



ERIE COUNTY

REQUEST FOR PROPOSAL (RFP) TO PROVIDE BOND COUNSEL SERVICES FOR THE COUNTY OF ERIE

RFP #1213VF

May 7, 2012

**Michael A. Siragusa, Esq.
Erie County Attorney
EDWARD A. RATH COUNTY OFFICE BUILDING
95 FRANKLIN STREET
BUFFALO, NEW YORK 14202**

COUNTY OF ERIE, NEW YORK
REQUEST FOR PROPOSALS (“RFP”)

RFP# 1213VF

**TO PROVIDE BOND COUNSEL
SERVICES FOR THE COUNTY OF ERIE**

I. INTRODUCTION

The Erie County Attorney is soliciting proposals from qualified law firms to serve as bond counsel for the County for issuance of its general obligation bonds. Such appointment would be subject to termination by the County Attorney at any time.

The firm(s) to be engaged pursuant to this invitation would be required to assist the County Attorney in all matters relating to the issuance of tax-exempt and/or taxable general obligation bonds and other methods of financing public projects, including, but not limited to, tax anticipation notes, bond anticipation notes and revenue anticipation notes. The County also issues bonds through the New York State Environmental Facilities Corporation (NYSEFC). The County may also issue bonds for the capital projects of the Erie County Medical Center Corporation (ECMCC) (see N.Y. Public Authorities Law §3632). Some County issuances are arranged with the assistance of the Erie County Fiscal Stability Authority (ECFSA) pursuant to a Project Financing Agreement, as amended, and following all necessary legal approvals (see N.Y. Public Authorities Law §3950 et seq.).

To date, the County has not issued general obligation bonds for the 2012 capital budget. Services for the issuance of 2012 bonds in an estimated amount of \$24.2 million will be included in the awarded contract. For informational purposes only, proposers can estimate issuances of \$20-50 million for County capital budget years 2013, 2014 and 2015.

In 2011, the County issued \$130,750,000 of general obligation bonds which included \$17 million in County bonds, \$25.3 million in refunding bonds; and \$88.4M in bonds issued for capital projects at the behest of ECMCC. Following an approved declaration of need, these bonds were issued through the ECFSA and in accordance with a Project Financing Agreement and First Amendment to the Financing Agreement. The ECMCC issuance is governed by a Loan Agreement with ECMCC. Furthermore, in 2011, the County financed \$15.7 million through the NYSEFC.

In 2010, the County issued \$155,274,158 million of general obligation bonds which included \$35.6 million in County bonds for the 2010 capital budget; \$42.5 million in County bonds for the 2009 capital budget; \$46.5 million in County bonds for the 2008 capital budget; \$26.1 million in County bonds for the 2007 capital budget; and \$4.5 million for earlier capital projects. In 2010, the County also issued \$88.5 million in refunding bonds and \$2.7 million in Sewer District bonds. The County had not issued bonds previously in years 2007 through 2009. In 2010, bonds were issued in following an approved declaration of need and accordance with a Project Financing Agreement through the Erie County Fiscal Stability Authority. Additionally, in 2010, the County financed \$5.9 million through the NYSEFC.

The successful proposer(s) will be expected to furnish legal services to the County on an “of counsel” basis to the County Attorney, including, but not limited to, consultation, advice, and document drafting relating to tax-exempt financing and the rendering of approving legal opinions for bond issues of the County, as well as preparation of related post-closing Internal Revenue Service and New York State Department of Taxation arbitration reports. In addition, the successful proposer will be required to render advice to the County Attorney for projects under consideration, whether or not bonds are actually issued.

Should your firm be one of the firms selected to perform these services, it will be required to enter into a standard County contract with the County. Provisions in the standard County contract include, but are not limited to, indemnification, insurance provisions, reporting, confidentiality, fee(s) to perform the work, termination clause and compliance with law provisions. Should the proposer be awarded a contract, such contract shall be subject to County appropriations. The term of the contract shall be for three (3) year period commencing July 1 2012 (or sooner). The County at its sole discretion shall have the option to renew for subsequent one (1) year periods on the same terms and conditions.

The County will not guarantee any minimum level of activity or business. No exclusive rights are, or are intended to be, granted pursuant to any award under this request for proposals (“RFP) and the agreement(s) with the provider(s) of service(s) shall be only for services for such matters as the County, in its sole discretion, shall deem appropriate.

Should the proposer be awarded a contract, an Attorney/Client relationship with the County and its elected officials, officers and employees acting in their official capacity shall be established and all communications with the County and such elected officials, officers and employees of the County shall be confidential and privileged to the fullest extent permitted by law unless such privilege is specifically waived in writing by the County Attorney. The proposer shall be "Of Counsel" to the County Attorney.

