

Title 15. Natural Resources and Economic Development
Chapter VII. Arkansas Development Finance Authority, Department of
Commerce
Subchapter A. Generally
Part 60. Professional Selection Policy

Codification Notes. This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"July 21, 2005

Adopted by the Board of Directors of the Arkansas Development Finance Authority this ____ day of _____, 2005.

By: _____

Its: _____

ATTEST:

Mac Dodson, President/Secretary"

Subpart 1. Generally

15 CAR § 60-101. General policy statement.

(a)(1) It is the goal of the Arkansas Development Finance Authority to establish and support a professional selection policy to address the procedures for engaging the services of professionals in carrying out the primary business of the authority, which is the issuance of debt instruments.

(2) These same procedures may be followed, as appropriate, in other settings where the services of professionals are engaged, but the focus of the procedures

covered in this policy statement concerns the selection of underwriters, legal counsel, and trustees typically engaged by the authority in its bond and other finance projects.

(b) The primary objectives of the professional selection policy are to:

(1) Select the most qualified firms, relative to the size and complexity of each deal, at a fair and reasonable price;

(2) Identify optimal, efficient, legal, and profitable financing structures;

(3) Clearly indicate, by transaction type, when requests for proposals (RFPs) are used by the authority; and

(4) Clearly identify the distribution process for the issuance of RFPs.

(c)(1) The professional selection process is structured to encourage professionals to bring new and innovative ideas to the authority, which result in new product development and opportunities for professionals.

(2) Through increased opportunities, professionals should be encouraged to use the authority as issuer on future bond issues.

(d) Any firm wishing to respond to an RFP or submit a proposal or statement of qualifications to the authority for consideration should submit their equal opportunity policy to the authority in accordance with Acts 2005, No. 2157.

(e)(1) The President of the Arkansas Development Finance Authority is authorized to waive provisions set out in this RFP policy if there is a benefit to the authority or the State of Arkansas to waive certain provisions.

(2) Any waivers approved by the president shall be:

(A) Reviewed by the Board of Directors of the Arkansas Development Finance Authority; and

(B) Documented by the authority.

Authority. Arkansas Code § 15-5-207.

15 CAR § 60-102. Professional selection procedures.

(a) **When requests for proposals are to be used.**

(1) The general rule for the selection of professionals for the Arkansas Development Finance Authority's programs and projects involves the use of RFPs to solicit structured proposals that will permit the authority to compare and evaluate the relative qualifications of the professionals for the concerned tasks.

(2) In a typical program and project, this will involve the selection of:

- (A) Underwriters;
- (B) Bond counsel; and
- (C) A trustee.

(3) It is also possible that RFPs will be used to select professionals for other roles such as independent auditors, financial advisors, issuer's counsel, special counsel, master loan servicer, etc.

(4) There are occasions when the use of an RFP process is not practical or not in the best interest of the program or project (and, consequently, not in the best interest of the authority and the State of Arkansas).

(5) Following are examples of programs and projects in which, unless an exception exists, the RFP process will be followed:

(A) Ongoing authority programs, e.g.:

- (i) Single-family housing;
- (ii) College savings bonds; and
- (iii) Wastewater System Revolving Loan Fund;

(B) New or proposed programs, e.g., Drinking Water State Revolving Loan Fund Account;

(C) Multifamily housing projects;

(D) Bond guaranty pools — projects pooled from all areas of the state into one (1) bond issue guaranteed by the authority;

(E) Bond guaranty standalone issues — bond issue for one (1) company, guaranteed by either:

- (i) The authority;
- (ii) The Arkansas Economic Development Commission; or
- (iii) A combination of both; and

(F) Nonguaranteed standalone issues, e.g.:

- (i) Governmental;
- (ii) Private activity;
- (iii) 501(c)(3); and
- (iv) Taxable.

(b) Exceptions to request for proposal process.

(1) Special programs and projects (“proprietary proposals”).

(A) Professionals who present their own written financing proposals for programs or projects that, in the judgment of the Staff Professional Selection Committee with the concurrence of the Board Professional Selection Committee, are not currently being utilized by the authority will not fall under the RFP process.

(B) If the new proposal is accepted by the authority, the professional who brought in the new proposal will be the professional for that program or project.

(C) These special programs or projects should be presented to the Chair of the Staff Professional Selection Committee in a written proposal allowing for a preliminary substantive evaluation of the program.

(2) Refundings.

(A) Refunding proposals submitted by underwriters fall outside of the RFP process unless either:

(i) The Staff Professional Selection Committee, with the concurrence of the Board Professional Selection Committee, shall decide that refundings of issues within a particular program should be covered by the term program RFP process outlined in subdivision (c)(2) of this section; or

(ii) More than one (1) underwriter submits a written proposal within seven (7) calendar days of receiving the first written proposal.

(B) In subdivision (b)(2)(A)(ii) of this section, the underwriters who submitted a refunding proposal will be evaluated in the RFP process against each other.

(C) Refunding proposals will not be accepted prior to one hundred eighty (180) days from the proposed refunding transaction date (i.e., closing date).

(D) The bond indenture requirements shall be the sole determinant as to which bond issues are callable.

