



Deborah B. Goldberg, Chair
Susan E. Perez, Executive Director

Request for Responses to serve as Bond Counsel

January 10, 2017

Responses Are Due: January 20, 2017

Contact Person: Iqra Sohail – isohail@tre.state.ma.us

INFORMATION ABOUT THIS RFR

- 1. Introduction.** The Massachusetts Clean Water Trust (the “Trust”), seeks to engage a law firm (“Firm”) interested in providing bond counsel legal services for the issuance of the Trust’s State Revolving Fund Revenue Bonds, Series 20 (the “Bonds”). The Trust may sell the Bonds by means of a competitive bidding process using Parity® or by means of a negotiated underwriting.

For a detailed description of the Trust and its programs and other information relative to the Trust, see the Official Statement for the Trust’s State Revolving Fund Bonds, Series 19, and the Master Trust Agreement posted on the Commonwealth’s procurement website www.COMMBUYS.com (“COMMBUYS”) or on the Trust’s website at <http://www.mass.gov/treasury/affiliated-prog/wpat/>.

- 2. Schedule** (all dates are subject to change)

Issuance of RFR	January 10, 2017
Submission of Questions Deadline	January 12, 2017 at 12:00 PM
Responses to Questions Due Date	January 13, 2017 at 5:00 PM
Responses Deadline Date	January 20, 2017 at 1:00 PM
Oral Interviews, if Necessary	Week of January 23, 2017
Approximate Selection Date	February 1, 2017 (Trust Board meeting)

- 3. Purpose of RFR.** This RFR is designed to provide Firms with information necessary to prepare a competitive bid proposal. This RFR process is for the Trust's benefit and is intended to provide the Trust with the information necessary to assist in the selection of a Firm to provide bond counsel legal services for the Trust's upcoming issuance of Bonds. This RFR is not intended to be comprehensive and each Firm is responsible for determining all factors necessary for submission of a competitive bid proposal. Issuance of this RFR in no way constitutes a commitment by the Trust to award a contract.
- 4. Scope of Services.** The scope of services to be provided by bond counsel shall include, but not be limited to, the following:
- a) Provide complete legal representation as to all matters of state and federal law, including tax and security matters, with respect to an issuance of Bonds, whether for new money or refunding purposes, as applicable.
 - b) Prepare the Preliminary Official Statement and the Official Statement.
 - c) Review and provide structuring advice with respect to any bond issuance, including advice related to tax matters.
 - d) Prepare all necessary documentation in order to effectuate such transactions, including notices of sale, the preparation of all closing documents.
 - e) Review and approve the expectations as to the expenditure of proceeds to the purposes for which bonds are issued and applicable timelines for such expenditures.
 - f) Coordinate and complete the loan due diligence process by working with the Trust and the Trust's borrowers and their counsel.
 - g) Assist in preparation of presentations to rating agencies, market participants, and others.
 - h) Assist with other legal matters and perform other services customarily performed by bond counsel to an issuer similar to the Trust on an as-needed basis, including providing legal advice and assistance related to post-issuance tax matters and providing legal advice and assistance related to a cash defeasance of outstanding Trust bonds.
 - i) Assist with the conduct of competitive or negotiated bond/note sales including verification of bids.
 - j) Examine and comply with the Trust's post-issuance policy.
 - k) Provide any additional services understood by knowledgeable bond counsel to be reasonably necessary to satisfy the duties of bond counsel for the type of bonds being issued and under the circumstances of its issuance, including services to assist the Trust in complying with any disclosure obligations arising out of the issuance of the bonds.
- 5. Questions Concerning RFR.** Firms responding to this RFR that have questions must email their questions to the above Contact Person no later than the above Question Submission

Deadline date. The Trust's responses to the questions will be posted on COMMBUYS by the above Responses to Questions Due Date.

