

# NOTICE

**TITLE:** Request For Proposal for Assurance and Advisory Services.

**PURPOSE:** The purpose of this Request for Proposals (“RFP”) is to solicit proposals, in accordance with the New Mexico Finance Authority’s (“NMFA”) procurement policy, from qualified companies to provide assurance and advisory services.

**GENERAL INFORMATION:** RFP Procurement Manager Correspondence should be directed to:

Daniel C. Opperman  
Chief Legal Officer  
New Mexico Finance Authority  
207 Shelby Street  
Santa Fe, New Mexico 87501  
[dopperman@nmfa.net](mailto:dopperman@nmfa.net)  
Telephone: (505)-984-1454  
Facsimile: (505)-992-9635

**ISSUANCE:** The RFP will be issued on October 5, 2021. Firms interested in obtaining a copy may contact the NMFA directly at (505) 984-1454. This RFP is being made available by electronic means at [www.nmfinance.com](http://www.nmfinance.com). If accepted by such means, the offeror accepts full responsibility to insure that no changes are made to the RFP. In the event of conflict between a version of the RFP in the offeror’s possession and the version maintained by the NMFA, the version maintained by the NMFA shall govern.

**PRE-PROPOSAL CONFERENCE:** None.

**PROPOSAL DUE DATE AND TIME:** Proposals must be received by the Procurement Manager **NO LATER THAN 12:00 PM MOUNTAIN STANDARD TIME ON NOVEMBER 1, 2021**. Proposals received after this deadline will not be accepted.



NEW MEXICO  
**FINANCE AUTHORITY**

**REQUEST FOR PROPOSALS**  
**ASSURANCE AND ADVISORY SERVICES**

**DATE ISSUED: OCTOBER 5, 2021**

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## **I. INTRODUCTION**

### **A. PURPOSE**

The New Mexico Finance Authority (“NMFA”) requests proposals from qualified companies to provide assurance and advisory services related outlined in Section I(C) of this Request for Proposal (“RFP”).

### **B. BACKGROUND**

The NMFA was created by the New Mexico State Legislature in 1992 to finance infrastructure projects for the state’s counties and cities and certain departments of state government. The objective was to provide low-cost financing for borrowers who might not otherwise be able to access the tax-exempt and taxable bond market on a cost-effective basis. The 1992 statute created the PPRF as the vehicle to accomplish this financing objective. As authorized by the statute, the NMFA issues tax-exempt and taxable PPRF bonds to obtain the funds it loans to New Mexico governmental entities. The statute created the Governmental Gross Receipts tax as a source of funding for NMFA operations and to serve as a credit enhancement for the NMFA’s bonds.

In addition to the PPRF, the NMFA is responsible for several other public and private lending programs. Such programs often involve complex credit and identity due diligence, as well as underwriting. The rapid development of NMFA’s increased scope necessitates additional compliance safeguards.

### **C. SCOPE OF PROCUREMENT**

The assurance and advisory services required to be provided to the NMFA under a contract awarded pursuant to this RFP shall include, as directed by the NMFA, the following:

1. Assurance Services. The selected Offeror will provide assurance services, as directed by the Legal and Compliance Department, on selected program, procedures and functions of the NMFA. Such services will consist of an objective and independent examination of organizational processes, encompassing the traditional testing of processes and procedures to ensure compliance with applicable laws/regulations/standards, as well as the existence of adequate controls. These services may include financial, performance, compliance, system security, due diligence and quick response assurance engagements.

2. Advisory Services. Advisory services are those that are directed toward facilitation rather than assurance and include, counseling, advice and training. These services will be managed in a way to add value to the development and improvement of NMFA processes and programs, leveraged in a proactive manner as an additional resource to assist the NMFA in meeting its goals.

3. Reporting. The selected Offeror shall have dual reporting requirements, both to the Legal and Compliance Department, as well as directly to the NMFA’s Audit Committee. The

selected Offeror will be expected to meet with the LCD as often as required, and be available on a monthly basis to the NMFA Audit Committee.

#### **D. QUALIFICATIONS OF OFFEROR**

Offerors should meet the following qualifications:

1. Have a minimum of ten years of experience in providing assurance and advisory services as outlined herein.
2. Have provided assurance and advisory services to governmental infrastructure lending agencies with characteristics similar to the NMFA, or alternatively, have provided such services to both governmental organizations and private sector lenders such as commercial banks.
3. Be licensed to provide the requested services in the state of New Mexico, if required.
4. Maintain insurance coverage in the following amounts: (i) professional liability of \$2 Million per occurrence and \$2 Million in total coverage and (ii) general liability of \$2 Million per occurrence and \$4 Million in total coverage.