Additionally, the proposer, if awarded a contract pursuant to this RFP, shall not represent or agree to represent a client in any action or proceeding against the County, or against any elected official, officer or employee of the County in their official capacity, except with the express prior written consent of the County Attorney. This prohibition shall be deemed to include and prohibit the assertion of any third party claim, counterclaim or cross-claim by the proposer.

II. PROPOSAL PROCEDURES

A. ANTICIPATED SCHEDULE OF PROPOSAL

The following schedule is for informational purpose only. The County reserves the right to amend this schedule at any time.

Issue RFP:	May 7, 2012
Proposals Due:	May 21, 2012
Selection Made:	No later than June 8, 2012
Contract Executed:	Following all necessary County approvals

B. GENERAL REQUIREMENTS

1. Each proposal shall be prepared simply and economically avoiding the use of elaborate promotional materials beyond what is sufficient to provide a complete, accurate and reliable presentation. Each response should be accompanied by a letter of transmittal not exceeding three (3) pages which summarizes key points of the response and which is signed by an officer or representative of the firm authorized to commit the firm's resources.
2. One (1) original and three (3) copies shall be submitted. Proposals **MUST** be signed. Unsigned proposals will be rejected.
3. Submission of the proposals shall be directed to:

Michael A. Siragusa, County Attorney
Erie County Department of Law
95 Franklin Street, Room 1634
Buffalo, New York 14202

All proposals must be delivered to the above office on or before May 21, 2012 at 3:00 p.m. Proposals received after the above date and time will not be considered. The County is under no obligation to return proposals.

4. Requests for clarification of this RFP must be written and submitted to Michael A. Siragusa, at 95 Franklin Street, Room 1634, Buffalo, New York 14202 no later than 3:00 p.m. on May 14, 2012. Formal written responses will be distributed by the County on or before May 17, 2012. **NO COMMUNICATIONS OF ANY KIND WILL BE BINDING AGAINST THE COUNTY, EXCEPT FOR THE FORMAL WRITTEN RESPONSES TO ANY REQUEST FOR CLARIFICATION.**
5. Proposers may be required to give an oral presentation to the County to clarify or elaborate on the written proposal. Those proposers will be notified to arrange specific times.
6. No proposal will be accepted from nor any agreement awarded to any proposer that is in arrears upon any debt or in default of any obligation owed to the County. Additionally, no agreement will be awarded to any proposer that has failed to satisfactorily perform pursuant to any prior agreement with the County.
7. Certified Minority Business Enterprise/Women's Business Enterprise (MBE/WBE) proposers should include the Erie County certification letter with the proposal.
8. If proposer is a Veteran Owned Business, proposer should include letter indicating company is 51% or more Veteran-owned.
9. **All proposals must include a cost proposal.** Such fees are inclusive of proposer's research, postage, telephone, and file delivery charges.

III. SCOPE OF PROFESSIONAL SERVICES REQUIRED AND PROPOSAL INFORMATION

The successful firm to whom the contract is awarded shall furnish customary bond counsel services to the County Attorney and other County officials, including but not limited to consultation, advice and document drafting relating to tax-exempt and taxable financing and the rendering of approving legal opinions for bonds and notes issued by the County, transactions related to the Erie Tobacco Securitization Corporation, and financing through the New York State Environmental Facilities Corporation. The firm shall also render advice to the County Attorney and other County officials for projects and transactions under consideration whether or not bonds are actually issued, as well as preparation of related post-closing Internal Revenue Service and New York State Department of Taxation arbitrage reports.

All proposers to this invitation must submit their proposal in accordance with the following format. Failure of proposers to follow the requested format may be sufficient grounds for their proposal to be considered by the County non-responsive and to be rejected.

- A. **Title Page.** The title page should show the proposal title, the name of the proposer, its address, the name and title of the contact person authorized to represent the proposer, and the date.
- B. **Table of Contents.** The table of contents in the proposal should clearly identify all items of the proposal by topic number and page number.
- C. **Transmittal Letter.** The transmittal letter should be on the letterhead of the proposer. The letter should be signed by a partner of the firm.
- D. **Specific Information.** The proposer should, for the convenience of the selection committee, repeat each request and thereafter provide the proposer's response.
 1. Please provide a profile of the firm including:
 - a) The total number of offices of the firm, the addresses of each, and the total number of partners and associates.
 - b) The location of the office(s) from which the work is to be managed and the number of partners, associates, legal assistants and staff employed at the office(s).
 - c) A brief history of the firm and its municipal finance practice, including length of time in operation.
 - d) A statement as to whether the firm is listed in the directory of municipal bond attorneys in The Bond Buyer's Municipal Marketplace.
 - e) A description of the firm's general practice areas other than municipal finance.
 - f) The proportion of your firm's partners and associates who are minorities and a description of the firm's affirmative action program.

g) The proportion of your firm's partners and associates who are women.

