

**INDIANA EDUCATION SAVINGS AUTHORITY &
INDIANA ACHIEVING A BETTER LIFE EXPERIENCE AUTHORITY
REQUEST FOR INFORMATION
FROM LICENSED ATTORNEYS
TO SERVE AS BOARD COUNSEL**

PURPOSE

The purpose of this Request for Information ("RFI") is to invite qualified counsel to submit information that outlines their ability to serve as board counsel to the Indiana Education Savings Authority ("IESA") and the Indiana Achieving A Better Life Experience Authority ("ABLE"), referred to herein together as entities of the Treasurer of State ("TOS Entities"). Counsel will be requested to provide the customary services of board counsel with respect to the programs including but not limited to board governance, document review, and preparation for possible litigation.

This is not an Invitation to Bid or a Request for Proposal under the Indiana Procurement Code, I.C. 5-22. The TOS Entities create no obligation, expressed or implied, by issuing this RFI or by receipt of any Responses submitted pursuant hereto. The award of any contract as a result of this RFI shall be at the sole discretion of the TOS Entities. Neither this RFI nor any Response submitted hereto are to be construed as legal offers.

This RFI seeks Responses to serve as board counsel to the TOS Entities only and is not related to any other board, program, or entity related to the Office of the Indiana Treasurer of State.

BACKGROUND OF IESA

The IESA is a body corporate and politic of the State of Indiana (Ind. Code § 21-9-3) charged with establishing any number of education savings programs that qualify as qualified state tuition programs under Section 529 of the Internal Revenue Code.

The program was launched in 1997 as the Indiana Family College Savings Plan and later rebranded as the CollegeChoice 529 Investment Plan, before dividing into two plans on September 22, 2008: one offered directly to participants (CollegeChoice 529 Direct Savings Plan) and one offered to participants through third party investment advisors (CollegeChoice Advisor 529 Savings Plan). In April 2011 the IESA added the FDIC-insured CollegeChoice CD 529 Savings Plan.

As of July 31, 2018, the CollegeChoice Plans contained in excess of \$4.5 billion in assets under management in over 353,000 participant accounts.

The Indiana Treasurer of State serves as Chairperson of the Authority's board of directors, along with three other state government ex officio members and five gubernatorial appointees.

More information on the IESA can be found at www.in.gov/iesa.

BACKGROUND OF ABLE

The ABLE Authority is a body corporate and politic of the State of Indiana (Ind. Code § 12-11-14) charged with the oversight of a qualified ABLE program. A qualified ABLE program is one in which a person may make contributions for a taxable year for the benefit of an eligible individual to an ABLE account to meet the qualified disability expenses of the designated beneficiary. Such expenses include but are not limited to education, housing and transportation.

ABLE accounts allow individuals with disabilities to save money without jeopardizing public benefits, such as SSI or Medicaid. The intent of the accounts is to ease financial burdens on individuals with disabilities and allow for tax-deferred savings to cover qualified expenses. Post-tax dollars are contributed into the account and as long as the money is used for qualified expenses, the earnings portion remains tax-free.

The Treasurer of State serves as the Chairperson of the Board and is responsible for day to day operations and staffing for the ABLE Authority.

More information can be found on www.in.gov/tos/able/

SCOPE OF SERVICES

1. General Requirements

At the request of the TOS Entities' board members and/or staff:

- A. Attendance and legal oversight of all TOS Entities' board meetings.
- B. Review drafts of contracts and leases.
- C. Advise on legal issues related to TOS Entities' board procedures and governance.
- D. Review personnel, fiscal and other policies, as well as agency bylaws.
- E. Advise on Human Resources policies and/or procedures.
- F. Advise on responses to subpoenas, court orders, and requests for information from third parties.
- G. Defend lawsuits, administrative claims, or other legal claims.
- H. Conduct litigation as necessary.

2. Term of Engagement

The term of services requested will be for one year starting October 1, 2018 and ending September 30, 2019, subject to termination by either IESA or ABLE in their individual capacity.

3. Qualifications

Each respondent must be licensed to practice law in the State of Indiana. Respondent should have experience with federal and state tax law and disability benefits issues as well as a working knowledge of 529 and 529A accounts.

4. Engagement Letters

The attorney(s) selected will be expected to sign separate engagement letters for IESA and ABLE. These engagement letters will be shared with the respective boards. Please include with your Response the form of your engagement letter. The TOS Entities request the engagement letter include language allowing the TOS entity to terminate without cause the engagement on thirty (30) days' prior written notice. (The engagement letter will not count toward the ten-page response limit, as outlined below in this RFP.)

5. Specific Response Requirements

NOTE: The TOS Entities are sister agencies. They exhibit commonalities in process, oversight, and law that may allow for, and derive benefits from, the services of a shared board attorney. The TOS Entities are issuing this joint RFI for legal services concurrently. Responses to this joint RFI to either the IESA or ABLE individually will be evaluated on the same timeline.

Respondents are invited to submit:

- (a) A single Response to serve as board attorney for the IESA or ABLE only;
- (b) Separate Responses to serve as board attorney for the IESA or ABLE individually; or
- (b) A single Response to both TOS Entities (i.e. a Response to provide legal services to both IESA and ABLE).

In the interest of promoting government efficiency and leveraging economies of scale, it is the preference, but not the predetermination, of the TOS Entities to select a single respondent to provide all legal services.

SPECIFIC RESPONSE REQUIREMENTS

Responses should contain direct replies to the following questions or requests for information and be organized so that the specific questions being answered are readily identifiable. Responses to each question or request for information should each begin on a new page with the questions repeated at the top of the page. Responding individuals or firms are required to reply to all of the following questions and requests for information.

