

TSA

TOBACCO SETTLEMENT AUTHORITY

REQUEST FOR PROPOSALS

LEGAL SERVICES

FOR THE TOBACCO SETTLEMENT AUTHORITY

Deadline for submission:

**Wednesday, November 3, 2021
5 p.m. Prevailing Pacific Time**

Please email to:

Carol Johnson, Manager
carol.johnson@wshfc.org

**Tobacco Settlement Authority
1000 Second Avenue, Suite #2700
Seattle, Washington 98104**

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Part I

Introduction and Background

Introduction

The purpose of this Request for Proposals (RFP) is to obtain legal services for the ongoing activities of the Tobacco Settlement Authority (the “TSA” or the “Authority”), which could include the possible issuance of nonrecourse revenue bonds and the possible refunding of all or a portion of the TSA’s Revenue Refunding Bonds, Series 2013 (the “2013 Bonds”) and Revenue Refunding Bonds, Series 2018 (the “Series 2018 Bonds”). These services shall be provided for a maximum term of five years (initial contract term of two years with three one-year options to extend). The Tobacco Settlement Authority is an instrumentality of the state of Washington (“the State”). The Bonds were secured by a portion of the state’s share of tobacco settlement revenues (“TSRs”) under the Master Settlement Agreement (“MSA”).

The TSA will be reviewing proposals with a view towards creating opportunities for firms and individuals who have relevant experience but have historically been underrepresented in the industry. We encourage all qualified individuals and organizations to apply.

The Washington State Legislature enacted Chapter 365, Laws of 2002 (“the Act”), creating the TSA and authorizing the 2002 tobacco securitization transaction. The Act provides for the staff of the Washington State Housing Finance Commission (“WSHFC” or the “Commission”) to provide administrative, and staff support to the TSA. The Act further provides that the TSA may employ, contract with, or engage independent counsel, bond/transaction counsel, other attorneys, financial advisors, investment bankers, auditors, other technical or professional assistance, and such other personnel as are necessary and recommended by the TSA staff.

This RFP is for services as bond/transaction counsel, disclosure counsel, tax counsel and/or TSA general counsel for the Bonds authorized by the Act. The TSA reserves the right, in its sole discretion, to use the services of the selected firm or firms in connection with any subsequent bond issues.

The TSA intends to select one or more qualified law firm(s) to serve as bond/transaction counsel, disclosure counsel, tax counsel and/or TSA general counsel. In your proposal, please indicate the role(s) for which your firm wishes to be considered.

The TSA, WSHFC and the State shall bear no costs of or obligations to the proposing law firm(s) in connection with responses to this RFP, or to any selected law firm(s) in the event that a transaction is not completed.

Background

In 1998, the United States government and 46 states, the District of Columbia and five territories settled a lawsuit with four tobacco manufacturers: Philip Morris Incorporated, R.J. Reynolds Tobacco Company, Brown and Williamson Tobacco Corporation, and Lorillard Tobacco Company. Under the MSA, the State of Washington was allocated an estimated \$5.6 billion (\$2.497 billion present value) in TSRs over a 30-year period.

During its 2002 budget deliberations, the Washington State Legislature elected to securitize a portion of state TSRs. The Act authorizing the securitization provides that the proceeds raised from the sale of the Bonds may be used for capital expenditures, debt service on outstanding bonds of the State, and other purposes permitted by law. Use of proceeds for these purposes will make other funds available for increased costs of health care, long-term care, and other programs of the State.

The Act also created the TSA, a public instrumentality and agency of the State, but separate and distinct from the State, exercising public and essential governmental functions. A five-person Board of Directors appointed by the governor exercises TSA powers. Among the TSA powers is the issuance of bonds. The bonds shall be issued in the name of the TSA. The bonds are not obligations of the State of Washington and shall be obligations only of the TSA, payable solely from the special fund or funds created by the TSA for their payment. In addition, the TSA is empowered to enter into agreements with the State for purchase of a portion of the amounts otherwise due to the State under the MSA and of the State's rights to receive such amounts.

In 2002 the TSA and the State entered into a Purchase and Sale Agreement pursuant to which TSRs (\$30 million by July 1, 2003, and 29.2% of the TSRs thereafter) were purchased by the TSA for a one-time cash payment of \$450 million to the State of Washington. The 2002 Bonds were secured solely by the "right to receive" TSRs from major tobacco companies under the Master Settlement Agreement. The 2002 Bonds consisted of Serial Bonds and Turbo Term Bonds. The Turbo Term Bonds were subject to redemption in accordance with the Schedule of Sinking Fund Installments and, in addition, were subject to mandatory redemption to the extent that the funds remained on each payment date after meeting all current bond obligations.

