

**Request for Proposals
for
Bond Counsel Services**

Issued by:
Pennsylvania Housing Finance Agency

**Request for Proposals
PHFA 2018/19 RENTAL HOUSING PROGRAM
BOND COUNSEL**

Issue Date: March 5, 2018

Response Date: March 22, 2018, 2:00 P.M. EST

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Section I
General Information

I-1 Purpose

This Request for Proposals (“RFP”) provides interested Law Firms (as defined in Section II-1) who are in the preapproved Bond Counsel Pool (as previously determined by the Governor’s Office of General Counsel) with information to prepare and submit proposals for consideration by the Pennsylvania Housing Finance Agency (“PHFA”) to provide **Bond Counsel Services for its Rental Housing Finance Program.**

I-2 Issuing Office

This RFP is being issued for and by PHFA. PHFA is the sole point of contact for this RFP. Please refer all inquiries - **in writing only** - to:

Tracy Horetsky
Legal Administrator
PHFA
211 North Front Street
Harrisburg, PA 17101
thoretsky@phfa.org

From the issue date of this RFP until PHFA selects a proposal for award, the above referenced individual at PHFA is the sole point of contact concerning this RFP. Any violation of this condition may cause the Issuing Office to reject the offending Law Firm’s proposal. A Law Firm who shares information contained in its proposal with other Commonwealth personnel and/or competing Law Firm personnel may be disqualified.

Calendar of Events	
Deadline to submit Questions	March 12, 2018
Answers to Questions/Addendum Issued	March 14, 2018
Deadline for Proposal Submission	March 22, 2018 at 2 pm (EST)

I-3 Scope

This RFP contains instructions governing the responses to be submitted and the material to be included therein, a description of the services to be provided and requirements that must be met to be eligible for consideration.

I-4 Rejection of Proposals

PHFA reserves the right, in its sole and complete discretion, to reject any and all responses received from any party as a result of this RFP process, and to cancel this solicitation at any time.

I-5 Contract for Legal Services

All Law Firms have previously entered into a Contract for Legal Services (see form of Contract, included in the Request for Qualifications (“RFQ”) process) with the Office of

General Counsel (“OGC”). A specific customized form of that Contract entered into directly with PHFA will govern this procurement including any additional specific contract terms and conditions which may be set forth in writing and agreed upon by PHFA and the successful Law Firm ("Engagement Letter").

I-6 Term of Engagement

The Term of the Engagement, as set forth in the Engagement Letter, will commence on the Effective Date and will generally end two years from the date thereof, unless earlier terminated or extended in accordance with the terms of the Engagement Letter.

I-7 Law Firm’s Representations and Authorizations

By submitting its proposal, each Law Firm understands, represents and acknowledges that all terms and representations set forth in the Contract remain true and correct and additionally:

- A. All of the Law Firm's information and representations in the proposal are material and important, and PHFA may rely upon the contents of the proposal in entering into an Engagement Letter. PHFA shall treat any misstatement, omission or misrepresentation as fraudulent concealment of the true facts relating to the proposal submission, punishable pursuant to 18 Pa. C.S. § 4904.
- B. The Law Firm has arrived at the price(s) in its proposal independently and without consultation, communication or agreement with any other Law Firm or entity, if and as applicable.
- C. The Law Firm has not disclosed any aspect of its proposal to any other entity and it shall not disclose any of these items on or before the proposal submission deadline applicable to this RFP.
- D. The Law Firm has not attempted, nor will it attempt, to induce any firm or person to refrain from submitting a proposal, or to submit a proposal higher than this proposal, or to submit any intentionally high or noncompetitive proposal or other form of complementary proposal, if and as applicable.
- E. The Law Firm makes its proposal in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive proposal, if and as applicable.
- F. To the best knowledge of the Law Firm, the Law Firm, its affiliates, subsidiaries, officers, directors and employees are not currently under investigation by any governmental agency and have not in the last four years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding or proposing on any public contract, except as the Law Firm has disclosed in its proposal.
- G. To the best of the knowledge of the Law Firm and except as the Law Firm has otherwise disclosed in its proposal, the Law Firm has no outstanding or delinquent obligations to the Commonwealth including, but not limited to, any

state tax liability not being contested on appeal or other obligation of the Law Firm that is owed to the Commonwealth.

