



MINNEHAHA
COUNTY

Strong Foundation. Strong Future.

REQUEST FOR PROPOSALS

Bond Counsel



OCTOBER 15, 2018

MINNEHAHA COUNTY

415 N Dakota Ave | Sioux Falls, SD | 57104

Request For Proposals For Bond Counsel Services

Request for Proposals Issued: October 10, 2018
Deadline for Submittal of Proposals: November 15, 2018

I. OBJECTIVE

Minnehaha County, South Dakota is seeking proposals from qualified law firms to serve as bond counsel for the County's current and future Certificates of Participation (COP) program. Proposals should be submitted as specified below and must include all elements described under Section V., Requirements of Responses to Requests for Proposals.

The overall objective of this Request for Proposals (RFP) is to permit firms the opportunity to submit their relevant legal experience, client references, and proposed schedule of charges for consideration.

II. INSTRUCTIONS

Interested firms are invited to submit one original signed proposal and four (4) hard copies. The proposal shall be made in the format provided. The complete proposal shall be enclosed in a sealed envelope addressed and delivered no later than 10:15 a.m. on Thursday, November 15, 2018, to the following address:

Minnehaha County Auditor's Office
C/O Olivia Larson
415 N. Dakota Avenue
Sioux Falls, South Dakota 57104

The sealed envelope shall be marked on the outside lower left corner with the words "Bond Counsel Services RFP". It is the Responding Firm's responsibility to ensure that its proposal is received prior to the scheduled closing time for receipt of proposals. Proposals submitted after the 10:15 a.m. deadline on the 15th of November, 2018, will be declined. No corrected or resubmitted proposals will be accepted after the deadline. No proposals will be accepted via email, facsimile, or other means of electronic communication, and responses sent by such electronic means will be deemed non-responsive and will be rejected.

Minnehaha County reserves the right to reject any and all proposals. Minnehaha County also reserves the right to waive minor irregularities in any submitted proposal(s). The County also reserves the right to request clarification of information submitted and to request additional information from any firm. Additionally, the County further reserves the right to accept all or part of any proposal or to cancel in part or its entirety this RFP. The County further reserves the right to accept the proposal that it considers to be in the best interests of the County. Minnehaha County shall not be responsible for any costs incurred by any Responding Firm in preparing, submitting, or presenting its proposal.

All requirements must be addressed in your proposal. Non-responsive proposals will not be considered. All proposals, whether selected or rejected, shall become the property of the County. Firms are responsible for checking the Minnehaha County website periodically for any updates, addendums, or

revisions to the RFP. Firms that request to be added to the “Packet Holder’s List” will be expected to provide an email address where any updates, addendums, or revisions can be sent.

SCHEDULE OF EVENTS:

RFP Permission to Publish	October 9, 2018
RFP Materials Available	October 10, 2018
RFP’s Emailed to Regional Professionals	Week of October 10, 2018
RFP Questions Due	All questions regarding RFP must be received by Olivia Larson via email transmitted to olarson@minnehahacounty.org before 4:00 p.m. on October 31 st , 2018
RFP Questions Answered	All questions answered via Addendum posted on the Minnehaha County website on or before 4:00 p.m. on November 8 th , 2018
Responses	Response to Request for Proposals due in the Auditor’s Office on November 15 th , 2018, at 10:15 a.m.
Potential Interviews With Selected Responders	November 26 th and November 30 th , 2018
Potential Contracts Before Commission	December 18 th , 2018
Operational Date	January 1 st , 2018

Requests for Information

Questions related to this RFP should be submitted in writing to Olivia Larson, County Deputy Auditor, at olarson@minnehahacounty.org. Specify “RFP for Bond Counsel Services” in the subject line. Responses to all questions received will be posted on the County’s website and sent to the Packet Holder’s List. No oral questions will be entertained.

The contact person listed above is the only individual who may be contacted about the Request for Proposals before the deadline for the Request for Proposals. Other means of communications or contact may disqualify the submitting response at the sole discretion of the County.