#### **E. PROCUREMENT MANAGER**

The NMFA has designated a Procurement Manager responsible for the conduct of this procurement whose name, address, and telephone number are listed below (all deliveries should be sent to this address):

Daniel C. Opperman, Chief Legal Officer  
New Mexico Finance Authority  
207 Shelby Street  
Santa Fe, NM 87501  
Telephone: (505) 984-1454  
Facsimile: (505) 992-9661  
Email: [dopperman@nmfa.net](mailto:dopperman@nmfa.net)

This procurement is being conducted in accordance with and subject to the requirements of the NMFA's Procurement Policy ("Procurement Policy"). A copy of the Procurement Policy is available for inspection or review at the NMFA's offices or by request to the Procurement Manager.

Except as part of any interview that may be conducted as part of the evaluation process, until the award is made and notice given to all Offerors, no employee, agent, or representative of an Offeror shall discuss the RFP or make available or discuss an Offeror's proposal with an officer, member, employee, agent, or representative of the NMFA.

Until the award is made and notice given to all Offerors, the NMFA will not disclose the contents of any proposal with an Offeror or potential Offeror so as to make the contents of any offer available to competing or potential Offerors.

## II. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP contains the schedule for the procurement, describes the major procurement events, and specifies general requirements for the procurement.

### A. SEQUENCE OF EVENTS

The Procurement Manager will make every effort to adhere to the following schedule:

Action	Responsibility	Date
1. Issuance of RFP	NMFA	10/5/21
2. Deadline to Submit Written Questions	Offerors	10/15/21
3. Response to Written Questions/RFP Amendments	NMFA	10/22/21
4. Submission of Proposals	Offerors	11/1/21
5. Review of Proposals	Evaluation Committee	11/2/21 through 11/5/21
6. Selection of Finalists	Evaluation Committee	11/8/21
7. Oral Presentations (if requested)	Finalists	11/10/21 through 11/11/21
8. Best and Final Offers	Finalist Offerors	11/12/21
9. Selection and Recommendation to Committees	Evaluation Committee	11/15/21 through 11/16/21
10. Contract Award(s)	NMFA	11/18/21
11. Protest Deadline		15 days after award

### B. EXPLANATION OF EVENTS

The following paragraphs describe the activities listed in the sequence of events shown in Section II, Paragraph A.

- 1.0 Issuance of RFP. This RFP is being issued by the NMFA on October 5, 2021. Potential Offerors may be directly provided with a copy of the RFP by the Procurement Manager or may obtain a copy by visiting the NMFA’s website at [www.nmfinance.com](http://www.nmfinance.com).

At any time prior to the execution of a contract, an RFP may be cancelled or any or all proposals may be rejected in whole or in part when it is determined by the NMFA in its sole discretion, to be in the best interests of the NMFA.

- 2.0 Deadline to Submit Written Questions. Potential Offerors may submit written questions concerning this RFP until the close of business on October 15, 2021. All questions must be submitted in writing **VIA EMAIL to the Procurement Manager.**

- 3.0 Response to Written Questions/RFP Amendments. The NMFA will make the questions and the NMFA’s responses available via its website at [www.nmfinance.com](http://www.nmfinance.com) on October 22, 2021.

- 4.0 Submission of Proposal. Offeror proposals, including Appendix A, “Letter of Transmittal”, must be received for review and evaluation by the Procurement Manager **VIA EMAIL NO LATER THAN 12:00 PM MOUNTAIN DAYLIGHT TIME ON NOVEMBER 1, 2021.** Proposals must be emailed to the Procurement Manager at the address listed in Section E. The subject line of the email must clearly indicate that they are in response to the Request for Proposals to provide Assurance and Advisory Services to the NMFA.

A public log will be kept of the names of all Offeror organizations that submitted proposals. The contents of any proposal shall not be disclosed prior to contract award or cancellation of the RFP.

Upon submission of a proposal, Offerors agree to be bound by the form of contract in Appendix B subject to any objections made by the Offeror(s) pursuant to Section II(B)(1.14). The Contract will be placed in final form for execution by the parties. In the event that the selected offeror(s) do not agree to the final form of contract, the NMFA reserves the right to finalize a contract with one or more of the other Offerors without undertaking a new procurement process, provided that the proposals of such other Offerors are deemed advantageous to the NMFA.

- 5.0 Review of Proposals. Proposals will be distributed to members of the Evaluation Committee for review on November 2, 2021 for review through November 5, 2021.

The review of proposals will be performed by the NMFA’s Evaluation Committee. During this time the Procurement Manager may, on behalf of the Evaluation Committee, initiate discussions with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals, but proposals may be accepted and evaluated without such discussion. Discussions **shall not** be initiated by the Offerors.