(E) The decision to refund or not refund shall be based upon the overall benefit to the authority and the applicable program/borrower.

(F) It shall be the sole discretion of the Staff Professional Selection Committee and the Board Professional Selection Committee to determine whether a refunding will take place.

(c) Professional team policies.

(1) Special projects.

(A) In many cases involving proposals for special project financings, a team of professionals (e.g., underwriter, counsel, and trustee) will have participated in the development of the proposed project and it may prove to be useful to handle the project using the already assembled team.

(B) In cases where the submitting professional expects to propose one (1) or more other professionals to be part of its team in the project, if accepted by the authority, the submitting professional must clearly state this fact in the written proposal submitted and, as appropriate, address the pricing issues for all professionals who are part of the proposed team.

(C) The authority reserves the right to accept the proposal in whole or in part, including the proposed team.

(2) Term program RFPs.

(A) In the RFP process for certain programs (the "term programs"), it is deemed useful to provide continuity by selecting a team of professionals for a defined period of time and, absent extraordinary circumstances in which a team member may be removed by the Board of Directors of the Arkansas Development Finance Authority, the professionals will remain in place as a team for the designated term.

(B) Programs (including refundings of bond issues within a program) may be added to or removed from the list of term programs, and the term length may be shortened or extended, all by action from time to time of the board.

(d) **Transmittal of special proposals.** Written proposals that fall outside of the RFP process shall be:

(1) Submitted to:

rfp@arkansas.gov (preferred)

or

Staff Professional Selection Committee Chair
Arkansas Development Finance Authority
#1 Commerce Way, Suite 602
P.O. Box 8023
Little Rock, AR 72202

; or

(2) Delivered by such other means as shall be directed by the authority from time to time.

(e) **RFP process — Distribution and response.**

(1) The RFP issuance process is a key component of the selection process.

(2) The RFP is initiated by a need to select a professional or professional team to provide a service to the authority.

(3) In order to carry out the selection process, an RFP must be structured to include the appropriate criteria for the selection process.

(4) The steps involved in issuing an RFP for professional services are as follows:

(A) Draft of the RFP is reviewed by the authority's staff, and revisions are made to the draft at least one (1) month prior to selection being made;

(B) Final RFP is distributed via the internet or email format:

(i) RFP emailed to Communications Manager to post on the authority's website on the date of the RFP issuance;

(ii)(a) Email professionals on the RFP distribution list for the services being requested to notify them that the RFP is posted on the authority's website (<http://adfa.arkansas.gov>) and it is currently an open RFP.

(b) Attach a return receipt for the notice to ensure the professional received; and

(iii) RFP is moved to the "Closed RFP" section, for three (3) months and can be accessed for informational purposes, when the deadline for receiving proposals has passed;

(C) RFP responses are received via email by the Chair of the Staff Professional Selection Committee, at rfp@adfa.arkansas.gov, by the RFP response deadline;

(D) RFP responses are gathered and attached to an email that is distributed to the members of the Staff Professional Selection Committee;

(E) Staff Professional Selection Committee meeting is held to:

(i) Discuss the proposals; and

(ii) Develop a recommendation to be presented to the Board Professional Selection Committee at the next regularly scheduled meeting; and

(F) Staff Professional Selection Committee recommendation is made to the Board Professional Selection Committee and the board's decision is made.

Authority. Arkansas Code § 15-5-207.

Codification Notes. "RFP" means request for proposal.

"501(c)(3)" refers to 26 U.S.C. § 501(c)(3).

15 CAR § 60-103. Firms to receive an RFP.

(a)(1) An approved list of professionals (investment banking firms, law firms, trustees, and master servicers, as the case may be) will be maintained by the Arkansas Development Finance Authority.

(2) This list will automatically receive RFPs via email for the selection of professionals on projects in the designated area.

(3) For practical reasons, the list of eligible professionals will be limited to those firms who have demonstrated competence, resources, and a commitment to the business of the authority.

(4)(A) To remain on the list, professionals should submit an updated statement of qualifications at least every two (2) years.

(B) The statement of qualifications should be updated more frequently when there have been changes to the contacts for the authority.

(C) The statement of qualifications format can be obtained at the authority's website (<http://adfa.arkansas.gov/request-for-proposals>).

(5) To be added to the list, a request should be forwarded to the Chair of the Staff Professional Selection Committee along with a sufficient statement of qualifications.

(6) The authority reserves the right to remove professionals from the list as a result of:

(A) Sustained failure to respond to RFPs;

(B) Continual performance issues; or

(C) Other reasons at the discretion of the authority.

(b) Although not on the list, other professionals are entitled to submit proposals to the authority for consideration, including responses to RFPs, and any submitting professional will be given equal consideration for selection.

(c) The current list is maintained by and is available from the Chair of the Staff Professional Selection Committee.

Authority. Arkansas Code § 15-5-207.

Codification Notes. "RFP" means request for proposal.

15 CAR § 60-104. Managing and comanaging underwriters.

(a) All proposals submitted by underwriters, whether they are responses to an RFP or related to a special project, should list the proposed team of comanagers, if any, and describe the proposed division of the bonds among the team.

