

DAKOTA COUNTY COMMUNITY DEVELOPMENT AGENCY

REQUEST FOR PROPOSALS FOR LEGAL SERVICES

August 10, 2017

INTRODUCTION

The Dakota County Community Development Agency (DCCDA) is inviting interested and qualified law firms with experience representing housing authorities and economic development authorities and experience in the field of municipal finance and bond counsel services to submit written proposals to provide legal services for the DCCDA. The firm or firms selected will assist the DCCDA in matters related to legal services, concentrating on bond/issuer counsel and public finance, under terms to be negotiated for a minimum three year period subject to cancellation by either party during that term.

The DCCDA is looking for outside legal counsel to perform related legal services involving the following: tax increment financing districts, private activity bonds, mortgage revenue bonds, multifamily housing revenue bonds, low income housing tax credits (as sub-allocator), levy funds, federal HOME and CDBG (Community Development Block Grant) funds, related financing documents and development agreements, analysis of federal and state laws and regulations impacting affordable housing, redevelopment and economic development projects and programs, environmental liability and brownfield redevelopment services.

The firm and/or firms will be approved by the DCCDA Board of Commissioners and will work closely with the DCCDA staff.

DEFINITIONS

CDBG – Community Development Block Grant

DCCDA – Dakota County Community Development Agency

EDA – Economic Development Authority

HOME – Home Investment Partnerships Program

HTC – Housing Tax Credits

HRA – Housing and Redevelopment Authority

HUD – U.S. Department of Housing and Urban Development

MCC – Mortgage Credit Certificate

TIF – Tax Increment Financing

BACKGROUND

The DCCDA was established in 1971 as the Dakota County Housing and Redevelopment Authority, pursuant to special Minnesota State legislation, Minnesota Statute 383D.41. Originally named the Dakota County Housing and Redevelopment Authority (HRA), the government agency had all the powers and duties of a housing and redevelopment authority. In 1999, Statute 383D.41 was revised to allow the HRA to assume certain economic development authority powers granted by Dakota County (County). After December 31, 1999, the HRA became known as the CDA. The mission of the CDA is, “to improve the lives of Dakota County residents and enhance the economic vitality of communities through housing and community development”.

The DCCDA is a special-purpose unit of local government with the express limited purpose of serving the citizens of Dakota County, Minnesota through the administration of affordable housing and community development programs. The DCCDA owns and manages over 2,900 units of affordable rental housing for individuals, families and seniors, in addition to, serving over 2,600 households through state and federal rental assistance programs. In addition to developing, owning, and managing rental housing and providing rental assistance, the DCCDA also administers the federally funded CDBG program and HOME Partnership program on behalf of Dakota County. The DCCDA is also a sub-allocator of Housing Tax Credits and receives a direct allocation of private activity bonding authority, and is eligible for local HRA/EDA levy funds. These additional resources bring in varied and dedicated dollars into Dakota County to assist with the development of affordable housing, rehabilitation of housing stock, and other community development efforts throughout Dakota County.

The DCCDA also acts as an ongoing resource for information about housing and community development issues including housing market data, housing needs, and various government programs related to housing and community development.

The DCCDA operates under an eight member Board of Commissioners, which are appointed by the Dakota County Board of Commissioners. Seven of the eight commissioners represent a district that matches the boundaries of the County Commissioner districts. One commissioner is an “At-Large” position filled by a recipient of public housing benefits (resident of DCCDA public housing or participant in the Housing Choice Voucher program). Presently, the seven Dakota County Board of Commissioners have appointed themselves as members of the DCCDA Board of Commissioners. Once appointed, the Board of Commissioners exercises all oversight responsibilities including but not limited to matters of personnel, management, finance, and budget. The DCCDA Board of Commissioners is responsible for hiring the DCCDA Executive Director, whose responsibility is to carry out the policies of the board, to oversee the day-to-day operations of the DCCDA, and to hire the heads of the various departments. DCCDA Commissioners are appointed for a term of three years.

The DCCDA currently employs 77 full-time equivalent employees and 79 part-time employees (which are mostly resident caretakers residing in CDA owned housing). The majority of full-time equivalent employees are housed at the Eagan office building located at 1228 Town Centre Drive. The DCCDA Executive Director reports directly to the DCCDA Board of Commissioners and oversees the six departments – Administration, Community & Economic Development, Finance, Housing Assistance,

Housing Development, and Property Management. Staff who work with this requested legal counsel are primarily in the Community & Economic Development and Housing Development departments.