- 6.0 Selection of Finalists. The Evaluation Committee will select, and the Procurement Manager will notify the finalist Offerors. Only finalists will be invited to participate in the subsequent steps of the procurement.
- 7.0 Best and Final Offers from Finalists. Finalist Offerors may be asked to submit revisions to their proposals for the purpose of obtaining Best and Final Offers. Best and Final Offers may be clarified and amended at the finalist Offerors' oral presentations.
- 8.0 Oral Presentations. Finalist Offerors may be required to present their proposals to the Evaluation Committee and stand for questions. The Procurement Manager will schedule the time for each finalist Offeror's presentation. All Offeror presentations will be held by Zoom or other applicable video conferencing platform. Offerors should be prepared to explain their understanding of this procurement and be prepared to answer questions. The Procurement Manager may limit the length of time given to each finalist Offeror for the oral presentation.
- 9.0 Selection of Contractor(s). The Evaluation Committee will select, and the Procurement Manager will notify the selected contractor(s).
- 10.0 Recommendation to NMFA or Board. If applicable, and in conformance with NMFA policies and procedures, the Evaluation Committee will present its decision regarding the selected contractor(s) to the appropriate NMFA committee and/or to the NMFA Board of Directors for final approval.

The contract shall be awarded to the Offeror(s) whose proposals are determined to be most advantageous, taking into consideration the evaluation factors set forth in the RFP and in accordance with the NMFA's Procurement Policy. The most advantageous proposals may or may not have received the most points.

- 11.0 Contract Award(s). Upon approval of the final contract, the parties shall execute the contract(s). An award of contract means a fully executed contract.

The NMFA will provide written notice of the award to all Offerors following the date of the award.

- 12.0 Protest Deadline. Any protest by an Offeror must be in conformance with the Procurement Policy. Protests must be submitted in writing to the NMFA's Finance & Disclosure Committee within fifteen (15) calendar days of the award. Protests must include the name and address of the protester and the RFP number, and state with particularity the basis for the protest and the facts relied upon, including appropriate supporting exhibits. It must also specify the ruling requested from the NMFA. Protests must be delivered to the Procurement Manager for distribution to the Finance & Disclosure Committee.

Protests received after this deadline will not be accepted.



## C. GENERAL REQUIREMENTS

This procurement will be conducted in accordance with the NMFA's Procurement Policy and the following general requirements.

- 1.0 Acceptance of Conditions Governing the Procurement. Offerors must indicate their acceptance of the Conditions Governing the Procurement section of this RFP in their Letter of Transmittal which is attached hereto as Appendix "A". Failure to submit the Letter of Transmittal will disqualify the Offeror from consideration by the Evaluation Committee. Submission of a proposal shall be deemed to constitute acceptance of the requirements outlined in the RFP.
- 2.0 Incurring Cost. Any cost incurred by the Offeror in preparation, transmittal or presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror.
- 3.0 Prime Contractor Responsibility. Any contract that may result from this RFP shall specify that the prime contractor is solely responsible for fulfillment of the contract with the NMFA. The NMFA will make contract payments only to the prime contractor.
- 4.0 Subcontractors. Use or potential use of subcontractors for services must be clearly explained in the Offeror's proposal, and subcontractors must be identified by name, to the extent known at the time of submission of the proposal. In the event the name of a subcontractor is not known at the time of the proposal, the Offeror shall describe in detail, the nature of the services that might be obtained from a subcontractor. The prime contractor shall be wholly responsible for the performance of all services, whether or not subcontractors are used.
- 5.0 Amended Proposals. An Offeror may submit an amended proposal before the deadline for receipt of proposals. Such amended proposal must be a complete replacement for a previously submitted proposal and must be clearly identified as such in the transmittal letter. The NMFA will not merge, collate or assemble proposal materials.
- 6.0 Offeror's Rights to Withdraw Proposal. An Offeror will be allowed to withdraw a proposal at any time prior to the deadline for receipt of proposals. The Offeror must submit a written withdrawal request signed by the Offeror's duly authorized representative addressed to the Procurement Manager.
- 7.0 Proposal Offer Firm. Responses to this RFP, including proposal prices, will be considered firm and binding for ninety (90) calendar days after the due date for receipt of proposals.
- 8.0 Disclosure of Proposal Contents. The proposals will be kept confidential until a contract is awarded by the NMFA or the Procurement is terminated. At that time, all proposals and documents pertaining to the proposals will be open to the public in accordance with applicable law.

The Offeror hereby acknowledges that the NMFA is subject to state laws, including, without limitation, the Inspection of Public Records Act, Section 14-2-1 through 14-2-12 NMSA 1978, which provides generally that all records relating to a public business are open to public inspection and copying unless exempted under the Inspection of Public Records Act, and the Open Meetings Act, Section 10-15-1 through 10-15-4 NMSA 1978, which provides generally for open meetings for public deliberative bodies. Neither the Offeror nor any related entity shall make any claim against the NMFA if it makes available to the public any document, report, or other information the NMFA received from the Offeror or any related entity which was made public by the NMFA pursuant to the Inspection of Public Records Act or the Open Meetings Act, as permitted by law.

