

## **STATEMENT OF WORK FOR CAPITAL MARKET LEGAL SERVICES FOR FHFA**

### **1. Introduction**

Division A of the Housing and Economic Recovery Act of 2008 (HERA), Public Law No. 110-289, 122 Stat. 2654 (2008), titled the “Federal Housing Finance Regulatory Reform Act of 2008” established the Federal Housing Finance Agency (FHFA) as an independent agency of the United States Government, effective July 30, 2008.

Under the Federal Housing Enterprises Financial Safety and Soundness Act, as amended by HERA (the Safety and Soundness Act), FHFA is charged with the responsibility to ensure the capital adequacy and financial safety and soundness of the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), and the 11 Federal Home Loan Banks. See 12 USC 4513. Together, Fannie Mae and Freddie Mac (the Enterprises, or GSEs), own or guarantee more than \$5 trillion of residential mortgages in the United States, and play a key role in housing finance and the U.S. economy.

FHFA is statutorily empowered to place any regulated entity into conservatorship or receivership in certain circumstances. In September 2008, FHFA was appointed as the conservator of Fannie Mae and Freddie Mac. FHFA, as conservator of Fannie Mae and Freddie Mac, stands in the place of each regulated entity’s shareholders, boards, and management and may take such actions as necessary to put the regulated entities in a sound and solvent condition, and as are appropriate to carry on the business of the regulated entity and conserve and preserve its assets and property. See 12 U.S.C. 4617. In conservatorship, the regulated entities continue to operate under their existing charters, with missions to support the secondary mortgage market.

On September 5, 2019, the U.S. Department of the Treasury released a Housing Reform Plan (Plan). The Plan was developed pursuant to a Presidential Memorandum issued on March 27, 2019, directing the Secretary of the Treasury to develop a plan for administrative and legislative reforms of the housing finance system. Among other reform proposals, the Plan recommends “[i]n parallel with recapitalizing the GSEs, FHFA should begin the process of ending the GSEs’ conservatorships.” The Plan identifies a series of options to be considered to recapitalize the GSEs, stating “[e]ach of these options poses a host of complex financial and legal considerations that will merit careful consideration as Treasury and FHFA continue their effort, already underway, to identify and assess these and other strategic options.” In October 2019, FHFA then issued a new Strategic Plan and Scorecard for the Enterprises that required each Enterprise to support FHFA as needed to develop a roadmap with milestones for existing conservatorship (the “Roadmap”). FHFA has retained a financial advisor, Houlihan Lokey Capital, to assist in the development of the Roadmap to responsibly end the conservatorships.

In order to responsibly end the conservatorships, FHFA must consider a variety of options with regard to organizational and capital structures, market impacts and timing, and feasible capital raising alternatives, among other things. To facilitate development and assessment of those options, FHFA senior management and the Office of General Counsel (OGC) will require the services of a law firm that can advise on the full range of diverse legal issues arising out of the development and implementation of the Roadmap, including the legal implications and

requirements of options under consideration. Specific issues may include legal advice on issues under the Safety and Soundness Act, each Enterprise's Charter Act, and securities laws, as well as the review of transaction documents in connection with potential registered and unregistered issuances of securities by the Enterprises.

Additional background information on FHFA may be found on FHFA's website: [www.fhfa.gov](http://www.fhfa.gov). The website includes information on the authorizing statutes, agency activities and programs, procedures, regulations, supervisory guidance, and other background information. Additional information about Fannie Mae and Freddie Mac is also available in the Enterprises' 10-K and 10-Q filings with the Securities and Exchange Commission. Interested parties are encouraged to review this information.

## **2. Objective**

FHFA requires the legal support services of a law firm with specialized expertise to provide legal support services related to developing and implementing the Roadmap for responsibly ending the conservatorships of Fannie Mae and Freddie Mac.

## **3. Scope of Work**

The Contractor shall provide legal support services to advise on legal actions required and/or legal implications of options under consideration for developing and implementing the Roadmap for responsibly ending the conservatorships of Fannie Mae and Freddie Mac. The Contractor shall have advanced knowledge and familiarity with: the mortgage finance system; capital, governance and business models; and the Enterprises' roles in financial markets.

The legal support services may include, but are not limited to, the following areas of expertise: securities law, corporate governance, tax law, financial services law and regulation, interpretation, drafting, and negotiation of contractual arrangements, and other specialized areas related to ending the conservatorships of the Enterprises. If necessary, the Contractor may also provide court reporting, videography, and expert consultants/witnesses, including administrative and operational support services to support the expert consultants/witnesses.

