

# **New Mexico Mortgage Finance Authority**

## **Request for Qualifications**

### **Mortgage Servicing Legal 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 1978, 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 Qualifications (RFQ) is to solicit Qualifications, in accordance with New Mexico Mortgage Finance Authority Procurement Policy, from qualified law firms, by reason of their skill, knowledge, and experience, are able to furnish mortgage servicing legal services to MFA (Offerors).

##### **Questions and Answers**

Questions pertaining to this RFQ and application must be submitted via the MFA’ website at <https://www.housingnm.org/rfp>. Then under “RFPs, RFQs & NOFAs” select “Mortgage Servicing Legal Services RFQ.” On the legal Services RFQ page, select the “Mortgage Servicing Legal Services FAQs” link. Questions will be checked on a daily basis. The FAQ will open the day after the RFQ issues (August 30, 2023) and will close on September 22, 2023. 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.

##### **Qualification Submission**

Qualification submissions must be received no later than October 20, 2023, at 5:00 p.m., Mountain Time. Qualifications which are not received by this time will not be accepted.

Utilize one of the following methods for qualification submission:

Via E-mail: Send to [tlloyd@housingnm.org](mailto:tlloyd@housingnm.org) and [shagins@housingnm.org](mailto:shagins@housingnm.org) with a subject line of “Qualification to Furnish Mortgage Servicing Legal Services.” 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 qualification to MFA’s office located at 344 Fourth Street S.W., Albuquerque, New Mexico 87102. Qualifications shall be in sealed envelopes marked “Qualification to Furnish Mortgage Servicing Legal Services.”

**Qualification Tenure**

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

**RFQ Revisions and Supplements**

If it becomes necessary to revise any part of this RFQ, or if additional information is necessary to clarify any provision of this RFQ, 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 RFQ. All costs incurred by the Offerors in the preparation, transmittal or presentation of any qualification or material submitted in response to this RFQ will be borne solely by the Offerors.

**Cancellation of Requests for Qualifications or Rejection of Qualifications**

MFA may cancel this RFQ at any time for any for any reason and MFA may reject all qualifications (or any Qualification) which are/is not responsive.

**Offeror's Rights to Withdraw Qualification**

Offerors will be allowed to withdraw their qualifications by submitting a written withdrawal request addressed to:

Teresa Lloyd, Director of Servicing  
New Mexico Mortgage Finance Authority  
344 Fourth Street S.W.  
Albuquerque, NM 87102

Or:

tlloyd@housingnm.org , shagins@housingnm.org

**Evaluation of Qualifications, Selection and Negotiation**

Qualifications 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 MFA Board of Directors.

MFA may provide Offerors whose Qualifications are reasonably likely, in MFA's discretion, to be selected an opportunity to discuss and revise their Qualifications prior to award, for the purpose

of obtaining final and best offers. Qualifications shall be evaluated on the criteria listed in Part IV Evaluation Criteria, below.

The MFA Board of Directors shall select the Offeror(s) whose qualification(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 for its review and recommendation, with final approval to be made by the full MFA 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 qualification 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 Qualification(s) is/are accepted by MFA.

### **Qualification Confidentiality**

Offerors or their representatives shall not communicate with MFA's Board of Directors or staff members regarding any qualification 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 MFA Board of Directors, or its Contracted Services Committee / Finance Committee for a presentation and interview. A qualification will be deemed ineligible if the Offeror or any person or entity acting on behalf of the Offeror attempts to influence members of the MFA Board of Directors or staff during any portion of the RFQ review process, including any period immediately following release of the RFQ.

MFA will not disclose, discuss, or otherwise make available the contents of any qualification to competing or potential Offerors prior to final determination by the MFA Board of Directors.