The NMFA acknowledges that an Offeror may desire to protect proprietary or confidential information from disclosure under certain circumstances when reasonable. Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal and an Offeror *must* make a written request to keep such information confidential at the time of submission of a proposal.

Confidential data is normally restricted to confidential financial information concerning the Offeror's organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, Sections 57-3A-1 to 57-3A-7 NMSA 1978. The price of products offered or the cost of services proposed shall not be designated or treated as proprietary or confidential information.

If a request is received for disclosure of information for which an Offeror has made a written request for confidentiality, the NMFA shall examine the Offeror's request and make a determination that specifies which portions of the proposal should be disclosed.

The NMFA may endeavor to contact the Offeror before releasing any information, but in no event will the NMFA be under any obligation to either contact the Offeror or refuse to disclose information permitted to be disclosed by New Mexico law. In addition, the Offeror agrees to fully release, waive and hold the NMFA and its employees and officers harmless from any liability or costs associated with the release of any information.

- 9.0 No Obligation. This procurement does not obligate the NMFA to the eventual purchase of any professional services offered.
- 10.0 Termination. This RFP may be canceled at any time and any and all proposals may be rejected in whole or in part when the NMFA determines, in its sole discretion, such action to be in the best interest of the NMFA.
- 11.0 Sufficient Funding. Any contract awarded as a result of this RFP process may be terminated if sufficient budget, funding or authorizations do not exist. The NMFA's decision as to whether sufficient budget, funding or ad authorizations are available will be accepted by the contractor as final.

- 12.0 Governing Law. This procurement and any agreement with Offerors that may result shall be governed by the laws of the State of New Mexico.
- 13.0 Basis for Proposal. Only information supplied by the NMFA in writing through the Procurement Manager or in this RFP should be used as the basis for the preparation of Offeror proposals.
- 14.0 Contract Terms and Conditions. The contract between the NMFA and any contractor shall be in substantially the format and contain the terms and conditions included in the sample contract attached hereto as Appendix B. By submitting a response to this RFP, the Offeror accepts and agrees to be bound by the terms and conditions outlined in the sample contract and shall not negotiate such terms unless an Offeror specifically objects to such terms and conditions in their response to the RFP. Should an Offeror object to any of the NMFA's terms and conditions, that Offeror must propose specific alternative language that is acceptable to the NMFA. General references to the Offeror's terms and conditions or attempts at complete substitutions are not acceptable to the NMFA and will result in disqualification of the Offeror's proposal.
- Offerors must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording.
- The NMFA reserves the right to negotiate with a successful Offeror provisions in addition to those contained in this RFP.
- 15.0 Offeror Qualifications. The Evaluation Committee may make such investigations as necessary to determine the ability of the Offeror to adhere to the requirements specified within this RFP. The Evaluation Committee will, in its sole discretion, reject the proposal of any Offeror who it determines is not a responsible Offeror or fails to submit a responsive offer.
- 16.0 Right to Waive Minor Irregularities. The Evaluation Committee also reserves the right to waive any mandatory requirement provided that all of the otherwise responsive proposals failed to meet the same mandatory requirement and the failure to do so does not otherwise materially affect the procurement. This right is in the sole discretion of the Evaluation Committee.
- 17.0 Change in Contractor Representatives. The NMFA reserves the right to require a change in contractor representatives if the assigned representatives are not, in the opinion of the NMFA, meeting its needs adequately.
- 18.0 NMFA's Rights. The NMFA reserves the right to accept all or a portion of an Offeror's proposal.
- 19.0 Ownership of Proposals. One complete copy of all documents submitted in response to the RFP shall be placed into the procurement file. Those documents will become the property of the NMFA. Other copies may be destroyed.

### **III. RESPONSE FORMAT AND ORGANIZATION**

#### **A. NUMBER OF RESPONSES**

Each Offeror may submit only one proposal.

#### **B. NUMBER OF COPIES**

Offerors shall electronically submit all proposals via .pdf to the Procurement Manager on or before the closing date and time for receipt of proposals.

#### **C. PROPOSAL FORMAT AND CONTENTS**

All proposals must include the following:

##### **1.0 Proposal Organization**

- 1.1 The Letter of Transmittal, which shall be considered an integral part of the proposal, shall be signed by the responsible individual(s) who is (are) authorized to bind the Offeror contractually. The Offeror shall utilize the Letter of Transmittal template, attached hereto as Appendix A, for completion of this requirement.