Except for advising FHFA as provided herein, the Contractor shall be precluded from obtaining work related to the execution of the Roadmap.

## **4. Tasks**

The Contractor shall perform the full range of legal tasks related to the required legal support services that may include, but are not limited to:

- a. Assisting FHFA in identifying and assessing options for recapitalizing each Enterprise and otherwise developing and implementing the Roadmap for responsibly ending the conservatorships, including advising FHFA on the legal issues and other implications of the options under consideration.

- b. Advising on interpretative and other legal issues under the Safety and Soundness Act, each Enterprise's statutory charter, and other federal statutes.
- c. Advising on issues under the securities, tax, and other federal and state laws posed by the various options considered in connection with the development and implementation of the Roadmap.
- d. Providing support in drafting, reviewing, and negotiating underwriting agreements, purchase agreements, and other transaction documents in connection with the implementation of the Roadmap.
- e. Identifying and assessing requirements, restrictions, and other issues under the terms of each Enterprise's relevant contractual arrangements, including under the Treasury Senior Preferred Stock Purchase Agreements (PSPAs).
- f. Providing legal advice related to potential amendments to the PSPAs.
- g. Providing legal advice with respect to other outstanding obligations of the GSEs.
- h. Providing other legal advice on capital raising options.
- i. Advising on legal actions required for the structuring, pricing, timing and marketing of any capital raise or other transaction executed in connection with implementing the Roadmap.
- j. Identifying litigation risks and providing legal advice and representation in any matters that arise in relation to the execution of the roadmap.

The Contractor shall provide the services outlined above as authorized by the FHFA Contracting Officer's Representative (COR). Performance of any work not authorized by the COR is at the Contractor's own risk and is not subject to reimbursement by FHFA.

## **5. Other Requirements**

The Contractor shall:

- a. Maintain the highest levels of professionalism, confidentiality, discretion, and ethics.
- b. With respect to its attorneys working on this matter, have and maintain active membership in good standing in a bar of a state, territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico, and meet and maintain all applicable requirements of that bar.
- c. Upon request, provide a certificate of good standing in a state bar for each key personnel.
- d. Avoid any actual or apparent conflicts of interest pertaining to this contract.

- e. Immediately notify the COR of any requests or demands for FHFA information or documents that may arise during, or after, the performance of this contract.
- f. Maintain accurate and reliable billing information.
- g. Work collaboratively with FHFA's Capital Market Financial Advisor, Houlihan Lokey.
- h. Promptly respond to questions, requests for advice, or inquiries from the COR and other authorized FHFA personnel.
- i. Provide high-quality written work products for review by agreed-upon due dates.

## **6. Contract Deliverables**

FHFA shall have unlimited rights to all deliverables as defined in Federal Acquisition Regulation (FAR) 52.227-14. The Contractor(s) shall not mark any portion of a deliverable as having "limited rights," "limited rights data," or "restricted rights" as defined in FAR 52.227-14 without the written approval of the COR or Contracting Officer (CO), prior to Contractor(s) performance.

### **A. Quarterly Status Report**

The Contractor shall submit a Quarterly Status Report covering work planned and accomplished during each quarter of the performance period. Such reports shall be designed as an element in an integrated, comprehensive system of planning, control, reporting, and management of information.

The initial report shall be delivered within thirty (30) business days of completion of the first full three (3) months of performance and subsequent reports shall be delivered prior to the end of the succeeding calendar month following the quarter.

The reports shall contain the following elements:

- 1. A cover page containing:
  - a. Contract Number and Title;
  - b. Sequence number and period of performance covered;
  - c. Contractor's name;
  - d. Date of preparation; and
  - e. "Prepared for the Federal Housing Finance Agency"
- 2. Hours and dollars spent by labor category, including cumulative totals of each and forecast of future costs through the end of the contract period.
- 3. Subcontracts, including socioeconomic category of subcontractor and dollar value;
- 4. A summary of the quarterly activities by CLIN;

- a. Progress made against plans plus pertinent program and contract data in sufficient detail so as to allow assessment of production and productivity and explain any significant results, events, or deviations from anticipated results or schedules;
- b. Problems that may or may have impeded performance along with any corrective action accomplished or proposed; and
- c. Work to be performed during the next quarter presented in the context of overall plans or schedules for the activity.

**B. Conflict of Interest Mitigation Plan**

The Contractor shall immediately notify the COR in writing in the event a potential or actual conflict of interest arises with respect to the Contractor's representation of FHFA. If necessary, the Contractor shall submit a Conflict of Interest Mitigation Plan as part of its proposal, which shall be updated as necessary throughout the life of this contract.