6. **COMMBUYS Posting.** This RFR has been distributed electronically using COMMBUYS. This RFR and the Mandatory Attachments listed in sub-section d. of section 9 below are available on COMMBUYS by clicking on the individual documents listed as "File Attachments" on the home page for this procurement. COMMBUYS will be the primary site for any amendments, modifications, clarifications, or other information related to this RFR. The Trust also intends to post information on this RFR on its website, as a convenience. Firms responding to this RFR, however, are advised to use COMMBUYS as their primary source of information and updates. Respondents are solely responsible for obtaining and completing required attachments that are identified in this RFR and for checking COMMBUYS for any addenda, amendments, or modifications that are subsequently made to this RFR or attachments. The Trust accepts no liability and will provide no accommodation to Firms that fail to check for amended RFRs and submit inadequate or incorrect Responses.
7. **Communication.** Firms that intend to respond to this RFR are prohibited from communicating with any employee of the Trust or the Office of the State Treasurer regarding any matters related to this RFR, except the Contact Person, from the date of this RFR and continuing until the selection process is concluded. This prohibition shall also apply to any member of the Board of Trustees of the Trust ("Board"), or their designee. This prohibition shall also apply to any employee of the Trust's program counsel or current bond counsel and any employee of the Trust's program trustee or of any bond trustee. Failure to observe this prohibition shall be grounds for disqualification. An exception to this prohibition applies to individuals or firms that currently do business with the Trust or the Office of the State Treasurer, but such communication shall be limited to that business and must not relate to this RFR.
8. **Response Submission.** Firms must submit four paper copies of the Response and one electronic copy as a .pdf file. One of the paper copies must be an original signed copy by a person authorized to contractually bind the Firm and will have primary responsibility for the engagement (the "Authorized Signatory"). The paper copy of the Cost Proposal must be in a separately bound document delivered in a separate sealed envelope. The four paper copies must arrive at the Trust no later than the stated time on the above RFR Response Deadline Date at the following address:

Massachusetts Clean Water Trust
3 Center Plaza, Suite 430
Boston, MA 02108
Attn: Iqra Sohail.

The electronic copy of the Response and the Cost Proposal should be sent as two separate emails to the Contact Person. The subject line should state "Response to the Trust's Bond Counsel RFR" and "Cost Proposal for the Trust's Bond Counsel RFR," respectively.

All terms, conditions, requirements, and procedures included in this RFR must be met for a Response to be qualified as responsive. A Response that fails to meet any material term,

condition, requirement or procedure of this RFR may be deemed unresponsive and disqualified. The Trust reserves the right (i) to waive or permit cure of non-material errors or omissions, (ii) to modify, amend or cancel the terms of the RFR at any time, or (iii) to reject any or all bid proposals received in response to this RFR.

A Firm that is currently subject to any Commonwealth or federal debarment order or determination, shall not be considered for evaluation by the Trust. If a Firm's Response is dependent upon the services of a named subcontractor and the disqualification of this named subcontractor would materially alter the proposal, then that Response shall be deemed unresponsive if the named subcontractor is found to be debarred. Responses that indicate that subcontractors will be used but do not rely on any specifically named subcontractor shall not be deemed unresponsive if the disqualification of a proposed subcontractor will not materially alter the Response.

- 9. Contents of the Response.** To be considered complete, each copy of the Response must include the following.
- a. Cover Letter.** The Response must include a cover letter, no longer than two pages, signed by the Authorized Signatory that includes relevant introductory information. By signing the cover letter, the Authorized Signatory, on behalf of his or her Firm, irrevocably offers to provide the services envisioned by the RFR, and if selected, agrees to the terms and conditions of this RFR, and certifies that the statements made and the documents included in their Response are true, accurate and complete. Each responding Firm's offer shall be deemed to remain outstanding until 20 calendar days after the final Award Date.
 - b. Answers to Questions.** The Response must include an answer to each of the Response Questions listed in Section 12.
 - c. Cost Proposal.** The Response must include a separate document containing the Cost Proposal in response to Section 13.
 - d. Mandatory Attachments.** The following Mandatory Attachments are available on COMMBUYS and must be signed by the Authorized Signatory and included in the Response package for this RFR:
 - 1. Contractor Authorized Signatory Listing
 - 2. Tax Compliance Certification
 - 3. Standard Commonwealth Contract Form
 - 4. Commonwealth Terms and Conditions
 - 5. Invest in Massachusetts Plan
 - 6. Treasury Supplier Diversity Program
 - 7. Certificate of Non-Collusion

8. Electronic Funds Transfer
9. Massachusetts Substitute W-9 Form (if applicable)

The Request for Taxpayer Identification Number and Certification (W-9) should be completed ONLY if your Firm has not previously conducted business with the Commonwealth and been registered on the Commonwealth's Contractor File OR if any information on a W-9 previously filed with the Commonwealth has been updated or changed.