FINANCIAL STATUS

The DCCDA is considered to be a discretely presented component unit of Dakota County, Minnesota, as the Dakota County Board of Commissioners appoints the DCCDA Board of Commissioners and the County has a potential financial obligation relating to its general obligation pledge on \$106,940,000 of outstanding housing development bonds issued by the DCCDA to finance the construction of senior housing developments. These bonds are also secured by the pooled rent receipts of the underlying developments and by other pledged revenue sources, including the DCCDA property tax levy. The County has never incurred a financial obligation on these bond issues and the rents, and other revenue sources that secure these bonds are considered sufficient to make current and future debt service payments.

The DCCDA has issued bonds on behalf of both our own projects and on behalf of other entities. The DCCDA has issued certain limited-obligation revenue bonds, including:

- 1) mortgage revenue bonds issued to provide funding for first time homebuyer loans (first issuance done in 1983);
- 2) multifamily housing revenue bonds issued to provide funds to finance specific multifamily rental housing projects;
- 3) industrial redevelopment revenue bonds issued to assist manufacturing companies in financing new facilities, structural improvements and expansions, and new equipment;
- 4) essential function bonds to finance facilities used by the general public; and
- 5) 501(c)3 bonds issued to finance specific rental housing projects developed by nonprofit organizations.

This debt is secured by the property financed and is payable solely from payments received on the underlying loans. The DCCDA is not obligated in any manner for repayment of this debt accordingly, it is not reported as liabilities in the accompanying financial statements. The aggregate amount of all outstanding conduit debt obligations at June 30, 2016 was \$276,184,308.

Tax Exempt Housing Bond Allocation

The DCCDA receives an annual entitlement allocation of private activity bonding authority from the State of Minnesota. The DCCDA within its sole discretion will determine (a) whether it will use any of its entitlement allocation for multifamily bonds or single family bonds. In 2017, the DCCDA annual volume cap allocation was \$24,834,988. In connection with the issuance of private activity bonds that

receive an allocation of volume cap, the developer may be eligible for the 4% housing tax credit allocation.

Low Income Housing Tax Credits (as Sub-Allocator)

The DCCDA is a designated sub-allocating agency of Low Income Housing Tax Credits (HTC) by the Minnesota State legislature, per MN Statute 474A.03. Federal law requires the DCCDA to adopt a Qualified Allocation Plan, which explains the guidelines and methods for allocating tax credits. Allocation of HTC will be made in accordance with the Qualified Allocation Plan’s threshold requirements and then ranked based upon selection criteria. The DCCDA has the authority to allocate both 9% HTC and 4% HTC. The DCCDA is authorized to allocate \$890,312 of 2018 9% tax credits with applications due annually at the same timeframe as Minnesota Housing.

Ehlers Inc. is currently under contract with the DCCDA as its Financial Advisor to assist with the creation and management of TIF districts. Springsted Inc. is also currently under contract with the DCCDA for Municipal Advisor Services and assists with the issuance of bonds.

DCCDA financial reports are available online at www.dakotacda.org.

CURRENT LEGAL REPRESENTATION

DCCDA currently has agreements with several legal counsel to support the wide variety of needs for this type of organization. Below are legal services that are currently being met by other legal partners and **not** included in this Request For Proposals.

The Dakota County Attorney’s Office provides the following General Counsel services:

- Employment law
- Open Meeting law, data practices, records retention and privacy issues
- Real estate
- Public bidding
- Joint powers agreements, contracts, and other legal agreements

Angela Christy from Faegre Baker Daniels law firm, is the DCCDA representative and provider of the following legal services:

- General Partner counsel when the DCCDA is the general partner in a LLC, LLP, LP, or other partnership for the opportunity of building affordable housing

Mary Dobbins, Landrum Dobbins law firm, is the DCCDA legal representative and provider of the following legal services:

- Public housing
- Unlawful detainers pertaining to the DCCDA owned properties
- Appellate law, especially pertaining to the Section 8 Housing Choice Voucher program
- Property Management

The DCCDA is seeking proposals for specific types of legal services (beginning on page 6) but may at times be asked to work with our other legal representatives on issues that overlap.