2. List the names of the governmental and quasi-governmental entities in New York State for which your firm serves as bond counsel. List the names of local governmental units outside New York State with general taxing powers for which your firm serves as bond counsel for general obligation bond borrowings.

3. List up to five examples of non-general obligation financings for or on behalf of governmental entities similar to the County in which your firm has participated as bond counsel or underwriters' counsel and provide a brief description of the financings.

4. State the approximate dollar volume of municipal bond issues in New York State for which your firm has issued the approving legal opinion for each of the past two years (2010 and 2011).

5. State the approximate dollar volume of municipal bond issues of issuers in New York State for which your firm has acted as counsel to the underwriters for each of the past two years.

6. Provide references, with the name of the contact person, address and telephone number, for at least five (5) of the issuers listed in response to #2 above and all of the issuers identified in #3 above.

7. Provide the names of the partners and associates in your firm who would be assigned to bond issues for the County and give a brief description of each person's experience in general obligation bonds and tax issues related to such financings. List the firm's current material engagements and outstanding current proposals that could impact the availability of the individuals listed.

8. For each of the individuals listed in #7 above, provide three references, with the name of the contact person, address and telephone number.

9. Please provide the hourly rates of the individuals identified in #7 above and the range of hourly rates for partners and associates. If your firm has discounted or other blended plan rates for governmental entities such as the County, please provide these rates. Please provide your firm's proposed fee and billing arrangements.

10. Describe in detail any potential conflicts of interest arising from continued representation of the current clients of your firm and an engagement for the County.

11. Describe how your firm would furnish the County with information regarding legislation and regulations which would affect the County and its issuance of tax-exempt indebtedness.

12. Describe your firm's experience in drafting legislation for submission to the New York State Legislature dealing with municipal finance matters.

13. State whether your firm subcontracts any work relating to its bond counsel services. If so, provide what are the names and addresses of these firms. Describe in detail the experience these firms have had with the issuance of tax-exempt general obligation bonds and other methods of financing public projects.

14. Describe the firm's expertise in federal tax matters relating to the issuance of municipal borrowings including the firm's lawyers experienced in performing, and does the firm have the technical capabilities to perform, yield and arbitrage rebate calculations.

15. If your proposal is submitted as a joint proposal by more than one firm, describe how responsibilities and compensation would be allocated among the firms.

16. Identify what separates your firm from others and what your firm can provide to the County that other firms cannot.

17. The firm shall adhere to the County's Outside Counsel Guidelines attached hereto as Schedule "C".

PRICE PROPOSAL: For each of the following services, you must state your firm's proposed fees:

- a. Fee for preparation of each Bond Resolution;
 - b. Maximum fee per issuance of Notes (e.g.: TANs, RANs, BANs);
 - c. Maximum fee per issuance of Bonds (e.g.: general obligation and revenue bonds/taxable, tax-exempt or other bonds);
 - d. Maximum fee per issuance of Refunding Bonds; and
 - e. Maximum fee per issuance of debt through the New York State Environmental Facilities Corporation.
- e. Hourly rates of the individuals identified above for services that may be required that are not covered by any of the above categories. Please indicate any discounted rates for governmental entities.

IV. STATEMENT OF RIGHTS

UNDERSTANDINGS

Please take notice, by submission of a proposal in response to this request for proposals, the proposer agrees to and understands:

- that any proposal, attachments, additional information, etc. submitted pursuant to this Request for Proposals constitute merely a suggestion to negotiate with the County of Erie and is not a bid under Section 103 of the New York State General Municipal Law;
- submission of a proposal, attachments, and additional information shall not entitle the proposer to enter into an agreement with the County of Erie for the required services;
- by submitting a proposal, the proposer agrees and understands that the County of Erie is not obligated to respond to the proposal, nor is it legally bound in any manner whatsoever by submission of same;
- that any and all counter-proposals, negotiations or any communications received by a proposing entity, its officers, employees or agents from the County, its elected officials, officers, employees or agents, shall not be binding against the County of Erie, its elected officials, officers, employees or agents unless and until a formal written agreement for the services sought by this RFP is duly executed by both parties and if necessary, approved by the Erie County Legislature and the Office of the Erie County Attorney.