10. Procurement Management Team. The Executive Director of the Trust, the Deputy Director of the Trust, and the Senior Legal Counsel of the Trust, will comprise the Procurement Management Team ("PMT") and will evaluate the Responses. The PMT will make its recommendation to the Board for approval.

11. Contract Documents. Any contract that results from this RFR shall be comprised of this RFR, the Firm's Response to this RFR, all applicable Exhibits and Attachments, a completed and signed Commonwealth Standard Contract Form, and the Commonwealth Terms and Conditions.

12. Response Questions.

- a. **Personnel.** Please identify the personnel who will be involved in providing bond counsel services to the Trust and the role and responsibilities of each person. Please identify the partner or member of the Firm or other classification of lawyer who has the authority to bind the Firm who will have primary responsibility for this engagement. Also, please be sure to identify the personnel who will be tasked with performing due diligence on the loan documents and their relevant experience in providing similar services.
- b. **Tax Counsel.** Please provide proposed staffing of the tax component of an engagement as bond counsel. Please list each tax attorney who will be working on this engagement. Please describe the experience of the tax lawyers in tax matters relating to a governmental issuer's compliance with the Internal Revenue Code and the regulations promulgated thereunder, including experience with respect to issues such as arbitrage restrictions, tax treatment of debt service reserve funds, private activity rules, other limits on the allocation of proceeds, or any other significant tax issues that your Firm has encountered relative to the issuance of tax-exempt debt and, specifically, state revolving fund debt.
- c. **List of Transactions.** Please provide a list of bond transactions for state revolving funds or similar transactions executed since January 1, 2015, on which your Firm served as sole bond counsel and in which staff members identified above participated.
- d. **Value-Added.** Please discuss how your Firm would distinguish itself from its competitors in providing bond counsel services to a client such as the Trust. In doing so, please provide any recommended changes your Firm would make to the Series 19 Official Statement.

- e. **Bond Counsel for the Bonds.** Please discuss your view of the differences between the work of bond counsel for the Trust and the work of bond counsel for a typical debt issuance by a non-state revolving fund issuer. Please include in your answer how those differences may affect the work necessary for your Firm to issue its “due authorization” and tax opinions for the Bonds and perform its due diligence and post-issuance compliance support tasks. Additionally, please include in your answer any issues that may arise in a refunding of Trust bonds issued under the Trust’s previous indenture, the Program Resolution.
 - f. **Commencement of the Engagement and Post Issuance Tasks.** What steps would your Firm need to take to commence its engagement as bond counsel to an entity such as the Trust for the issuance of tax exempt or taxable bonds? Please be specific as to the tasks you will have to undertake, the time-line for completing those tasks, the preparation of the legal and other personnel for those tasks, and the key tasks you as bond counsel would put on the bond calendar. Include in those tasks the timeline for:
 - (1) Completing due diligence on borrower loan documents, assuming 100 loans,
 - (2) delivering the tax certificate to the Trust for review,
 - (3) filing all necessary tax forms with the IRS,
 - (4) delivery to the Trust of electronic copies of the transcript,
 - (5) delivery to the Trust of a bound copy of transcript documents, and
 - (6) delivery to the Trust of a bound copy of loan documents.
 - g. **References.** List at least three clients that the Trust can contact as references. Briefly describe the client and program served, and the services provided. For each reference include the name, title, address and phone number for the appropriate contact.
- 13. Cost Proposal.** In a separately bound document, please present a Cost Proposal to provide the outlined services under this RFR. The Trust reserves the right to negotiate any and all fees with any Firm.
- a. **Costs – Flat Rates.** The Cost Response must include flat rate quotes to provide all the services listed in the Scope of Services (section 4 above) for the following types of transactions:
 - i. Competitive new money financing
 - ii. Negotiated new money financing
 - iii. Stand-alone negotiated current refunding
 - iv. Stand-alone negotiated advance refunding
 - v. Current refunding as part of a negotiated new money issue
 - vi. Advance refunding, including a cash defeasance, as part of a negotiated new money issue
 - vii. Advance refunding, including a cash defeasance, and current refunding as part of a negotiated new money issue
 - b. **Expenses:** Out-of-pocket costs and expenses will not be paid by the Trust.

