



NEW MEXICO
FINANCE AUTHORITY

REQUEST FOR PROPOSALS

LEGAL SERVICES

**DATE ISSUED:
FEBRUARY 1, 2019**

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I. INTRODUCTION

A. PURPOSE

The New Mexico Finance Authority (“Finance Authority”) hereby requests proposals from responsible Offerors to provide Legal Services (also referred to as “legal services”) to the Finance Authority. The Finance Authority seeks expert legal services with respect to all of its programs and daily operations. Potential Offerors are invited to respond to one or more of the services sought by the Finance Authority as more specifically outlined in Section I(C) of this Request for Proposal.

These legal services will relate to all transactions involving the Public Project Revolving Fund pursuant to the New Mexico Finance Authority Act, the Water Project Finance Act, Statewide Economic Finance Act, the Drinking Water State Revolving Loan Fund Act, New Markets Tax Credits, and all other programs related to the purposes, powers and functions of the Finance Authority.

Offerors are encouraged to apply for any or all of the legal services sought to be provided pursuant to this Request for Proposals (“RFP”). The RFP, at Section I(C) below, outlines both the general scope of duties to be performed by the Contractor as well as the specific scope of services to be performed for each program or category of legal services proposed to be performed by each Offeror. Such specific scopes of services are set out in the applicable appendices. Appendix B provides a general overview of relevant Finance Authority programs in order to provide potential Offerors with additional information for each Finance Authority program.

B. BACKGROUND

The Finance Authority 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 bond market on a cost-effective basis. The 1992 statute created the Public Projects Revolving Fund (“PPRF”) as the vehicle to accomplish this financing objective. This statute also authorized the Finance Authority to issue tax-exempt PPRF bonds to obtain the funds it loans to New Mexico governmental entities and designated part of the Governmental Gross Receipts tax as a source of funding for Finance Authority operations and to serve as a credit enhancement for the Finance Authority’s bonds. With an operating budget of \$8.8 million and a total staff of 42 highly skilled professionals, the Finance Authority today is the leading facilitator of public capital project financing in the state. It manages a total portfolio of more than \$1.5 billion that includes loans in almost every county and Indian reservation in the state covering a wide spectrum of projects, from traditional infrastructure to innovative economic development initiatives.

In addition to the PPRF, the Finance Authority administers and manages ten other financing programs, including the bond program for the New Mexico Department of Transportation. The Finance Authority also acts as staff and the funding entity for Water Trust Board projects and Colonias Infrastructure Board Projects. The Finance Authority

also administers loans, receives funding from federal programs like the Drinking Water Program for distribution to accepted applicants, invests funds, and monitors project financing and repayment until the end of their term.

The Authority is governed by a Board of Directors consisting of a Chairman and ten additional Board Members. The Chief Executive Officer (CEO) is appointed by the Board and is responsible to the Board for administration of the Authority's affairs. The Board oversees the Finance Authority's business through several sub-committees, which debate and recommend items going before the Board.

C. SCOPE OF PROCUREMENT

The legal services required to be provided to the Finance Authority under a contract awarded pursuant to this Request for Proposals ("RFP") shall include, the general duties outlined below, as well as, more specific duties related to each particular Finance Authority program or category of legal services sought as more specifically outlined in the Appendices as described in number 3, Specific Duties, below.

1.0 General – applies to all legal services.

- 1.1 Advise the Finance Authority on the requirements of applicable federal, state and local law. Advise the Finance Authority on the requirements of best practices and applicable Finance Authority policies.
- 1.2 Assist in the development and modification of programmatic policies and procedures.
- 1.3 Draft and modify as appropriate programmatic form documents, including closing checklists, and master or form templates.
- 1.4 Perform legal due diligence on proposed transactions to ensure compliance with applicable law and policy.
- 1.5 Assist the Finance Authority and its underwriters with the structuring of proposed debt and developing options and alternatives for financing the Finance Authority's programs and projects.
- 1.6 Draft and negotiate transaction documents, including the preparation of all documents required to be adopted by the Finance Authority and its borrowers, including, but not limited to, the preparation of all applicable board resolutions and other determinations, legal and tax notices, loan agreements and related transaction documents, and such other documents as may be necessary or appropriate to the issuance of debt.
- 1.7 Prepare and render any legal opinions required in connection with the issuance of debt, including, but not limited to the rendering of applicable opinions relating to the legal authority of the Finance Authority or a qualified entity to

enter into specific transactions or debt, the validity and enforceability of the debt, and the tax-exempt status of these securities.

