

**New Mexico Mortgage Finance Authority**  
**Request for Proposals**  
**To Provide Legal Services as Bond Counsel for Single Family and/or Multifamily Housing Programs Services**

**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 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 law firms by reason of their skill, knowledge, and experience are able to furnish legal services as Bond Counsel to MFA in connection with its single family and/or multifamily housing program (“Offerors”).

The intent of this selection process is to choose one firm to provide legal services as Bond Counsel for MFA’s single family housing program and one firm to provide legal services as Bond Counsel for MFA’s multifamily housing program.

Offerors may apply for selection to provide legal services as Bond Counsel to MFA’s single family housing program and/or multifamily program.

**Questions and Answers**

Questions pertaining to this RFP and application must be submitted via the MFA website at <https://housingnm.org/rfps/rfps-rfqs>. Then under “Current RFP’s,” select “Bond Counsel Services RFP.” On the Bond Counsel Services RFP page, select the “Bond Counsel Services FAQs” link. Questions will be checked on a daily basis. The FAQ will open the day after the RFP issues (January 20<sup>th</sup>, 2022) and will close on February 25<sup>th</sup>, 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 February 25<sup>th</sup>, 2022 at 4:00 p.m., Mountain Time. Proposals which are not received by this time will not be accepted.

Utilize the following methods for proposal submission:

Via E-mail: Send to [chall@housingnm.org](mailto:chall@housingnm.org) with a subject line of “Proposal to Furnish Bond Counsel Services.” This is the preferred method and hard copies are not required.

### **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 [chall@housingnm.org](mailto:chall@housingnm.org).

### **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 the MFA. The protest must be written and addressed to:

Cooper Hall, Finance Manager  
New Mexico Mortgage Finance Authority

344 Fourth Street S.W.  
Albuquerque, New Mexico 87102

Or:

[chall@housingnm.org](mailto:chall@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 be listed in the most recent edition of The Bond Buyer's Municipal Marketplace.
2. All Offerors must have at least three years' experience as bond counsel or underwriters' counsel for single family and/or multifamily bond issues utilizing both a stand-alone and a general (open) indenture of trust.

3. All Offerors must maintain professional liability insurance as outlined in Part VI of this RFP for the duration of the contract.

Selected Offerors must also meet the following requirements:

4. 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.
5. 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.
6. A Written certification that Offeror has read and shall at all times conduct itself in a manner consistent with MFA's Code of Conduct and MFA's Anti-Harassment Policy. A copy of MFA's Code of Conduct and MFA's Anti-Harassment Policy is posted on the MFA website for review at <https://housingnm.org/rfps/rfps-rfq>. Upon request by MFA, Offeror shall disclose information MFA may reasonably request relating to conflict or potential conflicts of interest.
7. Offeror shall provide a written certification that Offeror is an Equal Opportunity Employer and complies fully with all government regulations regarding nondiscriminatory employment practices.
8. 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 legal services required to be provided and to be incorporated into the contract to be awarded pursuant to this RFP include, but are not limited to, the following:

- a. Advise the MFA on federal and state tax and securities law, and other legal requirements and issues applicable to previously issued and proposed new issues of mortgage revenue bonds;
- b. Provide legal assistance with respect to MFA programs, including federal programs administered by the MFA, and prepare and review MFA program documents and assist the MFA in evaluating and developing options and alternatives for financing MFA programs, including issuing additional bonds and refunding or redeeming outstanding bonds;
- c. Assist the MFA and its underwriters (including Underwriter's Counsel, Financial Advisor(s), General Counsel and Trustee's Counsel) in connection with the MFA's bond funded programs;

