



**Legal Advisory Services: Corporate Governance and Tax Structure
Request for Proposals**

PROCUREMENT TIMELINE

Monday 10/26, 10am: first-stage submissions due
Monday 11/2: interviews
Wednesday 11/4: final interviews, if held
Friday 11/6: decisions circulated to the firms interviewed
Monday 11/9: tentative awardee start date

Note: all times are Eastern Time

Email proposals to: Alex Merchant, Vice President, Strategic Operations (amerchant@nychdc.com) and Melissa Barkan, Special Counsel (mbarkan@nychdc.com).

Please hold availability on Monday, November 2 for interviews and on Wednesday, November 4 for a final interview, if one is held. An interview is required to be selected.

EXECUTIVE SUMMARY

The New York City Housing Development Corporation (HDC) is the nation's largest municipal housing finance agency charged with helping to finance the creation and preservation of affordable housing for low, moderate and middle-income New Yorkers. HDC is currently partnering with the New York City Economic Development Corporation (EDC) and the New York City Department of Housing Preservation and Development (HPD) to create a City-backed insurance program to reduce property and liability insurance costs for income-restricted affordable and rent regulated housing.

In June, EDC issued a public Request for Expressions of Interest (RFEI) to identify a firm to structure and operate this new insurance program. Responses are due on November 2.

HDC invites you to provide your hourly rates and a good faith estimate of the hours you anticipate the proposed work will take, for legal advisory services supporting the creation of the City-backed insurance program, specifically on questions of corporate governance and tax structure.

The Program is likely to involve two entities. The first is a regulated insurance company, which HDC expects the firm selected through the RFEI to create and operate. The second is a separate ownership entity that would hold governance control over the insurance company. The legal work sought under this RFP is focused on the governance entity and on its interconnection with the risk-bearing entity. If the structure is deemed suitable, HDC may ask the selected firm to complete the legal filings and other work required to establish it.

The engagement supports the City's governance goals as stated in the RFEI:

- First, the Program should stay within its founding mandate: it should not be able to drift into covering risks outside its core scope, dilute its underwriting standards, or depart from its founding parameters.
- Second, the Program should be bound to transparency and discipline from inception, to protect its creditworthiness and make any departure from its mandate visible.
- Third, the City's investment should be insulated: held with independent oversight, restricted to Program purposes as determined by the City, limited in its downside exposure in any policy year, and released only while the Program adheres to its underwriting and reserving standards, helping ensure long-term financial sustainability.

RFEI respondents will put forth proposals to achieve these goals, but the City wants to develop its own views on the following related issues of governance: (1) corporate and legal structure; (2) tax implications of different structures; (3) ownership; (4) representation of the City's investment in governance; and (5) binding protections for Program underwriting discipline.

These goals and questions are the primary focus of this engagement. HDC is interested in a legal review of possible structures that may satisfy these goals, a comparison to alternative structures that could achieve the same goals with lower cost, less complexity, or less legal risk, and a set of recommendations. The RFEI likewise remains open, and the firm's advice will be used to evaluate every proposed structure against the goals, not to predetermine the outcome.

SCOPE OF THE ENGAGEMENT

The engagement is scoped in two parts, so that HDC can commit to the initial work and decide on the balance once the structure is settled.

The initial scope covers:

- The corporate form the ownership entity should take, including the options available under the New York Not-for-Profit Corporation Law and the New York Public Authorities Law
- Tax treatment of the structure at the federal, State, and local levels

A potential phase two, which HDC may engage the same firm to perform, covers:

- Formation of the ownership entity, including its organizational documents, filings, and registrations
- An irrevocable trust to hold the City's capital and release it against objective conditions, including drafting the trust instrument
- Documentation of the oversight commitments that accompany the trust

HDC will issue a detailed scope, including the structures under review and the specific questions to be answered, to firms that advance to the second stage of this process.

SUBMISSION REQUIREMENTS AND EVALUATION

This RFP is run in two stages. The first stage asks only for qualifications, availability, and general pricing, so that firms can express interest without significant administrative burden. Firms that advance receive the detailed scope and are invited to interview, where the substantive discussion takes place.

