# New Mexico Mortgage Finance Authority

# Request for Proposals

**To** **Provide Professional Services for the Sale of Commercial Real Estate**

### Part I: Background & General Information

## Introduction

The New Mexico Mortgage Finance Authority (“MFA”) is a governmental instrumentality, separate and apart from the state, created by the Mortgage Finance Authority Act, NMSA Sections 58-18-1 to 27 (1975 as amended) for the purpose of financing affordable housing for low- and moderate-income New Mexico residents.

## Purpose

The purpose of this Request for Proposals (RFP) is to solicit proposals, in accordance with the New Mexico Mortgage Finance Authority Procurement Policy, from qualified commercial real estate broker by reason of their skill, knowledge, and experience are able to furnish professional services to MFA (“Offerors”).

**Questions and Answers**

Questions pertaining to this RFP and application must be submitted via the MFA website at http://[www.housingnm.org](http://www.housingnm.org/)/rfp.  Then under “Current RFP’s,” select “Professional Services for the Sale of Commercial Real Estate RFP.” On the MFA RFP page, select the “Professional Services for the Sale of Commercial Real Estate FAQs” link. Questions will be checked on a daily basis. The FAQ will open the day after the RFP issues August 22, 2022 and will close on. September 15, 2022.  To submit your questions, scroll down to the “Ask a question” section, enter your name, email address, and type your question in the “Question” box, type in the two (2) words in the CAPTCHA box and click on “Send my question”. MFA will make every attempt to answer questions within two (2) business days.

## Proposal Submission

Proposal submissions must be received no later than September 16, 2022 at 5:00 p.m., Mountain Time. Proposals which are not received by this time will not be accepted.

Utilize one of the following methods for proposal submission:

 Via E-mail: Send to smarez@housingnm.org with a subject line of “Proposal to Furnish Professional Services for the Sale of Commercial Real Estate.” **This is the preferred method and hard copies are not required.**

 Via USPS, FedEx, UPS, or other courier delivery: Deliver the original and six (6) copies of the proposal to MFA’s office located at 344 Fourth Street S.W., Albuquerque, New Mexico 87102. Proposals shall be in sealed envelopes marked “Proposal to Furnish Professional Services for the Sale of Commercial Real Estate.”

## Proposal Tenure

## All proposals shall include a statement that the proposal shall be valid until contract award, but no more than ninety (90) calendar days from the proposal due date.

## RFP Revisions and Supplements

If it becomes necessary to revise any part of this RFP or if additional information is necessary to clarify any provision of this RFP, the revision or additional information will be posted on the MFA web site.

## Incurred Expenses

MFA shall not be responsible for any expenses incurred by an Offeror in responding to this RFP. All costs incurred by Offerors in the preparation, transmittal or presentation of any proposal or material submitted in response to this RFP will be borne solely by the Offerors.

## Cancellation of Requests for Proposals or Rejection of Proposals

MFA may cancel this RFP at any time for any reason MFA and may reject all proposals (or any proposal) which are/is not responsive.

**Offeror’s Rights to Withdraw Proposal**

Offerors will be allowed to withdraw their proposals by submitting a written withdrawal request addressed to MFA, 344 Fourth Street, SE, Albuquerque, NM 87102 ATTN: Sandra Marez.

## Evaluation of Proposals, Selection and Negotiation

Proposals will be evaluated by an Internal Review Committee made up of MFA staff using the criteria listed in Part II Minimum Qualifications and Requirements, Part III Services to be Performed, and Part IV Compensation, below, pursuant to the Evaluation Criteria and scoring shown in Part V, Evaluation Criteria. Final selection shall be made by the full Board of Directors.

MFA may provide Offerors whose proposals are reasonably likely, in MFA’s discretion, to be selected, an opportunity to discuss and revise their proposals prior to award, for the purpose of obtaining final and best offers. Proposals shall be evaluated on the criteria listed in Part IV Evaluation Criteria, below.

The MFA Board of Directors shall select the Offeror(s) whose proposal(s) is/are deemed to be most advantageous to MFA to enter into contract negotiations with MFA. If a final contract cannot be negotiated, then MFA will enter into negotiations with the other Offeror(s). The agreed-upon draft final contract will then be referred to the Contracted Services Committee of the MFA Board of Directors for its review and recommendation, with final approval to be made by the full Board of Directors.

**Interview**

If selected as a finalist, Offerors agree to provide MFA the opportunity to interview proposed staff members identified by the Internal Review Committee. The Internal Review Committee may request a finalist to provide an oral presentation of the proposal as an opportunity for the Internal Review Committee to ask questions and seek clarifications. All requests for interviews and oral presentations shall be made in MFA’s sole discretion.

# Award Notice

MFA shall provide written notice of the award to all Offerors within ten (10) days of the date of the award. The award shall be contingent upon successful negotiations of a final contract between MFA and the Offeror(s) whose proposal(s) is/are accepted by MFA.