- c. **Hourly Rates.** Please identify any legal or other services, for which you will charge an hourly rate outside the flat-rate quote in sub-section (a) above and provide a schedule of hourly rates for each individual identified as a provider of such legal services to the Trust under this RFR, and for the following roles:

- i. Senior partner/member/other similar classification
- ii. Junior partner or similar classification
- iii. Senior Associate or similar classification
- iv. Junior Associate or similar classification
- v. Paralegal

No compensation will be paid (A) for any services outside the flat-rate quote that are not identified above or (B) for the services of non-lawyers (other than the above paralegal) or lawyers, law clerks, or newly graduated law students not licensed to practice law.

- e. **Other Fees.** Firms must disclose in their Responses any fees they will charge the Trust in connection with their representation of other entities that may be associated with the issuance of Trust Debt and an estimate of those fees. Please note that as our bond counsel your Firm will be required to respond to an audit request at the end of our fiscal year. Will there be a separate charge for responding, and if so, what would the cost be?

- 14. Evaluation Criteria.** The Trust is seeking detailed and responsive proposals from Firms. Evaluation criteria will include:

- i. **Technical Proposal:** The Procurement Management Team will evaluate Responses based on the following Technical Proposal criteria, which will account for 70% of a Firm's score:
 - A. Experience providing bond counsel services to state revolving fund loan programs or other special obligation revenue credits similar to the Trust.
 - B. Experience and abilities of the personnel who will work directly with the Trust.
 - C. Ability to provide technical expertise to the Trust on a broad range of financial matters, including debt issuance, refunding analysis, reserve fund investment, arbitrage and rebate, and other financial related aspects of the Trust and its programs.
 - D. Overall ability of the Firm to provide thorough, reliable, and timely service as bond counsel to the Trust.
 - E. Overall quality of the Response.

- ii. Evaluation of Cost Proposal. The Procurement Management Team will evaluate Firms' Cost Proposal separately following the Technical Proposal evaluation and scoring. The Cost Proposal shall account for 30% of a Firm's score.
- iii. Selection Procedures. A Firm may receive a total of 100 points for their Technical Proposal and their Cost Proposal combined. Selection will be based on the evaluation of both the Technical Proposals and the Cost Proposals by the Procurement Management Team. The Trust reserves the right to consider other factors, including information that may not be provided in the Response if it deems the information relevant to the evaluation and selection process. The Executive Director of the Trust will make her recommendation to the Board based on the evaluation by the Procurement Management Team. The Board will have final authority on the selection of the bond counsel Firm under this RFR.

15. Terms and Conditions. In addition to the Commonwealth Terms and Conditions, the following additional terms and conditions shall apply to this RFR:

- a. **Forum and Choice of Law.** The Commonwealth Terms and Conditions are hereby clarified to mean that unless otherwise agreed to in writing by the Trust and authorized by Massachusetts law, any actions arising out of a contract pursuant to this RFR shall be governed by the laws of the Commonwealth of Massachusetts and shall be brought and maintained in the Massachusetts Superior Court in Suffolk County, Massachusetts, which shall have exclusive jurisdiction thereof.
- b. **Conflict of Interest.** By signing the cover letter to its Response, the Authorized Signatory certifies that no relationship exists between the Firm and the Trust or any other Massachusetts state agency or authority that would constitute a violation of any Massachusetts general or special law or is a conflict of interest. The Authorized Signatory also certifies that no relationship exists that interferes with fair competition with respect to its Response or performance of work pursuant to this RFR. If the Authorized Signatory cannot make these certifications, the Authorized Signatory must disclose any conflict of interest or potential conflict of interest to the Trust.
- c. **Legal Proceedings.** Please disclose (i) any pending legal proceeding or judgments entered against your Firm or any related entities within the last five years, involving malpractice or violations of law, (ii) any pending matters involving your Firm where your Firm's interests are adverse to the Trust, (iii) any current or pending investigation or inquiry, legal or disciplinary matters, or orders involving your Firm by the SEC, U.S. Department of the Treasury or Internal Revenue Service (IRS), NASD, FINRA, the Municipal Securities Rulemaking Board (MSRB), any state Attorney General or other regulatory body, or (iv) any voluntary or involuntary petitions filed under the federal Bankruptcy Code or any state receivership or insolvency statute within the past five years against your Firm.
- d. **Reasonable Accommodation.** Firms that have individual members with disabilities or hardships and seek reasonable accommodation, which may include the receipt of RFR information in an alternative format, must communicate such

