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REQUEST FOR PROPOSALS FOR

GENERAL OBLIGATION BOND COUNSEL

ISSUING OFFICE

**Pennsylvania Treasury Department
Bureau of Support Services
Procurement Division
Room 3T-A, Finance Building
Harrisburg, PA 17120-0018**

RFP NUMBER

RFP 16-002

DATE OF ISSUANCE

September 21, 2016



REQUEST FOR PROPOSALS (RFP)
FOR
GENERAL OBLIGATION BOND COUNSEL

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CALENDAR OF EVENTS

The Pennsylvania Treasury Department will make every effort to adhere to the following schedule:

Activity	Responsibility	Date
Issue of RFP 16-002 posted to www.patreasury.gov	Issuing Office	9/21/2016
Deadline to submit Questions via email to: RFP16-002@patreasury.gov	Vendors	9/28/2016
Answers to Potential Vendor questions will be sent to master vendor list and posted to www.patreasury.gov/RFP16-002 no later than this date.	Issuing Office	9/29/2016
Sealed proposal must be received by the Issuing Office at: <p style="text-align: center;">Pennsylvania Treasury Department Bureau of Support Services Procurement Division Room 3T-A, Finance Building Harrisburg, PA 17120-0018 Attention: Mark Lavelle</p>	Vendors	By 2:00PM on 10/4/2016

PART I

GENERAL INFORMATION

I-1. Purpose

Consistent with Executive Order 2015-02, the purpose of this Request For Proposal (“RFP”) is to invite law firms previously qualified, based upon their responses to a previously issued Request for Qualifications (“RFQ”), by the Pennsylvania Governor’s Office of General Counsel (“OGC”) and listed in the Bond Counsel Pool (any single law firm previously qualified a “Vendor” and all of the law firms in the Bond Counsel Pool the “Vendors”) to prepare and submit proposals to enable the Pennsylvania Treasury Department (“Treasury”) to select for contracting within the Commonwealth of Pennsylvania a Vendor to serve as bond counsel for the Commonwealth’s anticipated the Second Refunding Series of 2016 (“the Bond Issue”). This RFP is being issued in conformance with Section 518 of the Commonwealth Procurement Code. 62 Pa.C.S. § 518.

Unless otherwise stated, Department shall mean the “Treasury” and “Commonwealth” shall refer to all other state agencies, Boards or Commissions.

I-2. Scope

Treasury intends to select a Vendor to serve as bond counsel for the Bond Issue regarding the validity of the Bond Issue, the sufficiency of security, the extent to which the Bond Issue is exempt from income and other taxation, and the Bond Issue’s satisfaction of all relevant legal and tax requirements.

This RFP contains instructions governing the requested proposals, including the requirements for the information and material to be included; a description of securities; requirements which vendors must meet to be eligible for consideration; general evaluation criteria; and such other requirements specific to this RFP.

I-3. Issuing Office

Treasury is the "Issuing Office." The sole point of contact for this RFP shall be Mark Lavelle, Chief Administrative Officer (“Issuing Officer”). Please refer all inquiries to the Issuing Officer by email at RFP16-002@patreasury.gov.

I-4. Service Requirement / Need

Treasury is seeking proposals to procure bond counsel services for the Bond Issue by the Commonwealth. Proceeds of the Bond Issue are expected to be used to refund approximately \$800 million of certain outstanding General Obligation Bond issues of the Commonwealth. There will not be any new money as part this issuance.

I-5. Questions and Answers

Vendors with questions must submit them by email (with the subject line **RFP 16 Questions**) to the Issuing Officer by September 28, 2016. The Vendor shall not attempt to contact the Issuing Officer by any other means. Given the brevity of the response period for the RFP, the Issuing Officer cannot

commit to reply to all questions that may be submitted. Questions posed closer to the deadline are less likely to be answered. The Issuing Office will send by email a copy of questions and corresponding answers to every Vendor.

I-6. Pre-proposal Conference

There will be no pre-proposal conference.

I-7. Contracting Terms and Conditions

If the Issuing Office selects a Vendor as a result of this RFP, then the Vendor and the Commonwealth will use the form of contract attached to this RFP as Appendix B, which is the text of the contract that each member of the Bond Pool agreed to at the time it qualified for the Bond Pool. Terms such as pricing that are not addressed in the contract will be set out in the Appointment Letter.