III. BACKGROUND

Minnehaha County is the largest County in South Dakota and has 810 Square miles with a value of approximately \$14 billion. Current active issues are:

	Issue And Series	Dated Date	Final Maturity
1,570,000	General Obligation Limited Tax Certificates of Participation, Series 2016B	11/30/2016	12/01/2025
2,420,000	General Obligation Limited Tax Certificates of Participation, Series 2016A	11/30/2016	12/01/2020

7,535,000	Limited Tax General Obligation Certificates of Participation, Series 2014A	12/17/2014	12/01/2027
5,930,000	Limited Tax General Obligation Certificates of Participation, 2013A	11/20/2013	12/01/2020
2,185,000	Taxable Certificates of Participation, Series 2010A (Recovery Zone Economic Development Bonds, Direct Pay)	11/17/2010	12/01/2030
43,255,000	Limited Tax General Obligation Certificates of Participation, 2017A	12/07/2017	12/01/2037

The County recently issued COP's in the amount of a little over \$46 million dollars for the construction of a jail expansion. The construction did begin in August 2018.

IV. SCOPE OF WORK

It is anticipated that the successful firm will be asked to provide the following scope of services (not necessarily inclusive):

1. Provide an objective legal opinion with respect to the authorization and issuance of the debt obligations and whether interest paid is tax-exempt under Federal and/or State laws and regulations; and
2. Examine applicable state and federal laws, prepare authorizing documents, consult with parties to the transactions, review proceedings, and perform additional duties as necessary to render the opinion(s); and
3. Provide continuing advice regarding any actions necessary to ensure that interest will continue to be tax-exempt; and
4. Prepare and review all legal documents for the issuance, sale and delivery of a bond financing, including necessary resolutions, closing documents and transcripts; and
5. Review legal issues relating to the structure of a bond issue; and
6. Draft enabling legislation if required; and
7. Assist in presenting information to the bond rating agencies and credit enhancers relating to legal issues affecting the issuance of the bonds; and
8. Offer continuing legal advice, as needed, on issues related to the sale and the on-going administration of bond obligations; and

9. Provide other legal opinions when requested by the County or as otherwise deemed necessary or in the best interests of the County; and
10. Participate in meetings, as requested, relating to the issuance of bonds; and
11. Keep the County informed of rulings issued by Federal and State regulatory agencies, such as the U.S. Securities Exchange Commission and Municipal Securities Rulemaking Board, which impact the County's bond financing process; and
12. Serve as disclosure counsel:
 - a. Prepare the preliminary and final official statements for any bond transaction; and
 - b. Provide the 10b-5 "Opinion" with respect to the preliminary and final official statements

V. REQUIREMENTS OF RESPONSES TO REQUESTS FOR PROPOSALS:

In order for a proposal to be considered, said proposal must be clear, concise, complete, well organized, and demonstrate the Responding Firm's qualifications and its ability to follow instructions. The quality of answers, not length of responses or visual exhibits, is important in the proposal.

The proposal shall be organized in the format listed below. Respondents shall read each item carefully and answer each of the following items accurately to ensure compliance with County requirements.

A. Submittal Letter

The Responding Firm shall submit a letter, including the RFP's title and submittal due date, along with the name, address, fax number and telephone number of the Responding Firm. The submittal letter shall include a contact person and corresponding e-mail address. The submittal letter shall state that the proposal shall be valid for a 60-day period and that the staff proposed is available immediately to commence work as bond counsel for the County. The submittal letter must include a statement that the Responding Firm currently has insurance coverage meeting the requirements of Section VIII, Paragraph C of this RFP. The person authorized by the Responding Firm to negotiate a contract with the County shall sign the cover letter.

B. Description of Firm

The Responding Firm shall provide an overview and history of the Responding Firm, its public finance practice in South Dakota, if any, as well as the approach that will be used in meeting the needs of the County.