In 2013 the TSA refunded its outstanding 2002 bonds, issuing \$334.7 million in refunding bonds to refund all of its outstanding Series 2002 Bonds. The Bonds generated \$58.2 million in present value savings to the TSA and shortened the expected final payoff of the 2002 bonds by 2 years, after which time the TSR stream would revert to the state. The refunding took advantage of fixed amortization serial bonds and a series of early call bonds maturing between 2024 through 2033. The refunding presented the TSA with an opportunity to reduce the payments of the TSA, to use fewer tobacco settlement revenues than the 2002 bond issue would require, and to retire the refunded bonds earlier than the 2002 bonds.

In 2018 the TSA refunded an allowable portion of outstanding 2013 bonds, issuing \$43.6 million in refunding bonds which generated \$5 million in present value savings and shortened the expected final payoff of the refunded bonds to 2024, after which time the TSR stream would revert to the state.

The TSA has not issued any general obligation bonds and does not currently have an issuer credit rating.

Part II Proposal Instructions and Conditions

- 2.1 Purpose. The TSA is authorized under section 6(c) of the Act to engage financing professionals as necessary to achieve its purposes. The TSA staff is issuing this RFP for the purpose of recommending one or more qualified firm(s) to the TSA to provide legal services in support of the TSA and of any future potential financing. Issuance of this RFP does not obligate the TSA to award a contract or to issue bonds. This RFP process is for the benefit of the TSA and is intended to provide competitive information to assist in the selection of qualified law firms. It is not intended to be comprehensive, and each proposing firm is responsible for determining all factors necessary for submission of a proposal.
- 2.2 Requests for Clarification and Inquiries. No conference to discuss this RFP will be held. Oral questions will not be accepted. Firms with questions concerning this RFP may submit their questions by email to Ms. Carol Johnson, Affiliates Manager, Tobacco Settlement Authority, no later than **5:00 p.m. PDT, on Tuesday, October 12, 2021.**

Submit questions to carol.johnson@wshfc.org

By the end of the day on **Tuesday, October 19, 2021**, all questions received and answers provided will be emailed to all known proposing firms, posted on the TSA website at www.tsa-wa.org, and posted on the Washington Electronic Business Solutions (WEBS) website at [WEBS \(wa.gov\)](http://WEBS.wa.gov) for all potential bidders to see. Please note that utilizing WEBS requires setting up an account.

- 2.3 No Ex Parte Communication. Apart from written questions as described immediately above, there shall be no *ex parte* communications concerning this RFP or the selection process between any proposing firm and any TSA Board member, TSA staff member or others aiding in the legal services selection process. Any such *ex parte* communications shall be grounds for disqualification of a proposing firm and its proposal. All communications concerning the selection process must be submitted as provided in Section 2.2 above.
- 2.4 Addenda to RFP. In the event it becomes necessary to revise any part of this RFP, addenda will be provided to all proposing firms who received the original RFP. Any addenda will also be posted on the TSA website and on WEBS.
- 2.5 Waiver of Claims. By submitting a proposal, proposing firms agree that they waive any claim against the TSA, WSHFC, the State of Washington, and their respective officers, employees, and agents for the recovery of any costs or expenses incurred in or connected with preparing and submitting a proposal.

2.6 Proposal Format. All submitted proposals will be in Calibri font style using a 12-point font and limited to 15 pages. To achieve a uniform evaluation process and maximum degree of comparability, proposals are to be organized as follows:

- (a) Title page that includes the subject of the proposal, name of the proposing firm, address, name of contact person, telephone number, fax number, if available, and the date.
- (b) Restatement of each question from Part V followed by the firm's response.
- (c) Completed Proposal Compliance and Certification Form in Part VII.

2.7 Submission of Proposals.

2.7.1 Interested proposers must submit their proposals no later than **5:00 p.m. PDT, on Wednesday, November 3, 2021.** No proposals will be accepted after the date and time specified in this section.