The Issuing Office, in its sole discretion, may select for negotiations Vendors whose proposals, in the judgment of the Issuing Office, show them to be qualified, responsible and capable of performing the services described in this RFP.

I-8. Addenda to RFP

If the Issuing Office deems it necessary to revise any part of this RFP before the proposal response date, the Issuing Office will email updated documents to the Vendors.

I-9. Electronic Version of RFP

The Issuing Officer is making official distribution of this RFP by providing it via email to each law firm that has been pre-qualified by the Office of General Counsel, as of the date of this RFP, to bid on contracts for legal work of the nature being sought. A copy of the RFP will also be made available on Treasury's website (www.patreasury.gov). The Vendor acknowledges and accepts full responsibility to insure that its proposal responds to the RFP as emailed to it, as amended, if at all, by subsequent emails. In the event of a conflict between a version of the RFP in the Vendor's possession and the Issuing Office's final version of the RFP, the Issuing Office's final version shall govern.

I-10. Response Date

To be considered, each vendor must deliver seven hard copies of its complete proposal, which consists of the following:

- i) Technical Submittal,
- ii) Cost Submittal, and
- iii) Small Diverse Business Submittal

to the Issuing Office on or before the time and date specified in the RFP Calendar of Events.

Please remember to allow sufficient mail delivery time to ensure timely receipt of the proposal. If, due to inclement weather, natural disaster, or any other cause, the Issuing Office location to which proposals are to be returned is closed on the proposal response date, the deadline for submission shall be automatically extended until the next business day on which the Department office is open, unless

the Vendors are otherwise notified by Treasury. The time of day for submission of proposals shall remain the same even if the response date is extended. Late proposals will not be considered.

I-11. Incurring Costs

The Issuing Office is not liable for any costs the Vendor incurs in preparation and submission of its proposal, in participating in the RFP process or in anticipation of award of the contract.

I-12. Economy Of Presentation

Vendors should submit proposals that are simple and concise, providing a straightforward, concise description of the Vendor's ability to meet the requirements of the RFP.

I-13. Proposal Contents

- a. Confidential Information. Treasury is not requesting, and does not require, confidential proprietary information or trade secrets to be included as part of Vendors' submissions in order to evaluate proposals submitted in response to this RFP.
- b. Treasury Use. All material submitted with the proposal shall be considered the property of Treasury and may be returned only at the Issuing Office's option. Treasury and any other agency with which Treasury shares the information in order to make a selection from proposals submitted, has the right to use any or all ideas not protected by intellectual property rights that are presented in any proposal regardless of whether the proposal becomes part of a contract. Notwithstanding any Vendor copyright designations contained on proposals, the Treasury shall have the right to make copies and distribute proposals internally and to such other agencies, and to comply with public record or other disclosure requirements under the provisions of any Commonwealth or United States statute or regulation, or rule or order of any court of competent jurisdiction.
- c. Public Disclosure. After the award of a contract pursuant to this RFP, all proposal submissions are subject to disclosure in response to a request for public records made under the Pennsylvania Right-to-Know-Law, 65 P.S. § 67.101, *et seq.*

I-14. Vendor's Representations and Authorizations

By submitting its proposal, each Vendor understands, represents, and acknowledges that:

- a. All of the Vendor's information and representations in the proposal are material and important, and the Issuing Office may rely upon the contents of the proposal in making an award. The Treasury shall treat any misstatement, omission or misrepresentation as fraudulent concealment of the true facts relating to the proposal submission, punishable pursuant to 18 Pa. C.S. § 4904.
- b. The Vendor has arrived at the price(s) and amounts in its proposal independently and without consultation, communication, or agreement with any other Vendor or potential Vendor. This provision has no application to those Vendors who partner to provide a comprehensive solution.
- c. The Vendor has not disclosed the price(s), the amount of the proposal, nor the approximate price(s) or amount(s) of its proposal to any other firm or person who is a Vendor or potential

Vendor for this RFP, and the Vendor shall not disclose any of these items until final selection of a vendor as specified in the Calendar of Events of this RFP.

