

**BREVARD COUNTY HOUSING FINANCE AUTHORITY  
REQUEST FOR PROPOSALS  
FOR  
BOND COUNSEL AND DISCLOSURE COUNSEL**

**I. Background Information:** The Brevard County Housing Finance Authority is requesting proposals from firms interested in serving as Bond Counsel or as Disclosure Counsel to the Authority.

The Brevard County Housing Finance Authority (the "BCHFA") established in 1979 under Part IV of Chapter 159, Florida Statutes and Brevard County Ordinance 79-09, hereby solicits written proposals from qualified firms in order to select a firm to serve as its Bond Counsel and a firm to serve as its Disclosure Counsel.

The BCHFA primarily uses tax exempt bond issues as its principal financing. From time to time the BCHFA may use its general funds for loans, credit enhancement or other purposes in order to provide single family affordable housing.

Since 2000, the BCHFA has issued five (5) single family bond issues totaling \$113,730,000, eight (8) new multifamily bond issues totaling \$70,316,450 and one (1) multifamily refunding issue totaling \$8,845,000. On September 14, 2012, the Authority entered an interlocal agreement with the Housing Finance Authority of Hillsborough County, Florida, pursuant to which its 2012 MBS Origination Program (aka TBA Program or Continuous Funding Program) is available within Brevard County. The purpose of the program is to provide financing for homes to persons and families whose income does not exceed certain limits and who might not otherwise be able to purchase a home. The program also provides mortgage credit certificates and down payment assistance secured by second mortgages held by the Authority.

The BCHFA's annual operating budget is approximately \$141,000. Yearly revenues are approximately \$311,000 and assets are approximately \$7.5 million.

The BCHFA has used the services of a Bond Counsel since 1980. The BCHFA has not previously retained Disclosure Counsel. The BCHFA has no staff. The BCHFA's counsel and financial advisor assist the BCHFA in the day to day administration of the Authority. The BCHFA does not guarantee any specific level of service and makes no representation or warranty as to any future level of service.

**II. Miscellaneous Terms and Conditions:**

1. Submission of Qualification Statements. Submissions are to be limited to a total of twenty (20) pages, not including a cover letter. Respondents must submit eight (8) copies and one electronic copy (on CD or flashdrive) of their proposal to BCHFA for receipt no later than 12:00 noon EST on May 9, 2019. Proposals shall also be submitted electronically.

Proposals should be addressed to the attention of:

Angela A. Abbott, Esquire  
4420 S. Washington Avenue  
Titusville, Florida 32780  
(321) 264-0334  
angelaabbott@cfl.rr.com

Qualified applicants must be listed in the most recent "Red Book", must have extensive housing, and federal and state tax experience, and show past experience in rendering such services in similar transactions,

including structuring single and multifamily Trust Indentures. Applicants for Disclosure Counsel must demonstrate experience providing similar services including drafting official statements and assistance in meeting continuing disclosure requirements. Past service in similar transactions to or for the Authority will be a consideration in the selection process.

Your proposal should be submitted with the understanding that it will form the basis for the Authority's acceptance of services to be rendered. The proposal, therefore, should be complete as to terms and conditions. A letter of engagement will be executed between the Authority and each of the firms selected.

The Authority anticipates selecting one firm to serve as Bond Counsel and one firm to serve as Disclosure Counsel for a minimum period of five (5) years with the option to renew for two additional one (1) year periods.

2. Review and Selection Process. All responsive proposals will be reviewed and evaluated by the Authority Members, Counsel, and Financial Advisor. BCHFA may, but is not required to, request one or more respondents to make oral presentations.

3. Expenses Relating to Proposals. BCHFA shall not be liable for any expenses incurred by respondents in replying to this Request for Proposal ("RFP").

4. Rejection and Negotiation. BCHFA reserves the right to reject any and all proposals submitted in response to this RFP, to enter into fee negotiations with one or more respondents to this RFP.

### **III. Scope of Services:**

#### **A. Bond Counsel**

1. Provide specialized legal advice regarding IRS Code as it applies to the Authority's bond financing activities and to the programs or projects funded with the proceeds of bonds (particularly with respect to the structure of proposed new issues of bonds, the integration of bond proceeds with Authority funds or other external funds (e.g., HOME, SHIP, CDBG, etc.), and the structure and operation of new programs relating to such bonds.
2. Prepare and submit the applications to the Division of Bond Finance of the State Board of Administration for approval of volume cap allocation for each BCHFA private activity bond issue.
3. Advise the Authority on the procedures, required approvals, filings and other legal issues relative to the issuance of bonds.
4. Prepare the Trust Indenture relating to each series of bonds, which document may be in the form of a Series Supplement for bonds issued on a parity basis under a master indenture or in the form of a separate, stand-alone "closed" indenture.
5. Prepare all applicable "Authorizing Resolutions" for consideration and adoption by the BCHFA and the Brevard County Board of Commissioners to authorize the financing team to go forward with the implementation of a particular proposed bond transaction by taking such actions as, among others, (i) reviewing and commenting on, and opinion on the applicable provisions of the related Disclosure Document, (ii) preparing and distributing program documents to prospective program participants, (iii) approving certain program parameters, (iv) approving program participants, etc.
6. Prepare the final Bond Resolution for consideration and adoption by the BCHFA and the Brevard County Board of Commissioners to (i) authorize the execution of the bond purchase agreement relating

to each series of bonds to be issued, (ii) authorize the execution of other documents required for closing, (iii) approve the final form of the related disclosure document, and (iv) generally authorize actions which must be taken incident to issuing the bonds.