Among other requirements, the Letter of Transmittal shall include the name, address, and phone number of the Offeror and a statement from the Offeror agreeing to provide all the services in the Scope of Procurement and adhere to all requirements, specifications, terms and contract provisions set forth in this RFP and any attachments or amendments to the RFP.

- 1.2 The proposal must supply names and resumes of key personnel to be assigned to the performance of the responsibilities contemplated by the RFP. Resumes describing the qualifications of all professional personnel, excluding support staff, to be utilized in the performance of this agreement, including all subcontractors who have been identified, must show, at a minimum, the person's name, education, position, and total years and types of experience relevant to the performance of the agreement.
- 1.3 The proposal must outline how the Offeror meets the minimum qualifications set out in Section I(D).
- 1.4 The Offeror must submit evidence of appropriate professional liability insurance that will be in force at the inception of the contract and must agree to maintain such coverage throughout the term of any agreement. Such insurance must be in an amount reasonable for a firm of Contractor's size and financial condition, and shall cover the Offeror, its employees, agents, representatives and subcontractors.

- 1.5 A detailed description of Offeror's knowledge and experience with respect to the services to be provided, with specific details/examples of advisory services provided to similar entities.
  - 1.6 A list of three (3) references for the Offeror's work with other entities supplying both assurance and advisory services.
  - 1.7 A detailed description of the Offeror's availability and accessibility to the NMFA in providing the services outlined herein. The Offeror should discuss the availability of frequent meetings and staffing breadth to perform assurance and advisory services as requested by the NMFA.
  - 1.8 A list and description of any legal action, administrative proceeding or disciplinary action or complaint, whether formal or informal, initiated or made in connection with the professional services of the Offeror and each of its subcontractors in the prior five years by any person or entity, including any state or federal regulatory organizations, disciplinary board or commission or other regulatory body. The list and description shall include the current status or final disposition of each such action.
  - 1.9 A statement disclosing (i) any current or proposed business transaction between the Offeror and any member, officer or employee of the NMFA; and, (ii) any other conflict or potential conflict which may reasonably give rise to a claim of conflict of interest.
  - 1.10 A specific description of the Offeror's proposal for the delivery of the professional services contemplated by this RFP. This proposal may include a work plan, a discussion of the manner in which the personnel will be made available to provide the services and such other information as the Offeror reasonably believes necessary to explain its proposal for meeting the needs of the NMFA.
  - 1.11 A detailed description of the Offeror's technical capabilities for the issuance and sale of tax-exempt and taxable bonds; e.g., the ability to prepare voluminous documents in a timely manner
  - 1.12 Detailed responses to the Questionnaire, if any, attached hereto as Appendix B.
- 2.0 Fee and Cost Schedule
- 2.1 Fees. A specific fee for the Offeror's services should be included in the proposal not to exceed the Offeror's standard fee schedule. The fee, if appropriate, shall either be properly detailed and broken down by hourly rates for each potential individual to provide services pursuant to any contract, or provide sufficient detail in the case of a flat fee proposal so that the services to be provided can be properly analyzed. The Offeror shall, if appropriate, also provide a not to exceed cost for each year of any resulting contract.

2.2 Reimbursement of Costs. The proposal shall provide detailed information concerning any expenses for which the Offeror proposes to be reimbursed in addition to the fee. If the Offeror proposes to be reimbursed for travel expenses, reimbursement shall be subject to approval by the NMFA for reasonableness. An invoice for services provided and reimbursable expenses incurred, if any, must be presented before any payment under the contract shall be made.

The Offeror must give the NMFA a four (4) year commitment on the rate schedule offered.

#### IV. EVALUATION

The following is a summary of items for which Offerors can be awarded evaluation points. These weighted factors shall be used in the evaluation of the individual Offeror responses.

**A. EVALUATION POINT TABLE/SUMMARY:**

	<b>Possible Points</b>
1. Demonstrated experience in providing assurance services to similar entities	20
2. Demonstrated experience in providing advisory services to similar entities	20
3. Qualifications of individuals who will be assigned to provide service to the NMFA	20
4. Accessibility and availability of individuals who will be assigned to provide services to the NMFA	20
5. Cost Proposal	20
<b>Total Points</b>	<u><b>100</b></u>

**B. EVALUATION FACTORS**

The award of a contract shall be made to the responsible Offeror(s) whose proposal is most advantageous to the NMFA taking into consideration the above weighted evaluation factors. **Please note**, however, that a serious deficiency in any one criterion may be grounds for rejection and that the listing of cost as an evaluation factor does not require the NMFA to select the Offeror who submits the lowest cost proposal. The NMFA shall, in its sole discretion, have the right to obtain, from any and all sources, information concerning an Offeror which is deemed pertinent to the RFP and to consider such information in the evaluation of the Offeror's proposal.