First stage: qualifications, availability, and general pricing

All RFP respondents must submit one searchable PDF of no more than two pages, covering the following in order. The appendices are excluded from the page limit.

1. **Qualifications.** Relevant experience of the firm and of the specific lawyers who would carry the work, addressed to the areas listed under Scope of the Engagement. Name the lead partner and the associates who would staff the engagement, and give one or two comparable matters for each area.
2. **Availability.** The earliest date the firm can begin, and the availability of the named lawyers over the engagement period. HDC intends to begin work immediately upon selection.
3. **General pricing.** Hourly rates for partners and associates, and for any other timekeeper class the firm would use, together with any public-sector discount from standard rates. A government or public-sector discount is a factor in HDC's review. Provide a good faith estimate of the hours you anticipate the proposed work will take, given separately for the initial scope and potential phase two.

Second stage: interviews

Firms that advance will receive an informational document describing the structures under review and the questions HDC needs answered. That document is background for the interview rather than a request for a further written submission. The interview will cover:

- The firm's approach to each workstream, and its reaction to the structures under review
- How the firm would schedule the work, and the dependencies it sees
- The basis for the hours estimate given at the first stage, and any revision to it once the firm has seen the detailed scope
- The firm's form of engagement agreement, and any of the points under Form of engagement it cannot accommodate

HDC may hold a final interview with the firms still under consideration, and may ask those firms for a not-to-exceed amount for the initial scope. HDC will select the firm following the interviews.

Basis of award

HDC will evaluate on relevant experience with comparable structures, the qualifications and committed time of the named lawyers, the quality of the interview, price, availability, and conflicts. HDC will view favorably firms that offer a government or public-sector discount from their standard rates.

Areas of concern

Proposals may be flagged for additional diligence and may receive a lower score if they include:

- Undisclosed or unmanaged relationships with RFEI respondents, insurers, reinsurers, brokers, or captive managers active in this market
- Staffing that names senior lawyers who will not carry the work
- Availability that cannot support an immediate start

Mandatory qualifications

RFP respondents must demonstrate experience in the following:

- Forming and advising not-for-profit corporations under New York law, including entities created or sponsored by government
- Federal tax treatment of governmental and quasi-governmental entities, and of tax-exempt organizations that hold taxable subsidiaries
- Government-sponsored, public entity, or other public-purpose insurance entities and their regulators
- Drafting trusts or comparable instruments in which funding is released against objective conditions
- Public-sector or quasi-public clients

Commitment of specific personnel

RFP respondents must identify the lead partner, the associates, and any subcontracted or associated counsel who would be assigned to this engagement. HDC expects a firm commitment that these individuals will work on this engagement for its entire duration.

APPENDICES

All appendices are submitted with the first-stage submission and are excluded from the two-page limit.

Appendix A: Conflict-of-interest disclosure

Provide responses for the RFP respondent and all subcontractors or associated counsel. If the answer is “yes” to any question, please describe.

1. Do you or any of your employees have any other employment, relationship, or situation (including any relationship with HDC) that may create a conflict of interest if your firm were selected? If yes, describe; if no, affirmatively state that no such relationship exists.
2. Identify any representation you are aware of that could create a conflict, including of any insurer, reinsurer, broker, managing general agent, captive manager, or fronting carrier active in the New York affordable housing market.
3. Do you or any affiliate expect to seek any compensated role in the Program other than the legal advisory role described in this RFP?
4. Describe the firewalls, personnel restrictions, and information controls you would apply to manage any relationship disclosed above.

HDC shall have the right, in their sole discretion, to determine whether a conflict of interest exists, whether proposed mitigation measures are adequate, and whether a respondent may be selected.

Appendix B: resumes of each lawyer who would be assigned to the engagement

Appendix C: compliance, workforce, and policy requirements, covering equal employment and the firm's most recent Employer Information Report EEO-1; participation of businesses certified by the New York City Department of Small Business Services as women or minority owned; the firm's New York City location and corporate citizenship; and a completed Doing Business Data Form under Local Law 34 of 2007

Appendix D: the firm's form of engagement agreement for HDC's review

ACKNOWLEDGEMENT

GENERAL PROCUREMENT TERMS AND CONDITIONS

The issuance of this RFP, and the submission of a proposal by the firm or the acceptance of such proposal by HDC, does not obligate HDC in any manner whatsoever. Legal obligations will only arise upon the execution of formal agreements by HDC and the firm selected to render services described herein.