- H. The Law Firm is not currently under suspension or debarment by the Commonwealth, any other State or the Federal government, and if the Law Firm cannot so certify, then it shall submit along with its proposal a written explanation of why it cannot make such certification.
- I. The Law Firm has not contacted PHFA with any recommendations concerning the need for the services described in its proposal.
- J. Until the selected Law Firm receives a fully executed and approved Engagement Letter from PHFA, there is no legal and valid contract, in law or in equity. Law Firm understands that fees and costs are generally the responsibility of the Obligor/ Conduit Borrower and are contingent upon closing of the financing transaction.

I-8 Incurring Costs

PHFA is not liable for any costs or expenses incurred by the Law Firm in the preparation or submission of their proposal to this RFP.

I-9 Prime Contractor Responsibilities

The Contract (and the Engagement Letter) requires the selected Law Firm to assume responsibility for all services offered in its proposal. PHFA will consider the selected Law Firm to be the sole point of contact with regard to contractual matters.

I-10 Economy of Preparation

Proposals should be prepared simply and economically, providing a straightforward, concise description of the Law Firm's ability to meet the requirements of this RFP. Succinct responses are encouraged.

I-11 Proposal Contents

- A. **Confidential Information.** PHFA is not requesting, and does not require, confidential proprietary information or trade secrets to be included as part of any submission in order to evaluate proposals submitted in response to this RFP. Accordingly, except as provided herein, proposal submissions should not be labeled as confidential, privileged or proprietary or trade secret protected. Any Law Firm who determines that it must divulge such information as part of its proposal must submit a signed written statement described below, and must additionally provide a redacted version of its proposal, which removes only the confidential, privileged, proprietary information and trade secrets for required public disclosure purposes.
- B. **Commonwealth Use.** All material submitted with the proposal shall be considered the property of PHFA and may be returned only at its option. PHFA has the right to use any or all ideas not protected by intellectual property rights that are presented in any proposal regardless of whether the proposal becomes

part of a contract. Notwithstanding any Law Firm copyright designations contained on proposals, PHFA shall have the right to make copies and distribute proposals internally and to comply with public record or other disclosure requirements under the provisions of any Commonwealth or Federal statute or regulation, or rule or order of any court of competent jurisdiction.

- C. **Public Disclosure.** After the selection pursuant to this RFP, proposal submissions are subject to disclosure in response to a request for public records made under the Pennsylvania Right-to-Know-Law, 65 P.S. § 67.101, et seq. If a proposal submission contains confidential, privileged, proprietary information or trade secrets, a signed written statement to this effect must be provided with the submission in accordance with 65 P.S. § 67.707(b) for the information to be considered exempt under 65 P.S. § 67.708(b)(11) from public records requests.

I-12 **Information about this RFP and Addenda to the RFP**

This RFP will be posted on the PHFA website-- at www.phfa.org.

RFPs are generally listed under "Procurement Opportunities" on PHFA's website. Any questions regarding this RFP must be submitted directly ONLY to the above designated individual at PHFA **in writing only**. Questions and responses, if any, may be provided as an addendum to this RFP and any such addenda will also be posted and available on the PHFA website. Each Law Firm shall be responsible for new or revised RFP information. PHFA shall not be bound by any verbal information nor shall it be bound by any written information that is not either contained within the RFP or formally issued as an addendum by PHFA. If PHFA deems it necessary to revise any part of this RFP before the proposal response date, the PHFA will issue an addendum to all Law Firms.

I-13 **News Releases**

Law Firms shall not issue news releases, Internet postings, advertisements or any other public communications pertaining to this RFP without prior written approval of PHFA.

I-14 **Response Date**

To be considered, **proposals must be received by PHFA no later than 2:00 p.m.** on the due date listed above. Late submissions will not be accepted. (PHFA in its discretion may accept submissions that are delayed due to exigent circumstances.)

I-15 **Proposals**

To be considered, proposals must consist of a complete response using the format provided in Section IV of this RFP. Proposals must be submitted to PHFA and shall include a paper copy and a complete and accurate copy of all three separate submissions requirements.