### **Irregularities in Qualification**

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 qualification that conforms in all material respects to the requirements of this RFQ 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 RFQ. 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 RFQ or the award of a Contract pursuant to this RFQ may protest to the MFA. The protest must be written and addressed to:

Teresa Lloyd, Director of Servicing  
New Mexico Mortgage Finance Authority  
344 Fourth Street S.W.  
Albuquerque, NM 87102  
Or:  
tlloyd@housingnm.org , shagins@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 MFA Board of Directors regarding the disposition of the protest.
- ◆ The MFA 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 MFA Board of Directors, until the protest period has expired, which if there is a protest shall not expire until final determination by the MFA 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 MFA Board of Directors or staff during any portion of the RFQ 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 qualification, 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 RFQ:

1. All Offerors must list the attorneys who will provide legal services for MFA, and every attorney must be licensed and in good standing in the State of New Mexico.
2. All Offerors must have at least five years' experience in the following substantive areas of law as applied in New Mexico: banking laws and regulations (including federal and New Mexico law relating to mortgage servicing), single-family foreclosures, bankruptcy, real estate, mortgages, and contract law.
3. All Offerors must maintain and provide evidence of professional liability insurance as outlined in Part VI of the RFQ.
4. All Offerors shall not be debarred, suspended or subject to a Limited Denial of Participation or otherwise restricted from participation in Housing & Urban Development (HUD) programs or MFA programs.
5. All Offerors must meet Fannie Mae and Freddie Mac Minimum Requirements for default related legal services.

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. Offeror shall provide 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 <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 legal services required to be provided (and to be incorporated into the contract to be awarded pursuant to this RFQ include, but are not limited to, the following:

1. At MFA's request, provide "end-to-end" default-related legal services to MFA in connection with MFA's single-family mortgage loans, including MFA's first and second and/or subordinate mortgage loan products funded with federal, state or other resources. These services may include representing MFA and protecting MFA's interests in foreclosure proceedings, bankruptcy proceedings, title policy claims, evictions, loss mitigation efforts, forbearance agreements, assignments, REO-related services, and related judicial and other proceedings.
2. At MFA's request, provide services for all other legal matters related to MFA's servicing of its single-family loans in accordance with HUD, VA, FHA, USDA, Conventional, MFA, and all other regulating agency guidelines, including document review and preparation.
3. At MFA's request, represent MFA in other legal matters that may affect MFA's servicing of its single-family loans, including but not limited to loan servicing litigation involving financial institutions, mortgage finance companies and brokerage houses, and other single family foreclosure litigation as required by MFA.

### **Part IV: Compensation**

[Fee basis should be an all-inclusive, hourly fee, which should include staff time and "out-of-pocket expenses." Offeror must provide an hourly fee breakdown for each staff position it would propose to use and/or make available to MFA for use as needed. Offeror must also state in their submission how long the Offeror can hold the all-inclusive hourly fee rates with the minimum amount of time being three (3) years from the date of qualification and should address how increases will be negotiated. If selected, contracts with Offerors must reflect the all-inclusive, hourly fee rates proposed.

Billing on the project shall occur on a frequency to be negotiated with successful Offeror(s) and will be based on hours spent on the project and associated costs.] (See Part VI, section 5 on page 10).

[Fee basis should be an all-inclusive, fixed-fee based on completion of service. Offeror must also state in their submission how long the Offeror can hold the all-inclusive fixed-fee for service with the minimum amount of time being three (3) years from the date of qualification and should address how increases

will be negotiated. If selected, contracts with Offerors must reflect the all-inclusive, fixed-fee for service. Billing on the project should occur on a frequency to be negotiated with successful Offeror(s) and will be based on proposed fixed fee for service.] (See Part VI, section 5 on page 10).

**Part V: Evaluation Criteria**

MFA shall award the contract for mortgage servicing legal services to the Offeror whose qualification is most advantageous to MFA. Qualifications that meet the Minimum Qualifications and Requirements shall be evaluated primarily on experience and fees. Qualifications 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.