## Proposal Confidentiality

Offerors or their representatives shall not communicate with MFA’s Board of Directors or staff members regarding any proposal under consideration or that will be submitted for consideration, except in response to an inquiry initiated by the Internal Review Committee, or a request from the Board of Directors, or its Contracted Services Committee / Finance Committee for a presentation and interview. A proposal will be deemed ineligible if the Offeror or any person or entity acting on behalf of the Offeror attempts to influence members of the Board of Directors or staff during any portion of the RFP review process, including any period immediately following release of the RFP.

MFA will not disclose, discuss or otherwise make available the contents of any proposal to competing or potential Offerors prior to the expiration of the protest period, which in the event a protest is presented, shall not occur until after final determination by the Board of Directors.

# Irregularities in Proposals

MFA may waive technical irregularities in the form of proposal of any Offeror selected for award which do not alter the price, quality or quantity of the services offered. Note especially that the date and time of proposal submission as indicated herein under “Part I Background and General Information, Proposal Submission” cannot be waived under any circumstances.

# Responsibility of Offerors

If an Offeror who otherwise would have been awarded a contract is found not to be a Responsible Offeror, a determination that the Offeror is not a Responsible Offeror, setting forth the basis of the finding, shall be prepared and the Offeror shall be disqualified from receiving the award. A Responsible Offeror means an Offeror who submits a proposal that conforms in all material respects to the requirements of this RFP and who has furnished, when required, information and data to prove that his financial resources, facilities, personnel, reputation and experience are adequate to make satisfactory delivery of the services described in this RFP. The unreasonable failure of an Offeror to promptly supply information in connection with an inquiry with respect to responsibility is grounds for a determination that the Offeror is not a Responsible Offeror.

## Protest

Any Offeror who is aggrieved in connection with this RFP or the award of a Contract pursuant to this RFP may protest to MFA. The protest must be written and addressed to:

 Sandra Marez

 New Mexico Mortgage Finance Authority

 344 Fourth Street S.W.

 Albuquerque, New Mexico 87102

 Or:

 smarez@housingnm.org

The protest must be submitted to MFA within five (5) business days after the notice of award. Upon the timely filing of a protest, the Contact Person shall give notice of the protest to all Offerors who appear to have a substantial and reasonable prospect of being affected by the outcome of the protest. The Offerors receiving notice may file responses to the protest within five (5) business days of notice of protest. The protest process shall be:

♦ The protest will be reviewed by the Contracted Services Committee of MFA’s Board of Directors, and that committee shall make a recommendation to the full Board of Directors regarding the disposition of the protest.

♦ The Board of Directors shall make a final determination regarding the disposition of the protest, which determination shall not be subject to appeal.

Offerors or their representatives shall not communicate with MFA Board of Directors or staff members regarding any proposal under consideration, except when specifically permitted to present testimony to the committee of the Board of Directors, until the protest period has expired, which if there is a protest shall not expire until final determination by the Board of Directors. A proposal will be deemed ineligible if the Offeror or any person or entity acting on behalf of Offeror attempts to influence members of the Board of Directors or staff during any portion of the RFP review process, which remains in effect until the expiration of the protest period, or does not follow the prescribed proposal and protest process.

**Confidential Data**

Offerors may request, in writing, nondisclosure of confidential information which Offeror includes in its proposal. Such confidential information shall accompany the proposal but shall be readily separable from the proposal so as to facilitate public inspection of the non-confidential portions of the proposal. After the expiration of the protest period, which shall include final determination of any protest by MFA’s Board of Directors, all proposals will be open to the public for inspection pursuant to MFA’s Request to Inspect Documents Policy. Confidential information shall only include such information as is excepted under Section 14-2-1 NMSA 1978.

If MFA receives a request for inspection of its records which would require the disclosure of information identified by Offeror as confidential information, it will examine Offeror’s request for confidentiality and make a written determination that specifies which portions of the proposal, including any information identified by Offeror as confidential information, shall be disclosed. MFA will provide the Offeror with a written notice of determination which details which information MFA intends to disclose and the date it shall disclose such information.

### Part II: Minimum Qualifications and Requirements

Only those Offerors who meet the following minimum criteria are eligible to submit a proposal pursuant to this RFP:

1. All Offerors must provide a firm bio and at least 5 references from current or past clients for whom Offeror has acted as broker in the sale of commercial real estate.
2. All Offerors must have at least five years’ experience in New Mexico in commercial real estate transactions in New Mexico, specifically the Albuquerque market. Offerors must also be licensed to sell commercial real estate in New Mexico
3. All Offerors must have substantial expertise in the downtown market.
4. All Offerors must maintain professional liability insurance as outlined in Part VI of this RFP. Award will not be made to any Offeror who is debarred, suspended or subject to a Limited Denial of Participation, is listed as an excluded party (ies) on the System for Award Management’s list of excluded parties accessed at www.sam.gov, or is otherwise restricted.