C. References and Description of Experience

The Responding Firm shall identify similar projects that the Responding Firm has completed as outlined in the RFP. The Responding Firm shall indicate relevant examples of legal experience of the Responding Firm and how the firm's legal experience will enable the County to benefit from that legal experience. The Responding Firm shall also include contact information for three (3) professional references, including full name, phone number, business address, and email address.

D. Team

The Responding Firm shall provide the names and resumes of staff who would be working with the County. Please indicate who the primary contact will be and who will be responsible for the day to day work with the County.

E. Project Overview

The Responding Firm shall provide a project overview, in which it clearly conveys the firm's understanding of the nature of the work related to bond counsel services and the general approach the firm will use in its ability to provide the services outlined in the Scope of Work (Section IV).

F. Fees

The Responding Firm shall indicate the fees it would charge to serve as bond counsel and/or disclosure counsel, specifying which role, as well as an estimate of expenses for a \$50,000,000 financing. Provide details on internal controls utilized if submitting for dual capacity. Please specify if there are fee differentials for different types of financing. All fees will be contingent upon the completion of a financing.

G. Conflict of Interest Statement

The Responding Firm shall provide a written Conflict of Interest Statement that affirmatively states that neither the Firm, nor any individual member of the Firm, has any pecuniary interest with Minnehaha County, any and all individual Minnehaha County Commissioners, the Treasurer of Minnehaha County, the State's Attorney of Minnehaha County, or the Auditor of Minnehaha County, other than an attorney-client relationship with the County and/or an elected county official in his or her official capacity. The Conflict of Interest Statement shall also affirmatively provide that neither the Firm, nor any individual member of the Firm, is providing legal representation in any matter adverse to the interests of the County, nor in any appeal or controversy in which there exists a reasonable likelihood the County Commission may be called upon to decide. The Conflict of Interest Statement shall include a disclosure identifying any and all suspected or known potential conflicts of interest. The Conflict of Interest Statement shall affirmatively state that the Responding Firm is unaware of any actual or potential conflict of interest with the County under South Dakota or federal law that would jeopardize the validity of any financial transactions of the County. The person authorized by the Responding Firm to negotiate a contract with the County shall sign the Conflict of Interest Statement.

VI. SELECTION CRITERIA

Firms submitting proposals are advised that all proposals will be evaluated to determine the firm deemed most qualified to meet the needs of the County. Responses to the Request for Proposals will be reviewed in accordance with the following criteria:

- A. Demonstrated understanding and responsiveness to the RFP; and
- B. Experience of firm and personnel named in the proposal; and
- C. Any past experience in assisting governmental entities with bond counsel services; and

- D. Firm's commitment and ability to provide each item outlined in the Scope of Work (Section IV); and
- E. Responses from References; and
- F. Interviews, if conducted; and
- G. Fees

VII. PROCESS FOR SELECTING FIRM

A Selection Advisory Committee will select and rank, in the order of their qualifications, those responding firms deemed to be the most highly qualified to perform the required work.

The Selection Advisory Committee may choose to interview any, all, or none of the respondents as may be in the best interest of the County. If interviews are held, the Auditor will notify those responding firms selected as to place, date, and time. The County will make investigations as necessary regarding the financial stability of any or all respondents and may require review by the Minnehaha County State's Attorney's Office.

Minnehaha County reserves the right to reject any and all proposals and to waive minor irregularities contained therein. The County also reserves the right to request clarification of information submitted and to request additional information from any firm. In the event that the selected firm fails to execute the contract within sixty days of award by the Commission, Minnehaha County reserves the right to award the contract to the next most qualified responding firm.

The County shall not be responsible for any costs incurred by the Responding Firm in preparing, submitting or presenting their Responses to the Request for Proposals.