- d. The Vendor has not attempted, nor will it attempt, to induce any firm or person to refrain from submitting a proposal to this RFP, or to submit a proposal with a price higher than the price presented in its proposal, or to submit any intentionally high or noncompetitive proposal or other form of complementary proposal.
- e. The Vendor makes its proposal in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive proposal.
- f. To the best knowledge of the person signing the proposal for the Vendor, the Vendor, its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation, with respect to bidding or proposing on any public contract, by any governmental agency and have not, in the last **four (4)** years, been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction involving conspiracy or collusion, except as the Vendor has disclosed in its proposal.
- g. To the best of the knowledge of the person signing the proposal for the Vendor and except as the Vendor has otherwise disclosed in its proposal, the Vendor has no outstanding, delinquent obligations to the Commonwealth including, but not limited to, any state tax liability not being contested on appeal or other obligation of the Vendor that is owed to the Commonwealth.
- h. The Vendor is not currently under suspension or debarment by the Commonwealth, any other State or the Federal government, and if the Vendor cannot so certify, then it shall submit along with its proposal a written explanation of why it cannot make such certification.
- i. The Vendor has not made any recommendations to the Commonwealth Budget Office or any other Commonwealth agency concerning the bond counsel services for the Bond Issue described in this proposal.
- j. Each Vendor, by submitting its proposal, authorizes Commonwealth agencies to release to the Issuing Office information concerning the Vendor's Pennsylvania taxes, unemployment compensation and workers' compensation liabilities.
- k. Each Vendor, by submitting its proposal, understands that Treasury will forward to the Office General Counsel the names of the Vendors that submitted proposals and request that they conduct a conflicts check for this RFP. Please note that representing a client in a tax appeal proceeding does not act as a conflict of interest for the purpose of this RFP.
- l. Until the selected Vendor receives a fully-executed contract from the Commonwealth, here is no legal and valid contract, in law or in equity, and the Vendor shall not begin to perform.

I-15. Small Diverse Business Information

The Issuing Office encourages participation by small diverse businesses as prime contractors, and encourages all prime contractors to make significant commitment to use small diverse businesses as subcontractors and suppliers.

A Small Diverse Business is a DGS-verified minority-owned business, woman-owned business, veteran-owned business or service-disabled veteran-owned business.

A small business is a business in the United States which is independently owned, not dominant in its field of operation, employs no more than 100 full-time or full-time equivalent employees, and earns less than \$7 million in gross annual revenues for building design, \$20 million in gross annual revenues for sales and services, and \$25 million in gross annual revenues for those businesses in the information technology sales or service business.

A database of Bureau of Small Business Opportunities-certified minority, women, veteran and service-disabled veteran owned businesses can be accessed from: <http://www.dgs.pa.gov/Businesses/Minority,%20Women%20and%20Veteran%20Businesses/Small-Diverse-Business-Procurement/Pages/default.aspx#.V9sFjkrJaQ>.

I-16. Restriction of Contact

From the issue date of this RFP until the Issuing Office selects a proposal for award, the Issuing Officer is the sole point of contact concerning this RFP. Any violation of this condition may be cause for the Issuing Office to reject the offending Vendor's proposal. If the Issuing Office later discovers that the Vendor has engaged in any violations of this condition, the Issuing Office may reject the offending Vendor's proposal or rescind its contract award.

Each Vendor that submits a proposal in response to this RFP agrees, as a condition of submitting the proposal, not to distribute any part of its proposal beyond the Issuing Office. A Vendor who shares information contained in its proposal with other Treasury personnel, a competing Vendor, or any other person may be disqualified up until final selection.

I-17. Vendor Responsibilities

The selected Vendor must assume responsibility for all services offered in the proposal whether it produces them itself or by subcontract. The Issuing Office will consider the selected Vendor to be the sole point of contact with regard to contractual and contract matters.

I-18. Rejection of Proposals

The Issuing Office reserves the right, in its sole and complete discretion, to reject any or all proposals received in response to this RFP, or to negotiate separately with competing Vendors.

I-19. Discussion for Clarifications

Vendors may be required to make an oral or written clarification of their proposals to the Issuing Office to ensure thorough mutual understanding of and Vendor responsiveness to the solicitation requirements. The Issuing Office will initiate requests for clarification.