Selected Offerors must also meet the following requirements:

1. Offeror shall provide a written statement disclosing: (1) any political contribution or gift valued in excess of $250.00 (singularly or in the aggregate) made by Offeror to any elected official of the State of New Mexico in the last three years, (2) any current or proposed business transaction between Offeror and any MFA member, officer, or employee, and (3) any other conflict or potential conflict which may give rise to a claim of conflict of interest.
2. Offeror shall provide a written statement disclosing any pending investigation, litigation, recent settlements or regulatory sanctions in performing professional services during the past five years involving Offeror’s firm or employees or individuals or organizations involved in any third-party agreements or joint venture agreements. Describe any circumstances under which Offeror’s firm or any of Offeror’s members or employees have been disciplined by any professional licensing, regulatory or ethics entity. Indicate whether Offeror’s firm has been involved in any capacity in litigation, investigations or regulatory proceedings involving HUD, the State of New Mexico or any agency thereof.
3. A Written certification that Offeror has read and shall at all times conduct itself in a manner consistent with MFA’s Code of Conduct, MFAs THIRD-PARTY CODE OF CONDUCT and MFA’s Anti-Harassment Policy. A copy of MFA’s NEW MEXICO MORTGAGE FINANCE AUTHORITY THIRD-PARTY CODE OF CONDUCTand MFA’s Anti-Harassment Policy is posted on the MFA website for review at http://www.housingnm.org/rfp. Upon request by MFA, Offeror shall disclose information MFA may reasonably request relating to conflict or potential conflicts of interest.
4. Offeror shall provide a written certification that Offeror is an Equal Opportunity Employer and complies fully with all government regulations regarding nondiscriminatory employment practices.
5. Offeror shall provide a written certification that Offeror is eligible to participate in any and all federal- or state funded housing programs; is not currently facing disciplinary action by any federal, state or local entity; is not suspended, debarred or excluded from participation in any federal or state funded housing program; and is not listed as an excluded party (ies) on the System for Award Management’s list of excluded parties accessed at [www.sam.gov](http://www.sam.gov).; and has not been debarred by MFA.

**Part III: Services to be Performed**

As requested by MFA, Professional Services for the Sale of Commercial Real Estate are required to be provided and to be incorporated into the listing agreement to be awarded pursuant to this RFP include, but are not limited to, the following:

1. Provide assistance assessing the market value of the building and setting a sales price.
2. Advise MFA on how to best market and present the property for interested parties to evaluate.
3. Provide guidance on duties required or expected of MFA as seller in the current market.
4. Assist MFA in obtaining a favorable sale price and net sales proceeds.
5. Provide other guidance through the process from listing of the property to closing on the sale.

### Part IV: Compensation

Fees and commission should be an all-inclusive and should include all compensation to be paid by MFA to the commercial real estate agent, their firm, and any other staff. Offeror must provide a commission rate with explanation of how commission is to be calculated, a flat fee, or an hourly fee depending on the type of compensation proposed by the Offeror. Offeror must also state in their submission any compensation or costs expected to be paid by MFA prior to closing on the sale of the property.

### Part V: Evaluation Criteria

MFA shall award the contract for Professional Services for the Sale of Commercial Real Estate to the Offeror whose proposal is most advantageous to MFA. Proposals that meet the Minimum Qualifications and Requirements shall be evaluated primarily on experience and fees. Proposals shall be scored on a scale of 1 to 100 based on the criteria listed below. Please note that a serious deficiency in any one criterion may be grounds for rejection regardless of overall score.

|  |  |  |
| --- | --- | --- |
| **Criteria**  | **Point****Range** | **Maximum****Points** |
| 1. Overall Experience and Capability: Offeror’s skill, knowledge and experience with--  a. New Mexico real estate, zoning, representing sellers in commercial real estate transactions in New Mexico, assessing the market value of commercial real estate, obtaining a favorable sale price and net sales proceeds, marketing and presenting the property for sale, providing guidance on duties required or expected a seller, guiding and advising the seller through the sales process from listing of the property to closing on the sale | 0-15 | 15 |
| 2. Downtown Albuquerque Experience | 0-10 | 10 |
| 3. Fees: Hourly basis-- hourly rates and other fees and costs | 0-20 | 20 |
| 4. References | 0-10 | 10 |
| 5. New Mexico Resident Business:Offeror is licensed to do business in New Mexico and the majority of Offeror’s employees who would perform the services to be performed in New Mexico reside in New Mexico | 0-5 | 5 |
| Interview | 10 | 10 |
| **Maximum Points** |  | 70 |

**Part VI: Proposal Format and Instructions to Offeror**

Proposals submitted to MFA must, at a minimum, contain the following information and shall be organized as follows:

