

STATE OF UTAH  
OFFICE OF THE ATTORNEY GENERAL



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*Protecting Utah • Protecting You*

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October 24, 2011

**REQUEST BY THE ATTORNEY GENERAL OF THE STATE OF UTAH  
FOR PROPOSALS TO SERVE AS BOND COUNSEL, OR DISCLOSURE  
COUNSEL, OR BOTH, TO THE UTAH STATE BOARD OF REGENTS AND  
UTAH VALLEY UNIVERSITY FOR THE ISSUANCE OF UP TO \$48  
MILLION OF REVENUE BONDS TO PROVIDE FUNDS FOR A LIFE AND  
WELLNESS CENTER AND A PARKING STRUCTURE**

**PLEASE NOTE: WRITTEN PROPOSALS MUST BE RECEIVED NO LATER THAN  
12:00 P.M. (NOON) ON TUESDAY, NOVEMBER 1, 2011.**

The Attorney General is requesting proposals from attorneys and law firms interested in serving as bond counsel, disclosure counsel, or both, for the Utah State Board of Regents ("Board") and Utah Valley University ("UVU") for the issuance of revenue bonds in an amount to provide funds for construction costs of approximately \$48 million, together with other amounts necessary to pay costs of issuance, pay capitalized interest, and fund any debt service reserve requirements, to provide funds for new "Life and Wellness Center" and a parking facility for UVU on the UVU campus at Orem, Utah.

In response to this request for proposals ("RFP"), the Attorney General will consider proposals from the following: an individual attorney; two or more individual attorneys in association with each other; a law firm; two or more law firms in association with each other; or an individual attorney or two or more attorneys in association with a law firm or more than one law firm. For ease of reference, the term "firm" or "firms" will hereinafter refer to each of these groupings.

**OVERVIEW**

The 2011 General Session of the Utah Legislature passed legislation enacting Utah Code Ann. § 63B-20-103. Subsection (1) of that statute authorizes the Board to issue revenue bonds on behalf of UVU in an amount not to exceed \$40 million, together with other amounts necessary to pay costs of issuance, pay capitalized interest, and fund any debt service reserve

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requirements, "to finance the cost of constructing a Student Life and Wellness building with up to 170,000 square feet." Subsection (2) of that statute authorizes the Board to issue revenue bonds on behalf of UVU in an amount not to exceed \$8 million, together with other amounts necessary to pay costs of issuance, pay capitalized interest, and fund any debt service reserve requirements, "to finance the cost of constructing a parking structure with up to 534 stalls."

UVU would like to proceed with the bond issue as expeditiously as possible to take advantage of current low interest rates. The Board and UVU want to present the resolution and any other documents necessary for the Board to approve the issuance of these bonds to the Board at the Board's meeting on November 18, 2011, at UVU's campus in Orem, Utah. The Board and UVU would then like to issue the bonds as soon thereafter as possible.

**In order to be able to have the Board consider the bond resolution and other documents at its November 18, 2011 meeting, bond counsel will need to have documents to the Board of Regents no later than Friday, November 4, 2011. This is necessary to allow the Board the time it needs to review the documents before sending them to the individual Regents the following Monday, November 7.**

The Board and UVU have asked the Attorney General to appoint bond counsel and, provisionally (see below), disclosure counsel, to assist the Board and UVU in the issuance of these bonds.

#### **NATURE OF THE APPOINTMENTS**

Bond counsel and disclosure counsel appointed under this RFP will provide the necessary services for the Board and UVU to issue the bonds described above.