Law Firms shall make no other distribution of its proposal to any other person or entity. For this RFP, the proposal must remain valid for 120 days or until a contract is awarded. If PHFA selects the Law Firm's proposal for award, the contents of the selected Law Firm's proposal may become, except to the extent the contents are amended and revised

or changed through negotiations, contractual obligations set forth in an addendum to the Contract for Legal Services (the Engagement Letter.)

I-16 Cost Data

Cost data for the proposal shall be submitted as a separate document, apart from the Technical Proposal. Please note PHFA caps all fees and establishes maximum fees for all its financing transactions.

I-17 Clarifications/Discussions

Law Firms may be required to make an oral or written clarification of their proposal to PHFA to ensure thorough mutual understanding and Law Firm's responsiveness to the solicitation requirements. PHFA will initiate requests for clarification. Clarifications may occur at any stage of the evaluation and selection process. While not required, PHFA reserves the right to conduct discussions with any responsible Law Firm to determine the Law Firm's qualifications for further consideration and to contact identified references and related entities referenced in submissions. Discussions shall not disclose any information derived from proposals submitted by other Law Firms.

I-18 Contract Award

- A. Award will be made to the Law Firm determined to be the best qualified based on the evaluation factors set forth in this RFP. **PHFA will be using technical qualification as the primary determinant of selection and PHFA expects to look at the totality of the technical proposal, without a point system of gradation.**
- B. PHFA encourages the use and engagement of Small Diverse Businesses ("SDBs") in its programs. Accordingly, PHFA encourages engagement of SDBs directly by the primary Law Firm, and may provide a preference to the Law Firm best meeting technical qualification with a robust and defined SDB component in their proposal. **Please note, PHFA reserves the right to select and independently appoint other SDB entities to provide services in the capacity of co-bond counsel or specialized finance counsel in consultation with OGC as it deems necessary and appropriate to achieve its goals for diversity in its financing program and these financing transactions.**
- C. **Fair and reasonable compensation shall be determined through negotiation, subject to maximum fees and costs established by PHFA.**

Section II Background/Issuer Information

II-1 Background

Consistent with Executive Order 2015-02, on March 2, 2015, a Request for Qualification (“RFQ”) procurement was issued. Through the RFQ, OGC established a pool (the “Bond Counsel Pool”) of qualified legal service providers (“Law Firms”) to provide bond-related counsel work on behalf of its various issuing agencies in the Commonwealth. (This Bond Counsel Pool has been supplemented after its establishment.) Additionally, OGC established a pool of specialized financial services counsel predetermined to be qualified as “co-bond counsel”. There may be opportunities for Law Firms to identify and partner with pre-approved co-bond counsel pool established by OGC for Law Firms to achieve SDB participation. **(Please contact PHFA for a current list of co-bond counsel firms approved to date if interested in this opportunity.)**

From time to time, as opportunities arise, the OGC or any Commonwealth issuing agency will issue a specific RFP to invite Law Firms in the Bond Counsel Pool to be considered to perform specific transactional work on behalf of its various issuing agencies.

This is an RFP seeking Bond Counsel Services for PHFA for its residential rental housing financing program. PHFA seeks to establish a smaller pools of firms from which it may assign Bond Counsel work for specific rental housing transactions.

II-2 Issuer Information

PHFA is a body corporate and politic constituting a public corporation and a governmental instrumentality of the Commonwealth of Pennsylvania, created by the housing finance law (1959, Dec 3, P.L. 1688, amended 1972, Dec 5, P.L. 1259, No. 282, the “Act”). PHFA is authorized under the Act, *inter alia*, to provide financing for rental housing for persons and families of low and moderate income, including the elderly and to participate in specialized federal housing assistance programs.

In connection with its rental housing financings, PHFA uses the services of bond counsel to provide specialized services relating to the structuring and issuance of taxable or tax exempt debt. The issuance of debt for new construction, acquisition financing and rehabilitation of existing rental facilities will generally be supported by participation in the Section 42 (federal low income housing tax credit) program. Properties will also often be supported by federal subsidy programs such as Section 8 of the United States Housing Act of 1937, as amended, Rural Development programs or various federal insurance or credit enhancements programs, and may involve short term and long term programs with Fannie Mae and Freddie Mac. Financings will generally be special limited obligations of PHFA, without a pledge of PHFA credit.