1. Letter of Transmittal – to include at least the following:
	1. Name, address and telephone number of Offeror and name of contact person.
2. A signature of the Offeror or any partner, officer or employee who certifies that he or she has the authority to bind the Offeror.
3. Date of proposal.
4. A statement that the Offeror, if awarded the contract, will comply with the contract terms and conditions set forth in this RFP.
5. A statement describing how long the Offeror can hold the rates~~.~~
6. A statement that the Offeror’s proposal is valid for ninety (90) days after the deadline for submission of proposals.
7. Disclosure and Certifications – Offeror shall provide:
8. A written statement disclosing: (1) any political contribution or gift valued in excess of $250.00 (singularly or in the aggregate) made by Offeror to any elected official of the State of New Mexico in the last three years, (2) any current or proposed business transaction between Offeror and any MFA member, officer, or employee, and (3) any other conflict or potential conflict which may give rise to a claim of conflict of interest.
9. A written statement disclosing any pending investigation, litigation, recent settlements or regulatory sanctions in performing professional services during the past five years involving Offeror’s firm or employees or individuals or organizations involved in any third-party agreements or joint venture agreements. Describe any circumstances under which Offeror’s firm or any of Offeror’s members or employees have been disciplined by any professional licensing, regulatory or ethics entity. Indicate whether Offeror’s firm has been involved in any capacity in litigation, investigations or regulatory proceedings involving HUD, the State of New Mexico or any agency thereof.
10. Offeror shall sign and abide by the NEW MEXICO MORTGAGE FINANCE AUTHORITY THIRD-PARTY CODE OF CONDUCT(EXHIBIT B).
11. A written certification that Offeror is an Equal Opportunity Employer and complies fully with all government regulations regarding nondiscriminatory employment practices.
12. A written certification that Offeror is eligible to participate in any and all federal- or state funded housing programs; is not currently facing disciplinary action by any federal, state or local entity; is not suspended, debarred or excluded from participation in any federal or state funded housing program; and is not listed as an excluded party (ies) on the System for Award Management’s list of excluded parties accessed at [www.sam.gov](http://www.sam.gov).; and has not been debarred by MFA.
13. Experience and Capability
14. A detailed description of Offeror’s technical capabilities to provide responsive and professional services to MFA if the contract were awarded to Offeror (e.g., ability to prepare and respond to documents in a timely manner, expertise of administrative support staff, etc.).
15. A description of financial institutions, clients, state agencies, municipalities, local governments, mortgage lenders, real estate enterprises, etc. represented by or for which Offeror has represented currently or in the last five years.
16. A detailed description of Offeror’s policy regarding the resolution of conflicts of interest which arise out of Offeror’s representation of clients with adverse or potentially adverse interests and Offeror's mechanism to ensure that such conflicts do not arise and that if such conflicts do arise. Please include examples of the implementation of this policy.
17. Names and resumes of the lead Broker/Realtor and other key personnel to be assigned to the account. Resumes describing the qualifications of personnel to be utilized in the performance of this contract must show, at a minimum, the person’s name, education, position, and total years and types of experience relevant to the performance of the contract.
18. Responsiveness to MFA and Technical Capabilities
	1. Offeror’s proposal for delivering commercial real estate broker services, including organization of responsibilities, work plan, approach, and the availability for consultation, discussion, and coordination with staffA.
	2. The location of Offeror’s main office and the locations of any of Offeror’s branch offices. A description and location of the office of professionals who would handle MFA matters.
19. Fees
	1. Services performed under this RFP for Professional Services for the Sale of Commercial Real Estate will be provided on fee or commission basis. A specific fee schedule for Professional Services for the Sale of Commercial Real Estate must be included in this proposal. Please include the following information:

(ii) Explanation of how commission is to be calculated;

(iii) Information regarding Offeror’s ability to provide updates regarding marketing efforts and interest shown in the property;

(iv) Whether Offeror’s proposed rates are the best offered by the firm to any client.

1. References
	1. Offeror shall provide references for Offeror’s work with or for financial institutions, governmental entities, and/or mortgage lenders.
	2. Offeror shall provide at least three references for whom Offeror has provided services for the sale of commercial real estate in the Albuquerque market with references regarding downtown properties preferred.
	3. MFA shall provide the form attached hereto as **Exhibit A** to all references and seek feedback regarding their experience working with Offeror.
2. New Mexico Resident Business
3. Evidence that the Offeror is licensed to do business in Mexico.
4. Representation that the majority of Offeror’s employees who would perform the services to be performed reside in New Mexico.

**Part VII: Principal Contract Terms and Conditions**

In addition to the terms respecting the services to be performed and compensation described above, the contract between MFA and the successful Offeror (herein “Contractor”) shall include, but may not be limited to, terms substantially similar to the following:

Hold Harmless and Indemnification. Offeror shall indemnify, defend, and hold harmless MFA and the State of New Mexico, its officers, directors, agents, employees, successors and permitted assigns (each, a “MFA Indemnitee”) from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including attorneys’ fees, that are incurred by a MFA Indemnitee (collectively, “Losses”) arising out of or related to any third party claim alleging (i) breach or non-fulfillment of any provision of this Agreement by Offeror or Offeror’s personnel; (ii) any negligent or more culpable act or omission of Offeror or Offeror personnel, including any reckless or willful misconduct, in connection with the performance of Offeror’s obligations under this Agreement; (iii) any bodily injury, death of any person, or damage to real or tangible, personal property resulting from willful, fraudulent, or negligent acts or omissions of Offeror or Offeror personnel, or (iv) any failure by Offeror or its personnel to comply with any applicable federal, state or local laws, regulations, or codes in the performance of its obligations under this Agreement. Offeror shall further defend, indemnify, and hold harmless MFA Indemnitees from and against any and all claims that any of the Services or deliverables or MFA’s receipt or use thereof infringes any intellectual property right of a third party.

