

**REQUEST FOR PROPOSALS FOR
PURCHASE OF LEASE REVENUE REFUNDING BONDS
(COUNTY FACILITIES PROJECTS)**

SERIES 2016

**TO BE ISSUED BY THE BERKELEY COUNTY BUILDING COMMISSION
FOR THE BENEFIT OF THE COUNTY COUNCIL OF BERKELEY COUNTY**

The County Council of Berkeley County (the “County Council”) is requesting proposals from investment banking firms, banks and other qualified entities in connection with the purchase of Lease Revenue Refunding Bonds (County Facilities Projects) Series 2016 to be issued by the Berkeley County Building Commission (the “Issuer”) for the benefit of the County Council in an original aggregate principal amount of not to exceed \$4,500,000 (the “Bonds”). The proceeds of the Bonds will be used to refund the Issuer’s Lease Revenue Bonds (County Facilities Projects) Series 2006 issued on December 22, 2006, in the original aggregate principal amount of \$5,300,000, \$4,320,000 of which is currently outstanding, to finance costs of certain improvements to the Berkeley County Judicial Center, other county offices and related facilities located at 315 West Stephens Street, Martinsburg, West Virginia (the “Facilities”) and to pay costs of issuing the Bonds and related costs.

The Facilities are currently owned by the County Council pursuant to a Lease Agreement as supplemented and amended (the “Lease”) between the Issuer, as lessor, and the County Council, as lessee. The County Council will be required pursuant to the provisions of the subject Lease to make lease payments equal to the debt service on the Bonds and Prior Bonds hereinafter described and to operate, maintain, repair and insure the Facilities. The Issuer will assign to the Bond Trustee pursuant to the Indenture hereinafter described for the benefit of the owner(s) of the Bonds the right to receive the lease payments from the County Council pursuant to the Lease to pay the debt service on the Bonds and such Prior Bonds. The County Council reserves the right to enter into agreements with one or more boards, commissions or agencies of Berkeley County for the use of all or a portion of the Facilities provided that the County Council remains obligated to pay the lease payments so long as the Lease remains in effect. The principal of and interest and redemption premium, if any, on the Bonds will be payable solely from the lease payments to be made by the County Council pursuant to the Lease and the proceeds of any foreclosure sale of the Facilities pursuant to the Deed of Trust hereinafter described. As required by the laws of the State of West Virginia, the County Council will have the right at least once each fiscal year to terminate the Lease without any further obligation thereunder after such termination.

The Bonds will be issued on a parity with the Prior Bonds described below pursuant to a Bond Indenture and Security Agreement dated as of July 15, 2004, by and between the Issuer and WesBanco Bank, Inc., as bond trustee (the “Bond Trustee”), as supplemented and amended (the “Indenture”). The Bonds will be secured on a parity with the Prior Bonds by a Credit Line Deed of Trust and Security Agreement dated as of July 15, 2004, by the Issuer securing the Bond Trustee, as supplemented and amended (the “Deed of Trust”).

THIS BONDS WILL BE ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH (I) THE ISSUER'S LEASE REVENUE REFUNDING BONDS (BERKELEY COUNTY JUDICIAL CENTER PROJECT) SERIES 2014 A, ISSUED ON AUGUST 1, 2014, IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$7,290,000; (II) THE ISSUER'S LEASE REVENUE REFUNDING BONDS (BERKELEY COUNTY JUDICIAL CENTER PROJECT) SERIES 2014 B, ISSUED ON DECEMBER 12, 2014, IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$7,365,000; AND (III) THE ISSUER'S LEASE REVENUE REFUNDING BONDS (BERKELEY COUNTY JUDICIAL CENTER PROJECT) SERIES 2015, ISSUED ON OCTOBER 22, 2015, IN THE ORIGINAL PRINCIPAL AMOUNT OF \$9,340,000 (COLLECTIVELY, THE "PRIOR BONDS").

THE BONDS WILL BE LIMITED OBLIGATIONS OF THE ISSUER PAYABLE ON A PARITY WITH THE PRIOR BONDS SOLELY OUT OF THE LEASE PAYMENTS TO BE MADE BY THE COUNTY COUNCIL PURSUANT TO THE LEASE AND ANY LEASE PAYMENTS RECEIVED PURSUANT TO ANY OTHER LEASE OF THE FACILITIES AUTHORIZED UNDER THE BOND INDENTURE AND FROM PROCEEDS OF ANY FORECLOSURE UNDER THE DEED OF TRUST. THE BONDS AND ANY OTHER OBLIGATIONS, AGREEMENTS, COVENANTS OR REPRESENTATIONS CONTAINED IN THE BOND INDENTURE, LEASE, DEED OF TRUST OR OTHER DOCUMENTS RELATING TO THE BONDS, SHALL NEVER CONSTITUTE AN INDEBTEDNESS OF THE ISSUER, THE COUNTY COUNCIL OR THE STATE OF WEST VIRGINIA WITHIN THE MEANING OF ANY CONSTITUTIONAL PROVISION OR STATUTORY LIMITATION AND SHALL NEVER CONSTITUTE OR GIVE RISE TO A PECUNIARY LIABILITY OF THE ISSUER (EXCEPT AS EXPRESSLY PROVIDED IN THE BONDS), THE COUNTY COUNCIL (EXCEPT AS EXPRESSLY PROVIDED IN THE LEASE) OR THE STATE OF WEST VIRGINIA. THE PRINCIPAL OF AND INTEREST AND REDEMPTION PREMIUM, IF ANY, ON THE BONDS SHALL NEVER BE A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWER OF THE ISSUER, THE COUNTY COUNCIL OR THE STATE OF WEST VIRGINIA.