- d. Prepare or assist with the preparation of all legal and other documents required to be prepared and adopted by the MFA to administer any of the MFA's programs, as well as programs designated to the MFA by the State;
- e. Advise the MFA regarding state and federal securities law disclosure requirements in connection with the issuance and sale of mortgage revenue bonds or other obligations;
- f. Prepare or assist with the preparation of all preliminary and final official statements pertaining to the issuance and sale of mortgage revenue bonds or other obligations.
- g. Review and negotiate bond purchase contracts and prepare representation letters, escrow agreements, appropriate certificates and other closing documents in connection with the issuance and sale of bonds;
- h. Prepare or assist with the preparation of all applicable notices pertaining to federal and state hearings required in connection with the issuance of bonds and conduct or assist with the conducting of applicable hearings, including TEFRA hearings;
- i. Prepare and render any and all legal opinions required in connection with the issuance and sale of mortgage revenue bonds including but not limited to opinions relating to the MFA's authority to issue the bonds, the validity and enforceability of the bond obligations, and the tax-exempt status of the bonds;
- j. Conduct all bond closings;
- k. Assemble closing transcripts and related documents with respect to the issuance and sale of bonds(providing one hard copy and 2 CD copies); and
- l. Attend MFA Board of Directors' meetings, Financing Team meetings and conference calls as requested by the MFA.
- m. Provide opinions, advise and assist MFA staff regarding borrower eligibility on unique or complex situations that arise during MFA's Compliance Review or inquiries received.

**Part IV: Evaluation Criteria**

MFA shall award the contract for Legal Services as Bond Counsel for Single Family and/or Multifamily Housing Programs 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.

**A. Single Family Housing Programs Scoring Sheet**

| <b>Criteria</b>          | <b>Point Range</b> | <b>Maximum Points</b> |
|--------------------------|--------------------|-----------------------|
| 1. Letter of Transmittal | 0                  | 0                     |

|  |      |     |
|--|------|-----|
| 2. Experience and Capability:                          |      |     |
| a. The Firm  | 0-10 | 10  |
| b. Experience  | 0-25 | 25  |
| 3. Responsiveness to MFA and Technical Capabilities:   |      |     |
| a. Key Personnel & Availability of Key Personnel       | 0-20 | 20  |
| b. Technical Capabilities                              | 0-20 | 20  |
| 4. Fees:   |      |     |
| a. Fee Schedule for issuance of mortgage revenue bonds | 0-10 | 10  |
| b. Hourly Rates  | 0-5  | 5   |
| c. Other fees and costs                                | 0-5  | 5   |
| 4. References  | 0-5  | 5   |
| 5. Interviews, if held                                 | 0-5  | 5   |
| <b>Maximum Points</b>                                  | 105  | 105 |

B. Multifamily Housing Programs Scoring Sheet

| Criteria   | Point Range | Maximum Points |
|--|-------------|----------------|
| 1. Letter of Transmittal                               | 0           | 0              |
| 2. Experience and Capability:                          |             |                |
| a. The Firm  | 0-10        | 10             |
| b. Experience  | 0-25        | 25             |
| 3. Responsiveness to MFA and Technical Capabilities:   |             |                |
| c. Key Personnel & Availability of Key Personnel       | 0-20        | 20             |
| d. Technical Capabilities                              | 0-20        | 20             |
| 4. Fees:   |             |                |
| d. Fee Schedule for issuance of mortgage revenue bonds | 0-10        | 10             |

|                         |     |     |
|-------------------------|-----|-----|
| e. Hourly Rates         | 0-5 | 5   |
| f. Other fees and costs | 0-5 | 5   |
| 4. References           | 0-5 | 5   |
| 5. Interviews, if held  | 0-5 | 5   |
| <b>Maximum Points</b>   | 105 | 105 |

**Part V: 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:
  - A. Name, address and telephone number of Offeror and name of contact person.
  - B. A signature of the Offeror or any partner, officer or employee who certifies that he or she has the authority to bind the Offeror.
  - C. Date of proposal.
  - D. A statement that the Offeror, if awarded the contract, will comply with the contract terms and conditions set forth in this RFP.
  - E. A statement describing how long the Offeror can hold the rates and fee schedules with the minimum being three (3) years from date of proposal.
  - F. A statement that the Offeror’s proposal is valid for ninety (90) days after the deadline for submission of proposals.
  - G. Indicate the Bond Counsel position(s) your firm is applying for: Bond Counsel services to Single Family Programs and/or Multifamily Housing Programs.
  