Proposals and all communication regarding the submission should be addressed to:

Carol Johnson, Affiliates Manager
Tobacco Settlement Authority
1000 Second Avenue, Suite #2700
Seattle, Washington 98104-1046

E-mail : carol.johnson@wshfc.org
Phone: 206-462-8296
Fax: 206-587-5113

Electronic submission to carol.johnson@wshfc.org is preferred.

Prior to the date and time designated for receipt of proposals, any proposal may be modified or withdrawn by email notice to carol.johnson@wshfc.org. Such notice shall be delivered on or before the date and time set for receipt of proposals.

2.7.3 Responses will be evaluated by a committee appointed by the Executive Director of the TSA based on the responses to the questions included in this RFP. The TSA will not conduct oral interviews unless respondents are notified otherwise.

2.7.4 RFP Distribution and Proposal Evaluation Milestones. (Subject to Change)

Action	Date Due
Distribute RFPs	Mon, October 4, 2021
Written questions due TSA	Tues, October 12, 2021
Responses issued by TSA	Tues, October 19, 2021
Proposals due to the TSA	Wed, November 3, 2021
Evaluate proposals	November 3 – 5, 2021
Notify firms of their selection as finalists	November 5 – 8, 2021
Hold interviews – if deemed necessary	November 9 – 11, 2021
Final Selection at TSA Board Meeting	November TBD
Contracting	TBD

2.7.5 The TSA reserves the right to request additional information from any proposing firm to assist in understanding or clarifying the terms of any proposal. Such additional information may be considered by the TSA in the evaluation of a proposal so long as the information does not materially alter the content of the firm’s proposal. A proposing firm will not be permitted to modify or amend its proposal if contacted by the TSA for this reason.

2.7.6 The TSA reserves the right to obtain from any and all sources information concerning a proposing firm or a proposing firm’s products, services, personnel or subcontractors that the TSA deems pertinent to this RFP and to consider such information in evaluating the firm’s proposal.

2.7.7 The TSA reserves the right to waive minor deficiencies in a proposal. The decision as to whether a deficiency will be waived or will require the rejection of the proposal will be solely within the discretion of the TSA. Proposing firms are cautioned that failure to comply with or respond to any part of this RFP that requires a response may result in rejection of proposals.

2.7.8 The TSA reserves the right to investigate references and past performance of any proposing firm with respect to its performance of similar services, compliance with the RFP and contractual obligations, and its lawful payment of suppliers, subcontractors and workers. The TSA may postpone award or execution of the contract after the announcement of the apparent successful proposing firm in order to complete an investigation. The TSA reserves the right to reject any proposal at any time prior to execution of a contract.

2.7.9 The TSA has the sole discretion and reserves the right to reject any and all proposals received in response to this RFP and to cancel this solicitation if

it is deemed in the best interest of the TSA to do so. Issuance of this RFP in no way constitutes a commitment by the TSA to award a contract, or to pay an applicant's costs incurred either in the preparation of a response to this RFP or during negotiations for services. The TSA also reserves the right to make amendments to this RFP by giving written notice to applicants, and to request clarification, supplements and additions to the information provided by an applicant.

2.7.10 By submitting a proposal in response to this solicitation, applicants understand and agree that any selection of an applicant or any decision to reject any or all responses shall be at the sole discretion of the TSA. Additionally, by submitting a proposal, applicants agree that they waive any claim against the TSA, the State of Washington, and their respective officers, employees, and agents for the recovery of any costs or expenses incurred in preparing and submitting a proposal.

2.7.11 The TSA shall not be required to accept any proposal solely on the basis that it contains the lowest price for completion of the work contemplated by this RFP and the TSA reserves the right to negotiate the final contract price.

2.7.12 All proposals shall be firm for a period of seventy-five (75) days to allow for the full evaluation of all proposals and deliberation of recommendations by the TSA.

2.8 Standards of Conduct. The members of the TSA Board of Directors are subject to provisions of the Public Disclosure Act, chapter 42.17 Revised Code of Washington (RCW) and the Ethics in Public Service Act, chapter 42.52 RCW. Proposing firms should give due regard to state restrictions on gifts, gratuities, and hosting in connection with their proposals.

2.9 Proprietary Information/Public Disclosure

All proposals will become the property of the TSA and will not be returned to the proposer.

All proposals received shall remain confidential until the contract is awarded. If any contract resulting from this RFP is signed by the Executive Director of the TSA and the apparent successful contractor, the proposals shall be deemed public records as defined in RCW 42.17.250 to 42.17.340, "Public Records."