requests in writing to the contact person. Requests for accommodation will be addressed on a case-by-case basis. A Firm requesting accommodation must submit a written statement, which describes the disability and the requested accommodation to the contact person for the RFR. The Trust reserves the right to reject unreasonable requests.

- e. **Public Records.** All Responses and information submitted in response to this RFR are subject to the Massachusetts Public Records Law, Massachusetts General Laws, Chapter 66 and Chapter 4, Section 7, Clause Twenty-Sixth. Any statements in submitted Responses that are inconsistent with these statutes will be disregarded. Firms are advised that all proposals are deemed sealed, and therefore their contents will be treated as confidential and will not be disclosed to competing Firms until the evaluation process has been completed and the contract has been awarded.
- f. **Brand Name or Equal.** Unless otherwise specified in this RFR, any reference to a particular trademark, trade name, patent, design, type, specification, producer or supplier is not intended to restrict this RFR to any manufacturer or proprietor or to constitute an endorsement of any service. The Trust will consider clearly identified offers of substantially equivalent services submitted in response to such reference.
- g. **Alternatives.** A Response that fails to meet any material term or condition of the RFR, including the submission of required attachments, may lose points or be deemed unresponsive and disqualified. Unless otherwise specified, Firms may submit Responses proposing alternatives that provide equivalent, better or more cost-effective performance than achievable under the stated RFR specifications. These alternatives may include related services that may be available to enhance performance during the period of the contract. The Response should describe how any alternative achieves substantially equivalent or better performance to that of the RFR specifications. The Trust will determine if a proposed alternative method of performance achieves substantially equivalent or better performance. The goal of this RFR is to provide the best value of services to achieve the procurement goals of the Trust. Firms that propose discounts, uncharged services, or other benefits in addition to the RFR specifications may receive a preference or additional points under this RFR as specified. Firms may also propose alternatives for equivalent, better or more cost effective performance than specified under the Firm's original Response to enable the Trust to take advantage of enhanced technologies, commodities or services which become available during the term of the contract
- h. **Best Value Selection and Negotiation.** The Trust may select the Response(s) that demonstrates the "Best Value" overall, including proposed alternatives that will achieve the procurement goals of the Trust. The Trust and the selected Firm, or contractor, may negotiate a change in any element of contract performance or cost identified in the original RFR or the selected Firm's or contractor's Response which results in lower costs or in a more cost effective or better value than was presented in the selected Firm's or contractor's original Response.
- i. **Equal Employment and Affirmative Action Policies.** Please provide with your Response, as an Exhibit, a copy of your Firm's equal employment opportunity and affirmative action policy.
- j. **Costs.** Costs that are not specifically identified in your Firm's Response, and included as part of a contract, will not be compensated under any contract awarded

pursuant to this RFR. The Trust will not be responsible for any costs or expenses incurred by Firms responding to this RFR.

- k. Distribution of Information.** Any Firm awarded a contract under this RFR is prohibited from selling or distributing any information collected or derived from the contract and/or procurement process, including lists of the names, telephone numbers, or addresses of employees of the Department of the State Treasurer, including staff of the Trust.
- l. Alteration of Documents.** Firms may not alter (manually or electronically) the RFR language or any RFR component files. Modifications to the body of this RFR, specifications, terms and conditions, which change the intent of this RFR are prohibited and may disqualify a Response.