HDC reserves the right to amend, modify, postpone or withdraw this RFP; to waive any requirement of this RFP; to require supplemental statements and information from proposing entities, to accept or reject any or all proposals received as a result of this RFP; to extend the deadline for submission of proposals; to negotiate with any proposing entity which responds to this RFP; to hold discussions with any proposing entity; to divide the scope among more than one firm; and to correct deficient proposals which do not completely conform to the instructions given in this RFP. HDC may exercise such rights at any time without notice and without liability to any proposing entity or other parties for their expenses incurred in preparation of the proposal. In its review, HDC may accept a proposal but require modification or negotiation of scope. Although discussions may be conducted with proposing entities submitting acceptable proposals, awards may be made without discussion.

The scope of services described in this RFP provide the most current and accurate descriptions of services sought by HDC. However, at the time contracts are executed, programmatic changes may result in changes to the scope of services.

All documents presented in response to this RFP will become the property of HDC. The Corporation is subject to the New York State Freedom of Information Laws (FOIL) and as such HDC shall release all records subject to FOIL without notice or consent of responder.

All work by the RFP respondent and its subcontractors must be performed within the United States.

CONTRACTUAL TERMS AND CONDITIONS

This section sets forth the contractual terms and conditions governing the engagement. By submitting a proposal, respondents agree to comply with these requirements, which will be incorporated into the final agreement with the selected firm.

Form of engagement

HDC expects the selected firm to provide its own form of engagement agreement for HDC's review and negotiation. HDC will want that agreement to address the points below, and firms should note in the first-stage submission any they cannot accommodate.

1. Hourly rates, whether they are held for the term of the engagement, and the notice required before any increase
2. Monthly invoicing with timekeeper-level detail, and disbursements billed at cost
3. A not-to-exceed amount, and notice to HDC before fees approach it
4. Conflicts, including the restrictions relating to RFEI respondents described above
5. HDC's ownership and use of the work product, and HDC's ability to share advice with EDC, HPD, and the Program's other advisors
6. HDC's obligations under the New York State Freedom of Information Law, and how the firm will coordinate with HDC on any request
7. Prompt notice to HDC of any subpoena seeking Program information

Personnel

Replacement of personnel requires prior written approval from HDC. Any proposed replacement must have equivalent or greater qualifications.

Deliverable acceptance and cure period

All deliverables are subject to review and acceptance by HDC. The firm shall promptly correct any deficiencies identified by HDC at no additional cost.

Ownership of work product

All memoranda, drafting, filings, and other work product produced under the engagement shall be the property of HDC, with perpetual, royalty-free rights for HDC to use, modify, and distribute, subject to the firm's professional obligations. Deliverables shall be provided in Microsoft Word or other open, non-proprietary formats.

Conflict of interest related to RFEI respondents

A respondent to this RFP, or any affiliate, that represents or expects to represent a respondent to the RFEI may be selected only if HDC and EDC determine, in their sole discretion, that adequate conflict-of-interest mitigation measures are in place and that permitting such participation would not compromise the fairness or integrity of either solicitation. The firm shall implement its approved mitigation plan immediately upon award and shall update it promptly upon any change in facts or circumstances. Failure to disclose relevant relationships or to comply with an approved mitigation plan may result in rejection of a proposal, termination of a contract, or other appropriate action.

Freedom of Information Law / public records

HDC is subject to New York State's Freedom of Information Law ("FOIL"), which provides public rights of access to government records, subject to statutory exemptions. Proposals and deliverables are subject to FOIL. The firm shall coordinate with HDC on any materials that may be subject to FOIL and shall not independently respond to any public records requests.

Assumptions and exclusions

- The initial scope is advisory, and formation work sits in potential phase two. The engagement does not include formation or licensing of the risk-bearing entity, placing insurance or reinsurance, or serving in any operating role in the Program
- HDC may refine the structure over time; the firm must support comparison across plausible structures rather than assuming a single predetermined outcome
- The timeline assumes timely provision of documents and stakeholder access; the workplan should identify dependencies explicitly