Permitted Subcontractors. Offeror shall obtain MFA’s written approval, which approval shall be given in MFA’s sole discretion, prior to entering into any agreements with or otherwise engaging any person, including all subcontractors, other than Offeror’s employees, to provide any Services to MFA (each such approved subcontractor or other third party, a “Permitted Subcontractor”). MFA’s approval shall not relieve Offeror of its obligations under the Agreement, for any reason, including but not limited to Permitted Subcontractor’s bankruptcy, insolvency, or other inability to perform the services required under any subcontract, an Offeror shall remain fully responsible for the performance of each such Permitted Subcontractor and its employees and for their compliance with all of the terms and conditions of this Agreement as if they were Offeror’s own employees. Nothing contained in this Agreement shall create any contractual relationship between MFA and any Permitted Subcontractor or supplier. Offeror shall require each such Permitted Subcontractor to be bound in writing by the confidentiality and intellectual property assignment provisions of this Agreement.

Records. Maintain complete and accurate records relating to the provision of the Services under this Agreement, including records of the time spent and materials used by Offeror in providing the Services in such form as MFA shall approve. During the Term and for a period of two years thereafter, upon MFA’s written request, Offeror shall allow MFA or MFA's representative to inspect and make copies of such records and interview Offeror personnel in connection with the provision of the Services. MFA shall have the right to audit bills submitted to MFA under this Agreement both before and after payment. Payment under this Agreement shall not foreclose the right of MFA to recover excessive and/or illegal payments.

Payment. Payment shall be made to Offeror at the times, and in the amounts, that shall be set forth in a Commercial Real Estate Listing Agreement between MFA and Offeror.

Insurance. Offeror shall procure and maintain at its expense for Services covered by this Agreement, insurance in the kinds and amounts hereinafter provided with insurance companies authorized to do business in the state of New Mexico, covering all operations under this Agreement, whether performed by the Offeror or its agents. Before commencing the Services, and on the renewal of all coverages, the Offeror shall furnish to MFA a certificate or certificates, providing for not less than thirty (30) days’ notice to MFA of non-renewal or cancellation, in form satisfactory to MFA showing that it has complied with this Sub-Section. Various types of required insurance may be written in one or more policies. With respect to all coverages required other than workers’ compensation, MFA shall be named an additional insured. Kinds and amounts of insurance required are as follows:

* + 1. Commercial General Liability insuring the activities of Offeror under this Agreement with limits no less than $750,000 per occurrence and $750,000 in the aggregate, and with a claim/aggregate deductible in an amount reasonable for a firm of Offeror’s size and financial condition, in a form acceptable to MFA.
		2. Professional Liability covering all liabilities and risks inherent in Offeror’s performance of the services required under this Agreement, with limits no less than $1,000,000 per occurrence and $2,000,000 in the aggregate and with a claim/aggregate deductible in an amount reasonable for a firm of Offeror’s size and financial condition, in a form acceptable to MFA.

Equal Opportunity Data. The Offeror will maintain data relative to "Equal Opportunity" as related to Minority Business Enterprises (“MBE”) and Women Business Enterprises (“WBE”). At a minimum, such data shall include the number and dollar value of MBE/WBE contracts and subcontracts awarded. This data is required to be reported to MFA annually in the format prescribed MFA and is due to MFA each year at a time to be determined by MFA in its sole discretion.

Termination. If, in the judgment of MFA, the Offeror, for any cause, fails or omits to

carry out the Work in an acceptable manner MFA may give notice in writing of such failure or omission and of a

reasonable time within which to cure the deficiency. The Successful Offeror shall take corrective measures within

such time. The Successful Offeror 's failure to comply with such notice and to cure the deficiency as provided in the

notice shall subject this Agreement to immediate termination by MFA. In the event of a for‐cause termination, MFA

shall terminate this Agreement by delivering to Offeror a written notice of termination. The effective date of

termination shall be the date stated in the notice or, if no date is stated, then the date of delivery of the notice.

Upon such termination, Successful Offeror shall deliver to MFA all materials developed under this Agreement. MFA shall then have the right to

retain the services of other professionals to complete Successful Offeror’s Work under this Agreement, and

shall have no obligation to seek bids for the services under this RFP.

