

**DELAWARE STATE HOUSING AUTHORITY**  
**Request for Proposals**  
**For**  
**Bond Counsel Services**

**I. Overview**

The Delaware State Housing Authority (DSHA) seeks firms interested in providing legal services to fill the role of Bond Counsel. Bond Counsel will be expected to serve DSHA under a multi-year contract. DSHA will only consider proposals from experienced counsel with demonstrated expertise in the area of law related to Housing. This Request for Proposals (RFP) is issued pursuant to 31 Delaware Code, Sections 4014 and 4004(b)(1).

**II. Proposal Procedure**

**A. Proposal**

Proposals should be delivered to Delaware State Housing Authority (DSHA) by Wednesday, May 20, 2015, at the address below.

Brian K. Rossello, Housing Finance Manager  
Delaware State Housing Authority  
820 N. French Street  
Carvel State Building  
Wilmington, Delaware 19801

Proposals should not exceed 15 pages in length excluding the cover letter and resumes attached as an exhibit. Questions should be directed to Brian K. Rossello at (302) 577-5001.

All interested firms should submit an original and an electronic format of their proposals ("Proposal") to the contact person. Proposals may be mailed or hand-delivered for receipt no later than 3:00 p.m. EDT on May 20, 2015 ("Closing Date"). All timely Proposals become the property of DSHA. Requests for extension of the Closing Date will not be granted. Any Proposal, request for modification, or request for withdrawal received after 3:00 p.m. on the Closing Date is late and may not be considered. The Proposals may be delivered by Express Delivery (e.g. FedEx, UPS, etc.), U.S. Mail, or by hand.

Each Proposal must be accompanied by a transmittal letter, which briefly summarizes the proposing firm's interest in providing the required professional services.

## **B. Calendar**

The proposed calendar for the receipt and evaluation of proposals is outlined below:

	<u>Anticipated Date</u>
Deadline for Receipt of Proposal	May 20, 2015
Potential Interview Dates	June 2-4, 2105
Notification of Award	June 15, 2015

## **III. Scope of Services**

### **A. Bond Counsel**

Bond Counsel shall provide the following services concerning financial matters to DSHA on a continuing basis throughout the period of this engagement. Such legal services shall include, but not be limited to, rendering objective legal opinions as well as advice and research in the following areas:

1. Advising and assisting DSHA in developing and structuring procedures to issue tax-exempt bonds and taxable, mortgage revenue bonds, mortgage credit certificates, and any and all other debt obligations issued by DSHA in accordance with applicable laws, customs, and practices governing the issuance of DSHA debt, including but not limited to opinions on tax matters pertaining to use of proceeds of bonds, ability to refund previous bond issues, mortgage credit certificates, tax exemptions, arbitrage compliance, private activity use, and alternative financing vehicles.
2. Providing an objective legal opinion with respect to the validity and security of any debt obligations and whether and to what extent interest on the obligations is exempt from income and other taxation under federal and/or state laws and regulations.
3. Examining applicable law, preparing authorizing documents, consulting with parties to the transaction, reviewing proceedings, and performing additional duties as necessary to render an opinion.
4. Preparing legal documents for the financing process, including closing documents and transcripts.
5. Developing legal documentation for the execution of the Preliminary Official Statement, Official Statement, tax opinions on exemptions, redemption notices, notices of sale, resolutions of issuing officers, opinions on the sale, and other documents as related to bond activities.
6. Assistance with the selection of electronic bid providers for the electronic sale of the bonds, vendors for the printing and distribution of Preliminary Official Statements, and Official Statements depository trust and insurance providers.

7. Advise and provide opinion on issues pertaining to the use of private activity bond allocations and tax-exempt vehicles, such as 501 (c) (3) status.
8. Providing opinions on the use and execution of general obligation, revenue bonds, single- and multi-family revenue bonds, revenue anticipation notes, defeasances, current and advance refunding, commercial paper, and other alternative debt vehicles to facilitate housing services.
9. Preparing and filing all documents and materials necessary to comply with all applicable “continuing disclosure” requirements for transactions and coordinating activities with underwriters’ counsel, if any.
10. Providing continuing advice regarding any actions necessary to ensure that interest continues to be tax-exempt.
11. Participating, when requested, in activities associated with rating agency and/or bond insurer reviews.
12. Drafting and analyzing legislation related to the sale of obligations by DSHA or pertaining to the validity and security of the debt obligations.
13. Offering continuing legal advice and counsel, as needed, on issues related to the sale and the administration of DSHA obligations.
14. Providing other legal opinions as required.
15. Advising DSHA on debt management policy, as requested.

#### **IV. Requested Information**

##### **A. Cover Letter**

Proposals should include a cover letter that indicates the following:

- The proposer and key professionals do not have or anticipate a potential conflict of interest with the Issuer.
- The proposer meets and will continue to meet the insurance requirements for this engagement for the period specified – professional liability insurance, comprehensive general insurance, etc.
- Whether the firm or any member of the firm is currently disbarred from doing business with any government entity.
- Whether or not the firm is party to any pending or current litigation that might adversely affect its performance.
- The proposer agrees that during the term of the contract, key professionals will not represent anyone in a matter, proceeding, or lawsuit against the State of Delaware or any of its agencies or instrumentalities, except pursuant to a waiver secured in accordance with the Delaware Lawyers’ Rules of Professional Conduct. After termination of this contract, proposer agrees that key professionals will not represent anyone in a matter, proceeding, or lawsuit substantially related to this contract.

## **Qualifications and Key Personnel**

The proposer shall provide the identity and describe the qualifications of key personnel, team members, and any sub-contractors to be involved in the engagement, including their project assignments and the extent of their participation. Specifically, describe key personnel and project teams and any sub-contractors or consultants demonstrating capability and experience. Include any noteworthy areas of expertise in the pertinent work to be performed. Include resumes of all assigned personnel as an exhibit to this proposal.

### Minimum Qualifications:

1. Experience & Reputation
  - a. The law firm should be listed in the current editions of The Bond Buyer's Municipal Marketplace ("RED Book") as Bond Counsel and/ or Underwriters' Counsel; and
  - b. The law firm must designate a lead attorney licensed to practice law with five (5) or more years experience acting as Bond Counsel and/ or Underwriter's Counsel.
2. Professional Liability Insurance
  - a. The law firm will agree to maintain in full force and effect during the term of the Contract professional liability insurance in an aggregate amount of not less than \$2 Million. In order to satisfy this requirement, the law firm must include a statement in its proposal affirmatively responding to this requirement and include a certificate of insurance or other evidence, satisfactory to DSHA, of meeting this requirement or of having such coverage as of the date the Contract commences.

## **B. Experience and Past Performance**

The proposal should describe the work which best illustrates the proposer's experience and ability.

Describe the prior recent experience, 2010 to present, of key personnel and team members identified above as bond counsel. Specifically, provide a list of experience in each of the following areas for which at least one approving opinion has been provided:

Mortgage Revenue Bonds (Single family & Multifamily)  
Mortgage Credit Certificates  
Federally – funded or guaranteed loans  
Private Activity Bonds and comparable financing transactions  
501 (c) (3) or 63-20 organizations  
Multi-Family Conduit & Tax Exempt Note Financings  
To Be Announced (TBA) Transactions

Include State or authority projects and list the name of the issue, date, and amount of each transaction.

Also provide experience with other state and local Housing Finance agencies. Include the name, title, and contact information of at least one individual with whom the proposers worked.

In addition, provide any experience with Delaware real estate using a financing conduit.

The proposal should describe the similarities and differences between the experiences offered and DSHA. Describe any unique contribution your firm made to a specific transaction or the client's program, and quantify the benefit.

### **C. Capacity, Organization, and Management Approach**

The proposal should demonstrate the firm's capacity to successfully apply and commit itself to a project and complete required services. Specifically, describe the firm's organizational structure, staffing, and plan for coordination of activities. Describe how the project team would maintain a financing schedule, control costs, resolve resource constraints, and interact effectively with DSHA personnel. Proposals should specifically address the teamwork and division of responsibilities envisioned for underwriters, underwriters' counsel, financial advisors, and other capital financing team members.

### **D. Costs and Fees**

DSHA anticipates issuing smaller more frequent bond issues, and is seeking a way to manage legal fees that will be as compatible as possible to this approach. We ask that each proposal provide a per transaction total compensation structure along with a sliding scale fee structure based on per bond issued of, mortgage revenue bonds, refunding bonds, etc., and the preparation and review of disclosure documents. For work not related to a specific transaction, provide the firm's proposed hourly billing rate for each of the key professionals described. Identify all other charges and expenses for which you will seek reimbursement, the method of determining such reimbursements, and the frequency of billing. Note invoices will be subject to review and payment will be made no sooner than thirty (30) days following receipt and approval.

### **E. Conflicts of Interest**

1. In general, if a conflict of interest arises, the law firm should be willing to continue to represent DSHA and be in a position to inform other existing or potential clients that they must find representation elsewhere in particular situations. DSHA reserves the right, in its sole discretion, to select another approved law firm to work on a particular matter if a conflict is not resolved to its satisfaction.

2. Each law firm shall identify any conflicts of interest which may arise if the law firm serves as Bond Counsel. The law firm shall describe in its Proposal how it proposes to deal with such conflicts. Conflicts may arise not only from attorneys' names on the contract, but also from representation of parties involved in the transactions or other matters involving DSHA or the State of Delaware by any member of the firm, regardless of whether that attorney is in the same office or a different office of the firm.

#### **F. Other**

- Discuss any other considerations or factors that impact upon your ability to perform the tasks relevant to or associated with this proposal.
- Identify any portion of your proposal that contains confidential or proprietary information.
- Provide proof that you are currently authorized to do business in Delaware (i.e., a copy of a valid Delaware business license).
- Execute and attach to the proposal a completed Statement of Commitment and Non-Collusion (see attached sample for format).

### **V. EVALUATION OF PROPOSALS**

The selection committee shall evaluate the proposals. During the evaluation process the selection committee may, at its discretion, request any or all firms to make oral presentations or participate in a formal interview. Such presentation or interviews will provide firms with an opportunity to answer questions about a firm's Proposal. Not all firms may be asked to make an oral presentation or to attend an interview.

#### **A. Selection Criteria**

The selection of the firm to provide legal services will be based on an evaluation of the Proposals to determine which Proposal reflects the best value to DSHA, with technical factors generally being considered more important than cost of services. The selection of the firm to provide legal services will be based upon the following technical factors in descending order of importance.

1. Experience of the firm and the individual attorneys representing governmental entities as bond counsel in the issuance of governmental housing bonds and debt instruments;
2. Experience with or knowledge of the firm and individual attorneys representing governmental entities in each of the following areas:
  - Mortgage Revenue Bonds (Single family & Multifamily)
  - Mortgage Credit Certificates
  - Federally – funded or guaranteed
  - Private Activity Bonds or similar financings
  - 501 (c) (3) or 63-20 organizations
  - Multi-Family Conduit & Tax Exempt Note Financings
  - To Be Announced (TBA) Financings

3. Administrative structure of representation (i.e., proposed staffing assignments), soundness of approach to representation and understanding of the needs of DSHA;
4. Demonstrated ability to perform the services referenced in the RFP; and
5. References and recommendations of other clients.

## **B. Contract Negotiation**

DSHA intends on opening negotiations with the law firms that DSHA determines have a reasonable likelihood of being awarded a contract based on the proposals that are submitted. Negotiations will focus on any technical weaknesses or deficiencies in proposals as well as cost and pricing issues.

A written contract with each of the selected law firms will be required. Each contract must be approved by the Director of the Delaware State Housing Authority.

## **C. Contract Award**

DSHA reserves the right to award all, part, or none of this contract. DSHA intends to award contracts to more than one law firm if deemed appropriate and desirable.

## **Terms and Conditions**

1. DSHA's engagement of Bond Counsel is expected to be for a period of three (3) years, beginning with the execution of a formal contract. It is within the discretion of DSHA to shorten or extend such time period. The contract will provide for a maximum of two (2) one (1) year extensions after the initial three (3) year period, at the same terms and conditions.
2. Under no circumstances will DSHA be prohibited from performing legal work in-house or from engaging other outside counsel, should such action be deemed in the best interests of DSHA.
3. DSHA reserves the right to reject any or all proposals, the right, in its sole discretion, to accept the proposal(s) it considers most closely aligned with its interests, and the right to waive minor irregularities in the procedures. DSHA also reserves the right to reject all proposals and seek new proposals.
4. DSHA reserves the right to request clarification of information submitted and to request additional information from one or more respondents.
5. DSHA will not be liable for any costs incurred in the preparation of this proposal.
6. DSHA reserves the right to conduct oral interviews of any or all proposers prior to selection and will not be liable for costs incurred by the proposers in connection with such interview.