Services of bond counsel for PHFA will entail expertise and proficiency in all aspects of rental housing bond financing, real estate, federal housing programs (including the federal tax credit program), security and tax compliance issues that may arise in the context of design, structure, operation and administration of project and/or residential rental portfolio financings and restructurings.

Except for SDB subcontractors identified in the SDB submittal, the Law Firm must possess all expertise in-house and may not rely on subcontractors or on third-party counsel to provide expertise in any of the relevant practice areas, including specifically bond financing, federal housing programs, federal tax and housing bond expertise.

Section III Work Statement

III-1 Submission Requirements

Law Firms seeking to be considered to provide Bond Counsel Services to PHFA must submit all items described below in each of the following three Sections: Technical Submission; Small Diverse Business Submission; and Cost Submission.

Law Firms shall make no other distribution of its proposal to any other person or entity.

III-2 Technical Submission

Technical Submission shall be the primary determinant in selection under this RFP.

- A. In narrative form, **briefly** outline the Law Firm's satisfaction of the following requirements:
- a. Knowledge of, and expertise in, tax exempt housing financing structures, including specifically, direct recent experience with bond financings involving Section 42 housing tax credits, rental housing bond financings, financings involving both tax exempt and taxable bonds, federal housing subsidy programs, public bond sales involving original issue premium and discount, tax treatment of acquisition financing, treatment involving long term management and short term tax exempt loans with banks, operating agreements and long term restrictive covenants and other specifically developed financing structures. Include any familiarity with Fannie Mae and Freddie Mac financing transaction structures. **(Drafting hint- Use this section to tell us about your specific experience in housing deals.)**
 - b. The ability to anticipate issues facing residential rental housing financings, especially regulatory challenges and ongoing program compliance guidance. Your narrative should include an outline of specific types of current topics that are germane to this type of financing, and should offer very specific insight into your Law Firm's direct experience and familiarity with these types of financing transactions and programs. Tell us how your firm approaches TEFRA notices based on the recently issued proposed regulations. Tell us about a recent financing problem in a HUD financed deal and how the problem was resolved. **Industry publications or client alerts which your Law Firm has issued in areas relevant to housing bonds within the past two years may be submitted with the narrative.**
 - c. Bond counsel must demonstrate the holistic in-house capacity to respond expeditiously to inquiries and to provide guidance to the structuring of transactions, with Section 42 in mind, as well as the compliance and regulatory complexities of the financing and the overall program operation. **(Drafting hint- To evidence familiarity, the narrative should clearly**

identify and briefly discuss the types of issues, questions and challenges faced in residential rental financings and in portfolio financings involving the use of Section 42 Credits. Be specific to evidence your experience with the types of programs used to finance residential transactions. This may be used as a factor to select the appropriate counsel for specific transactions.)

- d. Bond counsel must evidence familiarity with Pennsylvania processing requirements and residential rental housing financings in the Commonwealth in a narrative outlining the steps in the process for issuance of these types of financings by PHFA, especially PHFA underwriting processing.
 - e. Bond counsel represents PHFA in these transactions. If there are banks, firms and program participants you generally work with in the industry, while not mandatory, it would be helpful for you to provide information about these potential conflicts so PHFA can prescreen for conflicts in potential upcoming transactions.
- B. All Law Firms must provide **one (1) issuer reference** from a recent residential rental facility financings, specifically in the role of bond counsel, if available. PHFA may contact this reference during its review of the Law Firm's qualifications.
- C. Include a copy of an official statement displaying counsel's name and outlining the structure of the transaction, a form of private placement memorandum outlining the transaction (or, if none is available due to the nature of the transaction, a copy of the bond purchase agreement) with a copy of the bond opinion delivered by Law Firm at the closing of the transaction in connection with a rental housing financing with Section 42 Housing Credits conducted within the past two (2) years.
- D. Identify specifically both bond and tax personnel assigned for rental housing bond counsel transactions and their resumes regarding tax exempt Section 42 financing experience **as bond counsel or co-bond counsel**.

III-3 SDB Participation Submission

As noted, SDB appointments may also be specifically made directly by PHFA for its financing programs. Failure to submit anything under this category will not prevent consideration, but each Law Firm will be expected to abide by PHFA appointments of SDB co-counsel and should provide a narrative statement agreeing to work to fulfill the goals set forth in this section.

PHFA encourages participation by small diverse businesses as prime contractors, and encourages all prime contractors to make a significant commitment to use SDBs as subcontractors and suppliers.

PHFA encourages the use and engagement of SDBs directly by the primary Law Firm, and may provide a preference to technically qualified Law Firms which has a robust and

defined work plan involving qualified SDBs. Information about the SDB requirements is included here for purposes of that submission.

PHFA expects to select and appoint other SDB entities directly to provide services in the capacity of co-bond counsel or specialized finance counsel as it deems necessary and appropriate to achieve its goals for diversity in its financing programs.

A SDB is a Department of General Services (“DGS”)-verified minority-owned business, woman-owned business, veteran-owned business or service-disabled veteran-owned business. A small business is a business in the United States which is independently owned, not dominant in its field of operation, employs no more than 100 full-time or full-time equivalent employees, and earns less than \$7 million in gross annual revenues for building design, \$20 million in gross annual revenues for sales and services and \$25 million in gross annual revenues for those businesses in the information technology sales or service business.

Questions regarding the general SDB Program may be directed to:

Department of General Services
Bureau of Small Business Opportunities (“BSBO”)
Room 611, North Office Building
Harrisburg, PA 17125
Phone: (717) 783-3119
Fax: (717) 787-7052
Email: gs-bsbo@pa.gov
Website: www.dgs.pa.gov

DGS’s directory of BSBO-verified minority, women, veteran and service disabled veteran-owned businesses can be accessed from: Searching for Small Diverse Businesses.

Please note there are several SDBs included in the prequalified Bond Counsel Pool. In addition, OGC is currently establishing a pool of specialized financial services counsel that includes several SDB firms which have been prequalified to serve as co-bond counsel. A list of the co-bond counsel preapproved to date is available by contacting PHFA.

Small Diverse Business Participation Submission Requirements:

Law Firms shall submit a separate section outlining their commitment to and engagement of any SDB under this RFP.

The Law Firm must include in the SDB participation submittal the following information:

1. Law Firms must include a narrative statement of how they will engage the SDB in a meaningful way in the work to be performed by the Law Firm. Any prior example of shared work with the identified SDB should be outlined to evidence a robust and cooperative working relationship.
2. Law Firms must identify specifically the name and contact information for the SDB. The Law Firm will not receive any credit for stating that after the contract is awarded it will find an SDB.

3. Law Firms should outline the following additional information:
 - a) The services or supplies each SDB will provide, including the timeframe for providing the services or supplies,
 - b) The location where each SDB will perform services,
 - c) The timeframe for each SDB to provide or deliver the goods or services,
 - d) A subcontract or letter of intent signed by the Law Firm and each SDB identified in the SDB Submittal. The subcontract or letter of intent must identify the specific work, goods or services the SDB will perform, how the work, goods or services relates to the project, and the specific timeframe during the term of the contract and any option/renewal periods when the work, goods or services will be performed or provided. Include the name, address and telephone number of the primary contact person for each SDB, and
 - e) The subcontract or letter of intent should outline a general formula for expected compensation to the SDB based on the nature of work to be performed. For services as part of a specific bond financing transaction, please identify how the SDB will be involved, and what the level of compensation will be. For other services outside of a specific transaction, if any, please identify if and how the SDB may be involved and compensated.

The Law Firm is required to submit one copy of its SDB participation submittal. The submittal shall be clearly identified as SDB information and sealed in its own envelope, separate from the remainder of the proposal.

An SDB can be included as a subcontractor with as many prime contractors as it chooses in separate proposals.

A Law Firm that qualifies as an SDB and submits a proposal as a prime contractor is not prohibited from being included as a subcontractor in separate proposals submitted by other Law Firms.