Termination for convenience of MFA. On fifteen (15) business day’s written notice to Successful Offeror, MFA may

terminate this Agreement in whole or in part for its own convenience in the absence of termination for cause or any

default of Successful Offeror. In the event of a termination for convenience, MFA shall terminate this Agreement by

delivering to Successful Offeror notice of termination without cause specifying the extent to which performance of

Work under this Agreement is terminated and the date upon which such termination becomes effective. Within ten (10) calendar days of the effective date of termination, Successful Offeror shall deliver to MFA all design plans,

construction estimates, drawings, documents, survey books and any or all other materials developed under this

Agreement. Upon delivery of such notice, Successful Offeror shall have the right to receive payment for services

satisfactorily performed to termination date, including reimbursement then due.

All Offerors must be in good standing with MFA and all other state and federal affordable housing agencies. For example, debarment from HUD, MFA or other federal housing programs, bankruptcy, criminal indictments or convictions, poor performance on prior MFA or federally financed Projects on the part of any Offeror may result in termination of this Agreement.

Independent Offeror. The nature of the Offeror’s and its staff’s relationship to MFA will be that of an independent contractor, and the Offeror will not be deemed an agent, employee or servant of MFA. The compensation agreed upon by MFA and the Offeror will not be subject to withholding from taxes, F.I.C.A., or otherwise, and nothing in this Agreement burdens MFA with the duties of an employer concerning the Offeror and its staff under any state worker’s compensation laws, state or federal occupational health and safety laws, or any other state or federal laws. The Offeror and its staff will not participate in any of the fringe benefits generally made available by MFA to its officers or employees. MFA will not provide the Offeror office space, clerical help, office supplies or the like except as mutually agreed to by MFA and the Offeror. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

Awards to Other Offerors. The Offeror shall not assign or transfer any rights, duties, obligations or interest in or to the proceeds of this Agreement without the prior written approval of MFA. If approved, any assignee will be subject to all terms, conditions and provision of this Agreement. No such approval by MFA of any assignment shall obligate MFA for payment of amounts in excess of the Program Funds. In accordance with 2 CFR 200.213, Offeror shall not make any awards or permit any award (subcontract or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible to participate in Federal assistance programs under Executive Order 12549 and 12689, "Debarment and Suspension."

Intellectual Property Rights; Ownership. MFA is, and shall be, the sole and exclusive owner of all right, title, and interest in and to the deliverables provided pursuant to the provision of the Services, including all Intellectual Property Rights therein. Offeror agrees, and will cause its Offeror personnel to agree, that with respect to any deliverables that may qualify as "work made for hire" as defined in 17 U.S.C. §101, such deliverables are hereby deemed a "work made for hire" for MFA. To the extent that any of the Deliverables do not constitute a "work made for hire", Offeror hereby irrevocably assigns, and shall cause the Offeror personnel to irrevocably assign to MFA, in each case without additional consideration, all right, title, and interest throughout the world in and to the deliverables, including all Intellectual Property Rights therein. The Offeror shall cause the Offeror personnel to irrevocably waive, to the extent permitted by applicable law, any and all claims such Offeror personnel may now or hereafter have in any jurisdiction to so-called "moral rights" or rights of droit moral with respect to the deliverables. Upon the request of MFA, Offeror shall, and shall cause the Offeror personnel to, promptly take such further actions, including execution and delivery of all appropriate instruments of conveyance, as may be necessary to assist MFA to prosecute, register, perfect, or record its rights in or to any deliverables.

Confidential Information. Simultaneous herewith, Offeror shall enter into a Non-Disclosure Agreement with MFA under which Offeror shall agree Offeror will not, during the term of this Agreement, or thereafter, without the written consent of MFA, disclose to anyone, or use for Offeror’s own account, any confidential information concerning the businesses or affairs of MFA. Offeror will retain all such knowledge and information respecting such confidential information in trust for the sole benefit of MFA. Upon termination of this Agreement, Offeror will deliver to MFA all writings relating to or containing confidential information or destroyed with destruction certified by the receiving Party.

Remedies. Offeror recognizes that irreparable injury would be caused by any breach of any of the provisions of this Agreement by Offeror. MFA, in addition to all other rights and remedies at law or equity as may exist in its favor, will have the right to enforce the specific performance of the provisions of this Agreement and to apply for injunctive relief against any act that would violate any such provisions. Offeror shall reimburse MFA for all costs and expenses, including reasonable attorney fees incurred by MFA by reason of Offeror’s breach of this Agreement. Nothing herein shall be read to limit Offeror’s remedies in the event of a breach of this Agreement by MFA.

Licenses/Compliance with Laws and Regulations. Before the date on which the Services are to start, obtain, and at all times during the Term of this Agreement maintain, all necessary licenses and consents and comply with all relevant laws applicable to the provision of the Services.

Compliance with MFA Rules, Regulations and Policies. Comply with, and ensure that all Offeror personnel comply with, all rules, regulations, and policies of MFA that are communicated to Offeror in writing, including security procedures concerning systems and data and remote access thereto, building security procedures, and general health and safety practices and procedures.

