REQUEST FOR PROPOSALS
FOR
CONSULTANT SERVICES

COLLEGECOUNTS 529 FUND
STATE TREASURER OF ALABAMA

Release Date: March 9, 2020
Proposal Due Date: April 10, 2020

***BEASON-HAMMON ALABAMA TAXPAYER AND CITIZEN PROTECTION ACT* COMPLIANCE**

The Beason-Hammon Alabama Taxpayer and Citizen Protection Act (§§31-13-1 et. seq, Code of Alabama, 1975 as amended by Act 2012-491) regulates illegal immigration in the State of Alabama. All contracts with the State or a political subdivision thereof must comply with that law.

For the purposes of this RFP and any responding Proposal, the following sections of that law impose specific requirements: Section 9 (a) of the Act provides "As a condition for the award of any contract, grant, or incentive by the state, any political subdivision thereof, or a state-funded entity to a business entity or employer that employs one or more employees, the business entity or employer shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama."

Section 9(b) of the Act requires "As a condition for the award of any contract, grant, or incentive by the state, any political subdivision thereof, or a state-funded entity to a business entity or employer that employs one or more employees within the State of Alabama, the business entity or employer shall provide documentation establishing that the business entity or employer is enrolled in the E-Verify program."

As provided in the Act a **"business entity"** is *any person or group of persons performing or engaging in any activity, enterprise, profession, or occupation for gain, benefit, advantage, or livelihood, whether for profit or not for profit* and an **"employer"** is defined as *any person, firm, corporation, partnership, joint stock association, agent, manager, representative, foreman, or other person having control or custody of any employment, place of employment, or of any employee, including any person or entity employing any person for hire within the State of Alabama, including a public employer. This term shall not include the occupant of a household contracting with another person to perform casual domestic labor within the household*.

A Proposal must include a statement that the Proposer has knowledge of this law and is in compliance. Before a contract is signed, the Contractor awarded the contract must submit a Certificate of Compliance using the form at Exhibit D to this RFP and, unless exempt because it has no employees in the State of Alabama, a complete copy of the Memorandum of Understanding issued by the United State Department of Homeland Security upon enrollment in the E-Verify Program. E-Verify enrollment can be accomplished at the website of the United States
Department of Homeland Security at http://www.uscis.gov.

See Section 10 for additional language required by Section 9(k) of the Act to be included in the contract.
Rev.5-14-13

GENERAL INFORMATION

1. Overview

This Request for Proposal ("RFP") has been issued by the Board of Trustees ("Board") of the Alabama College Education Savings Program ("ACES"), marketed as CollegeCounts, Alabama's 529 Fund ("Fund"). The program is codified in Section 529 of the Internal Revenue Code. The Board solicits proposals from qualified professional firms interested in providing 529 plan consulting services ("the Consultant") to the Board.

This Request for Proposals (hereinafter "RFP") is issued in accordance with the requirements of Section 41-16-72(4), Code of Alabama (1975). This RFP is not an offer to contract but seeks the submission of proposals from qualified, professional firms that may form the basis for negotiation of an agreement. ***The Board reserves the right to reject any or all proposals and to solicit additional proposals if that is determined to be in the best interest of the Fund.***

2. Background of the CollegeCounts 529 Fund

The CollegeCounts 529 Fund was launched in June 2001. In creating the Fund, the Alabama Legislature determined that the "advancement and improvement of higher education in the State of Alabama is a proper governmental function and purpose of the State of Alabama." The Alabama Code further states that the programs created in or by the Fund were to "assist individuals in paying costs and expenses of attending colleges and universities and thereby encourage students to attend colleges and universities. In establishing the plan, it is further the intent of the Legislature to encourage timely financial planning for higher education."

In accordance with the intent of the Legislature as codified in the Alabama Code, the Fund's vision is to enable greater education opportunities for Alabama citizens by providing investment options that consistently lead the nation in meeting the increasing cost of higher education.