I-20. Notification of Selection

The Issuing Office will notify the selected Vendor in writing of its selection for negotiation after the Issuing Office has determined, taking into consideration all of the evaluation factors, the proposal that is the most advantageous to Treasury.

I-21. Term of Contract

Upon the successful completion of negotiations, the Office of General Counsel will issue an appointment letter to the selected vendor, along with the executed legal services contract. The effective date of the contract will be set by the legal services contract after it has been fully executed by the selected vendor and all approvals required by Commonwealth contracting procedures have been obtained.

The term of the contract will commence on the effective date and will extend until the completion of the debt issuance. Completion of the debt issuance shall occur upon certification by the Commonwealth of complete receipt of the proceeds of the bond sale following the closing of sale.

I-22. Debriefing Conferences

Vendors whose proposals are not selected will be notified of the name of the selected Vendor and given the opportunity to be debriefed. The Issuing Office will schedule the time and location of the debriefing. The debriefing will not compare the Vendor with other Vendors, other than the position of the Vendor's proposal in relation to all other Vendor proposals. A Vendor's exercise of the opportunity to be debriefed does not constitute the filing of a protest.

I-23. New Releases

Vendors shall not issue news releases, internet postings, advertisements or any other public communications pertaining to the Bond Issue without prior written approval of the Office of the Budget, and then only in coordination with the Office of the Budget.

PART II **PROPOSAL REQUIREMENTS**

II-1. General Requirements

Vendors must submit their proposals in the format, including heading descriptions, as outlined below. To be considered, the proposal must respond to all requirements in this part of the RFP. Vendors should provide any other information thought to be relevant, but not applicable to the enumerated categories, as an appendix to the Proposal. All cost data relating to this proposal should be kept separate from and not included in the Technical Submittal. The Issuing Office may, in its sole discretion, reject any Proposal that includes cost data in its Technical Submittal or, if it determines it to be in the best interests of the Commonwealth, redact cost data from the Technical Submittal in order to allow the Evaluation Committee to evaluate it without knowledge of the cost data.

Each Proposal shall consist of **three** (3) separately sealed submittals:

- a. Technical Submittal, in response to **RFP 16-002**
- b. Cost Submittal, in response to **RFP 16-002**, and
- c. Small Diverse Business Submittal, in response to **RFP 16-002**.

The Issuing Office reserves the right to request additional information which, in the Issuing Office's opinion, is necessary to assure that the Vendor's competence, business organization, and financial resources are adequate to deliver the RFP requirements.

The Issuing Office may make investigations as deemed necessary to determine the ability of the Vendor to deliver and support the solution, and the Vendor shall furnish to the Issuing Office all requested information and data. The Issuing Office reserves the right to reject any proposal if the evidence submitted by, or investigation of, such Vendor fails to satisfy the Issuing Office that such Vendor is properly qualified to carry out the services described in this RFP.

II-2. Technical Submittal

- a. **Statement of the Problem:** State in succinct terms your understanding of the bond counsel services to be delivered in connection with the Bond Issue required by this RFP.
- b. **Vendor Qualifications:** Provide documentation and other evidence as required below.
- c. **Services to be Provided:** Provide documentation and other evidence that you are able to complete the services required by this RFP.

Matters Subject to Disqualification

Please be advised that the following criteria not being met will automatically disqualify Vendors from being considered and their proposal will not be considered:

- One or more individuals on the bond counsel team not being admitted to the Pennsylvania Supreme Court
- Vendors having an outstanding Commonwealth tax liability
- Determination by the Commonwealth, Department of the Auditor General or Treasury that the firm has a conflict of interest that the Commonwealth, Department of the Auditor General and/or Treasury is not willing to waive. Please note that representing a client in a tax appeal proceeding does not act as a conflict of interest for the purpose of this RFP.