(b)(1) The Arkansas Development Finance Authority reserves the right to appoint comanagers or change the proposed list of comanagers and at the authority's discretion, require the use of a selling group for the transaction with emphasis on retail sales or require the use of a financial advisor or pricing advisor.

(2) All proposed team members are subject to the approval of the authority.

(c)(1) As a general rule, the management fee will be distributed to the lead underwriter.

(2) It will be at the lead underwriter's discretion as to whether or not the management fee would be shared with comanagers.

(d) The allocation of the underwriters' liability between the senior and comanager will be negotiated on an issue-by-issue basis with the final approval by the authority.

Authority. Arkansas Code § 15-5-207.

15 CAR § 60-105. Composition of professional selection committees.

(a) Staff Professional Selection Committee.

(1) The initial level of review of proposals is performed by the Staff Professional Selection Committee.

(2) The committee is composed of the following officers:

(A) Vice President for Finance and Administration of the Arkansas Development Finance Authority or designee;

(B) Vice President for Housing of the Arkansas Development Finance Authority or designee;

(C) Vice President for Development Finance of the Arkansas Development Finance Authority or designee;

(D) Vice President and General Counsel of the Arkansas Development Finance Authority;

- (E) Public Finance Officer of the Arkansas Development Finance Authority;
- (F) Internal Auditor of the Arkansas Development Finance Authority; and
- (G) President of the Arkansas Development Finance Authority.

(3) The president may from time to time appoint additional staff members and others to sit on the committee.

(4) The Public Finance Officer shall serve as chair of the committee.

(5) In the absence or other incapacity of the Public Finance Officer, the president shall appoint an interim chair of the committee.

(6) The chair shall act as a liaison between the Staff Professional Selection Committee and the Board Professional Selection Committee.

(7) The chair shall also:

(A) Notify the Board Professional Selection Committee of any upcoming RFPs; and

(B) Forward to the Board Professional Selection Committee the Staff Professional Selection Committee's recommendation.

(b) Board Professional Selection Committee.

(1)(A) The Board Professional Selection Committee shall consist of three (3) members.

(B) The Chair of the Board of Directors of the Arkansas Development Finance Authority shall appoint the Vice Chair of the Board of Directors of the Arkansas Development Finance Authority and two (2) additional members of the Board of Directors of the Arkansas Development Finance Authority to the committee.

(C)(i) The Chair of the Board of Directors of the Arkansas Development Finance Authority shall annually select one (1) of the three (3) as chair of the committee.

(ii) The annual appointment shall take place during the first meeting of the Board of Directors of the Arkansas Development Finance Authority for the calendar year.

(D) The Chair of the Board of Directors of the Arkansas Development Finance Authority shall fill vacancies as appropriate.

(2) The Board Professional Selection Committee is charged with the responsibility and authority for:

(A) Overseeing the various aspects in which professionals are engaged to provide services to the authority; and

(B) Otherwise interacting with the authority in the regular course of business.

(3) Except in such cases where the Board of Directors of the Arkansas Development Finance Authority delegates to the Board Professional Selection Committee the authority to make the final decision as provided herein, it is the responsibility of the Board Professional Selection Committee to report to the Board of Directors of the Arkansas Development Finance Authority the results of its selection process, including the Board Professional Selection Committee's recommendation for selection.

(4) As part of its ongoing responsibilities, the Board Professional Selection Committee shall consider and take action on appropriate matters including, but not limited to:

(A) Consider and recommend amendments to this part from time to time, as well as consider and recommend additional or supplemental policies or procedures that may be appropriate for the Board of Directors of the Arkansas Development Finance Authority to act upon concerning the engagement of or relationship with professionals;

(B) Consider and make recommendations to the Board of Directors of the Arkansas Development Finance Authority concerning temporary waivers of or deviations from the policies and procedures adopted herein;

(C) Preapprove the form of RFPs used in the solicitation and selection of professionals;

(D) Review the recommendations and other actions from the Staff Professional Selection Committee and take action as deemed appropriate;

(E) Conduct interviews of professionals and take other actions deemed appropriate in assisting the committee in making its decisions; and

(F) Take other actions consistent with the policies and procedures expressed herein.

(5)(A) In the case of all refundings (not involving new program money) in an amount not exceeding ten million dollars (\$10,000,000) and any other case where the Board of Directors of the Arkansas Development Finance Authority, by appropriate action, has so authorized, the decision of the Board Professional Selection Committee shall be considered the final decision of the Board of Directors of the Arkansas Development Finance Authority.

(B) Any such action taken by the Board Professional Selection Committee will be reported to the next regular meeting of the Board of Directors of the Arkansas Development Finance Authority.

(C) In the case of all other decisions regarding selection and proposal approvals by the Board Professional Selection Committee, the decision by the Board Professional Selection Committee shall be referred to the full Board of Directors of the Arkansas Development Finance Authority at any regular or special meeting of the Board of Directors of the Arkansas Development Finance Authority for final action by a vote of the Board of Directors of the Arkansas Development Finance Authority.

Authority. Arkansas Code § 15-5-207.

Codification Notes. "RFP" means request for proposal.