**C. EVALUATION PROCESS**

1.0 All Offeror proposals will be reviewed for compliance with the mandatory requirements stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.

- 2.0 The Procurement Manager may contact the Offeror for clarification of the response as specified in Section II(B)(1.5).
- 3.0 The Evaluation Committee may use other sources of information to perform the evaluation as specified in Section IV(B).
- 4.0 Responsive proposals will be evaluated utilizing the factors outlined in Section IV(A) that have been assigned a point value in order to assist the Evaluation Committee in selecting an Offeror(s) most advantageous to the NMFA. The responsible Offeror(s) whose proposal is most advantageous to the NMFA, taking into consideration the evaluation factors in Section IV, will be recommended for contract award.

**APPENDIX A  
ASSURANCE AND ADVISORY SERVICES**

**LETTER OF TRANSMITTAL FORM**

In acknowledgement of its intent to respond to this Request for Proposal the undersigned makes the following representations as required by the RFP.

OFFEROR: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_

PRIMARY CONTACT: \_\_\_\_\_

PHONE NO.:( ) \_\_\_\_\_ FAX NO.: ( ) \_\_\_\_\_

E-MAIL ADDRESS \_\_\_\_\_

FEDERAL EMPLOYER ID#: \_\_\_\_\_

The aforementioned firm and its authorized representatives hereby confirm and acknowledge:

1. This Proposal is a firm and irrevocable offer for a period of 180 days, beginning \_\_\_\_\_, 2021.
2. The Offeror is willing to perform all of the services as outlined in the RFP.
3. The Offeror is able to provide all of the services as outlined in the RFP beginning on \_\_\_\_\_:
4. The Offeror accepts all terms and conditions as outlined in the RFP.
5. The Offeror agrees to the terms and conditions outlined in the sample contract, Appendix B to this RFP.
6. The following material is considered by the Offeror to be trade secret information:
7. The Offeror hereby acknowledges that the NMFA is subject to the Inspection of Public Records Act, (NMSA 1978 Ch. 14, Article 2) and the Offeror hereby indemnifies and agrees to hold the NMFA harmless for the release of any information, including information deemed confidential commercial information by the Offeror, if the NMFA reasonably believes the NMFA is permitted to release such information in accordance with law.
8. The Offeror hereby certifies that the undersigned is authorized to contractually bind the Offeror:



By submission of this cover letter, the Offeror hereby certifies that the above are true and correct statements.

\_\_\_\_\_  
Signature  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**APPENDIX B**

**FINANCE AUTHORITY CONTRACT**

**NEW MEXICO FINANCE AUTHORITY  
PROFESSIONAL SERVICES AGREEMENT**

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is made and entered into by and between the New Mexico Finance Authority (“NMFA”) and \_\_\_\_\_ (“Contractor”), collectively referred to as the “Parties”.

The Parties agree as follows:

1. Scope of Work.

The Contractor, as requested by the NMFA, shall perform the following services:

**[INSERT SOW DESCRIPTION]**

2. Compensation.

a. Services: The NMFA shall pay to the Contractor as compensation for services rendered upon full and satisfactory completion, in the sole discretion of the NMFA, of the services, reports and deliverables outlined in the Scope of Work, plus applicable New Mexico Gross Receipts Tax, as follows:

**[INSERT PAYMENT PROVISIONS]**

b. Payment: Payment shall be made to Contractor monthly, after receipt and review of a detailed statement from the Contractor, for services rendered to the NMFA. If requested by the NMFA, a detailed estimate of all items for which the Contractor will request reimbursement will be provided to the NMFA in advance of actual expenditures.

c. Gross Receipts Taxes and Expenses. The Contractor shall bill the NMFA for reimbursement of gross-receipts taxes levied on fees paid and disbursements reimbursed to Contractor under this Agreement including reimbursement of reasonable and necessary out-of-

pocket expenses as approved by the NMFA. The Contractor shall not bill the NMFA for overhead expenses. The Contractor is responsible for paying to the New Mexico Taxation and Revenue Department all gross receipts taxes levied on amounts paid under this Agreement.

d. Not to Exceed. The total compensation paid under this Agreement shall not exceed \$ \_\_\_\_\_, including reimbursement of expenses and gross receipts taxes.

3. Term.

This Agreement is effective on **[INSERT MONTH DAY YEAR]** and shall continue in effect until **[INSERT MONTH DAY YEAR]**, unless it is terminated earlier pursuant to Paragraph 4 of this Agreement or at the time Contractor has received the maximum compensation permitted under this Agreement. Under no circumstances may the term of this Agreement exceed four years, including any extensions.

