

**REQUEST FOR PROPOSALS**  
**FOR**  
**BOND/SECURITIES DISCLOSURE COUNSEL**

**I. BACKGROUND ON THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

**A. PURPOSE**

The Texas Department of Housing and Community Affairs (“TDHCA”), is a public and official governmental agency of the state, existing pursuant to Chapter 2306, Texas Government Code (the “Act”). One purpose of TDHCA is to provide for the housing needs of individuals and families of low, very low, and extremely low income and families of moderate income. Pursuant to the Act, TDHCA may issue bonds, notes, or other obligations to finance or refinance residential housing and multi-family developments and to refund bonds previously issued by Texas Housing Agency (the “Agency”), TDHCA, or certain other quasi-governmental issuers. The Act specifically provides that the revenue bonds of the Agency become revenue bonds of TDHCA.

**B. ORGANIZATION**

TDHCA is governed by an executive director employed by a seven-member board. The members of the board are appointed by the Governor upon the advice and consent of the Texas Senate for staggered six-year terms, with the terms of two or three members expiring on January 31 of each odd-numbered year. The board is responsible for authorizing the allocation of bonds by TDHCA and all other acts in connection therewith specified in the Act. The executive director is responsible for the overall administration of TDHCA and its programs and for employing its staff.

**C. BOND PROGRAMS.**

Single Family Housing Bond Program. TDHCA has established a Single Family Mortgage Revenue Bond Program pursuant to the Act for the purpose of assisting in financing the costs of acquisition of residences within the State of Texas by eligible borrowers. The program offers mortgage loans at competitive interest rates through the sale of tax-exempt mortgage revenue bonds. The guidelines adopted by TDHCA from time to time in connection with the program establish the eligibility of lenders to participate in the program, time limitations with respect to commitments for and originations of mortgage loans, the types of mortgage loans eligible for purchase by the servicer, the eligibility of mortgagors, the requirements for dwellings which secure mortgage loans, the fees which a mortgage lender may charge to originate a mortgage loan, the fees which a lending institution may charge for servicing a mortgage loan, as well as other aspects of the program.

Multi-Family Bond Program. The Multi-Family Bond Program finances below market loans to non-profit and for-profit developers of apartment projects serving moderate income persons and families that agree to set aside at least 20% of a project's unit for rental to very low and low income persons and families. In addition, at least 5% must be rented to persons with special needs. TDHCA funds the loans through the sale of tax-exempt and taxable mortgage revenue bonds.

## **II. SCOPE OF SERVICES.**

### **A. NATURE OF SERVICES REQUIRED.**

TDHCA anticipates the need for legal services in connection with the issuance of bonds at any time and from time to time during the term of the contract at the request of TDHCA. Bond/Securities Disclosure Counsel is expected to assign those attorneys and professionals employed by the firm who are best suited to appropriately respond to such requests in connection with the issuance of bonds and with ongoing compliance of any/all trust indentures and other documents and agreements integral to the issuance of such bonds. The firm will provide any such services as Bond/Securities Disclosure Counsel, which includes preparation of all Official Statements of TDHCA in connection with bond issues being sold into the public market.

### **B. TERMS OF AGREEMENT**

Subject to the approval of Bond/Securities Disclosure Counsel by the governing board of the TDHCA, and negotiation of an acceptable contract by TDHCA and such outside counsel, TDHCA will execute an agreement with Bond/Securities Disclosure Counsel for at least a one year term with optional extensions as required based on performance and on such other terms and conditions as may be acceptable to the parties subject to required approval of the Attorney General of Texas. Any such agreement shall provide that TDHCA will retain the right to terminate the contract for any reason and at any time upon the payment of fees and expenses then due and payable.

## **III. RFP INSTRUCTIONS**

### **A. PROPOSAL FORM AND FORMAT**

Four (4) copies of the proposal are requested and should be sent by registered mail or delivered in person to the attention of Mr. Timothy K. Irvine, Chief of Staff and General Counsel, Texas Department of Housing and Community Affairs, 221 East 11<sup>th</sup> Street, Austin, Texas 78701, no later than the deadline for submission of proposals specified below. The proposals must include each question or request for information, as specified herein, followed by the narrative answer in the standard format for interrogatories, limited to one side of a single 8 1/2" x 11" page. Supplemental information (such as firm brochure, annual reports or background material), if any, must be restricted to Appendices following the responses. The pages of the proposal

should be numbered sequentially with the name of the firm on each page. The proposal should be submitted in a loose-leaf binder.

**B. DEADLINE FOR SUBMISSION**

The deadline for submission in response to the Request for Proposals is **4:00 p.m.**, Central Daylight Saving Time, on **June 30, 2010**. No proposal will be accepted after the deadline.

**C. GENERAL INFORMATION**

TDHCA reserves the right to accept or reject any (or all) proposals submitted. The information contained in this proposal request is intended to serve only as a general description of the services desired by TDHCA, and TDHCA intends to use responses as a basis for further negotiation of specific project details with offerors. This request does not commit TDHCA to pay for any costs incurred prior to the execution of a contract and is subject to availability of funds. Issuance of this request for proposal in no way obligates TDHCA to award a contract or to pay any costs incurred in the preparation of a response.

**D. RELEASE OF INFORMATION**

Information submitted relative to this request for proposals shall not be released by TDHCA during the proposed evaluation process or prior to contract award. All information submitted to and retained by TDHCA becomes subject to disclosure under the Texas Public Information Act, unless an exception under such Act is applicable.