2. Disclosure and Certifications – Offeror shall provide:
  - A. 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.
  - B. 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.

- C. A Written certification that Offeror has read and shall at all times conduct itself in a manner consistent with MFA's Code of Conduct and MFA's Anti-Harassment Policy.
- D. A written certification that Offeror is an Equal Opportunity Employer and complies fully with all government regulations regarding nondiscriminatory employment practices.
- E. 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.

### 3. Experience and Capability, The Firm

- A. Offeror should provide a detailed description and history of the firm including mergers, acquisitions and staffing level changes from January 2017 to present, areas of law practice and location of the main office and additional offices.
- B. A statement from Offeror that Offeror is listed in the most recent edition of The Bond Buyer's Municipal Marketplace
- C. Evidence submitted by Offeror that Offeror retains professional liability insurance which fulfills the requirements set forth in Part VI Professional Liability Insurance of this RFP. Note that possession of such Professional Liability Insurance coverage shall not limit Offeror's potential liability.
- D. 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, how the Offeror intends to assist the MFA in retaining counsel to represent the MFA. Please include examples of the implementation of this policy and information regarding whether Offeror has a computerized management information system in place to track possible conflicts of interest.
- E. The MFA requires that Offeror be an Equal Opportunity Employer. Please state that Offeror complies fully with all government regulations regarding nondiscriminatory employment practices.
- F. For the last ten years, provide a list and description including the current disposition or status, of any litigation or any formal or informal action taken by any bar association, state or federal securities commission, disciplinary board, or other attorney regulatory body against Offeror including Offeror's representatives assigned to this account.
- G. A description of New Mexico state agencies, municipalities, financial institutions, mortgage companies or real estate firms represented by Offeror from January 2017 to present.

4. Experience and Capability, Experience: For single-family bond transactions from January 2017 – Present, provide a detailed description of Offeror’s knowledge and experience with respect to the issuance and sale of tax-exempt and taxable bonds utilizing a traditional or pass-through structure. Discuss any innovative housing transactions in which your firm was involved. In addition, please provide the following:
  - A. At least two examples of new money transactions issued under a general (open) indenture
  - B. At least two examples of new money/refunding transactions with a traditional structure issued under a general (open) indenture
  - C. At least two examples of new money and/or refunding transaction issued under a pass-through structure;
  - D. Include a list of all single family mortgage revenue bond issues for which Offeror has acted as bond counsel since January 2017 to present, including date of sale, issuer and, dollar amount along with the name of the lead attorney. This information may included as an Appendix;
  
5. Responsiveness to MFA and Technical Capabilities
  - A. Offeror’s proposal for delivering services, including organization of responsibilities, work plan, approach, and the availability of personnel for consultation, discussion and coordination with staff, and for travel both within and outside New Mexico, as necessary, to serve the needs of MFA.
  - B. Names and resumes of the lead attorney, tax counsel and other key personnel including other attorneys, legal assistants and support staff 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, office location (city, state) and total years and types of experience relevant to the performance of the contract.
  - C. A detailed description of Offeror’s technical capabilities to provide responsive and professional services to the MFA if the contract were awarded to Offeror (e.g., ability to prepare voluminous documents in a timely manner, expertise of administrative support staff, etc.) Include a discussion of the ability of the lead attorney to have access to other professionals in the firm that have expertise in areas such as tax law, MCC programs, etc.
  
6. Fees A specific fee schedule for professional legal services for single family transactions must be included in this proposal. Since 2005, MFA has issued fixed-rate mortgage revenue bonds under a general (open) indenture and does not anticipate using variable rate bonds in the future. Loans funded by bond proceeds are securitized. Historically, MFA has issued 3-5 bond issues per year for a total of \$250 million. There is no Guarantee that this historical practice will repeat itself in the future. Please include the following information:
  - A. A fee schedule for the issuance of single family mortgage revenue bonds and whether there would be a charge for Offeror’s services in the event a proposed bond issue is not successfully completed. Provide a fee schedule for each: \$40 million new money issue, \$30 million refunding issue and \$70 million combined refunding and new money issue. Indicate fees for both traditional and pass through structures.