Vendor Qualifications/Work Statement

In addition to those minimum qualifications identified pursuant to OGC's Bond Counsel RFQ, the following criteria will be used in evaluating each proposal. As part of your Technical Submittal, please provide the following Additional Qualifications/Information:

- 1). Provide a narrative demonstrating the Law Firm's knowledge of the areas of law and experience relevant to the engagement at issue as well as an analysis of the Law Firm's plan of action consistent with the problem statement and the Statement of Work. Law Firms should also highlight their knowledge of the Commonwealth, the Executive Branch and its agencies.
- 2). Identify all of the attorneys who will be members of the firm's bond counsel team for the Bond Issue and their roles as members of the team. Identify the attorney who will be the main point-of-contact for the Office of the Budget, and will have day-to-day responsibility for this representation. Confirm that all members of the firm's bond counsel team are admitted to practice law before the Supreme Court of Pennsylvania and are members in good standing.

- 3). Confirm that one or more members of the firm's bond counsel team have served as bond counsel for tax-exempt general obligation bond issues of comparable size by comparable issuers within the preceding five (5) years. Identify and discuss the size and other characteristics of the issues (up to ten examples).
- 4.) Identify the member(s) of the firm's Bond Counsel team that specialize in public finance tax law.
- 5). Identify which members of the firm's Bond Counsel team practice regularly in the area of municipal securities law.
- 6). Describe the ability of the firm's bond counsel team to evaluate legal issues, prepare documents and complete other necessary tasks as bond counsel for the Bond Issue in a timely manner.
- 7). Identify and describe, one or more, particularly challenging bond issues the firm has encountered and how the firm dealt with such.
- 8). Confirm that the firm or any member thereof has no pending or contemplated conflicting representation or adverse litigation involving any Commonwealth agency or department, including, without limitation the Issuing Officials (the Governor, Pennsylvania Treasury, and Pennsylvania Auditor General). Please note that representing a client in a tax appeal proceeding does not act as a conflict of interest for the purpose of this RFP.

II-3. Cost Submittal

The Cost Submittal shall be placed in a separate, sealed envelope clearly labeled Cost Submittal within the sealed proposal, separated from the Technical Submittal and the Small Diverse Business Submittal.

Treasury expects at this time that the Bond Issue will be in the amount of \$800 million and will be a complete refunding with no new money as part of the issuance. Accordingly, each Vendor shall submit a cost proposal that is less than the fee resulting from the application of the following formula to a hypothetical bond issue in the amount of \$800 million (HBI) (*i.e.*, that fee being less than \$96,250):

The total sum of:

50 cents per \$1,000.00 of par for 1st \$25 million of par; plus

35 cents per \$1,000.00 of par for 2nd \$25 million of par; plus,

10 cents per \$ 1,000.00 of par for any amount over \$50 million of par.

Vendors' cost proposals may utilize the rate structure set out above, and/or may consist of a flat fee, another rate structure based upon the total amount of debt issuance, or a hybrid. Each submittal must contain a simple statement of the proposed fee amount for the HBI. Unless identified as a flat fee regardless of actual amount of debt issuance, each submittal shall also include a sufficiently detailed description of the fee methodology to allow the Department to determine the fee that would result from application of the methodology to debt issuances in amounts lesser or greater than \$800 million.

Vendor Cost submittals will be evaluated exclusively upon the fee amount proposed for the HBI. Any Vendor selected for negotiation, however, will be required to agree to accept as its fee, in the event that the actual bond issuance is in an amount other than \$800 million, the lower of the fee it proposed for the HBI and the fee that would result from the application of its cost methodology to the actual

bond issuance. Notwithstanding the prior sentence, a Vendor selected for negotiation that proposed a fixed fee for the HBI shall be paid that fixed fee regardless of the amount of the actual bond issuance.

The proposed fee shall not include any expenses beyond what the firm incorporated into the proposed fee. Any firm that attempts to suggest that the Commonwealth agreed to pay other fees outside of the proposed fee or tries to negotiate for higher fees at the contract negotiation stage will be disqualified.

PART III

CRITERIA FOR SELECTION

III-1. Mandatory Responsiveness Requirements

To be eligible for selection, a proposal must be:

- a. Timely received from the Vendor; and
- b. Properly signed by the Vendor.

III-2. Nonconforming Proposals

The Issuing Office reserves the right, in its sole discretion, to waive administrative, non-substantive, or immaterial nonconformities in a Vendor's proposal. Please be advised II-2 and III-1 are not subject to waiver unless stated otherwise.

III-3. Evaluation Committee

Proposals will be reviewed and evaluated by a committee of qualified personnel selected by the Commonwealth. This committee will recommend for selection the proposal which it determines is the most advantageous to the Commonwealth after considering all of the evaluation factors.