7. Prepare validation pleadings, including proposed final judgments, as required by the Authority and Counsel.
8. Review and comment on any documents prepared by other members of the Authority's bond financing team relating to each bond issue, including, among others, the bond purchase agreement, program agreements, loan documents, disclosure document, continuing disclosure agreement, investment agreement bid specifications and bid procedures, investment agreements, etc.
9. Provide required Bond Counsel opinion relating to the tax exempt status of BCHFA bonds under applicable State and Federal Law, as well as, legal opinions attesting to the valid issuance of bonds under applicable State Law. Provide required tax opinions evidencing compliance of each new issue of bonds with applicable provisions of the IRS Code, as well as, the adequacy of Program documents and operating procedures/policies of the Authority to reasonably assure compliance with such Code provisions.
10. Assemble all closing transcript items and arrange for preparation of bound transcripts for distribution to each member of the Authority's bond financing team within ninety (90) days following the applicable closing date.
11. Prescribe the detailed procedures to be followed by the Authority's Financial Advisor or Senior Managing Underwriter in calculating the Bond Yield and Mortgage Yield associated with each issue of bonds and each new bond-financed loan program.
12. Review Bond/Mortgage Yield calculations for each new issue of bonds for the purpose of determining the extent to which calculations may be relied upon in preparing the Arbitrage Certificate for such bonds.
13. Prepare the Arbitrage Certificate relating to each new issue of bonds and deliver such Certificate prior to closing.
14. Review all financial feasibility studies and contracts for legal issues relating to bonds for any proposed bond issue and participate with Authority staff, the financial advisors and Counsel's office in the development of all financing programs.
15. Render opinions on such related matters as:
  - a. The applicability of particular provisions of federal and state securities laws.
  - b. The eligibility of the bonds for investment by various fiduciaries and other regulated investors.
  - c. The validity and enforceability of security agreements, indentures, and other documents related to the bonds and their security.
  - d. Bankruptcy laws regarding preferential transfer as related to payments made to bondholders, if applicable.

16. Assist in presenting information to bond rating organizations and bond insurers.
17. Assist the Authority in developing and implementing procedures for post issuance compliance, as requested.
18. Assist the Authority, its staff, Counsel and Financial Advisor in the development of new programs, and in the preparation of rules and regulations and other documentation necessary to implement such programs, whether such programs utilize tax exempt bonds, taxable bonds, or Authority funds.
19. Attend regular and special meetings of the Authority and any meeting of the County Commission, as deemed necessary by the Authority.
20. Perform such other work, as may be requested by the Authority, in connection with proposals received, special programs and general Authority needs.

#### **B. Disclosure Counsel**

1. Review all bond documents applying knowledge and experience of the firm with financings of the issuer or comparable issuers.
2. Prepare preliminary official statement and official statement for the sale of the Authority's bonds, advise and assist the Authority to assure that the information contained in the official statement is accurate and complete in all material respects.
3. Prepare or review the Authority's continuing disclosure agreement pursuant to Section 15c2-12 of the Securities Exchange Act of 1934.
4. Render to the Authority a 10(b)-5 opinion as to no material omissions or misstatements and either (a) render such opinion to the underwriter(s) of the bonds as well, or (b) consent to the underwriter's relying on such opinion.
5. Advise on disclosure matters with regard to the Authority's debt issuance.
6. Advise on matters of material event disclosures and related matters regarding secondary market disclosure.
7. Advise on changes in Federal and State legislation and regulation involving disclosure matters applicable to the Authority.

#### **IV. Proposal Response**

The proposers must provide a clear, concise statement of qualifications as it relates to the required scope of services, as well as the proposer's ability to comply with the requirements under this RFP.

Proposals cannot exceed twenty (20) pages, plus a cover letter.

Proposals must include the following information in sequence, to the questions listed below. Responses to each question must begin on a new page with the question restated at the top:

1. General Information. Provide a brief description your firm including, but not limited to the following:

- a. A description of the general capabilities of your firm, relating to total size and staffing, location of offices, research capability, resource facilities, professional staff and clerical support.
- b. Discuss your firm's experience within the last five years with the issuance of tax-exempt and taxable housing bonds, including a list or table summarizing all issues of such housing bonds for which the firm has served as bond, underwriter's or disclosure counsel. Include the following information:
  - Type of issue (single-family, multi-family).
  - Role (bond counsel or underwriter's counsel)
  - Size of issue.
  - Manner in which bonds were sold (competitive, negotiated or private placement).
  - Type of credit enhancement, if applicable.