<b>Criteria</b>	<b>Point Range</b>	<b>Maximum Points</b>
<b>1. Experience and Capability:</b> Offeror’s skill, knowledge and experience with: <ul style="list-style-type: none"> <li>a. banking law, New Mexico real estate law, and contract law;</li> <li>b. state and federal laws relating to Single Family foreclosures and bankruptcies and mortgage lending, including but not limited to HUD and other federal housing laws to include and all GSEs (Fannie Mae and Freddie Mac);</li> <li>c. minimum of five years of experience for all areas listed in a. and b.</li> </ul>	0-25 0-15 10	50
<b>2. Responsiveness to MFA and Technical Capabilities:</b> Offeror’s ability to deliver mortgage servicing legal services and Offeror’s availability for consultation and discussion as evidenced by: <ul style="list-style-type: none"> <li>a. Number of attorneys assigned to MFA matters on a priority basis.</li> <li>b. Offeror’s technical support capabilities, office hours, and the hours in which attorneys can be reached by telephone.</li> </ul>	0-10 0-5	15
<b>3. Fees:</b> Fixed Fees for specific services (Exhibit A), hourly rates, billing structure and other fees and costs. <ul style="list-style-type: none"> <li>a. Hourly basis – hourly rates OR Fixed fee based on specific services (Exhibit A); AND Other fees and costs.</li> </ul>	0-25	25
<b>4. References:</b> Organizational references regarding timeliness, communication, knowledge, expertise, value of services, level of satisfaction and overall recommendation of Offeror.	0-5	5
<b>5. Interviews, if held</b>	0-5	5
Maximum Points		100

## Part VI: Qualification Format and Instructions to Offeror

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

### A. Letter of Transmittal

Include at least the following information:

- A. Name, address and telephone number of Offeror and 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 Qualification.
  - D. A statement that the Offeror, if awarded the contract, will comply with the contract terms and conditions set forth in this RFQ.
  - E. A statement describing how long the Offeror can hold the hourly rates, flat-fee, rate schedule, etc. with the minimum being three (3) years from date of qualification.
  - F. A statement that the Offeror's Qualification is valid for ninety (90) days after the deadline for submission of Qualification.
  - G. A list the attorneys who will provide legal services for MFA, and every attorney must be licensed and in good standing in the State of New Mexico.
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.

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

- A. 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.).
- B. A description of businesses, clients, state agencies, municipalities, local governments, etc. represented by or for which Offeror has worked, performed services, etc. currently or in the last ten years.
- 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 RFQ. Possession of such coverage shall not limit Offeror's potential liability.
- D. Names and resumes of the lead attorney and other key personnel including other attorneys, legal assistants and support staff to be assigned to the contract. 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.
- E. A detailed description of Offeror's knowledge and experience with respect to the single-family mortgage banking industry, federal and state tax and real estate laws as well as rules, regulations and guidelines of both single family governmental and private mortgage insurers. Offeror must also provide a detailed description of Offeror's ability to provide legal services to MFA as set forth in Part III "Services to be Performed" above, including: single family loan servicing and related matters.

### 4. Responsiveness to MFA and Technical Capabilities

Offeror's qualification 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.

## 5. Fees

- A. Services performed under this RFQ for mortgage servicing legal services will be provided on a [fixed fee, hourly, etc.] basis (based on service provided). A specific fee schedule for mortgage servicing legal services must be included in this qualification. Please include the following information:
- (i) A list of all Offeror's employees including attorneys, paralegals and support staff who are to work on MFA matters and their specific hourly rates, and if the rate varies by the type of service, the hourly rate for different types of service.
  - (ii) Offeror's minimum billing unit.
  - (iii) Information regarding Offeror's ability to provide detailed monthly billings summarized by subject matter and a sample itemized bill.
  - (iv) Whether Offeror's proposed rates are the best offered by the firm to any client.
  - (v) A rate schedule for those matters that would be charged on a flat rate fee basis, and a detailed breakdown of the service provided.
  - (vi) 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 MFA under the contract, such as mileage and travel expenses, and a statement as to when such miscellaneous charges would be imposed.
  - (vii) 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.
  - (viii) All Offerors are responsible for determining fees or costs associated with doing business in New Mexico and those costs must be included as part of the Qualification.