- B. Hourly rates for services relating to advice or representation on legislation, litigation or administrative proceedings not related to the issuance of a specific obligation.
- C. Information regarding Offeror's ability to provide detailed monthly billings, when required, summarized by subject matter and a sample itemized bill.
- D. Offeror's minimum billing unit.
- E. Whether Offeror's proposed rates are the best offered by the firm to any client.
- F. A rate schedule for those matters that could be charged on a flat rate fee basis.
- G. A rate schedule for standard expenses such as per page copying charges, facsimile transmissions, overnight mail expenses and word processing charges and a description of all other charges that would be billed to the MFA under the contract, and a statement as to when such miscellaneous charges would be imposed. Please use table format as illustrated to list out these prices.

| Service                      | Price |
|------------------------------|-------|
|                              |       |
| Photocopies                  |       |
| Telephone                    |       |
| Facsimile Transmission       |       |
| Mailing and Express Delivery |       |
| Word Processing              |       |
| Proofreading                 |       |
| Computerized Legal Research  |       |
| Other                        |       |

- H. A narrative description of the steps routinely taken to ensure that legal representation is provided on a cost-effective basis. Discuss such matters as Offeror's policy with respect to billing for such items as intra-office consultation, research, travel, and unsuccessful attempts to reach people by telephone.
- I. MFA invites the attention of Offeror to MFA's serious concern about the rising cost of legal services. The control and management of legal costs is the mutual concern of the Offeror and MFA. MFA requires quality professional services at a reasonable cost and the performance of only those services necessary. In evaluating bids, MFA will consider the methods used by the Offeror to avoid services which do not materially contribute to the overall success of the engagement.

- J. Lodging and other travel related expenses shall be reimbursed by MFA in accordance with MFA expense reimbursement policies set forth in its Policies and Procedures Manual.
- K. Offeror must absorb the cost of familiarizing itself with MFA programs, policies and procedures, rules, regulations and past bond issues. Program documents and any other relevant information shall be made available for Offeror's review at MFA's office in Albuquerque. MFA will not pay for such work. Indicate how much time Offeror expects to devote to familiarizing itself with MFA programs, policies and procedures, rules, regulations and provide a timetable for doing so.
- L. Offeror must give MFA at least a three (3) year commitment on the rate schedule offered. The contract may be extended for two, one (1) year periods at the option of the MFA Policy Committee.
- M. Offeror is required to submit itemized billing statements on a monthly basis.

## 7. References

- A. Offeror shall provide at least three references for Offeror's work as bond counsel on single family mortgage revenue bonds. References must be clients managed by the firm's representatives that would be assigned to the MFA account. Information required for each reference is firm name, telephone number, email address, name and title of person to contact, type of service provided and the dates services were provided. By providing this information, Offeror grants permission for the Contact Person to communicate with each reference.
- B. Offeror shall provide the form attached hereto as **Exhibit A** to all references.

## 8. Experience and Capability- Multi family.

The following are to be answered by Offerors seeking to provide legal services to Bond Counsel to Multifamily Housing Programs:

- A. For multifamily bond transactions from January 2017- present, provide a detailed description of Offeror's knowledge and experience with respect to the issuance and sale of tax-exempt and taxable bonds utilizing a traditional or pass through structure. Discuss any innovative housing transactions in which your firm was involved. In addition, please provide the following:
- B. At least two examples of new money transactions with a traditional structure issued under stand-alone indentures.
- C. At least two examples of a new money transaction with a pass through structure.
- D. Describe your firm's experience with multifamily affordable housing programs including, but not limited to, Low Income Housing Tax Credits, Home, and/or multifamily HUD funding programs such as Section 8 or Section 202. Also describe your firm's experience with workouts of troubled projects finance with housing bonds.
- E. Include a list of all multifamily housing revenue bonds for which Offeror has acted as bond counsel since January 2017 to present, including date of sale, issuer, dollar amount, and the name of the lead attorney.