Governing Law and Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico without giving effect to any choice or conflict of law provision or rule that would cause the application of laws of any jurisdiction other than those of the State of New Mexico. Any legal suit, action, or proceeding arising out of, or related to, this Agreement or the Services provided hereunder shall be instituted exclusively in the federal courts of the United States or the courts of the State of New Mexico in each case located in the city of Albuquerque and County of Bernalillo, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

**New Mexico Mortgage Finance Authority**

|  |  |
| --- | --- |
| **Board Members** |  |
|  |
| Chair Angel Reyes – President, Centinel Bank in TaosVice Chair – Derek Valdo – Chief Executive Officer, AMERIND Risk |
| Treasurer Rebecca Wurzburger – Strategic Planning Consultant |
| Member Howie Morales – Lieutenant Governor, State of New Mexico |
| Member Hector Balderas – Attorney General, State of New Mexico |
| Member Tim Eichenberg – Treasurer, State of New Mexico |
| Member Patricia Sullivan – PhD, Associate Dean, New Mexico State University College of Engineering  |
|  |
| **Management** |  |
| Isidoro Hernandez, Executive Director/CEO |  |
| Donna Maestas-De Vries, Chief Housing OfficerJeff Payne, Chief Lending OfficerLizzy Ratnaraj, Chief Financial Officer |
|  |  |

**EXHIBIT A**

**ORGANIZATIONAL REFERENCE QUESTIONNAIRE**

The New Mexico Mortgage Finance Authority, as part of the RFP process, requires Offerors to submit at least five references from financial institutions, governmental entities, and/or commercial real estate clients for whom for whom Offeror has acted as broker in the sale of commercial real estate as required within this document. The purpose of these references is to document Offeror’s experience relevant to the scope of work in an effort to establish Offeror’s responsibility. MFA will send the following reference form to each business reference listed in Offeror’s proposal.

**HOUSING DEVELOPMENT LEGAL SERVICES RFP**

**ORGANIZATIONAL REFERENCE QUESTIONNAIRE FOR:**

**­­­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_RGANIZATION REFERENCE QUESTIONNAIRE FOR:
ed proposal. Business references provided may be contacted for validation of content**

This form is being submitted to your company for completion as a business reference for the company named above. This form is to be returned to the New Mexico Mortgage Finance Authority via facsimile or e-mail at:

Name: \_Sandra Marez\_\_\_\_\_\_\_\_\_\_\_

Address: 344 4th St. SW

 Albuquerque, NM 87102

Telephone: \_505-767-2223\_\_\_\_\_\_\_\_\_\_\_

Fax: (505) 243-3289

E-mail: \_smarez@housingnm.org

No later than September 15, 2022 at **5:00 p.m. Mountain Time**, and must **NOT** be returned to the company requesting the reference.

For questions or concerns regarding this form, please contact the individual first named above.

|  |  |
| --- | --- |
| Company providing reference: |  |
| Contact name and title/position: |  |
| Contact telephone number: |  |
| Contact e-mail address: |  |
| Description of services provided: |  |
| Dates services provided (starting and ending): |  |

1. How would you rate the timeliness of work conducted and information requested?

\_\_\_\_ (3=Excellent 2=Satisfactory 1=Unsatisfactory 0=Unacceptable)

COMMENTS:

1. How would you rate how the work was planned and executed?

\_\_\_\_ (3=Excellent 2=Satisfactory 1=Unsatisfactory 0=Unacceptable)

 COMMENTS:

1. How would you rate the knowledge and technical expertise demonstrated?

\_\_\_\_ (3=Excellent 2=Satisfactory 1=Unsatisfactory 0=Unacceptable)

COMMENTS:

1. How would you rate the value added to your organization through the Offeror’s recommendations?

\_\_\_\_ (3=Excellent 2=Satisfactory 1=Unsatisfactory 0=Unacceptable)

COMMENTS:

1. With which aspect(s) of this Offeror’s services are you most satisfied?

COMMENTS:

1. With which aspect(s) of this Offeror’s services are you least satisfied?

COMMENTS:

1. Would you recommend this Offeror’s services?

COMMENTS:

**EXHIBIT B**

**NEW MEXICO MORTGAGE FINANCE AUTHORITY**

**THIRD-PARTY CODE OF CONDUCT**

1. **Preamble.** The New Mexico Mortgage Finance Authority (“MFA”), an instrumentality of the state government, exists to serve the citizens of the State of New Mexico. To maintain the respect, trust, and confidence of the public, and consistent with MFA’s commitment to conduct its business in an ethical and legal manner, MFA requires that all Third Parties doing business with MFA comply with this Third-Party Code of Conduct and otherwise uphold the highest standards of ethics and behavior.
2. **Purpose.** The purpose of this Code of Conduct is to provide general guidelines and a minimum standard of conduct for Third Parties doing business with MFA.
3. **Definitions.** For the purpose of this Third-Party Code of Conduct, the following words and phrases shall have the following meanings:

**"MFA Employee"** means any person employed directly by MFA and any person employed through a staffing agency or by contract and for whom MFA has the right to direct and control the work performed**.**

**"MFA Member"** means a Member, and with respect to an ex-officio Member, his or her proxy, of the Board of Directors of MFA.