The source of repayment will be lease payments to be made by the County Council pursuant to the Lease. The County Council desires an amortization period for the Bonds of approximately twenty (20) years. The Bonds will be "bank qualified" meaning that they will be a "qualified tax-exempt obligation" for purposes of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

CONTENTS OF PROPOSALS.

Proposals responsive to this request should contain at a minimum the following information:

1. The interest rate or rates on the proposed Bonds (a fixed rate is preferred);

2. Redemption premiums or other prepayment penalties, if any. The County Council would prefer that there not be any redemption premiums or other prepayment penalties but will accept proposals with or without redemption premiums or other prepayment penalties.

3. The proposed maturity date and amortization schedule for the proposed Bonds. The County Council would like to receive proposals for an amortization period of approximately 20 years.

4. The County Council desires to receive proposals for up to \$4,500,000 in original principal amount of the Bonds but reserves the right to have the Bonds issued in an original principal amount less than \$4,500,000. The fees and expenses of Bond Counsel and other issuance costs will be included in the principal amount of the Bonds.

5. Whether a debt service reserve fund will be required with respect to the Bonds and, if required, the amount of the debt service reserve fund.

6. The amount of any loan origination fees and a list of all other costs of issuance relating to the issuance of the proposed Bonds that would be payable by the County Council or Issuer, excluding the fees and expenses of Bond Counsel which has already been retained by the Issuer.

7. Approximate time schedule for the issuance of the proposed Bonds, it being required that the Bonds be issued by December 1, 2016;

8. Whether payments will be made on the Bonds biweekly, monthly, quarterly, semi-annually or otherwise (the County Council would like to have the option of paying the Bonds on a biweekly basis);

9. Location/address of the investment banking firm, bank and other qualified entity submitting the proposal and name, address, telephone number and e-mail address of local representative/contact for all issues or problems relating to the subject financing;

11. Whether an appraisal will be needed and, if so, the timeframe for appraisal completion and the party responsible for payment of the appraisal and also the maximum loan-to-value percentage;

11. Whether any other due diligence, e.g. environmental study, will be needed and, if so, the timeframe for completion of such due diligence and the party responsible for payment of the due diligence; and

12. Fully executed Non-Collusion Certificate (see Attachment A).

Proposals submitted in response to this request should be enclosed in a sealed opaque envelope marked “**Berkeley County Building Commission Lease Revenue Refunding Bonds (County Facilities Project) Series 2016.**” Proposals must be submitted and time-stamped into the County Council Office, Room 201, 400 W. Stephen Street, Martinsburg, WV, 25401 no later than 4:00 PM on Wednesday, October 05, 2016. Failure to provide the required

information as requested in the RFP for the County Council's review may result in disqualification.

Questions and requests for information relating to this Request for Proposals should be directed to Alan J. Davis, County Administrator, at (304) 267-5102. Please note that the annual audits for the County Council are available on the County Council's website at www.berkeleywv.org. In addition, it should be noted that on September 14, 2015, Moody's Investors Service updated Berkeley County's issuer and lease revenue ratings to Aa2 and Aa3, respectively.

Proposals will be opened and entered into public record at 10:15 AM on Thursday, October 06, 2016 in the County Commission Meeting Room, 400 W. Stephen Street, Room 205, Martinsburg, WV 25401.

Nether the County Council nor the Issuer will be responsible for any expenses incurred in the preparation and/or presentation of the proposals and oral interviews, if conducted, or for the disclosure of any information or material received in connection with this solicitation, whether by negligence or otherwise. The County Council and Issuer reserve the right to reject any and all proposals, with or without cause, and waive any irregularities, technicalities, or informalities in the proposals and to take whatever action is in the best interest of the County Council. The County Council and Issuer further reserve the right to make such investigations as it deems necessary as to the qualifications of any and all parties submitting proposals. In the event all proposals are rejected, the County Council and Issuer reserve the right to solicit additional proposals.

The County Council shall make positive efforts to utilize Disadvantaged Business Enterprises for its supplies and services and shall allow these sources the maximum feasible opportunity to compete for contracts, including without limitation the financing described herein. Berkeley County does not discriminate on the basis of race, color, national origin, sex, religion, age or disability for the provision of services.