**However, whether the firm appointed as disclosure counsel under this RFP performs any services on this bond issue in that capacity will in part be determined by the wishes of the underwriter on the bond issue. If the firm appointed by the Attorney General to perform the disclosure work is acceptable to the underwriter, the appointed firm will serve as disclosure counsel. If the underwriter on the bond issue wishes to appoint its own underwriters' counsel to do the disclosure work, the appointment of disclosure counsel under this RFP will likely be rescinded by the Attorney General in order to avoid duplication of efforts, and keep down the costs of issuance. The decision as to whether the appointment of disclosure counsel is rescinded will be made solely by the Attorney General, after consultation with other appropriate individuals.**

#### **APPOINTMENT BY ATTORNEY GENERAL**

The Attorney General is appointing bond counsel and disclosure counsel pursuant to Utah Code Ann. § 67-5-5 (West 2009). The procedures the Attorney General will follow in making the appointment are set forth in Utah Admin. Code R. 105-1 (2011).

### **TERM OF APPOINTMENT**

Bond counsel and disclosure counsel appointed under this RFP will serve in those capacities only for this bond issue, and only for the bonds described above, unless the appointment is modified by the Attorney General.

### **RESPONSIBILITIES OF BOND COUNSEL**

Bond counsel will have the responsibilities, and perform the functions, usually associated with bond counsel in the issuance of revenue bonds. These services will likely include, but will not be limited to: development of necessary legal documentation; assistance with the issuance and sale of the bonds; issuance of an opinion as to the legality and validity of the bonds; issuance of an opinion regarding the tax-exempt status of the bonds; assisting, in a limited manner, in the preparation and development of an official statement for the bond issues; and attending to the details of the closings and printing of the bonds, as required. Bond counsel will also be expected to attend all meetings associated with the issuance of bonds.

**Bond counsel must be prepared to commit the attorney time and other resources necessary to assist the Board and UVU in meeting their current goal of presenting the resolution authorizing the bonds to the Board at the Board's meeting on November 18, 2011, at UVU's campus in Orem, Utah. This includes having all necessary documents to the Board of Regents by Friday, November 4, 2011, so the Board can review the documents and include them in the packets that will be sent to the individual Regents the following Monday, November 7. Bond counsel must then be prepared to assist the Board and UVU in issuing the bonds as soon thereafter as possible.**

### **REQUIRED CONTENTS OF PROPOSALS TO SERVE AS BOND COUNSEL**

Proposals must address the following criteria, which the Attorney General will use to select bond counsel:

- A. The ability of the firm to complete bonding transactions in a timely, professional manner. In evaluating this factor, the Attorney General will consider each of the following:
  1. The experience of the firm as bond counsel or disclosure counsel on general obligation bond and revenue bond transactions. (If the firm has recently submitted to us a proposal on another bond or note issue, the firm may refer to and incorporate any parts of that proposal into this proposal, updating information where necessary.)

2. The professional resources available to assist with bond issues, and the names and qualifications of the principal attorney(s) who would be assigned to work on the bond issue. At least one attorney who will participate must be a member in good standing of the Utah State Bar, and at least one attorney must be listed among the attorneys in the "Municipal Bond Attorney's Section" of The Bond Buyers' Municipal Marketplace (the "Red Book"). The proposal must state which attorney(s) would actually be providing most of the services. The firm may associate with other firms or attorneys to provide services as bond counsel, but primary use of local attorneys will be a positive element in evaluating this factor.
  3. The availability of the firm to complete work on the bond issues in a timely and professional manner.
- B. The fee structure and estimated costs for the legal services provided. The proposal must state whether the firm would expect to receive the proposed fee or any part of the proposed fee, or to be reimbursed for costs incurred, in the event bonds are not issued. PREFERENCE WILL BE GIVEN FOR PROPOSED FEES BASED UPON A SET FEE, A FEE SCHEDULE BASED UPON THE DOLLAR AMOUNT OF BONDS ISSUED, HOURLY RATES WITH A CEILING, OR SOME OTHER METHOD BY WHICH THE ISSUER WILL BE ABLE TO ASCERTAIN AT THE OUTSET OF A BOND ISSUE WHAT THE LEGAL FEES FOR BOND COUNSEL WILL BE. The proposal must also state whether there would be a charge for future legal services incidental to the issuance of the bonds, and if so, what type of fee would be charged (e.g., hourly, no charge for first X number of hours, etc.).