Any information in the proposal that the contractor desires to claim as proprietary and exempt from disclosure under the provisions of RCW 42.17.250 to 42.17.340 must be clearly designated. The page must be identified and the particular exception from disclosure upon which the contractor is making the

claim. Each page claimed to be exempt from disclosure must be clearly identified by the word "Confidential" printed on the lower right-hand corner of the page.

The TSA will consider a contractor's request for exemption from disclosure; however, the TSA will make a decision predicated upon Chapter 42.17 RCW and Chapter 143-06 of the Washington Administrative Code. Marking the entire proposal exempt from disclosure will not be honored. The contractor must be reasonable in designating information as confidential. If any information is marked as proprietary in the proposal, such information will not be made available until the affected proposer has been given an opportunity to seek a court injunction against the requested disclosure.

A charge will be made for copying and shipping public records, as outlined in RCW 42.17.300. No fee shall be charged for inspection of contract files, but twenty-four (24) hours' notice to the RFP Coordinator is required. All requests for information should be directed to the RFP Coordinator.

2.10 Protest Procedures

All protests, either against the solicitation or the award, must be in writing or contain the original signature of the protesting party or authorized agent. Such protests must state all facts and arguments on which the protesting party is relying as the basis for its action. Copies of the protest must be mailed or hand-delivered to the office of the TSA.

Protests against the solicitation must be received by the TSA in writing no later than 5:00 PM Prevailing Pacific Time two (2) business days prior to the date proposals are due. Filing of a protest against the solicitation does not entitle the protesting party to an extension of time for submitting its proposal.

Protests involving the rejection of a proposal must be received by the TSA in writing no later than 5:00 PM Prevailing Pacific Time on the fifth (5th) business day following the interested applicant(s)'s receipt of the notice of rejection, whether oral or written, or the announcement of the apparent successful interested applicant(s), whichever occurs first. Only those who are eligible to submit a proposal under the criteria established by the TSA may protest the rejection of a proposal.

The Executive Director of the TSA will consider the record and all facts available and issue a decision within five (5) business days from receipt of the protest unless additional time is required, in which case the protesting party will be notified by the TSA. The decision of the Executive Director will be final.

2.11 Debriefing of Unsuccessful Contractors

Applicants whose proposals have not been selected for further consideration will be notified via e-mail. Only applicants who have submitted a proposal under the criteria established by the TSA may protest the rejection of a proposal and request a debriefing. Upon request, a debriefing will be scheduled with an unsuccessful applicant. The request for a debriefing must be received by the RFP Coordinator within three (3) business days after the Notification of Unsuccessful Bidder Letter is e-mailed to the bidder. The debriefing must be held within three (3) business days of the request. Discussion will be limited to a critique of the requesting applicant's proposal. Comparisons between proposals or evaluations of the other proposals will not be allowed. Debriefing conferences may be conducted in person or on the telephone and will be scheduled for a maximum of one hour.

Part III
General Terms and Conditions of the Contract

- 3.1 The successful applicant will be expected to enter into a contract generated by the TSA in accordance with guidelines provided by the State of Washington, including its general terms and conditions and other standard provisions customary to such services agreements. In no event is the applicant to submit its own standard terms and conditions in response to this procurement. The applicant may submit exceptions to the general terms and conditions. The TSA will review requested exceptions and accept or reject the same in its sole discretion.
- 3.2 Contract Award. The contract(s) that the TSA may award as a result of this RFP will be based upon the proposals submitted by the successful proposing firm and this solicitation. The TSA reserves the right to either award a contract without further negotiation with the successful proposing firm, or to negotiate contract terms with the successful proposing firm if the best interest of the TSA and the State would be served. Contracting procedures will be in accordance with chapter 39.29 RCW.
- 3.3 The firm will not subcontract or assign any of its work under the proposed financing without written consent of the TSA.
- 3.4 Insurance Coverage

The selected contractor is to furnish the TSA with a certificate(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth below.

The contractor shall, at its own expense, obtain and keep in force insurance coverage that shall be maintained in full force and effect during the term of the contract. The contractor shall furnish evidence in the form of a Certificate of Insurance that insurance has been provided, and a copy shall be forwarded to the TSA within fifteen (15) days of the contract effective date.