VIII. GENERAL TERMS AND CONDITIONS

A. NON-DISCRIMINATION. The Firm agrees that it will not engage in nor permit unlawful discrimination in employment. In compliance with Title VII of the Civil Rights Act of 1964, consistent with the intent of the South Dakota Human Relations Act of 1972 and SDCL 20-13-10, and in accordance with state and federal law, the firm will provide equal employment opportunities to all persons irrespective of race, color, creed, religion, national origin, citizenship, ancestry, gender, gender identity, sexual orientation, marital status, pregnancy, age, disability, veteran's status, genetic information, or any other legally protected status. Adverse or unequal treatment based on these factors shall be prohibited by the firm in regard to all aspects of employment including, but not limited to, recruitment, selection, hiring, promotion, demotion, transfer, layoff, recall, termination, rates of pay or other forms of remuneration, selection for training, and in the offering of employment opportunities, benefits and services.

B. PROHIBITED INTERESTS. No officer, employee, or agent of the County, who is authorized in such capacity and on behalf of the County to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting, or approving any agreement, shall become directly or indirectly interested financially in this Contract or in any part thereof. No officer, employee, or attorney of or for the County who is authorized in such capacity and on behalf of the County to exercise any executive,

supervisory, or other similar functions shall become directly or indirectly interested financially in this Contract or in any part thereof. Proposer shall receive no compensation and shall repay County for any compensation received by the firm hereunder, should Proposer aid, abet, or knowingly participate in violation of this Article.

C. LIABILITY COVERAGE. The Firm shall indemnify, defend, and hold harmless Minnehaha County for any and all costs, loss, and liability for any injury or damage caused in whole or in part by any negligent, willful, or intentional act or omission of the Firm or anyone directly or indirectly employed by or contracting with the Firm. The Firm shall at all times maintain the following insurance coverage and furnish proof of coverage to Minnehaha County if so requested:

- i) Workers' compensation insurance with statutory limits required by South Dakota law, including Coverage B—Employer's Liability—not less than \$1,000,000 each accident, \$1,000,000 disease—policy limits. The required limit may be met by excess liability (umbrella) coverage.
- ii) Commercial general liability insurance providing occurrence form contractual, personal injury, bodily injury and property damage liability coverage with limits of not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, and \$2,000,000 aggregate products and completed operations. If the occurrence form is not available, claims-made coverage shall be maintained for three years after termination of the contract. The policy shall name the County and its representatives as an additional insured.
- iii) Automobile liability insurance covering all owned, nonowned, and hired automobiles, trucks, and trailers. The coverage shall be at least as broad as that found in the standard comprehensive automobile liability policy with limits of not less than \$1,000,000 combined single limit each occurrence. The required limit may include excess liability (umbrella) coverage.
- iv) Professional liability (legal malpractice) insurance providing claims-made coverage for claims arising from the negligent acts, errors or omissions of the Firm, inclusive of its attorneys and its staff, in the amount of \$1,000,000 each occurrence and \$1,000,000 annual aggregate. Coverage shall be maintained for at least three years after termination of the contract.

The Firm shall agree to furnish Minnehaha County satisfactory evidence of its compliance with each of these insurance requirements set forth herein prior to the time a contract is entered into and to obtain and furnish to Minnehaha County an undertaking by the insurance company issuing such policy that it will not be canceled except after a fifteen (15) day notice to the County of its intention to do so.

D. INVOICES AND PAYMENTS. Unless specified otherwise, the Firm shall render invoices for services performed under the contract to the County Auditor's Office. Invoices shall be submitted in a timely manner.

E. DURATION OF CONTRACT. The contract period shall be from the date the contract is signed through four (4) years. The parties may mutually agree to extend the resulting contract for an additional time period beyond the initial term.

F. INDEPENDENT CONTRACTOR. The Firm, inclusive of its attorneys and its staff, shall at all times remain an independent contractor as that term is defined by statute and interpreted by case law.