AS YOU PREPARE YOUR PROPOSAL, PLEASE NOTE THAT NO FUNDS ARE AVAILABLE FROM THE STATE OF UTAH, THE ATTORNEY GENERAL'S OFFICE, THE BOARD, OR UVU, FOR PAYMENT OF FEES OR COSTS IF BONDS ARE NOT ISSUED. The Attorney General, in consultation with the appropriate officials from the Board and UVU, will allow for adjustments in bond counsel fees, if there are unusual or unforeseen circumstances that require significant additional services by bond counsel, and if funds are available from the bond issue.

- C. The number of appointments of, and the total fees received by, the firm in the last three (3) years for bonding work (including note projects) on behalf of the State, the State Board of Regents, any of the State's colleges or universities, or the Utah Higher Education Assistance Authority.

## **RESPONSIBILITIES OF DISCLOSURE COUNSEL**

Disclosure counsel will have all the responsibilities, and will provide all the services, normally associated with disclosure counsel for revenue bond issues. These responsibilities and services will likely include, but will not be limited to: reviewing documentation developed by bond counsel (and, if applicable, the financial advisor), and developing any additional necessary legal documentation; assisting with the issuance and sale of the bonds; issuing a 10b-5 opinion; assisting in the preparation, development, and review of an official statement for the bond issue; and performing such other duties as are normally and customarily required of disclosure counsel. Disclosure counsel will also be expected to attend all meetings they are required to attend that are associated with the bond issue.

**Disclosure counsel must be prepared to commit the attorney time and other resources necessary to assist the Board and UVU in issuing the bonds as soon as possible.**

**As stated above, if the firm appointed by the Attorney General to perform the disclosure work is acceptable to the underwriter, the appointed firm will serve as disclosure counsel. If the underwriter on the bond issue wishes to appoint its own underwriters' counsel to do the disclosure work, the appointment of disclosure counsel under this RFP for the bond issue will likely be rescinded by the Attorney General in order to avoid duplication of efforts and to keep down the costs of issuance. The decision as to whether the appointment of disclosure counsel is rescinded will be made solely by the Attorney General, after consultation with other appropriate individuals.**

## **REQUIRED CONTENTS OF PROPOSALS TO SERVE AS DISCLOSURE COUNSEL**

Proposals must address the following criteria, which the Attorney General will use to select disclosure counsel:

- A. The ability of the firm to complete bonding transactions in a timely, professional manner. In evaluating this factor, the Attorney General will consider each of the following:
  1. The experience of the firm as bond counsel or disclosure counsel on general obligation bond and revenue bond transactions. (If the firm has recently submitted to us a proposal on another bond or note issue, the firm may refer to and incorporate any parts of that proposal into the firm's proposal, updating information where necessary.)
  2. The professional resources available to assist with bond issues, and the names and qualifications of the principal attorney(s) who

would be assigned to work on the bond issue. At least one attorney who will participate must be a member in good standing of the Utah State Bar, and at least one attorney must be listed among the attorneys in the "Municipal Bond Attorney's Section" of The Bond Buyers' Municipal Marketplace (the "Red Book"). The proposal must state which attorney(s) would actually be providing most of the services. The firm may associate with other firms or attorneys to provide services as disclosure counsel, but primary use of local attorneys will be a positive element in evaluating this factor.

3. The availability of the firm to complete work on the bond issues in a timely and professional manner.
- B. The fee structure and estimated costs for the legal services provided. The proposals must state whether the firm would expect to receive the proposed fee or any part of the proposed fee, or to be reimbursed for costs incurred, in the event bonds are not issued. PREFERENCE WILL BE GIVEN FOR PROPOSED FEES BASED UPON A SET FEE, A FEE SCHEDULE BASED UPON THE DOLLAR AMOUNT OF BONDS ISSUED, HOURLY RATES WITH A CEILING, OR SOME OTHER METHOD BY WHICH THE ISSUER WILL BE ABLE TO ASCERTAIN AT THE OUTSET OF A BOND ISSUE WHAT THE LEGAL FEES FOR DISCLOSURE COUNSEL WILL BE. The proposal must also state whether there would be a charge for future legal services incidental to the issuance of the bonds, and if so, what type of fee would be charged (e.g., hourly, no charge for first X number of hours, etc.).