Union Bank & Trust of Nebraska serves as the Fund's Program Manager, and its investment advisor is Wilshire. While the Program Manager and its consultant are tasked with providing recommendations for the portfolio managers, allocations, and similar investment related responsibilities, the Board seeks an independent investment advisor to review such recommendations and provide guidance to the Board. The Fund currently offers portfolios directly to the public or with the assistance of professional financial advisors.

The chart below provides summary information on assets in the Fund, including assets attributable to Alabama and non-Alabama investors.

	12/31/2014	12/31/2015	12/31/2016	12/31/2017	12/31/2018	12/31/2019
Total Plan Assets	**1.247 bil**	**1.284 bil**	**1.414 bil**	**1.65 bil**	**1.61 bil**	**1.93 bil**
Total Plan Accounts	**72,399**	**75,831**	**82,104**	**86,625**	**92,089**	**97,235**
Alabama Assets	**512.97 mil**	**574.3 mil**	**684.7 mil**	**856.7 mil**	**890.0 mil**	**1.134 bil**
Alabama Accounts	**34,414**	**39,456**	**44,218**	**49,230**	**54,503**	**59,443**

Information about the direct sold product, including plan benefits, investment options, performance, and program disclosure statements, is available at collegecounts529.com. Comparable information about the advisor sold product is available at collegecountsadvisor.com.

3. <u>Minimum Qualifications</u>

In order to be considered for selection, the Consultant must provide Exhibit C as documented proof that the following minimum qualifications listed below are met. The Consultant has a continuing obligation to disclose information throughout the RFP process should any qualifications or situations change that might render the Consultant as an unqualified candidate.

1. The company has been in business for at least eight (8) years conducting similar services as described in this RFP, as of December 31, 2019.
2. The consultant assigned to this account has at least five (5) years' experience in consulting with 529 plans or other services as described in this RFP, as of December 31, 2019.
3. Company will comply with all state regulations to conduct business in the State of Alabama and will register with the Secretary of State if applicable. For more information, visit the Secretary of State website at www.sos.alabama.gov and click Business Services/Corporations.
4. Company and its personnel have all authorizations, permits, licenses, and certifications as may be required under federal, state or local law to perform the services specified in this RFP at the time it submits a response to the RFP.
5. Company has a company policy and practice of equal employment opportunity and non-discrimination based on race, creed or gender.
6. Company will comply with *The Beason-Hammon Alabama Taxpayer and Citizen Protection Act.*

4. <u>Fees</u>

The Consultant shall be entitled to receive compensation in arrears. The proposal must state the fees charged for these services. Any charge for services not addressed in the Statement of Fees in your proposal will not be allowed during the course of the contract. It is expected that the successful proposal will result in a contract to provide these services for five years.

5. Proposal Required Information

Proposals should be as thorough and detailed as possible so that your capabilities to provide the required services can be properly evaluated.

Responses to this RFP must include:

1. A brief transmittal letter to include a statement that the Consultant has read this RFP and accepts the terms and conditions set out herein and that the Consultant is aware of the requirements of the Beason-Hammon Alabama Taxpayer and Citizen Protection Act and will comply with that law.
2. Exhibit A, RFP Response;
3. Exhibit B, Statement of Fees;
4. Exhibit C, Minimum Qualifications;
5. Exhibit D, Certificate of Compliance;
6. Disclosure Statement. All proposals submitted in response to this RFP must include one original Disclosure Statement as required by Section 41-16-82, et seq., Code of Alabama (1975). Copies of the Disclosure Statement, and information, may be downloaded from the State of Alabama Attorney General's web site at www.alabamaag.gov/forms.

6. Submission of Proposals

Issuing Office. The State Treasurer serves as Chairman to the Board and, in this capacity, is issuing the RFP on behalf of the Board.

Office of State Treasurer John McMillan
Alabama State Capitol
600 Dexter Avenue, Suite S106
Montgomery, Alabama 36104
Phone: 334-242-7501

Submission Deadline. It is the responsibility of the Consultant to ensure that its proposal is timely delivered and received in the Treasurer's Office on or before 5:00 p.m. CST on April 10, 2020. Provide one original proposal response plus two additional copies to facilitate the response evaluation process. Email an electronic copy of the response to alatreas@treasury.alabama.gov for retention purposes. If your response includes confidential trade secrets or proprietary information, also send an electronic version with those sections redacted in the event a public information request for your response is received (see Section 11 for additional information).

The Board will not consider proposals received after the date and time specified herein. However, the response may be emailed by the submission deadline with the paper documents delivered within two business days.

Questions and Inquiries. The sole point of contact for purposes of this RFP is Anita Kelley. Any questions or inquiries should be emailed to anita.kelley@treasury.alabama.gov by April 2, 2020 in order to assure a timely response. Any oral communications shall be considered unofficial and nonbinding on the Board.

Rejection of all Proposals. The Board reserves the right to reject any or all proposals and/or to solicit additional proposals if that is determined to be fiscally advantageous to the Fund or otherwise in its best interests.

7. Efforts to Influence Selection Process Prohibited

The integrity of the RFP process is of primary importance and will not be compromised. Any written or oral communications beyond the RFP response made by Consultants, or others on their behalf, whether paid or unpaid, to influence the selection process, from the time the RFP is issued through its conclusion, made directly or indirectly to the Board or Treasury staff will be grounds for immediate elimination from the selection process.

8. Evaluation and Selection

After the review and evaluation of the proposals, the Board may conduct interviews on or around May 20, 2020. Finalists chosen for interviews will be notified. The Board will select the Consultant the Board determines, in its sole discretion, to be fully qualified and best suited among those submitting proposals to meet the needs of the Fund in a cost-effective manner.

9. Agreement

All duties of the Consultant shall be set forth in a contract agreement between the Consultant and the Board. The contract will be for a five-year term. The contract will incorporate reference to the requirements of the RFP and the Consultant's proposal, as negotiated.

In compliance with the Beason-Hammon Alabama Taxpayer and Citizen Protection Act (§31-13-9(k), Code of Alabama, 1975, as amended), the contract will include the following language:

> *"By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom."*

In compliance with Act 2016-312, the contract will include the following language: "the contractor hereby certifies that it is not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this state can enjoy open trade."

You are charged with knowledge that there are certain terms standard to most commercial contracts in private sector use which the Board is prevented by law and policy from accepting. These include (1) indemnification and hold harmless of the vendor or third parties, (2) consent to choice of law and venue other than the State of Alabama, (3) methods of dispute resolution other than negotiation and non-binding mediation, (4) waivers of subrogation and other rights against third parties and (5) some provisions limiting damages to the cost of goods or services.

10. <u>Public Information</u>

All responses received will be subject to the Alabama Open Records Act, §36-12-40, Code of Alabama and may be subject to public disclosure upon request. The Open Records Act is remedial and should therefore be liberally constructed in favor of the public. The Alabama Trade Secrets Act is §8-27-1 through §8-27-6, Code of Alabama. Responders are cautioned to be familiar with these statutes. The burden is on the one asserting the trade secret to show that the information sought to be protected meets the definition of a Trade Secret as defined by the Act.

Any RFP response submitted that contains confidential trade secrets or proprietary commercial information must be conspicuously marked on the outside as containing confidential information, and each page upon which confidential information appears must be conspicuously marked as such. Identification of the entire bid proposal as confidential is not acceptable unless the Firm enumerates the specific grounds or applicable laws which support treatment of the entire material as protected from disclosure according to the foregoing statutes or other applicable Alabama law. The owner of the confidential information shall indemnify and hold the State of Alabama, the Treasury staff and Board members harmless from all costs or expenses, including but not limited to attorney fees and expenses related to litigation concerning disclosure of said information and documents.

<u>Exhibit A</u>

RFP RESPONSE

Part I. Organization

1. Provide an overview of your firm, including corporate profile, firm experience, quality control procedures, ownership structure, financial condition, and overall business objectives. .
2. Provide a listing of all vendors or subcontractors your firm will partner with to provide services to the Board.
3. Is your firm a member of NAST (National Association of State Treasurers) or similar trade organizations?
4. Provide a listing of all "related" or "affiliated" firms.
5. With respect to your firm or any subcontractors you plan to engage, please indicate whether your firm, any subcontractor, or any of their respective principals, owners, directors, officers or employees have been the subject of any of the following (answer "yes" or "no" and, if the answer is "yes", please provide additional information) since January 1, 2012:
    - Any past or pending regulatory restrictions, consent orders, stipulations or agreements arising from any regulatory, judicial proceeding or investigative agency that would apply to the delivery of any of the Services.
    - Any pending regulatory proceedings, litigation or investigations involving alleged or actual unfair, illegal or unethical business practice, or any such regulatory proceedings or litigation.
    - Any pending settled or adjudicated litigation, or any settled claim, or any currently threatened litigation, with or concerning any qualified tuition program or participant therein.
    - Any litigation alleging the violation of fiduciary responsibility.
6. Provide details of any claims, disputes, litigations or other legal proceedings where your firm is involved with the State of Alabama or any of its agencies, or has been involved, in the three preceding years.
7. Describe all arrangements or understandings (written or oral) between your firm and any advisor, broker, law firm, or other individual or entity in connection with the solicitation or referral of clients between the firms.

Part II. Personnel

1. Provide biographies of the person/persons/or team members who will be assigned to this account.
2. Provide an organizational chart of the investment consulting portion of your business. List the number of employees, professional and support, in each function. Indicate any areas of special consulting expertise in a program similar to this one.

Part III. Account Management

1. Describe your pertinent experience in providing consulting services to 529 Qualified Tuition Plans or similar programs.
2. Provide the following information on at least three clients (including contact persons for whom similar services as described in this RFP are provided):

    - Company
    - Address
    - Contact
    - Telephone Number
    - Length of Relationship in Year
    - Services Provided

Part IV. Scope of Services

The responsibilities of the Consultant include consultation on a range of topics and issues related to CollegeCounts 529 and 529 programs in general. The consultant may advise on matters including program design, management solicitations and evaluations, contract negotiations, marketing initiatives, benchmarks and best practices, distribution strategies, operational efficiencies, investment structure and legislative and regulatory updates and analyses.

A. Analysis and Guidance – 529 Environment

1. Can you provide an annual analysis of the Morningstar ratings, or similar industry publication? If so, describe your report and how CollegeCounts 529 might benefit from the report.
2. Do you conduct an annual review of the 529 industry, including a comparison of CollegeCounts 529 to other plans?
3. Can you provide analysis of 529 program management fees, underlying fees, or similar; and recommendations to the Board?
4. What other ongoing monitoring of the 529 industry and notifications of industry changes is provided?
5. Can you assist in preparing responses to media inquiries regarding 529 industry trends, opportunities, and growth?

B. Investment Services and Regular Reporting

1. What quarterly market and investment manager performance reporting do you provide?
2. Describe your abilities to recommend and develop Manager Watch List Criteria. How often should this criterion be reviewed or changed.
3. When investment funds are recommended by the program manager, describe your abilities to review these funds. Will you propose additional funds if your review determines other funds should be considered.

C. Other Services

1. If needed, are you available to assist and review a program manager request for proposal and to evaluate recommended investment portfolios?
2. Describe your capabilities to facilitate educational training to the Board concerning the 529 market, the industry landscape, best practices, and fiduciary responsibility.
3. Describe any other services that you may provide to the Board.

EXHIBIT B

STATEMENT OF FEES

Provide a proposed Fee Schedule for the services described in this RFP. Compensation is paid in arrears based on periodic invoices submitted and itemized in sufficient detail for a proper review and confirmation to be performed.

Any charge for services not addressed in the Fee Schedule in your proposal will not be allowed during the course of the contract. Provide fees for a 5-year contract term.

The Fee Schedule can propose a separate fee for any service not described in this RFP but which the Proposer provides for other 529 programs which might be beneficial, or a separate fee for limited or infrequent services.