III-4. Criteria for Selection

The technical submittal will be evaluated based on the Vendor's qualifications, experience, staffing, and competency, and its ability to perform the bond counsel services for the Bond Issue.

The cost submittal will be evaluated based on the total cost of the fee proposed by vendor to perform bond counsel services for the Bond Issue.

III-5. Vendor Responsibility

To be responsible, a Vendor must submit a responsive proposal and possess the capability to fully perform as bond counsel for the Bond Issue in all respects and the integrity and reliability to assure good faith performance of the contract, and shall not have any conflicts that prevent it from fully performing as bond counsel for the Bond Issue. The Issuing Office will award a contract only to a Vendor determined to be responsible in accordance with the most current version of Commonwealth Management Directive 215.9, Contractor Responsibility Program.

LIST OF ATTACHMENTS & APPENDICES

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Appendix A
PROPOSAL COVER SHEET
PENNSYLVANIA TREASURY DEPARTMENT
RFP 16-002

Enclosed in three separately sealed submittals is the proposal of the Vendor identified below for the above-referenced RFP:

Vendor Information:	
Vendor Name	
Vendor Mailing Address	
Vendor Website	
Vendor Contact Person	
Contact Person's Phone Number	
Contact Person's Facsimile Number	
Contact Person's E-mail Address	
Vendor Federal ID Number	

Submittals Enclosed and Separately Sealed:	
<input type="checkbox"/>	Technical Submittal
<input type="checkbox"/>	Disadvantaged Business Submittal
<input type="checkbox"/>	Cost Proposal

<i>Signature</i>	
Signature of an official Authorized to bind the Vendor to the provisions contained in the Vendor's proposal:	
Printed Name:	
Title:	

FAILURE TO COMPLETE, SIGN AND RETURN THIS FORM WITH THE VENDOR'S PROPOSAL MAY RESULT IN THE REJECTION OF THE VENDOR'S PROPOSAL.

Appendix B

This document is enclosed in the email in which you receive the RFP.

APPENDIX C
PERSONNEL EXPERIENCE BY KEY POSITION

<p style="text-align: center;">POSITION WITHIN THE FIRM</p> <p style="text-align: center;">(Include information for all individuals identified in response to Appendix D – Statement of Qualifications/Technical Questionnaire, as well as any additional positions identified as integral to the work delineated in your proposal.)</p>	<p style="text-align: center;">PERSONNEL NAME/POSITION IN THE FIRM</p> <p style="text-align: center;">(Identify by first/last name the person who will fulfill this position.)</p>	<p style="text-align: center;">COMMITMENT</p> <p style="text-align: center;">(Provide the percentage of this person’s time to be committed to the proposed project.)</p>	<p style="text-align: center;"># of Projects</p> <p style="text-align: center;">(List the number of projects for which this person has acted in the same role.)</p>	<p style="text-align: center;">OTHER RELEVANT EXPERIENCE</p> <p style="text-align: center;">(Provide a brief narrative of other experience this person has had that may be relevant to his/her role in the proposed project.)</p>	<p style="text-align: center;">EDUCATION</p> <p style="text-align: center;">(List all postsecondary degrees completed for this person.)</p>

APPENDIX D
Certification of Minimum Requirements

- I certify that this submission is complete and that my firm and I have included a technical and a cost proposal.
- I certify that the firm maintains professional liability insurance through an AA Best-Rated (or the equivalent) insurance carrier in an aggregate amount of not less than \$10 million. The professional liability insurance will include coverage for practice in the field of federal and state securities and tax law.
- I certify that all the attorneys on the proposed team are admitted to practice before the Supreme Court of Pennsylvania.
- I have completed Appendix C.
- I certify that I have disclosed any possible conflicts that my firm may have as set forth in I-II(8). I also confirm that the firm has no pending or contemplated conflicting representation or adverse litigation involving any Commonwealth agency or department, including, without limitation the Issuing Officials (the Governor, Pennsylvania Treasury, and Pennsylvania Auditor General).
- Should my firm win the RFP, we will agree to the contract set forth in Appendix B.

Signed

Lawyer responsible for firm submission