

**2022 RFP**

**Lender's Counsel and Workout Counsel**

**Questions and Answers**

**Questions regarding Workout Counsel Contract:**

**Q: *What is the overall project annual budget/spend for this work?***

A: There is no annual budget for either the Workout Counsel Contract or the Lender Counsel Contract. The fees to be paid under each contract will be based on the amount and nature of the work assigned.

**Questions regarding Lenders Counsel Contract:**

**Q: *What are the hourly rates and fixed fees currently being charged under the lender's counsel contract?***

A: We believe the hourly rates and fixed fees of the law firms currently under contract constitute confidential commercial information, and therefore are not subject to disclosure under the Maryland Public Information Act. However, below is a chart showing the aggregate amount of fees paid under each contract category over the past two completed calendar years. We believe this information should be useful in determining whether or not to submit a proposal for the contracts. Please note that the amounts paid under the Lender's Counsel Contract as fixed fees also includes expenses incurred by the law firms, such as photocopying and over-night delivery charges. We believe the amount of such expenses, however, is not significant.

**Aggregate Annual Payments under each Contract Category**

<u>Contract Category</u>	<u>2021</u>	<u>2020</u>
Lender's Counsel	\$262,000	\$225,000
Workout Counsel	\$2,460	\$44,497

**Q: *All of our proposal team members have more than five years' experience in representing borrowers or lenders in connection with commercial lending transactions involving real estate and business collateral. The firm has represented borrowers or lenders in connection with more than one complex financing transaction in the last three years. The firm's team has also represented borrower or lenders in financing transactions involving affordable multifamily rental housing, but not within the last three years. (Past***

***experience includes representing a local jurisdiction in connection with low income housing – but again not in the last three years.) Question: Would the state be willing to waive the three year timeframe to allow bids on that portion of the RFP? If the state is not willing to waive that requirement, please advise.***

A. Without seeing the Proposal, it is difficult to provide a definitive answer. However, the OAG is interested in providing as many firms as possible with an opportunity to engage in the work described in the RFP. Therefore, the OAG will consider waiving the three year time frame requirement with respect to work in multifamily rental housing based on the totality of the experience reflected in your Proposal.

**Questions regarding Conflicts:**

***Q: We regularly practice before other State agencies. Would that present a conflict that would preclude us from receiving the work described in the RFP?***

A: Conflict issues often are fact sensitive, so it is difficult to provide a definitive answer to this question. However, to the knowledge of our current Principal Counsel, which reaches back to 2001, firms representing the Department that also practice before other State agencies have not presented any conflict issues. Should such a conflict arise, however, the process of waiving the conflict, as described below, could be pursued.

***Q: We have no conflict with the DHCD. However, we have an extensive lobbying and regulatory practice and might, in the future, be asked to take a position adverse to the DHCD in some way. Can you describe the conflict process if a future issue might arise?***

A: We recognize that conflicts may arise with firms that are qualified to perform the work required by the RFP, and that appropriate measures may be taken to maintain confidentiality and to otherwise protect the interests of the Department, consistent with the requirements of the Maryland Rules of Professional Responsibility (the "Rules"). When such conflict issues arise, a written request to waive the conflict may be made to the Contract Officer. Typically, such requests must meet the criteria set forth in the conflict waiver request form (attached hereto as Attachment A), that was developed by the OAG at the Department. As stated in the conflict waiver request form, each firm is expected to perform its own analysis regarding whether the conflict is waivable under the Rules. If the conclusion is reached that a waiver is appropriate, a written conflict waiver request is submitted to the Contract Officer, typically in the form of Attachment A. If the Contract Officer agrees with the analysis, a recommendation is made to the client to agree to the request, which is then signed by both the Contract Officer and the client. It is the expectation of the OAG and the Department that if an attorney with a firm under Contract is involved in a transaction involving the Department, the firm is expected to disclose that

representation to the Contract Officer even if the firm believes that a conflict of interest does not exist.