The Firm who provides services under the contract understands and agrees that at no time will the Firm, his or her partners, associates, personnel or agents, be considered an employee of Minnehaha County. The Firm and its employees shall be responsible for the payment of income taxes, FICA, withholding and other wage related obligations. The Firm and its employees shall not be considered employees of the State of South Dakota or Minnehaha County for purposes of retirement, insurance programs, or other benefits.

G. COMPLIANCE. The Firm shall covenant and agree to comply with all applicable federal, state and local laws, codes, ordinances, rules, and regulations. Failure to comply with the terms of this provision shall constitute a breach of contract and permit the County to terminate the contract.

H. ASSIGNMENT OF CONTRACT. The contract shall not be assigned without the written permission of Minnehaha County, authorized by a Resolution of the County Commission. The Firm shall immediately notify Minnehaha County of any proposed changes in the attorneys providing legal services under the contract. Any proposed change in attorneys providing services under the contract shall be subject to final approval by Minnehaha County.

I. TERMINATION. The County may terminate the contract at any time. The contract may be terminated by the Firm upon sixty (60) days written notice. The Contract may be terminated by mutual agreement by both parties at any time. In the event the contract is terminated, the Firm must fulfill all of his or her ethical and legal obligations consistent with the South Dakota Rules of Professional Conduct.

J. CHOICE OF LAW AND VENUE. Any and all disputes, controversies, or claims arising under this RFP or any resulting contract shall be governed by the laws of the State of South Dakota and the exclusive venue for all such disputes shall be the Second Judicial Circuit, Minnehaha County, South Dakota.

K. NON-APPROPRIATION OF FUNDS. In the event funds are not budgeted or appropriated for any fiscal year, there shall be no obligation imposed upon Minnehaha County under the contract, and the contract shall become null and void except as to purchases agreed upon for which funds have been appropriated or budgeted, and no right of action or damage shall accrue to the benefit of any bidder, contractor, their agents, successors or assigns, for any further payments or other performance under the contract.

L. CONFLICT OF INTEREST STATEMENT. The contracting Firm shall provide the County with the conflict of interest statement as described and required in Paragraph V(g) above. The Firm shall be under a continuing duty to promptly supplement the conflict of interest statement and to notify the County immediately upon learning of any future transaction, financial relationship, or other matter, that creates a potential or actual conflict of interest.

IX. NOTICE OF REQUEST FOR PROPOSALS

**County of Minnehaha
Notice of Request for Proposals
for Bond Counsel
Date: October 10, 2018**

Minnehaha County, South Dakota, hereby solicits qualified and interested parties to submit responses to the Request for Proposals for providing defined bond counsel services, as described in the Request for Proposals, in accordance with federal, state, and local laws and regulations. The County Commission is seeking responses to the Request for Proposals from Attorneys to provide bond counsel services for Minnehaha County's current and future Certificates of Participation program.

In order for a response to the Request for Proposals to be considered, any response must be received by the Minnehaha County Auditor's Office, 415 N Dakota Avenue, Sioux Falls, South Dakota 57104 no later than November 15, 2018, at 10:15 a.m. central time. Instructions are contained in the Request for Proposals which shall be carefully followed by Proposers. One (1) original and four (4) copies of the complete response to the Request for Proposals are to be submitted. Responses to the Request for Proposal received after the submission deadline will be rejected and returned unopened to the sender.

The Request for Proposal for Bond Counsel has been placed on file at the Minnehaha County Auditor's Office. The RFP is also available at the Minnehaha County website: www.minnehahacounty.org. The County reserves the right at any time and for any reason to cancel this Request for Proposals, to reject any or all proposals, to provide an addendum to this Request for Proposals, or to accept an alternate proposal. The County reserves the right to waive any immaterial defect in any response to the Request for Proposal.

Robert Litz
Minnehaha County Auditor

PUBLISH:

- Argus Leader: Monday, October 15, 2018 and October 22, 2018
- Garretson Gazette: Thursday, October 25, 2018
- Minnehaha Messenger: Thursday, October 25, 2018