GENERAL INSTRUCTIONS

Responses must provide complete information as described in this request. Questions about this RFP may be made to Kaili Braa, Administrative/Communications Coordinator, kbraa@dakotacda.state.mn.us or 651-675-4432 by Friday, August 18, 2017 at 4:30pm. Written responses to the questions will be available to all potential responders.

An electronic copy and one hard copy shall be submitted no later than 4:30 p.m. on Tuesday, August 29, 2017 to Kaili Braa and to the address below. The hard copy proposal must be bound by three ring binders and tabbed per the instructions under “required proposal elements” beginning on page 8. Proposals shall be sent to:

Legal RFP c/o Dakota County CDA
Attn: Kaili Braa
1228 Town Centre Drive
Eagan, MN 55123

CONDITIONS REGARDING PROCESS

The DCCDA will not reimburse any expenses incurred by the firm submitting responses, including but not limited to, expenses associated with the preparation and submission of the response and attendance at interviews.

The DCCDA reserves the right to reject any and all proposals, to request additional information from any or all firms, and to suggest modifications to the terms and conditions that are offered by a firm.

The DCCDA reserves the right to select and enter into agreements with multiple firms for a combination of the services requested in this RFP.

TYPES OF SERVICE AREAS NEEDED

The DCCDA will consider proposals for each of the service areas, separately or any combination of service areas or all service areas listed.

Each proposal should begin with a list of which service areas are being proposed and the submission must contain the required proposal elements for **each** service area listed under Legal Services Requirements, for the service areas the responder is proposing to provide the DCCDA.

REQUESTED LEGAL SERVICE AREAS

To follow are the primary responsibilities for each service area:

1. **Bond and Issuer's Counsel.** Bond and Issuer's counsel services pertaining to the issuance of the full spectrum of taxable and tax exempt bonds as regulated by state and federal law pertaining to housing authority and economic development authority activities, including but not limited to:
 - a. Assist in planning the financing and structuring of the bond issue and, where appropriate, preparing enabling legislation,
 - b. Negotiate, prepare or supervise the bond proceedings, including documents necessary or appropriate to the authorization, issuance, sale, bond opinion, delivery of bonds and prepare schedules relating to the issuance of bonds;
 - c. Assist in the various aspects of preparing the official statement or other disclosure document to be disseminated in connection with the sale of the bonds;
 - d. Prepare, review and obtain from governmental authorities such approvals, rulings, permissions, and exemptions as bond counsel determines are necessary or appropriate with respect to the issue;
 - e. Prepare and review all necessary closing documents and assemble transcripts concerning all proceedings taken in connection with the issuance and sale of the bonds;
 - f. Render opinions on such related matters as:
 - i. The applicability of particular provisions of federal and state securities laws;
 - ii. The applicability of tax law provisions governing estate and gift taxation;
 - iii. The eligibility of the bonds for investment by various fiduciaries and other regulated investors;
 - iv. The status of the bonds and regulated obligations under laws relating to creditor's rights; and
 - v. The validity and enforceability of securing agreements, indentures, and other documents related to the bonds and their security
 - g. Assist in presenting information to bond rating organizations and bond issuers;

- h. Advise on federal and state tax law matters and bond allocation;
- i. Advise in negotiating bond purchase agreements with underwriters;
- j. Provide rebate/arbitrage services for IRS reporting purposes as necessary;
- k. As requested, consult and participate with other DCCDA finance team members, represent DCCDA on issues related to regulatory compliance and bond allocation, participate in public forums, DCCDA meetings, as bond and Issuer's counsel to explain legal aspects of financing; and
- l. Assist in other specific activities related to the bonds.

In addition, responders must be well versed in mortgage credit certificate (MCC) regulation and have the capacity to assist in structuring MCC programs and providing the necessary notifications and documentation for MCC programs.

2. Public finance law specifically including preparation of Redevelopment Plans, Project Areas and Tax Increment Financing Plans, tax abatement programs, housing finance programs, special tax levy and other typical finance tools. Draft tax increment financing plans, agreements, resolutions, and related work to create tax increment financing districts. Review and preparation of multifamily financing documents utilizing DCCDA's array of housing finance tools, including but not limited to financing and development agreements and contracts.