Only written responses to this RFP shall be considered. All materials submitted shall become part of the proposal.

PROPOSALS AND AWARD SCHEDULE:

- A. Proposals received prior to the deadline will be treated as confidential, until receipt of all proposals and opening of the same. Proposals received after the deadline will not be considered in the evaluation process and will be returned unopened.
- B. It is expected that the award of the subject financing will be made within ten (10) business days after the opening of proposals. The contract will be awarded to the investment banking firm, bank and other qualified entity whose proposal, conforming to this request, will be the most advantageous to Berkeley County.
- C. Proposals must give the full name and address of the proposer and the person signing the proposal shall indicate his or her title and/or authority to bind the

investment banking firm, bank and other qualified entity submitting the proposal in a contract.

- D. Proposals may not be altered or amended after they are opened.
- E. The approval or disapproval of the Proposal will be determined by its response to this request and on past performance. No assumptions should be made on the part of the investment banking firm, bank and other qualified entity submitting a proposal that the County Council has prior knowledge of their abilities.
- F. The County Council reserves the right to request clarification of information submitted and to request additional information of one or more applicants.

TERMS AND CONDITIONS:

- A. Any proposal may be withdrawn up until the date and time set within this RFP for the opening of the proposals. Any proposal not so withdrawn will constitute an irrevocable offer, for a period of ninety (90) calendar days, to provide to the Issuer and the County Council the financing set forth above, in the manner and at the costs set forth in the subject proposal.
- B. Prior to the closing, the selected investment banking firm, bank and other qualified entity shall not assign any interest in the financing and shall not transfer any interest in the same without prior written consent of the County Council.
- C. Investment banking firms, banks and other qualified entities submitting a proposal shall give specific attention to the identification of those portions of their proposals that they deem to be confidential, proprietary information or trade secrets and provide any justification why such materials, upon request, should not be disclosed by the County Council under the West Virginia Freedom of Information Act.
- D. Berkeley County reserves the right to request clarification of information submitted and to request additional information of one or more applicants.
- E. The County Council reserves the right to request interviews.
- F. By submitting a proposal, the investment banking firm, bank or other qualified entity submitting a proposal agrees that it is satisfied, as a result of its own investigations of the conditions set forth in this request, and that it fully understands the obligations set forth therein.
- G. By submitting a proposal, the investment banking firm, bank or other qualified entity submitting a proposal agrees to abide by and comply with the true intent of the RFP and agrees that it shall not take advantage of any unintentional error, ambiguity or omission.

- H. By submitting a proposal, the investment banking firm, bank or other qualified entity submitting a proposal represents and warrants:
1. That it is currently licensed to do business and to provide investment banking or banking services, as the case may be, in the State of West Virginia and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
 2. That it is not in arrears with respect to the payment of any monies due and owing the State of West Virginia, or any department or agency thereof, including, but not limited to, the payment of taxes and employee benefits, and that it shall not fall into arrears during the term of the financing; that it shall comply with all federal, State, and local laws, ordinances, and legally enforceable rules and regulations applicable to its activities and obligations under the contract;
 3. That it shall procure, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations with respect to the requested financing;
 4. That the facts and matters set forth in its proposal are true and correct.

Should any investment banking firm, bank or other qualified entity find discrepancies in, or omissions from, this RFP or be in doubt of the meaning, they should at once request in writing an interpretation from the County Council. All necessary interpretations will be made available to all recipients of this RFP in the form of addenda to the RFP, and such addenda shall become part of this RFP. Failure of any recipient of this RFP to receive any such addendum or interpretation shall not relieve such recipient from any obligation under their proposal as submitted. The County Council will assume no responsibility for oral instructions or suggestions. **ORAL ANSWERS SHALL NOT BE BINDING ON BERKELEY COUNTY OR THE COUNTY COUNCIL.** Every interpretation made by the County Council will be made in the form of an addendum that, if issued, will be sent by the County Council to all interested parties.

ATTACHMENT A

NON-COLLUSION CERTIFICATE

I HEREBY CERTIFY I am the _____ (Title)
and the duly authorized representative of _____

_____ whose
address is _____.

AND THAT NEITHER I nor, to the best of my knowledge, information and belief, the above entity nor any of its other representatives I here represent have:

- (a) Agreed, conspired, connived or colluded to produce a deceptive show of competition in the compilation of the proposal or offer being submitted herewith;
- (b) Not in any manner, directly or indirectly, entered into any agreement, participated in any collusion to fix the proposal of the bidder or offeror herein or any competitor, or competitive bidding in connection with the financing for which the within proposal or offer is submitted; and that no member of the County Council of Berkeley County, West Virginia, administrative or supervisory personnel or other employees of Berkeley County have any interest in the proposing entity except as follows: (complete if applicable)

I solemnly affirm under the penalties of perjury that the contents of the foregoing paper are true to the best of my knowledge, information, and belief.

Signature

Date

Printed or Typed Name