## 9. Technical Capabilities

- A. A detailed description of Offeror's technical capabilities to provide responsive and professional services to the MFA if the contract were awarded to Offeror (e.g., ability to prepare voluminous documents in a timely manner, expertise of administrative support staff, etc.) Include a discussion of the ability of the lead attorney to have access to other professionals in the firm that have expertise in areas such as tax law, real estate law, 501(c)(3) entities, etc.
- B. Offeror's proposal for delivering services, including organization of responsibilities, work plan, approach, and the availability of personnel for consultation and discussion as necessary to serve the needs of the MFA.
- C. Names and resumes of the lead attorney and other key personnel including other attorneys, tax counsel, legal assistants and support staff 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, office location (city, state) and total years and types of experience relevant to the performance of the contract.

## 10. References

- A. Offeror shall provide at least three references for Offeror's work as bond counsel on multifamily housing revenue bonds and at least one reference for an issuer utilizing the pass through structure. References must be clients managed by the firm's representatives that would be assigned to the MFA account. Information required for each reference is firm name, telephone number, email address, name and title of person to contact, type of service provided and the dates services were provided. By providing this information, Offeror grants permission for the Contact Person to communicate with each reference.
- B. Offeror shall provide the form attached hereto as **Exhibit A** to all references.

## 11. Fees

A specific fee schedule for professional legal services for multifamily transactions must be included in this proposal. Since 2005, MFA multifamily bond issues are predominately fixed rate transactions issued under a closed indenture. Historically, MFA has issued 1-3 bond issues per year with an average size of \$15 million. There is no guarantee that this historical practice will repeat itself in the future. Note: In general, the fee charged for a multifamily bond issue is a market-competitive fixed rate fee based on the size, complexity and structure of a multifamily transaction. Offeror should anticipate that the sponsor of each multifamily project will pay Bond Counsel's fee rather than the MFA. This fee will be negotiated with Bond Counsel prior to each new multifamily transaction although the fee will be based on the estimated fee schedules as provided below:

Please include the following information:

- A. A fee schedule for the issuance of multifamily mortgage revenue bonds and whether there would be a charge for Offeror's services in the event a proposed bond issue is not successfully completed. Provide a fee schedule for each: \$15 million new money risk share issue, \$15 million new money conduit issue, \$15

million refunding issue, and \$20 million combined refunding and new money issue. Indicate fees for both a traditional and pass through structure.

- B. Hourly rates for services relating to advice or representation on legislation, litigation or administrative proceedings not related to the issuance of a specific obligation.
- C. Information regarding Offeror's ability to provide detailed monthly billings summarized by subject matter and a sample itemized bill.
- D. Offeror's minimum billing unit.
- E. Whether Offeror's proposed rates are the best offered by the firm to any client.
- F. A rate schedule for those matters that could be charged on a flat rate fee basis, if applicable.
- G. A rate schedule for standard expenses such as per page copying charges, facsimile transmissions, overnight mail expenses and word processing charges and a description of all other charges that would be billed under the contract, and a statement as to when such miscellaneous charges would be imposed. Please use table format as illustrated to list out these prices.

| Service                     | Price |
|-----------------------------|-------|
| Photocopies                 |       |
| Telephone                   |       |
| Facsimile Transmission      |       |
| Mailing and Express Deliver |       |
| Word Processing             |       |
| Proofreading                |       |
| Computerized Legal Research |       |
| Other                       |       |

- H. A narrative description of the steps routinely taken to ensure that legal representation is provided on a cost-effective basis. Discuss such matters as Offeror's policy with respect to billing for such items as intra-office consultation, research, travel, and unsuccessful attempts to reach people by telephone.
- I. MFA invites the attention of Offeror to MFA's serious concern about the rising cost of legal services. The control and management of legal costs is the mutual concern of the Offeror and MFA. MFA requires quality professional services at a reasonable cost and the performance of only those services necessary.

