

Bidder Qualification Application

Frequently Asked Questions

Prospective Bidders should refer to the Application Guidance and Instructions (the “**Guidance and Instructions**”) for definitions of any capitalized terms used in these Frequently Asked Questions without separate definition.

Frequently Asked Questions

1. Question:

Question for Section 1.1: If the Private Owner has not yet been determined, can this be left as “To be determined” for purposes of this form?

Answer:

If the Private Owner has not been determined or formed at the time of the submission, it would be reasonable to note “not yet determined” and provide that information at a later date if requested. The Prospective Bidder must provide the information for the Lead Bidder and Investors (*e.g.*, likely stakeholders or investors in, providers of finance to, managers of and servicers for, the Private Owner), and the Investors' expected ownership percentages and percentage funding contributions, and the Servicer, Asset Manager (if different from the Servicer), Key Decision Makers and Key Asset Managers, however, at the time of submission. This section is for informational purposes and will not impact scoring.

2. Question:

Question 1.3.13: If the Prospective Bidder is a pass-through entity for U.S. tax purposes, but the ultimate K-1 recipients are subject to U.S. tax, how should responses to question 1.3.13 be documented?

Answer:

Please document in response to Question 1.3.13 that the Prospective Bidder is not subject to US tax and provide in the explanation the tax status of the Prospective Bidder and information concerning whether the ultimate recipients are subject to US tax.

3. Question:

Question 1.3.18: What additional information is required if the Servicer has been servicing loans for less than 3 years?

Answer:

If the answer to Question 1.3.18 is yes, please provide any information not captured in Section 2.3 that would provide additional support for the credentials of the servicing team. This could include additional details of the prior servicing/asset management experience of Key Asset Managers on the servicing team.

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4. Question:

Question 2.1.2: What if a Prospective Bidder does not have audited financial statements?

Answer:

If a Prospective Bidder does not have audited financial statements or unaudited CFO-certified financial statements, the Prospective Bidder should provide the following supplementary information, if available, as noted below:

- Dunn & Bradstreet score/report complete with a composite risk and financial stress rating for the Prospective Bidder
- A Statement of Net Assets/Financial Position, certified as true, correct and complete by a senior officer of the Prospective Bidder
- Parent Company's Financial Statements with Letter of Corporate Guaranty

5. Question:

Regarding the documentation support requested for Section 2.2, is it necessary for a Prospective Bidder to provide this if it currently reports into the FDIC with regard to funding/liquidity positions on a daily basis? Is a letter from the Prospective Bidder's investment fund parent stating that it has sufficient funds available to fund the structured transaction adequate support or must such a letter be accompanied by the investment fund parent balance sheet?

Answer:

Responses to Section 2.2 should provide an explanation for how the Prospective Bidder intends to fund the purchase price and any other required deposits at closing. Responses should include supporting documentation to evidence the actual dollar amount of funding available and that funds are readily accessible, or document a plan of how liquid funds will be obtained prior to the closing date (e.g., sale of securities). Responses should not comment on the Prospective Bidder's general liquidity position, but specifically address the Private Owner's source of funds for the structured transaction. Examples of funding documentary support are copies of bank statements, investment statements, guaranty letters, intercompany loan agreements, third party loan agreements and audited financial statements (audited within the nine months prior to submission of the Application). If the Prospective Bidder intends to raise funds through a capital call, the amount of capital available (including the unfunded amount) should be provided, as well as a copy of an investor agreement documenting the number of days in which the capital can be called.

6. Question:

Section 2.2: Private Equity firms cannot have an open-ended equity funding obligation because they need to call capital from investors. Is it satisfactory to describe the ability to call capital from investors in lieu of setting aside cash for this potential funding obligation?

Answer:

Please provide details of the ability to call capital from investors, as required to meet funding obligations. This can include an excerpt from a copy of an investor agreement. Please also provide documentation regarding the total amount of capital available to be called (including unfunded amounts) and identify any restrictions or contingencies on the called capital, as well as the amount of time for the funds to be available. This documentation may include audited financial statements.

7. Question:

Question Section 2.3.1: With regard to the "Scoring Methodology," there is no scoring methodology referenced for the Fitch Special Servicer Ratings (RSS1, RSS2, etc.) only the Fitch Primary Servicer Ratings. Should a Prospective Bidder include both the primary and special servicer rating for its captive platform?