Must be knowledgeable in both multi-family and single family financing programs and tools, including mortgage regulations. Responders must have the capacity to review mortgage documents and processes to ensure they meet current statutory standards and to respond to general mortgage industry related questions.

3. Low Income Housing Tax Credits (Sub-allocator). Ongoing advice and consultation on Low Income Housing Tax Credit program representing the DCCDA as a sub-allocator, including, but not limited to:
 - a. Review documents and advise DCCDA regarding adoption of the annual Qualified Allocation Plan and Program Compliance Manual, while also drafting and reviewing board resolutions, ensuring compliance with public notice and hearing requirements, and advising DCCDA regarding changes to policies and procedures that may be appropriate in response to changes in the laws applicable to HTC allocation;
 - b. Review developer tax credit applications and provide comments regarding adequacy of documentation, satisfaction of threshold requirements, and scoring;
 - c. Prepare documents related to the reservation/commitment of credits including board resolutions and deliver fully executed reservation/commitment letters to the DCCDA;

- d. Review all carryover applications and provide comments regarding adequacy of documentation and satisfaction of the carryover requirements, and deliver fully executed carryover documents to DCCDA;
 - e. Provide advice and document preparation with respect to final allocations. Review Final Allocation (8609) Application, prepare 8609 forms for execution and issuance by DCCDA;
 - f. Provide advice regarding compliance monitoring obligations and contractual agreements related to monitoring services and other legal matters.
4. Ongoing advice and consultation on redevelopment efforts, including environmental laws.
 - a. Knowledge of environmental laws pertaining to polluted properties, state and federal programs, liability matters.
 - b. Provide advice on environmental remediation, brownfield redevelopment, and legal issues.
 5. Ongoing advice and consultation on the Fair Housing Law and Minnesota Human Rights Act.
 6. Research and analysis of federal and state laws and regulations impacting housing, redevelopment and economic development projects and programs.
 7. As needed, assistance with drafting of joint powers agreements, sub-recipient agreements, contracts, or other legal agreements.

REQUIRED PROPOSED ELEMENTS

All responders must provide information for all tabs. Please note that Tabs #2, #4, and #7 require a separate response for **each service area for which you would like your firm to be considered**.

- Tab 1: Firm Description. Describe organizational structure and size. Describe whether the firm is local, regional, national, or international in operation. Describe location of the office from which the work is to be done and the number of professional staff at that location. Include a description of the range of activities performed at that office. In addition:
 - Describe the nature of the law firm's practice. Describe why the firm is qualified to provide the services requested by the DCCDA.
 - Include a description of the firm's affirmative action plan for employment of minority persons, women, and disabled persons and actions that have been taken to ensure that all employees are treated equally with respect to hiring, training, rates of pay and other forms of compensation.

- Summarize the firm’s procedure and policy for addressing conflicts of interest or appearances of conflicts of interest. Disclose all relationships which may raise questions about conflicts of interest or concerns about loyalty to DCCDA. If obligations of confidentiality prevent full disclosure, indicate if perceived conflicts may exist.
- **Tab 2: Capacity and Training.** Describe the overall capabilities, qualifications, training, and areas of expertise for each of the principals, partners, and associates of the law firm who will serve the DCCDA **for each service area for which you would like your firm to be considered.** Include any proposed staffing changes should the DCCDA’s legal services contract be awarded. Please include the information below:
 - Identify the individual(s) who will be designated to serve the DCCDA in each service area including the length of employment for each person, and his/her area of specialization. Additionally, identify personnel who will handle litigation matters.
 - For each identified individual, a description of all instances of discipline against that attorney by the official disciplinary body of any jurisdiction during the preceding five years. This includes all disciplinary complaints and matters which resulted in the issuance of any public sanction, but not limited to, warnings, admonitions, reprimands, and suspensions.
 - Include the legal training and number of years of practice, include date of admission to the Minnesota Bar Association, number of years of municipal, housing authority or other local public sector law practice as a full-time local government attorney and/or in a private law officer specializing in local government.
 - Identify relevant professional affiliations, including recent recognition or awards.
 - Describe how the firm will manage the volume of DCCDA work so that the DCCDA can operate in an effective and efficient manner.
 - Describe office staffing, all permanent employees, general duties, and work schedules.
 - Describe the firm’s procedures for providing continuing uninterrupted quality service if staffing changes or if the requested scope of services is significantly increased.
- **Tab 3: Litigation.** If the firm or any of the attorneys employed by the firm, have ever been sued by cities or other clients for malpractice, been the subject of complaints filed with the State Bar Association, or had discipline imposed by the State Bar Association, please provide information about the nature of the incident, the dates of when the matter began and concluded, and the results of the situation. This includes pending claims, claims in which a final judgement was entered and claims in which a settlement was paid.