Liability Insurance

Contractor shall maintain commercial general liability (CGL) insurance and, if necessary, commercial umbrella insurance, with a limit of not less than \$1,000,000 per each occurrence. If CGL insurance contains aggregate limits, the General Aggregate limit shall be at least twice the "each occurrence" limit. CGL insurance shall have products-completed operations aggregate limit of at least two times the "each occurrence" limit. All insurance shall cover liability assumed under an insured contract (including the tort liability of another assumed in a business contract) and contain separation of insured's (cross liability) condition. The TSA will not accept any subcontracted work under this contract.

In the event that services delivered pursuant to this contract involve the use of vehicles, either owned or unowned by the contractor, automobile liability insurance shall be required. The minimum limit for automobile liability is:

- \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

The insurance required shall be issued by an insurance company/ies authorized to do business within the state of Washington, and shall name the state of Washington, its agents, and employees as additional insureds under the insurance policy/ies.

All policies shall be primary to any other valid and collectable insurance. Contractor shall instruct the insurers to give the TSA thirty (30) calendar days advance notice of any insurance cancellation.

Contractor shall submit to the TSA within fifteen (15) calendar days of the contract effective date, a certificate of insurance that outlines the coverage and limits defined in the Insurance section. Contractor shall submit renewal certificates as appropriate during the term of the contract.

Employers Liability (“Stop Gap”) Insurance

In addition, the contractor shall buy employers liability insurance and, if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

Additional Provisions

Above insurance policy shall include the following provisions:

1. Additional Insured. The Tobacco Settlement Authority, its elected and appointed officials, agents, and employees shall be named as an additional insured on all general liability, excess, umbrella, and property insurance policies. All insurance provided in compliance with the contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the TSA.
2. Cancellation. The Tobacco Settlement Authority shall be provided written notice before cancellation or non-renewal of any insurance referred to therein, in accord with the following specifications. Insurers subject to 48.18 RCW (Admitted and Regulation by the Insurance Commissioner): The insurer shall give the State forty-five (45) days advance notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, the State shall be given ten

(10) days advance notice of cancellation. Insurers subject to 48.15 RCW (Surplus lines): The State shall be given twenty (20) days advance notice of cancellation. If cancellation is due to non-payment of premium, the State shall be given ten (10) days advance notice of cancellation.

3. Identification. Policy must reference the State's contract number and the agency name.
4. Insurance Carrier Rating. All insurance and bonds should be issued by companies admitted to do business within the state of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports. Any exception shall be reviewed and approved by Tobacco Settlement Authority. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC.
5. Excess Coverage. By requiring insurance herein, the State does not represent that coverage and limits will be adequate to protect contractor, and such coverage and limits shall not limit contractor's liability under the indemnities and reimbursements granted to the State in this contract.

Part IV

Scope of Services

The services to be provided by the firms appointed as bond/transaction counsel, disclosure counsel, tax counsel and/or TSA general counsel, respectively, include but are not limited to the following:

Bond/Transaction Counsel

- 4.1 Participate actively and collaboratively as a key member of the financing team focused on achieving the objectives of the TSA.
- 4.2 Establish the legal framework of the proposed transaction to assist the TSA, TSA staff, financial advisor, and the senior managing underwriter in developing a plan of finance reflecting the best interests of the TSA and the State.
- 4.3 Review the proposed plan of finance and legal structure of the bonds in light of bankruptcy and tax related issues.
- 4.4 Render an approving bond opinion and other relevant issuer opinions relating to bankruptcy, commercial and securities laws. Assist with other legal matters.
- 4.5 Draft trust agreement and other financing documents, including TSA Board resolutions and the bond purchase agreement.
- 4.6 Participate in informational meetings and/or investor calls as deemed necessary, including meetings with rating agencies and bond insurers.
- 4.7 Coordinate with other counsel, including underwriters' counsel, on financing issues.
- 4.8 Recommend amendments to state tobacco settlement legislation, if appropriate.
- 4.9 Attend any financing working group or other related meetings as requested.

Disclosure Counsel

- 4.10 Participate actively and collaboratively as a key member of the financing team focused on achieving the objectives of the TSA.
- 4.11 Assist the TSA, TSA staff, financial advisor, and senior managing underwriter by drafting the official statement and other disclosure-related documents required to market and sell the Bonds.

- 4.12 Engage in such investigations and “due diligence” activities as the TSA may request in connection with preparation of the official statement and other disclosure documents.
- 4.13 Render 10b-5 opinion and any other opinions required under securities laws or reasonably requested by the TSA or the underwriters of the bonds.
- 4.14 Participate in informational meetings and/or investor calls as deemed necessary.
- 4.15 Assist the TSA and TSA staff with the undertakings of continuing disclosure under SEC rule 15c2-12 relating to the bonds.