III-4 **Cost Submission**

A typical conduit project financing will be paid for by the underlying property owner through payments made under the terms of loan agreements, tax-exempt leases, notes or other debt instruments entered into between PHFA and the Borrower, through a trust structure, direct loan agreement or bridge lending arrangements with other lenders. Many of the financing transactions for residential rental housing facilities will be conduit issuances, whereby the faith and credit of the PHFA is not pledged to repay the bondholders and all fees and costs are borne by the Borrower. Accordingly, fees for Law Firms who provide bond counsel services to PHFA for each of these transactions will be capped at appropriate levels with PHFA and the Borrower, which provides underlying credit for the transaction. **Bond counsel fees are payable from closing costs set aside by the Project Borrower and are payable and contingent upon the closing.**

This RFP provides services for the overall financing program of PHFA. Accordingly, there is no set number of transactions determined as of this date. In submitting your cost proposal, minimum fee requirements must be articulated by

the Law Firm and hourly rates should be described, but will be subject to negotiation and to any ultimate cap established by PHFA. Fees will be set forth in the addendum to the Contract for Legal Services (the Engagement Letter).

Section IV

Information Required From Law Firms

IV-1 Proposal

Law Firms seeking to be considered to provide Bond Counsel Services to PHFA must submit all items described in Section III of this RFP.

- A. Technical Submission (This is the major determinant used by PHFA and should contain all information you want PHFA to consider in making its determination of Law Firm's qualification to serve as rental housing program bond counsel.)
- B. Small Diverse Business Submission
- C. Cost Submission.

IV-2 Instructions for Proposal Submissions

- A. **Response Format.** Proposals are to be straightforward, clear, concise, and specific to the information requested.

- B. **What to Submit with Your Proposal.** Submit **only** the following documents:

In a separate sealed envelope - Document #1: Technical Submission—Submit two paper copies.

In a separate sealed envelope - Document #2: Small Diverse Business Proposal—Submit two paper copies.

In a separate sealed envelope - Document #3: Cost Proposal—Submit two paper copies.

Section V

Criteria for Selection

V-1 Evaluation of Proposals

PHFA has selected a committee of qualified personnel to review and evaluate timely submitted proposals and to make its selection in consultation with the OGC.

V-2 Evaluation Criteria

The following criteria will be used in evaluating each proposal:

- A. Technical - **Technical criterion for this RFP shall be the predominant determinant of selection.** Evaluation will include a review of all of the following items listed in Section III-2 including:
 - 1. Personnel Qualifications

2. Law Firm Qualifications
3. Prior Comparable Experience

PHFA does not use a point scoring matrix, but rather will look at the totality of technical qualification in its evaluation.

- B. Small Diverse Business Participation – **PHFA also reserves the right to make its own appointments of SDBs in areas such as co-bond counsel to meet the goals in its financing programs.** SDB participation criterion for this RFP may be used as a preference in making an award. In general, all Law Firms are expected to have a meaningful and robust usage of the SDB in the contract.

NOTE: EQUAL EMPLOYMENT OPPORTUNITY AND CONTRACT COMPLIANCE STATEMENTS REFERRING TO LAW FIRM EQUAL EMPLOYMENT OPPORTUNITY POLICIES OR PAST CONTRACT COMPLIANCE PRACTICES DO NOT CONSTITUTE PROOF OF SDB STATUS OR ENTITLE A LAW FIRM TO RECEIVE CREDIT FOR SDB UTILIZATION.

V-3 **Final Recommendation and Award**

- A. After any discussions with responsible Law Firms, PHFA will combine the evaluation committee's final recommendations regarding technical submission and shall coordinate its selection of Law Firms into the qualified pool. Once qualified in the pool, PHFA, in consultation with OGC, will make appointments for specific transactions from time to time.
- B. Award will be made to one or more Law Firms determined to be the best qualified to perform the specific transactional financing work based on this RFP. Fair and reasonable compensation shall be determined through negotiation.
- C. PHFA has the discretion to reject all proposals, or cancel this RFP at any time prior to the time a contract is fully executed, when it is in the best interests of PHFA. The reasons for the rejection or cancellation shall be made part of the contract file.
- D. PHFA reserves the right to appoint other parties to this transaction, including co-bond counsel or other specialized financing counsel, to best achieve its goals in its contracting and financing programs.
- E. There is no guarantee that any project financings will occur and PHFA has no obligation to make payments of any kind to any one or more Law Firms in the event the financings fail to proceed.