1. Summary (limit to two pages)

Each Response should include a summary which highlights the reasons why you should be selected for board counsel. The summary must also contain a statement that the individual signing the Response has the authority to commit the firm to the terms proposed.

2. Basic Information Requirements (limit to one page)

- a. Name of the firm
- b. Name and title of individual preparing and responsible for the Response
- c. Mailing address
- d. Telephone and email

3. Basic Information re: the Respondent (limit to two pages)

- a. Name(s) and brief resume(s) of the lawyer(s) who will have daily responsibility for the engagement. Please identify other representations in which they have had an active role which might be relevant to the TOS Entities.
- b. If applicable, name and brief résumé of the partner who will have oversight responsibility for the engagement.
- c. Name and brief résumés of any additional staff members who will provide support to the individual(s) in item 3(a).
- d. A description of the general capabilities of your firm including information relating to total size and staffing, research capability, professional staff and clerical support.

4. References

References including names, addresses and current telephone numbers of specific individuals should be provided for three clients for whom your firm has served in a capacity related to the TOS Entities' operations. Please include ONLY three (3) references.

5. Fee Proposal

Please provide a fee schedule on a per hour basis with a legal service fee cap for the term of the engagement. This fee cap may be constructed to apply annually, quarterly, or monthly. All fee caps should take the form of not-to-exceed amounts for the applicable time frames. The TOS Entities will also consider other fee structures included in your response (e.g. monthly retainers).

ADDITIONAL INFORMATION

1. Selection

A. Criteria

Selection of board counsel shall be at the sole discretion of the TOS Entities and shall be based upon the following criteria:

1. Experience of attorney(s);
3. Past experience of firm in the role of board counsel;
4. Fee proposal;
5. Any other quality or characteristic deemed in the best interest of the TOS Entities.

B. Selection Date

It is anticipated that a selection will be made during the week of September 23, 2019; however, it may be made before, or after, that date.

TOS Entities reserve the right to reject any and all Responses.

2. Clarification of Information

It is the responsibility of the respondent to inquire about and clarify any aspect of the RFI that is not understood. Questions for clarification must be addressed via email to Troy Montigney, IESA

Executive Director at tmontigney@tos.in.gov, and Ryan Locke, Deputy Treasurer of State, at rlocke@tos.in.gov. Written responses will be provided.

Respondents are advised that materials contained in Responses are subject to the Indiana Public Records Act and may be viewed and/or copied by any member of the public, including news agencies and competitors. In accordance with said Public Records Act IC 5-14, respondents claiming a statutory exception to the Indiana Public Records Act must place the putatively confidential documents in a sealed envelope clearly marked "Confidential" and must indicate on the outside envelope of their Response that confidential materials are included and specify which statutory exception provision applies.

3. No Contact

The TOS Entities specifically requests that no contact concerning this RFI be made with any member of the IESA (other than Troy Montigney, tmontigney@tos.in.gov), ABLE, their contract partners, or the Office of the Treasurer of State (other than Ryan Locke, rlocke@tos.in.gov) during the selection process. Failure to honor this request will be viewed negatively in the selection process.

RESPONSE PREPARATION AND SUBMISSION REQUIREMENTS

1. RFI Response

In order to be considered for selection, respondents must submit a complete signed response to this RFI. Please submit your responses via email to tmontigney@tos.in.gov and rlocke@tos.in.gov. All Responses must sent no later than 12:00pm (EDT) on Tuesday, September 18, 2018.

2. Response Preparation

- a. Responses must be signed by an authorized representative of the firm. Failure to submit all information requested may result in the Response being considered "non-responsive," and, therefore, rejected.
- b. Responses should be prepared simply, providing straightforward, concise responses to satisfy RFI requirements. No printed brochures or materials other than written responses to the specific requirements should be provided. The total length of the response must not exceed 5 pages.

3. Discretion in Determining Deviations and Compliance

The TOS Entities reserve the right to determine which of the Responses have met the minimum qualifications expressed in this RFI. The TOS Entities shall have the sole right to determine whether any deviation from the requirements of this RFI is substantial in nature, and the TOS Entities may reject unacceptable Responses. In addition, the TOS Entities may reject in whole or in part any and all Responses, may waive minor irregularities, and may negotiate with responsible offers in any manner deemed necessary to serve the best interests of the TOS Entities.

4. Costs:

The TOS Entities shall not be liable for any expenses incurred in the preparation of the Responses.

5. Notification

The TOS Entities are not required to furnish a statement of the reason(s) why a Response was not deemed to be the most advantageous nor will it be required to furnish any information regarding this RFI other than the original solicitation document.

6. Conflict of Interest

Respondent must disclose any existing or potential conflict of interest relative to the performance of the services resulting from this RFI, including any relationship that might be perceived or represented as a conflict. By submitting a Response in response to this RFI, respondent affirms that it has not given, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant or any employee or representative of same, in connection with this procurement. Any attempt to intentionally or unintentionally conceal or obfuscate a conflict of interest will automatically result in the disqualification of the respondent's Response or immediate termination of an awardee's contract. An award will not be made where an actual conflict of interest exists. The TOS Entities will determine whether a conflict of interest exists and whether an apparent conflict of interest may reflect negatively on TOS Entities, should TOS Entities select the respondent. Further, the TOS Entities reserves the right to disqualify any Response on the grounds of actual or apparent conflict of interest.