In evaluating bids, MFA will consider the methods used by the Offeror to avoid services which do not materially contribute to the overall success of the engagement.

- J. Lodging and other travel related expenses shall be reimbursed by MFA in accordance with MFA expense reimbursement policies set forth in its Policies and Procedures Manual.
- K. Offeror must absorb the cost of familiarizing itself with MFA programs, policies and procedures, rules, regulations and past bond issues. Program documents and any other relevant information shall be made available for Offeror's review at MFA's office in Albuquerque. MFA will not pay for such work. Indicate how much time Offeror expects to devote to familiarizing itself with MFA programs, policies and procedures, rules, regulations and provide a timetable for doing so.
- L. Offeror must give MFA at least a three (3) year commitment on the rate schedule offered. The contract may be extended for two, one (1) year periods at the option of the MFA Policy Committee.
- M. Offeror is required to submit itemized billing statements on a monthly basis.

12. Please provide any other relevant information which will assist MFA in evaluating Offeror's ability to provide Bond Counsel services to MFA.

#### **Part VI: 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:

Contract Term. The term of the Legal Services as Bond Counsel Contract shall begin the date the MFA Board of Directors approves the award and end April 30, 2025. At the option of the MFA Policy Committee, the contract may be extended for two, one-year periods under the same terms and conditions with consideration being given to market conditions which may affect the fee schedule. There will be a transition period for matters in process at the beginning and the end of the contract term.

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 the 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 Service Agreement between MFA and Offeror.

Insurance. Offeror shall procure and maintain at its expense until final payment by MFA 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:

i. 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.

ii. 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 Architect 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 design plans, construction estimates, drawings, documents, survey books, and all other materials developed under this Agreement. MFA shall then have the right to retain the services of other design professionals to complete Successful Offeror's Work under this Agreement, and shall have no obligation to seek bids for that replacement design professional(s). The cost of completing Successful Offeror's Work under this Agreement shall be paid for by applying the balance of the contract amount remaining on this Agreement at the time of termination. If the cost to complete the Work under this Agreement is less than the remaining contract amount, the remaining contract amount shall be paid to Successful Offeror. If the cost of completing the Work under this Agreement exceeds the contract amount, then Successful Offeror shall pay MFA for the difference between the contract amount and the cost to complete Successful Offeror's Work.

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 the 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 Taos

Vice 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 A. Sullivan – Associate Dean, New Mexico  
State University College of Engineering

**Management**

Isidoro Hernandez, Executive Director/  
Chief Executive Officer  
Stephanie Yara, Chief Financial Officer  
Donna Maestas-De Vries, Chief Housing Officer  
Jeff Payne, Chief Lending Officer

## **EXHIBIT A**

### **ORGANIZATIONAL REFERENCE QUESTIONNAIRE**

The New Mexico Mortgage Finance Authority, as part of the RFP process, requires Offerors to submit at least three references from financial institutions, governmental entities, and/or mortgage servicers and at least one reference for whom Bond Counsel Services have been provided 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. The Offeror will send the following reference form to each business reference listed in Offeror's proposal.

**LEGAL SERVICES AS BOND COUNSEL FOR SINGLE FAMILY AND/OR MULTIFAMILY HOUSING PROGRAMS RFP**

**ORGANIZATIONAL REFERENCE QUESTIONNAIRE FOR:**

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: Cooper Hall  
 Address: 344 4<sup>th</sup> St. SW  
 Albuquerque, NM 87102  
 Telephone: (505) 767-2284  
 Fax: (505) 243-3289  
 E-mail: chall@housingnm.org

No later than **February 25<sup>th</sup>, 2022 4:00 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:

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

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

COMMENTS:

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

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

COMMENTS:

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

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

COMMENTS:

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

COMMENTS:

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

COMMENTS:

7. Would you recommend this Offeror's services?

COMMENTS: