

**SOUTHERN CALIFORNIA  
PUBLIC POWER AUTHORITY**



**SCP PA**

**Request for Proposals  
for  
Bond and Tax Counsel Services**

**RFP Date:** *August 30, 2005*

**Response Deadline:** *September 23, 2005, by 5:00 p.m. PDT*

***Request for Proposals (RFP) for  
SCPPA Bond Counsel and  
for SCPPA Tax Counsel***

The Southern California Public Power Authority (SCPPA) is currently soliciting proposals from qualified “Category One” law firms interested in being retained to serve the Authority as either lead bond counsel or as co bond counsel.

The Authority is also soliciting proposals from experienced tax practitioners skilled in the tax issues implicit in structuring and issuance of tax-exempt local government debt. In addition, SCPPA is also encouraging small firms to apply under this RFP process to potentially act as co-bond counsel in selected specified legal tasks associated with the work described herein.

Bond Counsel and Tax Counsel services may be provided under the proposed legal services engagement by the same firm or firms, or each of these legal specialties may be engaged independently by SCPPA through separate and discrete legal service agreements with different law firms.

The Authority is seeking experienced law firms possessing substantial background and experience in both taxable and tax-exempt municipal finance work. It is possible that one or more firms may be selected and assigned responsibilities depending upon their capability to handle specified tasks. It is also possible that one firm may be selected for SCPPA bond work while another firm may be selected for SCPPA tax work. Therefore responding firms are encouraged to set forth the complete array of services which the firm is capable of providing with respect to all of the subjects addressed in this request for proposal process, as well as all other relevant experience or expertise which the firm may possess. The Authority intends to choose the

most suitable firms to enter into a legal services agreement for an estimated period commencing January 1, 2006, through December 31, 2008. The agreement would be subject to termination by either party upon thirty days' written notice.

This proposal process is designed to select suitable firms to assist SCPPA to carry out financing requirements with respect to SCPPA projects, and to advise with respect to those actions which may be appropriate in addressing these matters. SCPPA requests that responding proposers provide evidence of substantial experience as public entity bond counsel, especially with respect to municipal utilities and/or California joint powers agencies. To satisfy the desired experience SCPPA believes that, in general, proposers should have served as bond counsel in more than six (6) municipal or three (3) joint powers authority financings within a calendar year.

The response to this RFP shall set forth the firm's background and qualifications which make firm suitable for this particular engagement agreement. The information provided by the firm should identify with specificity the different areas of expertise addressed in this RFP for which the firm is uniquely suited. The selection process is anticipated to consist of submission of the requested written information and any other information helpful to the selection process. At the discretion of SCPPA the selection process may entail requests by SCPPA for further information and the scheduling of firm interviews.

The Southern California Public Power Authority is a joint powers authority and a public entity organized under the laws of the State of California. The Authority was created pursuant to the California Government Code and a Joint Powers Agreement for the purpose of planning and financing, as well as development, acquisition, construction, operation and maintenance of projects for the generation or transmission of electric energy. Membership consists of

eleven cities and one irrigation district which supply electric energy in Southern California. An overview of SCPA and major SCPA Projects which could be subject to potential refundings or refinancings during the term of the proposed engagement agreement can be found at the SCPA web site at [www.scpa.org](http://www.scpa.org) .

During the period of the proposed legal services agreement services may entail new money financings or refinancings of generation and transmission facilities and natural gas resources. Depending on a variety of factors, including market conditions, the potential services may entail the refunding of existing issues relating to various SCPA projects. The Authority is also currently interested in developing a commercial paper program by which to carry forth the potential financing of certain of its projects. The Authority also desires to continue to reduce Project costs and to help its members maintain their competitive position in the electric industry. The financing vehicles which may be contemplated may entail forward delivery, swap or derivative transactions. The Authority is authorized to issue revenue bonds on a competitively bid basis or upon a negotiated basis, and in fixed or in variable rate form.

Only written proposals will be considered. Proposals should be responsive to the questions set forth in this Request for Proposals. All materials shall become a part of the proposal, and may be incorporated in any subsequent contract between SCPA and any selected proposer.

**The maximum length of your written proposal, excluding exhibits, resumes and bios, and reference contacts, should not exceed twenty (20) pages. Ten (10) paper copies of your written proposal and one (1) CD containing the complete contents of your proposal should be submitted no later than 5:00 p.m. on Friday, September 23, 2005.**

Proposals should be submitted in a sealed package, clearly marked with the words as follows:

“Response to RFP for Bond Counsel  
and/or Tax Counsel”

Proposals shall be addressed to:

Richard M. Helgeson  
General Counsel  
Southern California Public Power Authority  
225 South Lake Avenue, Suite 1250  
Pasadena, CA 91101

Questions regarding this RFP should be directed to Richard Helgeson or Craig Koehler of SCPPA at (626) 793-9364. Proposers should not contact SCPPA board members with respect to this RFP or this RFP process.

#### **1. Scope of Work**

The duties of bond counsel include, but are not limited to, assisting SCPPA and its financial advisor in the preparation and examination of all proceedings necessary for the issuance, sale, execution, delivery and disclosure as required by law of SCPPA revenue bonds, revenue notes, revenue certificates, refunding revenue bonds, commercial paper or any and all other forms of indebtedness which SCPPA may propose to issue or sell.

Transactions for which the selected counsel may be engaged may include any original issue, refunding, forward delivery, swap or derivative transaction in which SCPPA may participate. Bond Counsel may be called upon to work on bond counsel matters either individually or in conjunction with another co bond counsel firm which, depending on varying circumstances could be a small to midsized firm or an MBE/WBE/OBE firm.

Bond Counsel will be expected to examine all procedural requirements and all constitutions, statutes, laws, rules, regulations and resolutions relevant to or in any way affecting the issuance, sale, execution, delivery and disclosure issues relating to any anticipated bonds, notes, certificates or commercial paper, including swap or derivative transactions. Bond Counsel may also be called upon to assist SCPPA and other SCPPA Counsel in any litigation relating to or in any way affecting the issuance, sale, execution, delivery and disclosure issues of such bonds, notes or certificates, or commercial paper, including swap or derivative transactions. Bond counsel may also be called upon to provide a bond counsel opinion either individually or in conjunction with a SCPPA co bond counsel firm stating that the bonds, notes, certificates or commercial paper, as executed and delivered pursuant to bond proceedings, will constitute valid and binding obligations of SCPPA and its applicable project participants. Bond Counsel may also be required to render an opinion expressing the fact that the interest on such bonds, notes, certificates or commercial paper is exempt from personal income taxes under the laws of the United States and the laws of the State of California, unless SCPPA chooses to issue such securities on a taxable basis.

SCPPA frequently requires advice with respect to highly technical tax exempt implications in many of the financings and refinancings which it contemplates. In addition to seeking counsel possessing municipal finance and joint powers financing experience, SCPPA is also seeking counsel having substantial background and experience with legal provisions implicated in tax exempt

financings of generation projects, transmission projects, natural gas reserve acquisition projects and natural gas prepayment transactions. Firms purporting to have substantial tax experience should have a working understanding of the laws, decisions, treasury regulations, rulings, and determinations dealing with tax exempt financing of governmental generation and transmission projects and projects for acquisition of natural gas to be used as fuel for governmental electric generation facilities. Experience in how to address output facility issues associated with 1.141-7 of the Treasury Regulations and management contract issues associated with Revenue Procedure 97-13 are desirable.

The proposed engagement contract is anticipated to be for three years. SCPPA currently has approximately \$1.9 billion in outstanding bonds representing eight different SCPPA projects. SCPPA anticipates that the potential for refunding or swap opportunities which may arise from time to time, as well as the potential sale of original issue project bonds over the next three (3) years will depend, in part, on market conditions as well as the development of new SCPPA projects.

## **2. Evaluation Criteria**

The retention by SCPPA of any firm submitting a proposal may be based upon, but will not necessarily be limited to, the following general criteria:

- (a) Service as lead bond counsel in more than six (6) municipal or three (3) joint powers financing closings within a calendar year;
- (b) The ability as a nationally recognized bond counsel to provide a written opinion as to the legality of any bond, note or certificate issue, including the tax exemption of any such issue,

acceptable to the underwriting syndicates and investment firms in the United States who may bid on project debt offerings of SCPPA;

- (c) Ability to provide an acceptable arbitrage certificate;
- (d) Ability to provide advice on disclosure issues which may be required by law;
- (e) Ability to provide tax expertise on current municipal electric utility tax exempt financing issues, such as those created by the electric industry deregulation, open access, private use issues, natural gas acquisition issues, natural gas prepayments, etc.;
- (f) Ability to provide such services on a continuing and uninterrupted basis; and ability to provide other legal services as requested by SCPPA.
- (g) The fee schedule and/or the alternative or “per transaction” fee arrangements proposed by the proposing firm.

It is anticipated that the proposals will be evaluated by one or more evaluation committees comprised of representatives from SCPPA member cities. The evaluation committee(s) may conduct interviews of the proposed bond counsel and tax counsel to further assist in the evaluation process. Any recommendations for the award of legal services contracts under this process may be premised, among other factors, on the basis of the best value and the lowest ultimate cost to SCPPA. SCPPA reserves the right to reject any or all proposals.



### **3. Content of Response**

A copy of SCPPA's Bond Counsel and Tax Counsel Questionnaire is attached as Appendix A. SCPPA requests that responses to this questionnaire be completed by each firm interested in being retained as bond counsel and/or tax counsel. Please complete the questionnaire as accurately and as fully as possible and include all information which you deem relevant or which you believe would be helpful to the evaluation process.

Proposals shall also include the following information in the order listed:

#### **3.1 Subcontractors**

State whether your firm will use any subcontractors or sub-bond counsel or co bond counsel to perform services pursuant to the contract. Should the use of subcontractors or sub-bond counsel or co bond counsel be offered, the proposing firm shall provide the same assurances of competence for subcontractors, plus the demonstrated ability to manage and supervise the subcontracted work.

Subcontractors shall not be allowed to further subcontract with others for work on this program without the consent to SCPPA.

#### **3.2 SCPPA Small Firm Program Characteristics**

To provide for certain economies in some of the processes necessary to bond financings or refinancings SCPPA may pair a large firm with a small firm which will be tasked to carry out certain activities. If you believe your firm is in the small firm category please so state, and indicate on the attached bond and tax counsel questionnaire whether or not your firm's net income for 2004 was in excess of \$250,000.

### 3.3 Insurance Requirements

Responding firms should state that, if engaged, they will comply with SCPPA's insurance requirements which include \$1,000,000 automobile liability insurance, \$1,000,000 commercial general liability insurance, workers compensation coverage as required by law and legal malpractice insurance sufficient to insure against the consequences of potential errors and omissions.

### 3.4 Taxpayer Identification Number

Provide the proper Taxpayer Identification Number for your firm for the preparation of any Form 1099 or other Internal Revenue Service reporting requirements.

### 3.5 Services Provided to SCPPA member agencies.

Provide in detail whether your firm, within the last three years has rendered any service to any SCPPA member, either as a primary contracting law firm or as a subcontracting firm, either under your firm's current business organization or under any other name or business organization.

## 4. Clarification requests

Any clarification request in connection with this request for proposals process should be submitted in writing and directed to Richard M. Helgeson, or Craig Koehler, 225 So. Lake Avenue, Suite 1250, Pasadena, California 91101; Fax 626-793-9461; email: [rhelgeson@scppa.org](mailto:rhelgeson@scppa.org) or [ckoehler@scppa.org](mailto:ckoehler@scppa.org).

All proposers requesting clarification shall provide an active e-mail address to receive responses to questions.

## **5. Right to Reject Proposals**

SCPPA reserves the right to reject any or all proposals and to amend, modify or terminate the RFP process at any time.

## **6. Incurring Costs**

SCPPA shall not be liable for any costs incurred by any proposers in preparing any information in connection with this RFP process or in any manner in responding to this RFP. Any such costs shall remain the sole responsibility of the responding firm.

## **7. Disposition of Proposals and Ownership of Data**

### **7.1 Disposition of Proposals**

All proposals submitted in response to this RFP shall become the property of SCPPA. Also, the proposal must identify all copyrighted material, trade secrets or other proprietary information which the proposer may contend may be exempt from disclosure under the Public Records Act (California Code Sections 6250 et seq.) In the event such an exemption is claimed, the proposer is requested to state in the proposal that the proposer will defend any action which seeks disclosure.

## 7.2 Ownership of Data.

Upon completion of all work under the proposed engagement contract, ownership and title of all reports, documents, instruments, indentures, contracts, plans, drawings, specifications, and estimates produced as part of the contract will automatically be vested in SCPPA, and no further agreement will be necessary to transfer ownership to SCPPA. Copies of work product produced for SCPPA shall not be furnished to others without written authorization from SCPPA.

## **8. Contract Period**

It is anticipated that any contract or contracts which may be awarded arising out of this RFP process would be expected to begin January, 2006 and provide for a term of up to three years.

## **9. RFP Processes, Selections, Negotiations and Fees**

This request for proposals constitutes only an invitation to provide the requested information and is not a request for a competitive bid for any services set forth herein. Therefore SCPPA reserves and holds and, in its sole discretion, may exercise any and all rights to enter into negotiations with any responding party or with any combination of responding parties who, in SCPPA's sole judgment, appear to be qualified to represent SCPPA's interests and to provide the best value to best satisfy the needs of SCPPA as set forth in this RFP process. If SCPPA receives information from one or more respondents in the course of this RFP process which, in its sole discretion, it deems worthy of further consideration, SCPPA may request additional information from the respondent or respondents and may engage in

any additional negotiations with any such firms submitting such information which SCPPA deems to be in its best interests. SCPPA may award a contract on the basis of proposals submitted, without discussions, or may carry forth a series of further discussions and interviews. SCPPA also reserves the right to, and may, submit additional clarifying questions to proposers which SCPPA, in the exercise of its discretion, determines to be helpful to the selection process. SCPPA also may negotiate with one or more proposers to achieve the lowest and most reasonable competitive fee structure. Proposals should be submitted on the basis of the proposers most favorable public entity fee discounts. While not an exclusive factor, the fee structure of the firm is an important factor. In many SCPPA member city selection processes in the past, selection decisions have revolved around finalist firms having substantially comparable credentials, making fee considerations an important defining criteria in selection decisions. SCPPA may require proposers to affirmatively represent that the proposer does not provide for a lower fee structure to any public entity in Southern California.

## **10. SCPPA Standard Contract Provisions**

At the conclusion of the initial evaluation process, negotiations between the SCPPA and the successful proposer or proposers for a contract will proceed. SCPPA contemplates entering into a legal services contract containing SCPPA's standard terms and conditions which will include specific standards for the firm's billing of costs and services. The contract will also set forth requirements for the scrupulous exercise of good billing judgment, billing specificity, billing documentation, and insurance requirements. SCPPA's legal services contract requirements relating to billing practices are similar to those found in current Los Angeles Department of Water and Power and Los Angeles City Attorney's Office outside counsel legal services contracts. The contract will contain an express provision that in the event of any dispute

concerning any matter touching upon the agreement each party agrees to bear its own attorneys fee. In addition the contract will not contain any clause requiring that disputes be submitted to mandatory arbitration and will require that venue for any dispute be in Los Angeles County.

## **11. Signatures and Declarations**

Each proposal must be signed on behalf of the proposer by an officer authorized to bind the proposer, and should include the following statement:

“This proposal is genuine, and not a sham or collusive. The proposer has not improperly attempted to induce any other firm to refrain from submitting a proposal and the proposer has not in any manner sought by collusion to secure for itself an advantage over any other proposer.”

## **APPENDIX "A"**

### **Bond Counsel and Tax Counsel Questionnaire**

#### **GENERAL INFORMATION QUESTIONS FOR ALL PROPOSERS**

1. Name of proposer:
  
2. Address and contact information for principal office:  
  
Address of satellite offices:  
  
Address and contact information for the office(s) and personnel anticipated to be responsible for the potential engagement matters addressed in this RFP:
  
3. Size of your firm, number of offices, number of partners and associates
  
4. If your firm does not have a Southern California office please describe the arrangements your firm will make to provide bond counsel services and/or tax counsel services on a continuous and uninterrupted basis.
  
5. If you consider your firm to be in the small firm category please indicate whether your firm's net income in 2004 was more than \$250,000.
  
6. Has your firm carried out any legal services for any SCPPA member during the last three years. SCPPA members are listed on the SCPPA web site at [www.SCPPA.org](http://www.SCPPA.org). If so, please set forth the SCPPA

member, the nature of the work, the dates of your engagement and the names of the SCPPA member agency personnel responsible for the administration of your contract.

7. Do you have any municipal law specialists in your firm? If so, please provide names, resumes, experience and specialty areas.
8. Does your firm have any potential conflicts with SCPPA which might implicate the provisions of Rule 3-310 of the California Rules of Professional Conduct? If so, please state in detail the nature of the matter which might give rise to any such conflict.
9. Does your firm presently represent, or has your firm at any time during the past three (3) years represented, any party in any litigation or transactional matter adverse to SCPPA or any SCPPA member? If so, please identify the SCPPA member and describe the litigation or transaction. Please indicate whether or not the litigation or transaction has now concluded and, if concluded, please indicate how the matter was concluded.
10. Which of your firm's attorneys would be assigned the primary responsibility for administering and carrying out services under the engagement agreement proposed herein.
11. Please provide the complete background and experience of the attorney or attorneys identified in your response to Question 10 if you have not done so elsewhere in your response.
12. Do you carry an "errors and omissions" policy? If so, state the policy limits of such coverage.



