Request for Proposals
for
Bond Counsel Services

Issued by:
Pennsylvania Housing Finance Agency

Request for Proposals
PHFA 2020/21 RENTAL HOUSING PROGRAM
BOND COUNSEL

Issue Date: November 4, 2019

Response Date: November 29, 2019, 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 PHFA to reject the offending Law Firm’s proposal.

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<th>Calendar of Events</th>
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I-3 SCOPE
This RFP contains instructions governing the responses to be submitted and the material to be included, 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 will 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 (or upon consummation of all financing transactions contemplated in the Engagement Letter), 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 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.

C. 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 of 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.

D. 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.

E. 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.

F. **All personnel identified by the Law Firm are expected to be available for engagement in all matters and no material change in personnel is contemplated.**

G. 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. **Law Firm understands that being accepted into the pool of qualified counsel does not guarantee any assignments will be made to it.**

I-8 **Incurred 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. **As appropriate, reference and hyperlinks to website contact should be used (for such things as resumes and other marketing materials.)**

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 which determines that it must divulge such information as part of its proposal must submit a signed written statement as 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 thorestky@phfa.org (or to her above listed mailing address) 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, 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 communication 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 November 29, 2019. 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. If PHFA selects the Law Firm's proposal for award, the contents of the selected Law Firm's proposal, as amended and revised or changed through negotiations, may become part of the Engagement Letter.

I-16 Cost Data

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

I-17 Clarifications/Discussions

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 expects 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 since 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 the 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, 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 agency 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, but from time to time, PHFA may incur direct debt obligations for rental housing transactions secured by its own 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.
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.

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 and portfolio financings. (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. Any specific concerns about current financing strategies (such as MBS swapping) should be discussed to allow evaluation of your familiarity and position on such transactions. Tell us how your firm views the new TEFRA process. 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. Use hyperlinks to your Law Firm website for marketing and industry materials as you deem appropriate.

c. Bond counsel must demonstrate 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 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 and approval timing.
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 financing, 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 the bond opinion and tax certificate 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 be made directly by PHFA for its financing programs. Failure to submit under this category will not prevent consideration, but you should submit a statement acknowledging your Law Firm's willingness to abide by such appointment. Each Law Firm will be expected to accept PHFA appointments of SDB co-counsel and must agree 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 have a robust and defined work plan involving qualified SDBs. Information about the SDB requirements is included here for purposes of that submission.
As noted, PHFA will 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 has established a pool of specialized financial services counsel that includes several SDB firms which have been prequalified to serve as co-bond counsel.

**Small Diverse Business Participation Submission Requirements:**

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

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

1. Law Firms may 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. Law Firms should 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; or

2. **In the alternative and in addition to a specified SDB proposal, Law Firms must clearly state they will abide by appointments made by PHFA to achieve SDB participation.**
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 providing 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 generally 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 one paper copy.

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

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

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 expects to make its own appointments of SDBs in areas such as co-bond counsel to meet the goals in its financing programs.* All Law Firms are expected to have a meaningful and robust usage of the SDB in the contract.

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, 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.