**C. Future Deliverables**

The tasks outlined in Section 4 of this SOW require on-going deliverables. For each work product/deliverable, FHFA will specify a date/time for completion. All deliverables shall be in electronic format where feasible and in hard copy as necessary and/or required by the COR or other authorized FHFA personnel. Deliverables will be considered "draft" upon initial receipt. FHFA will either review and accept draft deliverables, or provide the Contractor with concerns/comments/revisions that must be addressed. The Contractor shall appropriately address FHFA's concerns/comments/revisions and provide final deliverables within timeframes specified by the COR, attorney liaison, or other authorized FHFA personnel.

**7. Subcontracting**

The Contractor shall not subcontract any part of its work unless the CO specifically approves the subcontract after the Contractor submits to the CO (with a copy to the COR) a Subcontract Request identifying the work to be subcontracted, the reason for subcontracting and the cost or rate of subcontracting. Refer to FAR 52.244-2(e) Subcontracts for additional information that shall be included in the Subcontract Request. The proposed subcontractor shall have an active registration on the System for Award Management (SAM) website ([www.sam.gov](http://www.sam.gov)) at the time the Subcontract Request is submitted to the CO (with a copy to the COR).

**8. Place of Performance**

Performance shall take place in numerous places including Washington D.C., Virginia, and other locations as may be required, as well as at FHFA's facilities, Contractor's facilities, the Enterprises' facilities, or other locations as may be requested by the FHFA.

The Contractor shall be available on demand on an as-needed basis to provide immediate advice to FHFA on matters related in the above-defined scope. The Contractor will be expected to be responsive under very short time frames (24 hours or less). The Contractor may be required to

travel to perform work on a short notice to FHFA headquarters or any FHFA or Enterprise offices nationwide to perform work.

**9. Period of Performance**

TO BE COMPLETED AT CONTRACT AWARD

**10. Billing and Invoice Requirements**

Contractor will submit, no more or less frequently than monthly, separate invoices for each segregable billable assignment. Refer to FAR clause 52.212-4, Contract Terms and Conditions Commercial Items (Alternate I) and FHFA Specialty clause, Invoicing via Invoice Processing Platform, for further details.

**10.1 Invoice Format**

Each monthly invoice must contain a summary page that includes the total monthly cost for each Contract Line Item Number (CLIN) e.g. CLIN 0001 Roadmap Development, and any other CLIN that may be added. In addition to the summary page, supporting documentation must be included with each CLIN. The supporting documentation must include a brief description of each matter, name of each attorney, labor category, hourly rate, billable time, extended total cost (rate x hours) and any receipts for other direct costs. The supporting documentation must be clearly marked to identify which CLIN the information is provided for and organized by CLIN. The Contractor shall clearly identify any labor categories or other costs centers that are being performed subcontractors.

Contractor invoices shall identify the timekeeper with respect to whom charges are billed; describe in detail the activity for which the timekeeper’s charges are billed; the amount of time for which charges are billed, in units not larger than tenths of an hour; and the total charges for the timekeeper’s activity. Invoices shall also summarize total hours and charges billed for each timekeeper and for all timekeepers cumulatively.

**10.2 Invoice Submission**

If it is determined that the amount billed is incorrect, the invoice may be rejected by the Government, and the Contractor may be required to submit a revised invoice. To constitute a proper invoice, each invoice must include the information contained in the Invoicing via Internet Payment Platform FHFA specialty clause. Please note that any submitted invoice may be reviewed by FHFA’s Independent Validation & Verification (IV&V) invoice review contractor. The invoice shall also include the following information and attached documentation:

- (1) A schedule depicting the following information:

<b><u>Amount Invoiced This Period</u></b>	<b><u>Cumulative Amount Invoiced</u></b>	<b><u>Authorized Value of Contract</u></b>	<b><u>Balance Remaining on Contract</u></b>
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- (2) Name of COR
- (3) Travel and Other Direct Cost – see paragraph 11 below.
- (4) Signature of authorized representative of the firm with the following invoice certification:

“The undersigned hereby certifies to the best of my knowledge and belief that: the sum claimed under this contract is proper and due, and all the costs of contract performance have been paid, or to the extent allowed under the applicable payment clause, will be paid by the Contractor when due in the ordinary course of business; the work reflected by these costs has been performed, and amounts involved are consistent with the requirements of this Contract.