- 1.8 Conduct all closings of transactions involving the issuance and sale of debt.
 - 1.9 Advise the Finance Authority regarding continuing disclosure requirements, if applicable, under federal and state securities law in connection with the issuance of debt.
 - 1.10 Assemble closing documents, including closing transcripts and related documents with respect to the issuance of debt.
 - 1.11 Attend meetings of the Finance Authority, its Board of Directors, Committees, Sub-Committees, and staff meetings as requested by the Finance Authority.
 - 1.12 Provide legal services as alternative counsel in the event of a conflict or other constraints of other counsel assigned work which require the services of alternative counsel for any transactions involving the Finance Authority.
 - 1.13 Provide such other legal counsel, including litigation matters, and assistance related to the Finance Authority's statutory responsibilities as may be specifically requested by the Finance Authority.
- 2.0 Reporting and Monitoring – applies to all legal services.
- 2.1 Track and report the status of all assignments.
 - 2.2 Monitor the appropriateness and efficiency of the closing process.
 - 2.3 Identify and report any significant risk exposures or control issues in programmatic and closing processes.
 - 2.4 Report periodically, or as requested to the General Counsel.
- 3.0 Specific Duties

In addition to the above, the contractor shall perform the duties outlined in the following appendices for each type of legal services to be performed by the contractor.

[See Chart on Next Page]

<u>ACTIVE PROGRAMS</u>	<u>APPENDIX/</u>
PPRF Bond Counsel	Appendix C
Tax Counsel	Appendix D
Disclosure Counsel	Appendix E
PPRF Loan Counsel	Appendix F
GRIP Bond Counsel	Appendix G
Water Trust Board Counsel and Drinking Water Revolving Fund Loan	Appendix H
Colonias Loan/Grant Counsel	Appendix I
Private Entity Loan Counsel	Appendix J
New Markets Tax Credits Lending Counsel	Appendix K
New Markets Tax Credits Tax Counsel	Appendix L
New Markets Tax Credits Special Counsel	Appendix M
Special Assignments/Other Legal Services	Appendix N
<u>INACTIVE PROGRAMS</u>	<u>APPENDIX/SCOPE</u>
Private Entity Bond Counsel	Appendix O
Drinking Water Bond Counsel	Appendix P

4.0 Prohibited Participation

While under contract with the Finance Authority, the successful Offeror will not participate in any manner, other than as its capacity as legal representative to the Finance Authority, in any financial transaction of the Finance Authority or any other public entity which requires Finance Authority financing.

D. QUALIFICATIONS OF OFFEROR

Offerors should meet the following qualifications:

- 1.1 Have a minimum of five years of experience in providing legal services for which the Offeror has applied.
- 1.2 Have provided legal services to governmental lending agencies with characteristics similar to the Finance Authority, or alternatively, have provided such services to both governmental organizations and private sector lenders such as commercial banks.
- 1.3 Be familiar with all applicable statutes and regulations applicable to the legal services for which the Offeror has applied.
- 1.4 Be appropriately licensed to provide the requested services in the state of New Mexico.
- 1.5 Have appropriate liability insurance in an amount of not less than \$4,000,000 that shall cover the Offeror, its employees, agents, representatives, and subcontractors. The Finance Authority reserves the right to require that a greater amount of

professional liability insurance be in force in connection with any particular legal service which is to be provided by legal counsel.

- 1.6 Be free from conflicts of interest. In particular, by submitting a proposal the Offeror represents that to the best of its knowledge and belief (1) it currently represents no clients adverse to the Finance Authority; or (2) its representation of another client or clients in matters involving the Finance Authority will not adversely affect its ability to perform the requested services. Offerors must provide a list of all current matters involving the Finance Authority in which the Offeror represents another client or clients. The Procurement Manager retains the discretion to consent to or reject representation by any Offeror under the provisions of Rule 16-107 NMRA. Should a conflict be later discovered, it may result in termination of a contract awarded by this RFP, if any.

D. PROCUREMENT MANAGER

The Finance Authority 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
General Counsel
New Mexico Finance Authority
207 Shelby Street
Santa Fe, NM 87501

Telephone: (505) 992-9669
Facsimile: (505) 984-1454
Email: ogc@nmfa.net

This procurement is being conducted in accordance with and subject to the requirements of the Finance Authority's Procurement Policy ("Procurement Policy"). A copy of the Procurement Policy is available for inspection or review at the Finance Authority's offices or via the Finance Authority website at nmfa.net.