## 6. References

- A. Offeror shall provide at least three references for Offeror's work for financial institutions, governmental entities, and/or mortgage servicers.
- B. Offeror shall provide at least one reference for whom Offeror has provided mortgage servicing legal services.

- C. MFA shall provide the form attached hereto as **Exhibit A** to all references.
7. In preparing Offeror's proposed fee structure, please take note of the following:
- A. 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.
  - B. 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.
  - C. 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.
  - D. 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 Board of Directors.
  - E. Offeror is required to submit itemized billing statements on a monthly basis.
8. Please provide any other relevant information which will assist MFA in evaluating Offeror's ability to provide mortgage servicing legal services to MFA.

#### **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 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 rights, 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 Wurzbarger-Strategic Planning Consultant  
Member Howie Morales – Lieutenant Governor, State of New Mexico  
Member Raul Torrez – Attorney General  
Member Laura M. Montoya – Treasurer, State of New Mexico  
Member Patricia A. Sullivan, PhD-Associate Dean, New Mexico  
State University College of Engineering

### **Management**

Isidoro “Izzy” Hernandez, Executive Director  
Yvonne Segovia, Acting Chief Financial Officer  
Donna Maestas-De Vries, Chief Housing Officer  
Jeff Payne, Chief Lending Officer

## **EXHIBIT A**

Following are the types and number of actions most often supported by legal services in the prior year.

**Foreclosures**

Foreclosure-MFA 1st Mtg - 1

Foreclosure-MFA 1st/2ndMtg – 1

Answer/Monitor - 94

Disclaimer - 74

Title policy claim - 0

Forbearance agreement - 0

Eviction action - 0

**Bankruptcies**

Monitor Bankruptcy - 30

Proof of Claim - 2

Motion for relief from Stay - 0

Proof of Claim Preparation -2

Plan objection - 0

**Miscellaneous**

Deed in Lieu of foreclosure - 0

## EXHIBIT B

### ORGANIZATIONAL REFERENCE QUESTIONNAIRE

The New Mexico Mortgage Finance Authority, as part of the RFQ process, requires Offerors to submit at least three references from financial institutions, governmental entities, and/or mortgage servicers and at least one reference for which services sought in this RFQ 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.

Offeror is required to send the following reference form to each business reference provided by Offeror. The business reference, in turn, is requested to submit the Reference Form directly to: Teresa Lloyd, Director of Servicing, [tlloyd@housingnm.org](mailto:tlloyd@housingnm.org) and Steve Hagins, Servicing Supervisor, [shagins@housingnm.org](mailto:shagins@housingnm.org) by **October 20, 2023 at 5:00 p.m.** for inclusion in the evaluation process. The form and information provided will become a part of the submitted Qualification. Business references provided may be contacted for validation of content provided therein.

**MORTGAGE SERVICING LEGAL SERVICES RFQ**

**ORGANIZATIONAL REFERENCE QUESTIONNAIRE FOR:**

\_\_\_\_\_ (“Offeror”)

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

Name: Teresa Lloyd and Steve Hagins  
Address: 344 4<sup>th</sup> St. SW  
Albuquerque, NM 87102  
Telephone: (505) 767-2217, (505) 767-3395  
Fax: (888) 794-5658  
E-mail: [tlloyd@housingnm.org](mailto:tlloyd@housingnm.org) and [shagins@housingnm.org](mailto:shagins@housingnm.org)

The completed form must be returned to MFA no later than **October 20, 2023 5:00 p.m.**, and must **NOT** be returned to the Offeror requesting the reference.

For questions or concerns regarding this form, please contact Teresa Lloyd or Steve Hagins at the number listed 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):	
Total Revenues:	\$
Total Assets:	\$

1. How would you rate the timeliness of the legal work conducted and the communication provided?  
\_\_\_\_ (3=Excellent 2=Satisfactory 1=Unsatisfactory 0=Unacceptable)  
COMMENTS:
2. How would you rate how the work was 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 services?  
\_\_\_\_\_ (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: