure Statement should be completed in the format provided herein and must be signed by the person identified in Paragraph 2. All responses will be deemed representations of the firm providing the Disclosure Statement. Staff of the Authority may request additional information, including copies of any relevant contracts or agreements described herein. Persons or organizations described in any of the responses provided may be requested by the Authority to provide information with respect to any arrangements described herein and may be requested to provide a separate Disclosure Statement. The Authority reserves the right to change the form of any Disclosure Statement requested by the Authority.

This Request for Disclosure Statement should be read broadly and any perceived ambiguity should either be resolved in favor of disclosing the information, or be raised with the Authority for resolution.

Certification Form

Proposal to Provide Bond Counsel Services to
Massachusetts State College Building Authority

I, the _____(Title) of _____(the "Firm"), affirm that I have the authority to contractually bind the Firm. I also affirm that:

1. The Firm will act in accordance with all applicable federal and state laws.
2. The Firm warrants that all information and statements in the proposal submitted in response to this RFQ are complete and true. Any statement or claim found to be incomplete, misleading, or false will be grounds for immediate disqualification or dismissal and may be subject to legal action.
3. The Firm will be responsible for any error or omission on its part.
4. The Firm is prohibited from assigning any interest in this contract to any other party without the prior written consent of the Authority.

Name of person signing this certification (print or type)

Authorized signature of person signing this letter

Address

Telephone(s)

E-Mail Address