4. Termination.

a. Termination for Cause: In addition to the NMFA's legal and equitable rights and remedies, the NMFA may terminate this Agreement at any time: (i) for Contractor's negligence, misconduct or breach of a term or condition of this Agreement, including but not limited to, failing to meet the Standard of Care outlined in Section 5 below; (ii) failure to perform the Scope of Work as provided herein for any reason; or (iii) if the NMFA determines that, as the result of any occurrence or change of circumstances involving Contractor, the continued association with Contractor as provided hereunder would have an adverse impact on the name, image, reputation, goodwill or proprietary rights of the NMFA.

b. Termination for No Cause: The NMFA may terminate this Agreement at any time for no cause, subject only to the NMFA's obligation to pay Contractor the unpaid compensation for services already performed as set forth in Paragraph 2 above.

5. Standard of Care.

Contractor hereby represents that it is an expert in providing the services contemplated by this Agreement. Therefore, over and above, and in addition to, any fiduciary or other obligations under applicable law, Contractor agrees that it shall at all times exercise at least the degree of care and competence as would a professional expert with superior skills in providing the services outlined in the Scope of Work.

6. Key Person.

Following the effective date of this Agreement, the Key People (as defined below) shall be the principal individuals responsible for the performance of the Scope of Work. The Contractor shall not substitute any other professionals in lieu of any of the Key People for the performance of the Scope of Work without first receiving written consent of the NMFA. Should the Contractor release any of the Key People from the employment of the Contractor during the term of this Agreement or for any reason one of the Key People terminates his or her responsibilities for the Contractor or becomes unable to maintain his or her responsibilities for the Contractor under this Agreement, the NMFA shall (a) be notified by the Contractor seven (7) calendar days prior to such event and (b) be provided the right to terminate this Agreement. The Key People shall be:

**[INSERT KEY PEOPLE]**

7. Status of Contractor.

The Contractor is an independent contractor performing professional services for the NMFA as described above, and nothing herein contained shall be deemed to create an agency relationship between Contractor and the NMFA and Contractor is not an employee of the NMFA. In no event shall Contractor be entitled to participate in, or be entitled to receive any benefits from, the NMFA's employee benefit plan, nor shall Contractor be entitled to accrue leave, retirement,

insurance, bonding authority, use of NMFA vehicles, or any other benefits, except as specifically set forth in this Paragraph 7, accorded to employees of the NMFA as a result of this Agreement. The Contractor acknowledges that it is responsible for any and all reporting required to be made to any taxing authority for income tax purposes. The provisions of this Paragraph 7 shall survive the expiration or earlier termination of this Agreement.

8. Litigation/Regulatory Action.

As of the effective date of this Agreement, the Contractor is not aware of any regulatory or self-regulatory investigation or legal or arbitration proceeding against the Contractor or any notice of a regulator in respect of the Contractor that has not been disclosed to the NMFA and, if after the date hereof, the Contractor should become aware of any regulatory or self-regulatory investigation or notice (other than routine information requests that the Contractor reasonably believes are not targeted at the Contractor but is instead an industry-wide request) or any legal or arbitration proceeding filed against the Contractor, the Contractor shall inform the NMFA of such investigation or lawsuit promptly, and in any event within five (5) calendar days after learning of such investigation or lawsuit.

9. Assignment.

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the NMFA.

10. Subcontracting.

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without prior approval of the NMFA. All fees and expenses of any approved subcontractor shall be billable by the subcontractor directly to the Contractor and paid by the

Contractor to the subcontractor. The NMFA is not responsible to any subcontractor for any fees, expenses, or payment of any kind. The Contractor assumes full and complete responsibility and liability for each subcontractor's performance of services under the Agreement and such performance shall be judged in accordance with the Standard of Care set out in Section 5 herein.

11. Products and Services/Copyright.

All materials developed or acquired by the Contractor under this Agreement are the property of the NMFA and shall be delivered to the NMFA no later than the termination date of this Agreement. Nothing produced, in whole or in part, by the contractor under this Agreement shall be the subject of an application for copyright by or on behalf of the Contractor. Contractor shall acquire no right under this Agreement to use, and shall not use, the name "NMFA" or designs of the NMFA.

12. Records and Audits.

The Contractor shall maintain detailed records of all fees and expenses for three years from the expiration or termination of the Agreement. Those records shall be subject to inspections and audit by the NMFA and its authorized representatives. The NMFA shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the NMFA to recover excessive or illegal payments.

13. Insurance.

The Contractor shall maintain insurance coverage, throughout the life of this Agreement, in the following amounts: (i) professional liability of \$2 Million per claim and \$2 Million in total coverage and (ii) general liability of \$2 Million per occurrence and \$4 Million in total coverage.

14. Release.

The Contractor shall, upon final payment of the amount due under this Agreement, release the NMFA, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the NMFA to any obligations not assumed herein by the NMFA, unless the Contractor has express written authorization to do so and then only within the strict limits of that authorization.

15. Confidentiality.

Any confidential information provided to or developed by Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by Contractor without written approval of the NMFA.

Contractor shall wholly and fully indemnify the NMFA against any and all losses, damages, costs, expenses, legal fees and liability resulting or arising from the release of information in violation of this Section 14 by Contractor, its officers, employees, subcontractors, affiliates or anyone under the control of Contractor.

16. Conflict of Interest.

The Contractor warrants that the Contractor currently has no interest and shall not acquire any interest, direct or indirect, that does or would conflict in any manner or degree with the performance of services required under this Agreement.

17. Amendment.

This Agreement shall not be altered, changed, or amended except by an instrument in writing that is executed by both Parties.

18. Merger.

This Agreement shall incorporate all the agreements, covenants, and understandings between the Parties hereto concerning the subject matter thereof, and all such covenants, agreements and understandings, oral or otherwise, of the parties shall not be valid or enforceable unless embodied in this Agreement.

19. Waiver.

No waiver of any breach of this Agreement or any of the terms or conditions thereof shall be held to be a waiver of any other or subsequent breach, nor shall any waiver be valid unless the same shall be in writing and signed by the party alleged to have granted the waiver.

20. Notices.

All notices, or other communications regarding the implementation of this Agreement shall be in writing and shall be deemed to have been given when delivered by registered or certified mail or overnight carrier. The NMFA may, in its sole discretion, call for a notice to be effective if sent by facsimile communication upon telephonic confirmation to the sender of receipt of the facsimile. Notices shall be addressed to:

Finance Authority:	Name:	Daniel C. Opperman
	Title:	Chief Legal Officer
	Address:	New Mexico Finance Authority 207 Shelby Street, Santa Fe, NM 87501

Contractor:	Name:	[INSERT]
	Address:	[INSERT]

21. Scope of Agreement.

This Agreement incorporates all the agreements and understandings between the parties concerning its subject matter, and all agreements and understandings have been merged into this Agreement. No prior or contemporaneous agreement or understanding, verbal or



otherwise, of the parties or their agents concerning the subject matter of this Agreement is valid or enforceable unless included in this Agreement.

22. Indemnification.

Contractor shall indemnify and hold the NMFA, its officers, directors, agents, employees and assigns, harmless from and against any and all claims, demands, suits judgments, losses or expenses of any nature whatsoever (including attorneys' fees) arising out of any material breach of Contractor's representations and warranties as set forth herein, any third party claim of infringement regarding the Services, or any other failure of Contractor to comply with the obligations to be performed hereunder. Notwithstanding anything to the contrary above, Contractor shall have no indemnification obligations under this Paragraph 21 with respect to any claims that the NMFA (in its reasonable and good faith business judgment) determines are so-called "frivolous" or "nuisance" claims. The provisions of this Paragraph 21 shall survive the expiration or sooner termination of this Agreement.

23. Penalties for Violation of Law.

The New Mexico criminal statutes impose felony penalties for bribes, illegal gratuities and kickbacks.

24. Equal Opportunity Compliance.

The Contractor agrees to abide by all Federal and State laws and rules and regulations, and Executive Orders of the Governor of the State of New Mexico pertaining to equal employment opportunity.

25. Applicable Law.

This Agreement shall be governed by the laws of the State of New Mexico.

26. No Guaranty.

Contractor acknowledges and agrees that by providing the Services, the NMFA is not obligated to offer Contractor any further employment opportunities with the NMFA and that Contractor is performing such Services only for the duration of the Term of this Agreement, unless the NMFA, in its sole discretion, determines to do otherwise.

27. Full Authority.

Contractor and the NMFA represent that (i) each has all rights, power and authority necessary to enter into and perform this Agreement, (ii) that neither Contractor nor the NMFA has granted any third-party rights inconsistent with the rights and obligations of the other party, and (iii) both Contractor and the NMFA shall reasonably cooperate with the other party in connection with their respective rights and obligations.

28. Facsimile/Counterparts.

This Agreement may be executed in counterparts and may be returned signed by electronic e-mail or facsimile.

IN WITNESS WHEREOF, the parties have executed this Agreement as of this \_\_\_ day of \_\_\_\_\_, 2021.

**NEW MEXICO**

By: \_\_\_\_\_  
Marquita D. Russel  
Chief Executive Officer

Reviewed and approved as to form and legal sufficiency by the Legal and Compliance Department as of this \_\_\_ day of \_\_\_\_\_, 2021.

By: \_\_\_\_\_  
Daniel C. Opperman, Chief Legal Officer

**[INSERT]**

(CONTRACTOR)

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

N.M. Tax I.D. #: \_\_\_\_\_