Answer:

Yes, please provide the primary and special servicer ratings, where applicable, in response to Section 2.3.1. The servicer rating will be scored in a manner consistent with the rating agency definitions for the rating and rating type.

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8. Question:

Multiple Servicers and Investors may be bidding jointly on the Private Owner Interests and servicing and are wondering how to respond to certain questions when multiple entities are involved. For example, how would a Prospective Bidder answer question 2.3.1 if one bidder in the group is rated and one is not rated. Does the Prospective Bidder pick one member of the group to base the answer on or does the Prospective Bidder look at it as a group (i.e., one of the parties is not rated; therefore the answer is “Not Rated”)?

Answer:

The appropriate way for an Investor (*i.e.*, all investors in the Private Owner with greater than twenty-five percent ownership in the Private Owner and/or providing greater than twenty-five percent of the initial capital or ongoing funding to the Private Owner or any of its affiliates) and Servicer to complete the Application depends on the role each party will take in the structured transaction and post closing. Each party providing servicing of the Assets should complete a separate Section 2.3 response, noting to which party each response relates. Each Investor in the structured transaction should provide a complete Application.

For example, in instances where a Lead Bidder is not providing any servicing but is outsourcing to a third-party servicing provider and that Servicer does not have a financial interest in the structured transaction, then all Sections other than Section 2.3 should be completed by the Lead Bidder. Likewise, an Investor with the Lead Bidder that has a financial interest in the structured transaction but is not providing any servicing should complete and submit all sections of an Application other than Section 2.3. Application Section 2.3 should be completed for the Servicer, and the name of the Servicer should be indicated.

In instances where the Lead Bidder or an Investor will be providing some servicing or asset management of the Assets and also using a sub-servicer, and the sub-servicer does not have a financial interest in the structured transaction, then all sections other than Section 2.3 should be completed by the Lead Bidder or the Investor. Section 2.3 would need to be completed for the Lead Bidder or the Investor who acts as a Servicer or Asset Manager and a separate Section 2.3 completed for the sub-servicer (please submit two separate Section 2.3 responses indicating the party to which each relates). If the Servicer, Asset Manager or sub-servicer also is an Investor, then the Servicer, Asset Manager or sub-servicer/Investor would need to complete all sections of the Application, including Section 2.3.

9. Question:

Section 2.4: In the event that a Prospective Bidder owns a Servicer, should both the Prospective Bidder and the Servicer fill out section 2.4 as separate entities?

Answer:

Components of the response to Section 2.4 will relate directly to the servicing, while other components relate more to the strategic investment plan. As detailed in the Application, the Portfolio Management Plan provided in response to Section 2.4 should address the following three areas: 1) Overall Project Strategy, including transition plan, 2) Operational Capacity and 3) Exit Strategy. The first and last bullets relate to the strategic investment plan and will likely be answered by the Prospective Bidder; the second bullet is more specifically related to the servicing of the Assets over the investment period.

10. Question:

A Prospective Bidder has submitted all prior paperwork and has had it signed by the parent company. They are now preparing the bidder/servicer qualification document and have prepared it for a subsidiary of the parent company. The subsidiary company plans to be the “bidder” and “owner” of the Private Owner. Does this present a problem?

Answer:

The definition of the term “Prospective Bidder” in the Guidance and Instructions includes the Lead Bidder (*i.e.*, the entity or individual authorized to enter a bid on behalf of a Prospective Bidder in accordance with the terms and conditions of the structured transaction) and the Investors (*i.e.*, all investors in the Private Owner with greater than twenty-five percent ownership in the Private Owner and/or providing greater than twenty-five percent of the initial

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capital or ongoing funding to the Private Owner), who may be affiliates of the Lead Bidder. The entities designated as the “Specified Parent” on the Bid Form (who are expected to be the Lead Bidder and the Investors) **collectively** must control or collectively own, either directly or indirectly, at least 50.1% in value of the Private Owner Interest. Therefore, responses to more general questions (such as Level 1 and Level 2, Section 2.1 and Section 2.2) are expected to include any details specific to the Specified Parent and Private Owner (if already formed) and their ability to fund the structured transaction and ongoing obligations. Sections specific to providing servicing and asset management of the Portfolio (Section 2.3 and Section 2.4) should refer to the experience of the Servicer and Asset Manager (if different from the Servicer)..

The entity that actually bids must be qualified (i.e., has successfully completed the Structured Transaction Qualification Request, the Structured Transaction Confidentiality Agreement, the Structured Transaction Purchaser Eligibility Certification, the Structured Transaction Security Deposit Agreement and the Bidder Qualification Application process). In this circumstance, the Structured Transaction Qualification Request, the Structured Transaction Confidentiality Agreement and the Structured Transaction Purchaser Eligibility Certification would need to be resubmitted for the Lead Bidder (the subsidiary) as opposed to the parent company. At the closing of the structured transaction, the Private Owner will sign the Transaction Documents and both the Private Owner and the Specified Parent (in this case, the subsidiary as both Lead Bidder and Investor) will sign the Structured Transaction Qualification Request, the Structured Transaction Confidentiality Agreement and the Structured Transaction Purchaser Eligibility Certification.

11. Question:

Why has Section 1.2 MWO Business Participation been included in the application? How will the provided information be used? Will this affect the score of the application?

Answer:

The FDIC welcomes and encourages participation of MWO Businesses in bidding on portfolios of loans and other assets in FDIC structured transactions. As the FDIC is interested in understanding the level of diversity of those entities participating in the program, Prospective Bidders are asked to disclose information about being MWO Businesses, if applicable. The information provided will be used by FDIC to examine participation levels and potential underrepresentation and to identify investor outreach activities to support diversity of participation. This information does not impact scoring of an Application.

12. Question:

Are there organizational requirements with respect to the Private Owner?

Answer:

The Private Owner must be organized as a special-purpose entity (an “SPE”). To qualify as an SPE, the Private Owner must be a corporation or limited liability company that (a) is organized pursuant to the laws of any state of the United States or the District of Columbia, (b) the equity of which is uncertificated (and in the case of a limited liability company, does not by its terms expressly provide that such equity shall be governed by Article 8 of the uniform commercial code as in effect in the jurisdiction applicable to such entity), (c) has no material assets other than cash and cash equivalents and its rights, title and interest in, to and under the Transaction Documents, (d) is not engaged in any significant business operations except in connection with the performance of its obligations under the Transaction Documents (e) does or causes to be done all things necessary to preserve and keep in full force and effect its existence, rights (charter and statutory) and franchises, (f) at all times holds itself out to the public as a legal entity separate from any other individual or entity (including any affiliate), (g) except as expressly contemplated by the Transaction Documents, does not commingle its assets with assets of any other individual or entity, (h) conducts its business in its own name and strictly complies with all organizational formalities to maintain its separate existence, (i) maintains an arm’s length relationship with any affiliate upon terms that are commercially reasonable and on terms no less favorable to it than could be obtained in a comparable arm’s length transaction with an unrelated individual or entity other than as expressly provided otherwise by the Transaction Documents;, (j) has no debt, and except as expressly permitted or required pursuant to the Transaction Documents, does not make any

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loans or advances to any other individual or entity, (k) except as otherwise consented to in writing by the FDIC with respect to the specific structured transaction, is a pass-through or disregarded entity for income tax purposes, (l) maintains its own separate books and records and its own accounts, in each case which are separate and apart from the books and records and accounts of any other individual or entity, (m) maintains separate financial statements, (n) allocates fairly and reasonably any shared expenses, including any overhead for shared office space, (o) uses separate stationery, invoices and checks in its own name, and (q) includes in its organizational documents applicable provisions and limitations requiring compliance with all the foregoing requirements, including an express requirement for the written consent of the Company (which consent of the Company in turn shall require the written consent of the FDIC) to any amendment or modification that would result in such organizational documents failing or ceasing to be in compliance with all of the foregoing requirements.

DISCLAIMER

THESE BIDDER QUALIFICATION APPLICATION FREQUENTLY ASKED QUESTIONS (“FAQS”) ARE BEING PROVIDED FOR THE ASSISTANCE AND CONVENIENCE OF PROSPECTIVE BIDDERS. NO REPRESENTATION OR WARRANTY, WHETHER EXPRESS, IMPLIED, BY OPERATION OF LAW OR OTHERWISE, IS BEING PROVIDED WITH RESPECT TO THE ACCURACY OR COMPLETENESS OF ANY INFORMATION CONTAINED IN THESE FAQS. ALL TERMS, CONDITIONS AND INFORMATION CONTAINED IN THESE FAQS ARE SUBJECT IN ALL RESPECTS TO THE FINAL TRANSACTION DOCUMENTS FOR THE STRUCTURED TRANSACTION.

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