Tax Counsel

- 4.16 Participate actively and collaboratively as a key member of the financing team focused on achieving the objectives of the TSA.
- 4.17 Coordinate with other counsel, particularly bond/transaction counsel, the financial advisor, and the senior managing underwriter on financing or structuring issues with tax implications.
- 4.18 Prepare nonarbitrage opinion and certification and act as a resource to the TSA and TSA staff on compliance measures.
- 4.19 Render, in conjunction with bond/transaction counsel, an opinion regarding tax exemption and, as reasonably requested by the TSA or the underwriter, any other tax opinions relating to the Bonds.

TSA General Counsel

- 4.20 Advise the TSA Board and TSA staff in matters of law relating to the proposed transaction that affects the TSA as a corporation.
- 4.21 Act as general in-house legal resource to the TSA.
- 4.22 Act as lead TSA counsel in any litigation or controversy involving the TSA.
- 4.23 Participate actively and collaboratively as a key member of the financing team focused on achieving the objectives of the TSA.
- 4.24 Review the proposed plan of finance and legal structure of the Bonds in light of state law.
- 4.25 Render an approving state law opinion and other relevant issuer opinions. Assist with other legal matters.

- 4.26 Participate in informational meetings and/or investor calls as deemed necessary, including meetings with rating agencies and bond insurers.
- 4.27 Coordinate with other counsel, including underwriters' counsel, on financing issues.
- 4.28 Recommend amendments to state tobacco settlement legislation, if appropriate.
- 4.29 Attend any financing working group or other related meetings as requested.
- 4.30 Perform for all the positions above, such other work as requested by the issuer as essential to complete the transaction.

Note: A more comprehensive scope of legal services may be defined in the legal services contracts.

Part V
Firm Information – Required Responses

- 5.1 Financing Team. Provide the names, titles, responsibilities, office locations and brief resumes for the individuals who will be assigned to the TSA. Highlight the name of lead counsel for this engagement. Please include any relevant experience for each individual. Please include only individuals who will be assigned to work with the TSA.
- 5.2 Please describe what your firm has done to encourage the participation of MWBE firms in your business and to encourage the employment of women and minorities.
- 5.3 Firm Experience in Tobacco Settlement Securitization.
- (a) Describe the firm’s role in the issuance of taxable and tax-exempt tobacco settlement securitization financings in the last 3 years. Please identify each issue separately, including the principal amount, your firm’s specific role in each and the date of issuance.
 - (b) For references, please provide contact information (names, titles, addresses and phone numbers) of at least three significant governmental issuers of tobacco bonds your firm has worked with directly.
 - (c) Describe the firm’s role in drafting and/or negotiating legislation concerning tobacco settlement securitization.
- 5.4 Firm Experience with Asset-Backed Securities. Describe your firm’s relevant experience as bond/transaction counsel, underwriters’ counsel, disclosure counsel, or tax counsel in the structuring and issuance of asset-backed securities and other similar transactions and credits in the last 3 years.
- 5.5 Conflict of Interest Identification. Describe any actual or potential conflicts of interest that your firm might have if selected to serve in any capacity as counsel for the TSA. Please include a description of any past or current relationship between your firm and any tobacco manufacturer. Describe how your firm will identify and disclose any conflicts of interest that exist or occur during the period in which your firm is involved with the TSA and any potential transaction.
- 5.6 Firm Experience with Washington Law. Describe your firm’s relevant experience with Washington law relating to obligations issued by the State or by state instrumentalities. Describe your firm’s experience with Washington State law concerning state debt capacity.
- 5.7 Statement of Assurance. Provide a statement of assurance that your firm is not currently in violation of any tax or securities regulatory agency rule or the subject of

any investigation or finding by a law enforcement agency or other regulatory agency concerning tax or securities matters. If the firm is in violation of laws or regulations, or is the subject of an investigation or finding, explain why the violation, investigation or finding does not have a material adverse effect on your firm's ability to perform under the proposed financing contract.

5.7 Firm Experience in and Commitment to Washington State. Describe: (1) the firm's commitment to Washington State as evidenced by local presence in the state and breadth of municipal bond issues worked on; (2) experience by the firm or legal finance team members in tax-exempt bond issues in Washington State; (3) familiarity with the political/policy context of Washington State legal issues.