**"MFA Management"** means the Executive Director/Chief Executive Officer, Chief Housing Officer, Chief Financial Officer, Chief Lending Officer and Director of Human Resources employed by MFA.

**"Transaction"** means any transaction including, but not limited to any sale, purchase, or exchange of tangible or intangible property or services; any loan, loan commitment or loan guarantee; any sale, purchase, or exchange of mortgage loans, notes, or bonds; or any other business arrangement or contract therefor.

1. **Conflicts of Interest.** Third Parties should avoid engaging in any activity that would conflict, interfere, or even create the appearance of a conflict with their business with MFA. Third Parties must disclose any potential conflicts to MFA in writing as soon as practicable upon discovery or recognition. Examples of potential conflicts include, but are not limited to:
* Engaging in a conflict-of-interest transaction prohibited by Section F of MFA’s Code of Conduct, which can be found at: (website reference to be added)
* Providing gifts and entertainment to any MFA Employee, MFA Management or MFA Member in an attempt to improperly influence MFA business decisions.

MFA shall not enter into any Transaction with a former MFA Member or former MFA Management for a period of one (1) year after such person ceases to be an MFA Member or MFA Management, except with prior approval of a disinterested majority of all current MFA Members.

To the extent applicable, Third-Party shall disclose conflicts of interest required pursuant to state or federal law, including but not limited to 2 CFR 200.112.

1. **Anti-Discrimination and Anti-Harassment Policy.** MFA is committed to maintaining an employment environment in which all individuals are treated with respect and dignity and expects the same from Third Parties doing business with MFA. MFA expects that Third Parties will maintain a workplace where employment-related decisions are based on performance, ability, or other legitimate, non-discriminatory bases and are never based on race, color, national origin, ancestry, citizenship status, religion, sex, sexual orientation, gender identity, age, physical or mental disability, serious medical condition, marital status, status with regard to public assistance, veteran status, or any other legally-protected status.

MFA also maintains and expects Third Parties to maintain a workplace that is free of unlawful harassment. This includes harassment based upon any of the above legally-protected status (such as age, sex, religion, national origin, etc.) and which creates an intimidating, hostile, or offensive working environment. This also includes sexual harassment which is defined as unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment, submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual; or such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidated, hostile, or offensive working environment.

MFA will also not tolerate any form of unlawful discrimination or harassment of an MFA Employee by any Third-Party including by its employees, owners, managers, members, directors, agents, or representatives.

1. **Confidential Information and Intellectual Property.** Third Parties doing business with MFA must protect any confidential or proprietary information that belongs either to MFA or any other third-party with whom MFA does business, if such other third-party has provided MFA with confidential or proprietary information. Confidential or proprietary information includes, but is not limited to, any non-public financial information, business processes and systems, intellectual property, personally identifiable information of MFA’s customers, and personally identifiable or private information about any MFA Employee, MFA Member, MFA Management, third-party, or customer, such as identity, medical, employment, or financial information.

To the extent necessary for a Third-Party to share MFA’s confidential or proprietary information with a sub-contractor, MFA expects the Third-Party to implement adequate controls at a level no less than those set forth in this Third-Party Code of Conduct with such sub-contractor.

Third Parties must not infringe upon the intellectual property rights of other companies or organizations.

Third Parties must return all confidential and proprietary information in their possession to MFA when the contractual relationship between MFA and the Third-Party has terminated, unless otherwise specified by contract. The obligation to protect MFA’s confidential and proprietary information continues even after any business relationship between MFA and the Third-Party ends.

MFA may require that Third Parties sign a separate confidentiality and non-disclosure agreement.

1. **Onsite Visitor Requirements.** While on MFA’s premises, Third Parties must comply with all MFA rules and procedures, including security measures and requests. These may include but are not limited to:
* Registering with reception.
* Accessing only authorized areas unless accompanied by an MFA Employee.
* Promptly reporting known security violations and property loss or damage.
* Complying with all MFA facility requirements, including maintaining a substance-free and violence-free workplace.
* Any public health and safety policies in effect, including wearing a face mask.
1. **Compliance with Laws, Regulations, Policies and Procedures and Contracts.**  All Third Parties must comply with all applicable state and federal laws, codes, and regulations and MFA’s policies and procedures to the extent applicable to the Third-Party and must not violate any terms and conditions established by contract with MFA.
2. **Business Integrity.** Any and all forms of illegal or inappropriateactivity by a Third-Party doing business with MFA, including, but not limited to, corruption, misrepresentation, extortion, embezzlement, or bribery, are strictly prohibited and may result in termination of any or all agreements with MFA.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

OFFEROR ACKNOWLEDGMENT

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DATE