2. Housing Experience and Firm Resources. Provide the following information with regard to your firm's experience, particularly as it relates to housing matters:

- a. Provide a list of all attorneys who would work for the Authority and their role. Describe their qualifications and experiences, specifically related to multi-family and single-family housing bonds.
- b. List the local and state housing finance authorities for which your firm has served as bond counsel or disclosure counsel both in the State of Florida and in other states.
- c. Describe your firm's involvement with bond validation procedures in circuit court and with appeals to the State of Florida Supreme Court.

3. Federal Tax Experience.

- a. Identify the attorney (or attorneys) in your firm who will address federal tax issues for Authority bond issues.
- b. Describe your Tax Counsel's experience with federal tax law questions related to housing.

4. Multi-Family Housing Experience.

- a. Describe your firm's involvement and familiarity with multi-family tax exempt and taxable housing bonds and 501(c)(3) tax-exempt housing bonds. Discuss any innovative housing transactions in which your firm was involved.
- b. Describe your firm's experience with multi-family housing bonds combined with low income housing tax credits, the HOME program or other state and federal subsidy programs.
- c. Describe your firm's experience serving as bond counsel in connection with refundings of multi-family mortgage revenue bond issues.
- d. Describe your firm's policy on serving as bond counsel for unrated and/or nonenhanced bond issues.

5. Single Family Experience.

- a. Describe your firm's involvement with complex and/or innovative single-family transactions.
- b. Describe your firm's experience with whole loan sales and the sale of GNMA and FNMA securities and/or options in conjunction with the defeasance of single-family bonds.
- c. Describe your firm's experience with “open” master indentures.

6. Legal Issues.

- a. State whether or not your firm has current malpractice insurance for tax-exempt securities issues. If the firm is insured, please state the following:
  - Name of carrier and policy number.
  - Effective date of insurance.
  - Policy exclusion, if any.
  - Current coverage amounts.
  - Attorneys covered.
- b. Provide all pertinent information on any and all litigation against the firm arising out of bond transactions or attorneys within the firm which is currently pending or which has been settled within the past five (5) years.
- c. Does your firm presently represent any clients that may present conflicts with representation of the Authority, such as trustee banks, credit enhancement providers, developers? Please list potential conflicts. If applicable, address your ability to resolve any conflicts.
- d. Provide a written statement which indicates whether the proposer is or is not under any investigation or review by any regulatory bodies. If your firm or any principal is, or has been, under an investigation or review, provide detailed information of the matters under review. Describe any arrangements, formal or informal, that the proposer has with any other party that might interfere with the proposer's ability to provide independent and unbiased legal advice and services under the RFP.

7. References. Provide three (3) references from housing bond issuers, including contract person and phone number. The references should be similar to the Authority, if possible.

8. Bond Counsel Fees. State the basis (formula) for your firm's proposed fees for serving as Bond Counsel on Single Family and Multifamily transactions and MCC programs, and as Disclosure Counsel. Specify your firm's fees and an estimate of the normal out-of-pocket expenses your firm would expect to incur in connection with financings and MCC programs by the Authority, and your firm's hourly rate for other services.

9. Qualifying Criteria. Describe how your firm satisfies the following criteria:

- a. Bond Counsel must be listed in The Daily Bond Buyer's most recent Directory of Municipal Bond Dealers in the section entitled “Municipal Bond Attorneys of the U.S.”.
- b. Bond Counsel must maintain an office in the State of Florida.

10. Miscellaneous. Briefly discuss any additional information that you would like the Authority to consider in evaluating your firm's proposal.

**V. Evaluation/Selection Process**

The method of award will be based on a ranking of responsive proposals based on the following:

- a. Demonstrated technical competence, expertise, innovative ability, accessibility and availability of the proposer in providing the services described herein.
- b. Experience in housing bond issues and related tax matters.
- c. Proposed fee structure that is the most advantageous to the Authority taking into consideration all of the other criteria set forth.

**VI. Proposal Procedures**

1. Public Entity Crimes. Florida Statutes, Section 287.133(3)(a) requires that prior to award of a contract for certain goods or services, a sworn statement shall be submitted. A copy of such statement is attached hereto for submission.

2. Insurance. Insurance coverage will be negotiated with the approved firm prior to that firm actually performing bond counsel services for the Authority and will be incorporated within the contract.

3. Public Access. The Authority is a political subdivision of the Government of the State of Florida. All documents and all other materials made or received in conjunction with this Response and Authority business will be subject to public disclosure requirements of Chapter 119, Florida Statutes. Copies of the end product(s) of the firm's work can be made available to the public upon request. Failure to allow public access to all documents, papers, letters or other materials subject to disclosure pursuant to Chapter 199, Florida Statutes, and made and received by the firm in conjunction with the contract may, in the discretion of the Authority, result in the cancellation of the contract.

4. Firms and their representatives are requested not to contact the BCHFA Members after the release of the RFP. Questions should be in writing and directed to Angela A. Abbott, Esq., Brevard County Housing Finance Authority, 4420 S. Washington Avenue, Titusville, Florida 32780 by 5:00 p.m., May 8, 2019.