5.8 Role and Experience.

- (a) Subject to the role (bond/transaction counsel, disclosure counsel, tax counsel and/or TSA general counsel) your firm proposes to play with the TSA and in any future financing, discuss what opinions you would expect to give and your ability and willingness to provide them.
- (b) Discuss your experience and your approach to working cooperatively in teams composed of counsel of different firms playing a variety of roles.
- (c) What ongoing (post-financing) compliance relationships with the TSA relating to any Bond issuance will be necessary in the disclosure and tax area?
- (d) Discuss other skills or capabilities that would be of value to the TSA that distinguish your firm from others.

5.9 Fee and Expense Proposal for Legal Services.

- (a) Please provide a firm indication of your fee for any proposed transaction based on your proposed role (bond/transaction counsel, disclosure counsel, tax counsel and/or TSA general counsel) expressed in dollars/\$1,000 of the Bonds.
- (b) Please specify and cost out your firm's estimated expenses associated with this engagement. Costs of travel (e.g., air, ground, hotel, and meal expenses) should be estimated separately from other costs. Please be specific about all costs that are in excess of the fee cited in Section 6.2(a) above.
- (c) Please quote an hourly rate or an annual fee, plus an expense component, for specified post-financing activities relating to the administration of the Bonds.
- (d) Please note that in the event of a bond issuance, all legal fees and other costs of issuance are to be paid only from Bond proceeds on and after closing and no fees or costs will be paid if a transaction is not completed.

Part VI
Evaluation Criteria and Selection Process

The TSA, in consultation with the TSA staff, reserves the right to reject any and all responses or to select the response deemed to be most advantageous to the achievement of its purposes. Selection of a firm(s) to serve as bond/transaction counsel, disclosure counsel, tax counsel and/or TSA general counsel will be based on the criteria described below. A firm's proposal should provide clarity and detail to allow the TSA staff review to adequately judge the expertise, experience and capabilities of the firm and make an appropriate recommendation to the TSA. The lowest cost proposal will not result necessarily in a firm being selected.

Please note that the percentages are listed not for use by the TSA to score each RFP, but to provide each proposing firm a measure of importance for each category.

- (a) Experience and Qualifications. 35%
 - (1) Relevant experience of firm in tax-exempt and taxable tobacco securitization financing and other asset-based financings.
 - (2) Relevant experience, knowledge and expertise of lawyers as indicated in the response and by references.
 - (3) Other information provided in response to Part V of the RFP.
 - (4) Reputation of the firm as evidenced by references obtained by the TSA.
- (b) Ability to Respond in a Timely Manner to the Needs of the TSA. 35%
 - (1) Demonstrated understanding of the TSA goals and objectives with respect to the TSR securitization and sale of the Bonds.
 - (2) Well-developed and coherent financing ideas, and understanding and discussion of legal, disclosure and tax issues.
 - (3) Clarity and creativity evidenced by the response to the RFP.
 - (4) Ability to work well with other team members in a cooperative environment.
 - (5) Other information provided in response to Section V of the RFP.
- (c) Transaction and Ongoing Fees and Expenses. 30%

Part VII
Bid Compliance and Certification Form
Firm's Lead Attorney Must Sign and Submit Certification with Proposal

- 7.1 I am my firm's lead attorney identified as required by Section 5.1 (page 18) of the RFP.
- 7.2 I certify that I have the authority to bind the legal services firm ("the Firm") indicated below to the specific terms, conditions and technical requirements of this RFP and offered in the Firm's proposal.
- 7.3 The Firm is qualified to serve in the capacity being proposed. The firm is listed in *The Bond Buyer* "Red Book." (If "Red Book" listing is not relevant to the role the Firm proposes to play, so state.)
- 7.4 I understand that by submitting this proposal, the Firm indicated below agrees to the following:
- (a) The Firm will provide the services to meet the requirements and objectives of this RFP.
 - (b) The Firm will provide the services set forth in its response for the fees quoted in the proposal.
- 7.5 The Firm hereby certifies total compliance with all terms, conditions, and specifications of this RFP, except as expressly stated below (add separate pages if necessary). Specify RFP item number and comments.

Firm Name: _____

Address: _____

Authorized Signature: _____

Printed Name: _____

Title: _____

Telephone Number: _____

Fax Number: _____

Date: _____