- Tab 4: Demonstrated Experience. **For each service area for which you would like your firm to be considered**, provide, at minimum, information on three relevant projects, cases, and/or work products that directly relate to the DCCDA programs that demonstrate the skills, knowledge and capacity to represent the DCCDA.
- Tab 5: Public Sector and Relevant Experience. List all public and relevant clients for which the firm currently provides services under a fee for services basis or on a retainer basis. Identify any foreseeable or potential conflicts of interest both public and private that could result from such representation and the manner in which you would propose to resolve such conflicts.
- Tab 6: Professional References. Provide three professional references for the partner assigned to the DCCDA, including addresses and work telephone numbers. References should be currently employed public agency officials or agents.
- Tab 7: Cost for services. Provide the pricing schedule proposed to charge the DCCDA **for each service area for which you would like your firm to be considered**. Describe how the firm intends to charge legal services. The DCCDA will not entertain proposals that have retainer charges.
 - The method of determining fees (e.g. hourly charges, fixed fee). Alternate methods may be submitted.
 - Provide the method and rate for all partners, associates and paralegals or other employee classifications that will be assigned to the DCCDA.
 - Any not-to-exceed amount, to be charged for professional fees under each method or alternate method designated.
 - Identify the minimum increment of time billed for each service including phone calls, correspondence and personal conferences.
 - Indicate all other costs and reimbursables including travel (per mile), telephone, printing, photocopying, etc.
- Tab 8: Malpractice Insurance. Provide the level of malpractice insurance carried, including the deductible amount, to cover errors and omissions, improper judgements, or negligence.

EVALUATION PROCESS

Proposals will initially be screened and evaluated by a review team comprised of:

- Kari Gill, DCCDA Executive Deputy Director
- Lisa Alfson, DCCDA Director of Community & Economic Development
- Katherine Kugel, DCCDA Housing Finance Program Coordinator
- Karly Schoeman, DCCDA Housing Finance Program Coordinator

After the initial screening, the DCCDA Executive Director and DCCDA Finance Director will receive an overview and recommendations for next steps from the Review Team. Top candidates may be interviewed by the Review Team. DCCDA staff will provide a recommendation to the DCCDA Board of Commissioners per their approval.

The criteria for evaluating the proposals are listed below in order of importance and weight given to them in evaluating each proposal:

1. Demonstrated depth and breadth of firm experience, expertise of the proposal team and lead attorney(s) in the practice of law proposed, as evidenced in the proposal.
2. Ability to staff and perform legal services promptly and in a manner that permits the DCCDA to operate in an effective and efficient manner.
3. Cost of services.
4. Lack of current or potential conflicts of interest with clients who do business with the DCCDA.
5. Outcome reference checks and oral interviews (if conducted) that demonstrate the capabilities for the area of law proposed.

PUBLIC RECORD/CONFIDENTIALITY

Information supplied by each firm to the DCCDA is subject to the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13 (the "Act"). Responses submitted become a matter of public record as set forth therein. Such information shall become public unless it falls within one of the exceptions in the Act. If the firm believes any non-public information will be supplied to this RFP, the firm shall take reasonable steps to identify and provide reasonable justification to the DCCDA regarding which data, if any falls within the exceptions to the Act. However, the firm agrees as a condition of submitting a response that the DCCDA will not be held liable or accountable for any loss or damage which may result from a breach of confidentiality as may be related to the response submitted.

The DCCDA will not consider any cost information and references submitted by the firm to be non-public, confidential or trade secret material. Simply stating that the document is confidential or making a blanket claim of confidentiality without proper supporting justification is also not a valid reason to declare the document confidential.