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- C. The number of appointments of, and the total fees received by, the firm in the last three (3) years for bonding work (including note projects) on behalf of the State, the State Board of Regents, any of the State's colleges or universities, or the Utah Higher Education Assistance Authority.

### **OTHER MATTERS FOR CONSIDERATION**

1. Firms may submit proposals to serve as bond counsel, as disclosure counsel, or both. If the fee for serving as both bond counsel and disclosure counsel would be different than just combining the fees submitted to serve as bond counsel and to serve as disclosure counsel separately, that should be indicated (e.g., \$20,000 for bond counsel, \$10,000 for disclosure counsel, and \$25,000 for both).

2. The Attorney General will make the determination, after consulting with officials for the Board and UVU, whether to appoint different firms to serve as bond counsel and disclosure counsel, even if significant savings to the State could be obtained by appointing one firm to serve in both capacities.

3. Should a key attorney in a firm leave that firm during the period of the firm's appointment under this RFP, the Attorney General reserves the right, in the sole discretion of the Attorney General, (a) to have the appointment follow the attorney to the attorney's new firm, (b) to leave the appointment with the firm originally appointed, or (c) to appoint a new firm to fill the appointment for the remainder of the period.

4. The Board and UVU have not yet determined if a financial advisor will be retained for this project.

### **DEADLINE FOR SUBMITTING PROPOSALS**

Written proposals must be received by the Utah Attorney General, c/o Bryce H. Pettey, Assistant Attorney General, 160 East 300 South, Fifth Floor, P. O. Box 140874, Salt Lake City, UT 84114-0874, **no later than 12:00 p.m. (Noon) on Tuesday, November 1, 2011. Only TWO (2) copies of the firm's proposal(s) need be submitted.**

The Attorney General reserves the right to accept or reject any or all proposals received after the due date, to accept or reject any or all proposals or any or all parts of a proposal, to waive minor defects or technicalities, and to request new proposals.

### **THE SELECTION PROCESS**

#### **In General**

The Attorney General will select bond counsel and disclosure counsel based upon each of the criteria set forth above under the respective headings of "**REQUIRED CONTENTS OF PROPOSALS FOR BOND COUNSEL**" and "**REQUIRED CONTENTS OF PROPOSALS FOR DISCLOSURE COUNSEL**". All criteria set forth under those headings are important, but the criteria in paragraph A under each heading will be given the greatest weight. Each of the

subparagraphs of each paragraph A will be given equal weight, and the subparagraphs will be evaluated in the order they appear in each paragraph A.

A firm must first be determined to be qualified under paragraph A to perform the services described for bond counsel or disclosure counsel. After passing that threshold, the factors in paragraphs B and C will be considered. The lowest proposed fees will be an important factor in selecting bond counsel and disclosure counsel, but other factors will also be considered, and the firm submitting the lowest proposed fee will not necessarily be the firm that is selected.

The Attorney General may seek input from appropriate State officials, Board officials, UVU officials, and from other prior issuers who have had experience with firms submitting proposals. Such input may be considered by the Attorney General in making the selection.