**Q: *Through the years, our firm has represented the State of Maryland in various capacities. As a part of its regular representation of ongoing clients, the firm is often asked to participate in matters that, in a broad sense, may be adverse to the interests of the State of Maryland. For instance, the firm regularly represents clients in state and local taxation matters (in which the Comptroller is adverse), occasionally is involved in bid protests and other matters relating to State contracts, occasionally is asked to represent parties before State regulatory agencies, and represents business and estate administration clients in matters that often involve income or other state taxation issues. In previous responses, neither our firm nor the State saw these matters as likely conflicts, and, in our prior representation of the State, they were not considered to be conflicts. Question: At this time, the firm is involved in a major ongoing litigation where the State of Maryland is adverse. Would the state be willing to waive this conflict?***

A: The OAG will consider each conflict waiver request on a case by case basis. However, we agree that the type of situations that you describe in your question typically do not constitute conflicts requiring a waiver request when representing the Department. In addition, we have inquired about the specific major ongoing litigation involving your firm with the State, and have been advised that it is sufficiently unrelated that it may be addressed through a conflicts wall.

**Attachment A**  
**Conflict Waiver Request Form**

[DATE]

[Name of Contract Officer]  
Assistant Attorney General  
Maryland Department of Housing and  
Community Development  
7800 Harkins Road  
Lanham, Maryland 20706

Re: Request for Waiver of Conflict of Interest: **[PROJECT  
NAME/DESCRIPTION]**

Dear [Contract Officer]:

We are requesting a conflict waiver regarding a representation **[INSERT LAW FIRM NAME]** (the "Firm") has been asked to undertake by our **[existing]** client(s), **[INSERT NAMES OF CLIENT(S)]** (the "Client") in connection with a project known as **[INSERT PROJECT NAME]** (the "Project"). The representation involves **[INSERT DESCRIPTION OF ENGAGEMENT]**.

The Maryland Rules of Professional Conduct provide that a lawyer is not to represent a client in connection with a matter if the representation of that client involves a "conflict of interest" – (1) will be directly adverse to another client; or (2) there is a significant risk that the representation of the client will be materially limited by the attorney's responsibilities to another client . . . ."; unless the conflict of interest is a "waivable conflict of interest" – (1) the attorney reasonably believes that the attorney will be able to provide competent and diligent representation to each affected client, (2) the representation is not prohibited by law, and (3) the representation does not involve the assertion of a claim by one client against another client represented by the attorney in the same litigation or other proceeding before a tribunal – and each potentially affected client consents to the representation after disclosure of the conflict .

We believe that our representation of Client will constitute a conflict of interest, but that it is a waivable conflict of interest for the following reasons:

First, a "Conflicts Wall" will be established among the groups of attorneys and none of the attorneys at the firm who represent the Department of Housing and Community Development and/or the Community Development Administration (the "Department") will be involved in the representation of Client. It is anticipated that **[INSERT NAMES OF ATTORNEYS INVOLVED IN REPRESENTATION]** will be the Firm lawyers working on the representation.

Second, in the unlikely event that the assertion of a claim, or threat of assertion of a claim, were to arise between the Department and Client in connection with this transaction or the Project, we would withdraw immediately from such engagement.

Third, should circumstances arise during this transaction in which you determine it would be appropriate or necessary to withdraw your consent, we will, of course, abide by your judgment.

For the foregoing reasons, we reasonably believe that we will be able to continue to provide competent and diligent representation to the Department. Should any circumstances arise during our representation of Client which limits our ability to provide competent and diligent representation to the Department, or otherwise result in the creation of a non-waivable conflict of interest, we will promptly notify the Department and withdraw from our representation of Client.

We are therefore writing to request a conflict waiver with respect to our representation of Client in connection with this specific transaction. We understand that should the conflict be waived, such waiver will be subject to the foregoing conditions.

If you consent to the requested waiver, please sign this letter in the appropriate place below and return it to me. Please let us know if you need any additional information regarding this matter.

Sincerely,

[Signature of firm's Authorized signatory]

**ACCEPTED AND AGREED TO:**

**COMMUNITY DEVELOPMENT ADMINISTRATION**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**OFFICE OF THE ATTORNEY GENERAL**

By: \_\_\_\_\_

Date: \_\_\_\_\_