- 13 Describe your firm's fee schedule and anticipated charges. Keep in mind that SCPA also desires to consider various alternative types of bond service fee arrangements such as "per transaction" pricing, a per issuance fee in terms of a fixed fee per thousand dollars of bonds to be issued, or a proposed lump sum price for original issues and refundings. The fees may be set forth in terms of a lump sum which first includes and then excludes the cost of official statement preparation or tax work. Respondents are requested to separately set out their fee or transaction pricing proposals under separate cover in a special exhibit or separately marked folder or envelope.
14. Do the hourly rates or the proposed transaction fees include all administrative and overhead costs such as word processing, telephone expenses, faxing, document duplication, expenses of travel, etc? Please indicate which charges or costs are not included in the above hourly rates or transaction fees. Please identify those charges or costs for which your firm expects reimbursement. If the reimbursement basis is other than cost based please indicate the amounts or the formula for calculating such charges or costs. If your firm does not have a Southern California area office, particularly note whether or not you are expecting to be separately reimbursed for transportation expenses in traveling to and from Southern California.
15. As indicated herein, it is entirely possible that the handling of the legal services described in this RFP may be undertaken through an approach involving two or more law firms working together on a common issuance, transaction, task or project. Other than your own law firm, please state which specific attorneys and law firms you feel would be most qualified to handle the type of responsibilities set forth in the scope of services section of this RFP.

16. Has your firm published any special articles, newsletters or law firm bulletins addressing any of the matters set forth in the Scope of Work section of this RFP? If so, please provide a reference to any such materials you feel may be relevant to your qualifications in your response. If you desire to attach any optional materials such as articles, news letters or bulletins which have been issued by your firm which may be relevant to the subject matter addressed in the Scope of Services section of this RFP you may attach these materials in a separate Exhibit section to your response.
17. Please provide any additional information you may deem appropriate
18. Please provide references.

#### **SPECIFIC QUESTIONS FOR BOND COUNSEL PROPOSERS**

19. Do you have any municipal finance specialists in your firm? If so, please provide names, resumes, experience and specialty areas.
20. Please describe all relevant bond counsel experience, including the date, issue size, issuer, underwriter, and type of security over the last three (3) years. If convenient for your firm this information may be set forth in an attached exhibit.
21. With respect to the experience set forth in question 20 please identify and describe what you believe may have been relatively complex transactions, such as straddles, advance refundings, swaps, swaptions, inverse floaters or other derivative transactions.

22. State all facts you rely upon to establish that your firm can comply with the required criteria to be a “Category One” law firm.
23. Has your firm been involved with financing issues associated with the acquisition of physical natural gas reserves by a public entity to fuel the entity’s electric generation? If so please describe the details and nature of any such work and describe your firm's experience and qualifications to do this work.
24. Has your firm been involved with financing issues associated with natural gas prepayment transactions entered into by a public entity for the purpose of procuring future supplies of fuel for electric generation? If so please describe the details and nature of any such work and describe your firm's experience and qualifications to do this work.

**SPECIFIC QUESTIONS FOR TAX COUNSEL PROPOSERS**

25. Do you have any Federal tax specialists in your firm? If so, please provide names, resumes, experience and specialty areas.
26. Do you have any Federal tax attorneys who are specialists in issues associated with Internal Revenue Code section 141 and 148, Section 1.141-7 of the Federal Treasury Regulations or Revenue Procedure 97-13 in your firm? If so, please provide names, resumes, experience and specialty areas.

27. Has your firm been involved with tax issues associated with the acquisition of physical natural gas reserves by a public entity to fuel the entity's electric generation? If so please describe the details and nature of any such work and describe your firm's experience and qualifications to do this work.
  
28. Has your firm been involved with tax issues associated with natural gas prepayment transactions entered into by a public entity for the purpose of procuring future supplies of fuel for electric generation? If so please describe the details and nature of any such work and describe your firm's experience and qualifications to do this work.
  
29. Has your firm prepared any private letter ruling requests to the Internal Revenue Service which have addressed subjects under section 141 or 148 of the Internal Revenue Code on behalf of any municipally owned electric utility? If so, please describe the subject matter of the ruling requests, the issues addressed in the request, the results obtained, and the PLR number assigned by the Internal Revenue Service to the private letter ruling.