### **Oral Presentations**

After reviewing the written proposals, the Attorney General may select bond counsel, disclosure counsel, or both at that time; however, the Attorney General reserves the option of selecting several of the top applicants for bond counsel and several of the top applicants for disclosure counsel (selected on the basis of the written proposals) to make oral presentations to supplement the information in the written proposals. The Attorney General will decide whether oral presentations are needed or desirable, based upon factors brought to the Attorney General's attention by the Attorney General's staff and officials from the Board and UVU, the amount of time available to hear such presentations, and the Attorney General's own schedule. The Attorney General may choose to have those oral presentations made to a panel of persons of the Attorney General's own choosing; if so, the Attorney General may or may not be a member of that panel. Information in those oral presentations, and any recommendations from a panel or panel members, may be considered by the Attorney General, along with the information in the written proposals, in making the selection.

If the Attorney General decides oral presentations are needed or desirable, the firms selected after initial review of the written proposals will be contacted by the Attorney General's office, and arrangements will be made to have the firms make their oral presentations. After these presentations, the Attorney General will select bond counsel and disclosure counsel.

### **NOTICE OF SELECTION**

After the Attorney General has selected the firms, the selected firms will be notified. If a firm the Attorney General has selected is unable or unwilling to accept the appointment, the Attorney General will select another firm based upon the same criteria used to select the first firm. After firms have been selected that are able and willing to, and do, accept the appointments under this RFP for bond counsel and disclosure counsel, a general announcement will be made to the public. It is anticipated bond counsel and disclosure counsel will be named

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no later than Monday, November 7, 2011. Interested persons can learn the name of the firm appointed by calling 801-366-0375 on Monday, November 14, 2011.

**NON-DISCLOSURE OF REASONS FOR SELECTING FIRM APPOINTED  
AND OF INFORMATION IN PROPOSALS;  
POSSIBLE REQUIREMENT TO DISCLOSE**

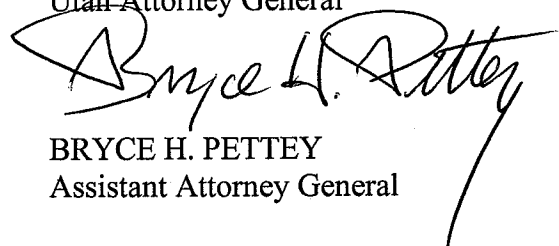
Utah Admin. Code R105-1 provides that the reasons for selecting the firms that are appointed will not be made available to anyone. However, like all other State agencies, the Attorney General's office is subject to the Government Records Access and Management Act ("GRAMA") (Chapter 2, Title 63G, Utah Code Ann. (West 2009 & Supp. 2011)). GRAMA makes most documents held by government entities in the State of Utah "public records," as defined in GRAMA. It is not yet clear just what effect GRAMA has upon proposals submitted in response to an RFP, such as this one. The Attorney General's office continues to analyze GRAMA for its effect on all written documents received by the Attorney General's office, including proposals received in response to an RFP, but all persons submitting proposals are on notice that the Attorney General may not be able to keep the information in the proposals confidential. **A firm desiring to protect the confidentiality of all or part of the contents of its proposal may wish to consider the applicability of Utah Code Ann. § 63G-2-309 (West 2009).**

**FURTHER INFORMATION**

Should you have questions relating to the business aspects of the bond issue, you may contact: at the Utah State Board of Regents, Dr. Gregory L. Stauffer, Associate Commissioner for Finance and Facilities, via telephone (801-321-7131), facsimile (801-321-7199), or email (gstauffer@utahsbr.edu); or at Utah Valley University, Val Petersen, Vice President for Finance and Administration, via telephone (801-863-8424), facsimile (801-226-5207), or e-mail (petersva@uvu.edu). Firms are authorized – and indeed are encouraged – to contact any or all of these individuals directly with any questions they may have regarding the business aspects of the bond issues described above. A firm need not contact the Attorney General's office before making inquiry of the Board or UVU.

Should you have questions relating to this RFP, or relating to the Attorney General's process of selecting bond counsel, you may contact Bryce Pettey, Assistant Attorney General, at the Utah Attorney General's Office, via telephone (801-366-0375), facsimile (801-366-0378), or e-mail (bpettey@utah.gov).

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