**E. PROPRIETARY INFORMATION**

If a firm does not desire proprietary information in the proposal to be disclosed under the Texas Public Information Act or otherwise, it is required to clearly identify (and segregate, if possible) all proprietary information in the proposal, which identification shall be submitted concurrently with the proposal. If such information is requested under the Texas Public Information Act, the firm will be notified and given an opportunity to present its position to the Attorney General of Texas, who shall make the statutory determination. If the firm fails to clearly identify proprietary information, it agrees, by the submission of a proposal, that those sections shall be deemed non-proprietary and made available upon public request after the contract is awarded.

**IV. REQUESTED INFORMATION**

Respondent must:

- A. Provide a general description of your law firm, including historical background, number and location of firm offices, number of attorneys and major areas of practice;
- B. Provide a general description of your firm's practice in the field of public finance, including the size and scope of the practice, the number of attorneys active in the practice and other resources of the firm relevant to the practice;

- C. Provide a complete list of bond issues for which the firm has acted as Bond/Securities Disclosure Counsel during the past five years; indicate, for each of the five years, the number and aggregate dollar amount of bond issues for which the firm acted as Bond/Securities Disclosure Counsel.
- D. Indicate subtotals for each of the following categories; state general obligation bonds, local general obligation bonds, state revenue bonds, and local revenue bonds; provide a description of the firm's practice in the field of housing finance, the number of attorneys active in the practice and other resources of the firm relevant to the practice; provide a listing of each single-family and multi-family housing bond issue handled by the firm as Bond/Securities Disclosure Counsel during the past ten years. For each bond issue, indicate the name of the issuer, the size of the bond issue and provide a capsule description of the type of transaction (e.g., nature of credit enhancement, tender option provisions or other unusual features); describe five innovative finance transactions in which the firm played a significant role, including at least three housing transactions; identify the individuals who will be assigned to the TDHCA account if the firm is selected as Bond/Securities Disclosure Counsel.
- E. Provide information regarding the background and experience of each individual, in particular their housing finance experience, if any, and designate the percentage of work for which each individual will be responsible; provide five public finance client references, preferably including at least two state agency clients; describe in detail the services that the firm normally provides as Bond/Securities Disclosure Counsel for a transaction and other matters not directly related to bond transactions in which the firm anticipates its services may be necessary.
- F. Explain the reasons why and the extent to which additional involvement may be necessary; discuss briefly the firm's views as to the major problems to be faced by the TDHCA during the next three years; and discuss the role of Bond/Securities Disclosure Counsel in helping to find solutions to those problems.
- G. Compensation. As required by the outside counsel contract provided by the Office of the Attorney General of Texas, your firm's proposed method of charging for legal services shall be submitted to the Agency on a monthly basis and shall provide a detailed accounting of the time charged and the respective charge for each increment of time and contain detail of specific expenses allowed by the Attorney General of Texas and set by the State of Texas Comptroller of Public Accounts. All proposals must include a statement that they are valid for the duration of the contract.
- H. Diversity within Organization. Each submission should include information relevant to participation in the firm by racial minorities, women and others who would otherwise be eligible, if sought individually, to be designated as a Historically Underutilized Business.

- I. Impact on the Marketplace. Each proposal should include a discussion of the strengths and weaknesses of changing or keeping counsel and its impact both positive and negative and changing Disclosure Counsel at this time. For purposes of this discussion, the responder should assume that current counsel has been in place for more than ten years. The discussion should include how the current market (as of date of release of RFP and for the initial one year term) would be impacted by a change.

**V. REVIEW.**

- A. In accordance with law, TDHCA will make its selection based upon its perception of the need for Bond/Securities Disclosure Counsel, the demonstrated competence, experience, knowledge, and qualifications, on the reasonableness of the proposed fee for the services to be performed. By this Request for Proposals, however, TDHCA has not committed itself to employ Bond/Securities Disclosure Counsel for any or all of the above-described matters, nor does the suggested scope of services or term of agreement require that Bond/Securities Disclosure Counsel be employed for any of those purposes. TDHCA reserves the right to make those decisions after receipt of responses, and TDHCA's decision on these matters is final.
- B. TDHCA reserves the right to negotiate all elements which comprise the proposal of the firm(s) to ensure that the best possible consideration be afforded to all concerned. TDHCA reserves the right to reject any and all proposals and to resolicit in such an event. TDHCA permits proposals utilizing joint ventures of any two or more firms, if appropriate. TDHCA may sever the multi family and single family bond transactions and award to different counsels.
- C. Conflict of Interest. TDHCA will not contract with any firm in which the provisions of conflict of interest, as set out in the 2009 Outside Counsel Contract provided by the Attorney General of Texas, are not met, as follows:

**8.12 CONFLICT OF INTEREST.**

If the legal services to be performed by an attorney pursuant to this Agreement involve representation of Agency in a contested matter, Outside Counsel represents that Outside Counsel, and such attorney, does not, and shall not during the term hereof, represent a plaintiff in a proceeding seeking monetary damages from the State of Texas or any of its agencies.

Outside Counsel represents that it does not now represent, and has not for a six-month period preceding this Agreement represented, a client before Agency; furthermore, Outside Counsel represents that it will not for a six-month period following the termination of this Agreement represent a client before Agency.

**VI. ADDITIONAL INFORMATION.**

For additional information concerning the requirements of this request for proposals, please contact Mr. Timothy K. Irvine, Chief of Staff and General Counsel, at (512) 475-3948. Communication with any member of the Board of Directors, the Executive Director, or TDHCA staff other than Mr. Irvine, or his assistant, concerning any matter relating to this request for proposals is grounds for immediate disqualification.

Issued in Austin, Texas on \_\_\_\_\_

*Michael Gerber*

Michael Gerber, Executive Director