In addition to the foregoing, by submitting a proposal, the proposer also understands and agrees that the County of Erie reserves the right, and may at its sole discretion exercise, the following rights and options with respect to this Request for Proposals:

- To reject any or all proposals;
- To issue amendments to this RFP;
- To issue additional solicitations for proposals;
- To waive any irregularities in proposals received after notification to proposers affected;
- To select any proposal as the basis for negotiations of a contract, and to negotiate with one or more of the proposers for amendments or other modifications to their proposals;
- To conduct investigations with respect to the qualifications of each proposer;
- To exercise its discretion and apply its judgment with respect to any aspect of this RFP, the evaluation of proposals, and the negotiations and award of any contract;
- To enter into an agreement for only portions (or not to enter into an agreement for any) of the services contemplated by the proposals with one or more of the proposers;
- To select the proposal that best satisfies the interests of the County and not necessarily on the basis of price or any other single factor;
- To interview the proposer(s);

- To request or obtain additional information the County deems necessary to determine the ability of the proposer;
- To modify dates;
- All proposals prepared in response to this RFP are at the sole expense of the proposer, and with the express understanding that there will be no claim, whatsoever, for reimbursement from the County for the expenses of preparation. The County assumes no responsibility or liability of any kind for costs incurred in the preparation or submission of any proposal;
- While this is a RFP and not a bid, the County reserves the right to apply the case law under General Municipal Law § 103 regarding bidder responsibility in determining whether a proposer is a responsible vendor for the purpose of this RFP process; and
- The County is not responsible for any internal or external delivery delays which may cause any proposal to arrive beyond the stated deadline. To be considered, proposals MUST arrive at the place specified herein and be time stamped prior to the deadline.

EVALUATION

The following criteria, not necessarily listed in order of importance, will be used to review the proposals. The County reserves the right to weigh its evaluation criteria in any manner it deems appropriate:

- Proposer's demonstrated capability to provide the services.
- Evaluation of the professional qualifications, personal background and resume(s) of individuals involved in providing services.
- Proposer's experience to perform the proposed services.
- Proposer's financial ability to provide the services.
- Evaluation of the proposer's fee submission. It should be noted that while price is not the only consideration, it is an important one. Proposer's prices are to be no higher than those offered to any other governmental or commercial consumer. If a proposer has a New York State or a Federal GSA contract for any of the services covered in this RFP, proposer shall so indicate that he has said contract and supply a copy of the contract(s).
- A determination that the proposer has submitted a complete and responsive proposal as required by this RFP.
- An evaluation of the proposer's projected approach and plans to meet the requirements of this RFP.
- The proposer's presentation at and the overall results of any interview conducted with the proposer.

- Proposers MUST sign the Proposal Certification attached hereto as Schedule “A”. Unsigned proposals will be rejected.
- Proposers may be required to give an oral presentation to the County to clarify or elaborate on the written proposal.
- No proposal will be accepted from nor any agreement awarded to any proposer that is in arrears upon any debt or in default of any obligation owed to the County. Additionally, no agreement will be awarded to any proposer that has failed to satisfactorily perform pursuant to any prior agreement with the County.

CONTRACT

After selection of the successful proposer, a formal written agreement will be prepared by the County of Erie and will not be binding until signed by both parties.

The term of the agreement shall commence upon execution and terminate upon the conclusion of the Firm’s representation of the County on the referenced contractual matters. The County, in its sole discretion, may terminate the engagement in whole or in part when the County deems it to be in its best interest. In such event, the Firm shall be compensated and the County shall be liable only for payment for services already rendered under the engagement prior to the effective date of termination at the rates specified.

INDEMNIFICATION AND INSURANCE

The proposer accepts and agrees that language in substantially the following form will be included in the agreement between the proposer and the County:

“In addition to, and not in limitation of the insurance requirements contained herein the Firm agrees:

(a) that except for the amount, if any, of damage contributed to, caused by or resulting from the negligence of the County, the Firm shall indemnify and hold harmless the County, its officers, employees and agents from and against any and all liability, damage, claims, demands, costs, judgments, fees, attorneys' fees or loss arising directly or indirectly out of the acts or omissions hereunder by the Firm or third parties under the direction or control of the Firm; and

(b) to provide defense for and defend, at its sole expense, any and all claims, demands or causes of action directly or indirectly arising out of this Agreement and to bear all other costs and expenses related thereto.

Upon execution of any agreement between the proposer and the County, the proposer will be required to provide proof of the insurance coverage described in Schedule “B”.

Insurance coverage in amount and form shall not be deemed acceptable until approved by the County Attorney.