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

### **11. Other Direct Costs**

Other Direct Costs (ODCs) will be reimbursed for direct costs associated with the scope of work only to the extent authorized in advance by the COR. Invoices including ODCs must provide a detailed breakdown of the actual expenditures invoiced. Contractor shall submit legible copies of receipts for all ODCs invoiced. To assure timely reimbursement of ODCs, the Contractor is strongly encouraged to submit charges within 45 days of the expense.

Out-of-pocket expenses incurred in performing services under this SOW are to be reimbursed at actual cost. As detailed in Section 12, the Contractor will meet all government requirements and limitations for out-of-town expenses, including economy class transportation, out-of-town meal charges, rental car arrangements, and parking charges if such charges apply. Ancillary charges such as photocopying, printing, overtime, secretarial, and local meals incurred by Contractor will not be reimbursed. Costs related to electronic legal research will not be reimbursed by the Government, unless the research is specifically approved by the Government and the Contractor is required to enter a subscription agreement for specialized legal research that the Contractor does not carry in the ordinary course of its business.

### **12. Travel Requirements**

When authorized by the COR and within the contract ceiling, travel expenses incurred under this contract may be reimbursed as allowed by the Federal Travel Regulations (FTR) in effect at the time of travel. Travel reimbursement will be made up to the established not-to-exceed amount for ODCs. Contractor shall not bill for the costs of local transportation or meals and refreshments consumed while performing work for the Government locally.

To be reimbursable, the travel expenses must be:

- Allowable under the FTR and the provisions of this contract and associated technical directives,
- Approved prior to travel expenditure by the COR, and

- Allocable and necessary for performance of this contract and associated technical tasks. Travel requests must be submitted in sufficient time for the COR to give prior approval, and must identify:
  - The name of the traveler,
  - Destination(s), including itinerary,
  - Purpose of the travel, and
  - Cost breakdown.

To be reimbursed, invoices including travel expenses must provide a detailed breakdown of the actual expenditures invoiced. The Contractor shall submit legible copies of all receipts for all travel expenses with the monthly invoice.

### **13. Contract Funding Status**

The Contractor shall immediately notify the COR (with a copy to the CO) in writing if at any time it has reason to believe that the total amount of services to be charged under any contract line item number will exceed 85% of its funding amount within the next 30 days.

The Contractor is cautioned that performance of work above the ceiling for any contract line item number is at the Contractor's own risk.

### **14. Security**

The Contractor shall safeguard all FHFA Controlled Unclassified Information provided during performance of this contract. Contractor personnel are required to sign an FHFA Non-Disclosure Agreement. Refer to the RFP for a copy of the Non-Disclosure Agreement and relevant information technology security standards.

### **15. Information and Communication Technology Requirement (ICT) Accessibility Requirements**

All contract deliverables shall be compliant with Section 508 of the Rehabilitation Act of 1973 and meet applicable Section 508 Standards. Section 508 of the Rehabilitation Act, as amended by the Workforce Investment Act of 1998 (P.L. 105-220) requires that when Federal agencies develop, procure, maintain, or use information and communication technology (ICT), it shall be accessible to people with disabilities. Federal employees and members of the public who have disabilities must have access to, and use of, information and data that is comparable to people without disabilities. See also Attachment B, FHFA Specialty Clause 6.223 Information Communication Technology (ICT) Accessibility. As such, the following requirements apply to this solicitation:

- 1) Products, platforms and services delivered as part of this work statement that are ICT, or contain ICT, must conform to the Revised 508 Standards, which are located at 36 C.F.R. § 1194.1 & Apps. A, C & D, and available at <https://www.access-board.gov/guidelines-and-standards/communications-and-it/about-the-ict-refresh/final-rule/text-of-the-standards-and-guidelines>



- 2) E102 / 702.10 – Web Content Accessibility Guidelines (WCAG) success criteria level A & AA are incorporated as a requirement. The referenced WCAG criteria is available at <http://www.w3.org/TR/WCAG20/>
- 3) E202 – No General Exceptions Authorized by FHFA

The following items have been identified that will be provided under this contract and that contain ICT: Transactional Legal Services – electronic documents

Applicable requirements for electronic documents and/or support services:

- E205 – WCAG Level A & AA Success Criteria
- E302 – Functional Performance Criteria
- E602 – Support Documentation
- E603 – Support Services

Applicable Functional Performance Criteria: All functional performance criteria apply when using an alternative design or technology that achieves substantially equivalent or greater accessibility and usability by individuals with disabilities, than would be provided by conformance to one or more of the requirements in Chapters 4-6 of the Revised 508 Standards, or when Chapters 4-6 do not address one or more functions of ICT.