EXHIBIT C

MINIMUM QUALIFICATIONS

1. The company has been in business for at least eight (8) years conducting similar services as described in this RFP, as of December 31, 2019. ___ Yes ___ No

2. The consultant assigned to this account has at least five (5) years' experience in consulting with 529 plans or other services as described in this RFP, as of December 31, 2019. ___ Yes ___ No

3. Company will comply with all state regulations to conduct business in the State of Alabama and will register with the Secretary of State if applicable. For more information, visit the Secretary of State website at www.sos.alabama.gov and click Business Services/Corporations. ___ Yes ___ No

4. Company and its personnel have all authorizations, permits, licenses, and certifications as may be required under federal, state or local law to perform the services specified in this RFP at the time it submits a response to the RFP. ___ Yes ___ No

5. Company has a company policy and practice of equal employment opportunity and non-discrimination based on race, creed or gender. ___ Yes ___ No

6. Company will comply with *The Beason-Hammon Alabama Taxpayer and Citizen Protection Act.* ___ Yes ___ No

<u>EXHIBIT D</u>

Certificate of Compliance

CERTIFICATE OF COMPLIANCE WITH THE BEASON-HAMMON ALABAMA TAXPAYER AND CITIZEN PROTECTION ACT (ACT 2011-535, as amended by Act 2012-491)

RE Contract/Grant/Incentive (*describe by number or subject):* ____by and between ____ (Contractor/Grantee) and ____(State Agency or Department or other Public Entity)

The undersigned hereby certifies to the State of Alabama as follows:

1. The undersigned holds the position of ________________________________with the Contractor/Grantee named above, is authorized to provide the representations that are set out in this Certificate as the official and binding act of that entity, and has knowledge of the provisions of THE BEASON-HAMMON ALABAMA TAXPAYER AND CITIZEN PROTECTION ACT (ACT 2011-535 of the Alabama Legislature, as amended by Act 2012-491) which is described herein as "the Act".
2. Applying the following definitions from the Section 3 of the Act, the Contractor/Grantee business structure is as indicated by my initials.

<u>BUSINESS ENTITY</u>. Any person or group of persons employing one or more persons performing or engaging in any activity, enterprise, profession, or occupation for gain, benefit, advantage, or livelihood, whether for profit or not for profit.

"Business entity" shall include, but not be limited to the following:

a. Self-employed individuals, business entities filing articles of incorporation, partnerships, limited partnerships, limited liability companies, foreign corporations, foreign limited partnerships, foreign limited liability companies authorized to transact business in this state, business trusts, and any business entity that registers with the Secretary of State.

b. Any business entity that possesses a business license, permit, certificate, approval, registration, charter, or similar form of authorization issued by the state, any business entity that is exempt by law from obtaining such a business license, and any business entity that is operating unlawfully without a business license.

<u>EMPLOYER</u>. Any person, firm, corporation, partnership, joint stock association, agent, manager, representative, foreman, or other person having control or custody of any employment, place of employment, or of any employee, including any including any person or entity employing any person for hire within the State of Alabama, including a public employer. This term shall not include the occupant of a household contracting with another person to perform casual domestic labor within the household.

______ a. The Contractor/Grantee is a business entity or employer as those terms are defined in Section 3 of the Act.

______ b. The Contractor/Grantee is not a business entity or employer as those terms are defined in Section 3 of the Act.

3. As of the date of this Certificate, Contractor/Grantee does not knowingly employ an unauthorized alien, as that term is defined in Section 3 of the Act, within the State of Alabama and hereafter it will not knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama.

*{**Alien** is any person who is not a citizen or national of the United States, as described in 8 U.S.C. § 1101, et seq., and any amendments thereto.}*

{Unauthorized Alien *is an alien who is not authorized to work in the United States as defined in 8 U.S.C. § 1324a (h)(3).}*

4. Contractor/Grantee is enrolled in E-Verify unless it is not eligible to enroll because of the rules of that program or other factors beyond its control.

Certified this ______ day of _____________ 20___.

____

Name of Contractor/Grantee/Recipient

By: ____

Its ____

The above Certification was signed in my presence by the person whose name appears above, on this _____ day of _____________________ 20_____.

WITNESS____

Print Name of Witness