NON-COLLUSION

The proposer, by signing the proposal, does hereby warrant and represent that any ensuing agreement has not been solicited, secured or prepared directly or indirectly, in a manner contrary to the laws of the State of New York and the County of Erie, and that said laws have not been violated and shall not be violated as they relate to the procurement or the performance of the agreement by any conduct, including the paying or the giving of any fee, commission, compensation, gift, gratuity or consideration of any kind, directly or indirectly, to any County employee, officer or official.

CONFLICT OF INTEREST

All proposers must disclose with their proposals the name of any officer, director or agent who is also an employee of the County of Erie. Further, all proposers must disclose the name of any County employee who owns, directly or indirectly, an interest of ten percent or more in the firm or any of its subsidiaries or affiliates.

There shall be no conflicts in existence during the term of any agreement with the County. The existence of a conflict shall be grounds for termination of an agreement.

COMPLIANCE WITH LAWS

By submitting a proposal, the proposer represents and warrants that it is familiar with all federal, state and local laws and regulations and will conform to said laws and regulations. The preparation of proposals, selection of proposers and the award of contracts are subject to provisions of all Federal, State and County laws, rules and regulations.

CONTENTS OF PROPOSAL

The New York State Freedom of Information Law as set forth in Public Officers Law, Article 6, Sections 84 et seq., mandates public access to government records. However, proposals submitted in response to this RFP may contain technical, financial background or other data, public disclosure of which could cause substantial injury to the proposer's competitive position or constitute a trade secret. Proposers who have a good faith belief that information submitted in their proposals is protected from disclosure under the New York Freedom of Information Law shall:

- a) insert the following notice in the front of its proposal:

“NOTICE

The data on pages ___ of this proposal identified by an asterisk (*) contains technical or financial information constituting trade secrets or information the disclosure of which would result in substantial injury to the proposer’s competitive position.

The proposer requests that such information be used only for the evaluation of the proposal, but understands that any disclosure will be limited to the extent that the County considers proper

under the law. If the County enters into an agreement with this proposer, the County shall have the right to use or disclose such information as provided in the agreement, unless otherwise obligated by law.”

and

b) clearly identify the pages of the proposals containing such information by typing in bold face on the top of each page " * **THE PROPOSER BELIEVES THAT THIS INFORMATION IS PROTECTED FROM DISCLOSURE UNDER THE STATE FREEDOM OF INFORMATION LAW.**"

The County assumes no liability for disclosure of information so identified, provided that the County has made a good faith legal determination that the information is not protected from disclosure under applicable law or where disclosure is required to comply with an order or judgment of a court of competent jurisdiction.

The contents of the proposal which is accepted by the County, except portions "Protected from Disclosure", may become part of any agreement resulting from this RFP.

EFFECTIVE PERIOD OF PROPOSALS

All proposals must state the period for which the proposal shall remain in effect (i.e. how much time does the County have to accept or reject the proposal under the terms proposed). Such period shall not be less than 180 days from the proposal date.

SCHEDULE "A"

PROPOSER CERTIFICATION

The undersigned agrees and understands that this proposal and all attachments, additional information, etc. submitted herewith constitute merely an offer to negotiate with the County of Erie and is NOT A BID. Submission of this proposal, attachments, and additional information shall not obligate or entitle the proposing entity to enter into a service agreement with the County of Erie for the required services. The undersigned agrees and understands that the County of Erie is not obligated to respond to this proposal nor is it legally bound in any manner whatsoever by the submission of same. Further, the undersigned agrees and understands that any and all proposals and negotiations shall not be binding or valid against the County of Erie, its directors, officers, employees or agents unless an agreement is signed by a duly authorized officer of the County of Erie and, if necessary, approved by the Erie County Legislature and the Office of the County Attorney.

It is understood and agreed that the County of Erie reserves the right to reject consideration of any and all proposals including, but not limited to, proposals which are conditional or incomplete. It is further understood and agreed that the County of Erie reserves all rights specified in the Request for Proposals.

It is represented and warranted by those submitting this proposal that except as disclosed in the proposal, no officer or employee of the County of Erie is directly or indirectly a party to or in any other manner interested in this proposal or any subsequent service agreement that may be entered into.

Proposer Name

By: _____
Name and Title

SCHEDULE "B"

STANDARD INSURANCE PROVISIONS

Located at

http://www2.erie.gov/law/sites/www2.erie.gov.law/files/uploads/pdfs/EC%20Final%20Cert_revised.pdf

SCHEDULE "C"

OUTSIDE COUNSEL GUIDELINES

Located at

<http://www2.erie.gov/law/sites/www2.erie.gov.law/files/uploads/Outside%20Counsel%20Guidelines.pdf>