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 Finance Authority.

Until the award is made and notice given to all Offerors, the Finance Authority 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	Finance Authority	2/1/19
2. Deadline to Submit Written Questions	Offerors	2/22/19
3. Response to Written Questions/RFP Amendments	Finance Authority	2/27/19
4. Submission of Proposals	Offerors	3/15/19
5. Review of Proposals	Evaluation Committee	3/18/19 through 4/5/19
6. Selection of Finalists	Evaluation Committee	4/8/19
7. Oral Presentations	Finalists	4/15/19 through 4/26/19
8. Best and Final Offers	Finalist Offerors	5/1/19
9. Selection and Recommendation to Committee(s)	Evaluation Committee	5/13/16
10. Contract Award(s) by Board	Finance Authority	5/23/16
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.

- 1.1 Issuance of RFP. This RFP is being issued by the Finance Authority on the date outlined above. Potential Offerors may be directly provided with a copy of the RFP by the Procurement Manager or may obtain a copy by visiting the Finance Authority's website at nmfa.net. 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 Finance Authority in its sole discretion, to be in the best interests of the Finance Authority.
- 1.2 Deadline to Submit Written Questions. Potential Offerors may submit written questions concerning this RFP until the close of business on the date outlined in the Sequence of Events above. All questions must be submitted in writing **VIA EMAIL to the Procurement Manager.**

1.3 Response to Written Questions/RFP Amendments. The Finance Authority will make the questions and the Finance Authority's responses available via its website at nmfa.net on the date outlined in the Sequence of Events above.

1.4 Submission of Proposal. *Offeror proposals, including Appendix A, must be submitted for review and evaluation to the PROCUREMENT MANAGER VIA EMAIL NO LATER THAN 12:00 PM MOUNTAIN TIME on the date outlined in the Sequence of Events above. Proposals received after this deadline will not be accepted. The date and time of receipt will be recorded on each proposal. Proposals submitted via mail, hardcopy, or by facsimile will not be accepted. Proposals must be less than 30 MB in size.*

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 C 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 Finance Authority 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 Finance Authority.

1.5 Review of Proposals. Proposals will be distributed to members of the Evaluation Committee for review on the date outlined in the Sequence of Events above.

The review of proposals will be performed by the Finance Authority'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.

1.6 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.

1.7 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.

1.8 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 at the Finance Authority's offices in Santa Fe, New Mexico, depending

on availability, or at another site that may be designated by the Procurement Manager. 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.

- 1.9 Selection of Contractor(s). The Evaluation Committee will select, and the Procurement Manager will notify the selected contractor(s).
- 1.10 Recommendation to Finance Authority or Board. If applicable, and in conformance with Finance Authority policies and procedures, the Evaluation Committee will present its decision regarding the selected contractor(s) to the appropriate Finance Authority committee and/or to the Finance Authority 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 Finance Authority's Procurement Policy. The most advantageous proposals may or may not have received the most points.

- 1.11 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 Finance Authority will provide written notice of the award to all Offerors following the date of the award.

- 1.12 Protest Deadline. Any protest by an Offeror must be in conformance with the Procurement Policy. Protests must be submitted in writing to the Finance Authority's Contracts 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 Finance Authority. Protests must be delivered to the Procurement Manager for distribution to the Contracts Committee.

Protests received after this deadline will not be accepted.

C. GENERAL REQUIREMENTS

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

- 1.1 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.

- 1.2 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.
- 1.3 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 Finance Authority. The Finance Authority will make contract payments only to the prime contractor.
- 1.4 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.
- 1.5 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 Finance Authority will not merge, collate or assemble proposal materials.
- 1.6 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.
- 1.7 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.
- 1.8 Disclosure of Proposal Contents. The proposals will be kept confidential until a contract is awarded by the Finance Authority 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 Finance Authority is subject to state laws, including, the Inspection of Public Records Act, Section 14-2-1 through 14-2-12 NMSA 1978, which provides 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, that provides generally for open meetings for public deliberative bodies. Neither the Offeror nor any related entity shall make any claim against the Finance Authority if it makes available to the public any document, report, or other information the Finance Authority received from the Offeror or any related entity which was made public by the Finance Authority pursuant to the Inspection of Public Records Act or the Open Meetings Act, as permitted by law.

The Finance Authority 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 Finance Authority shall examine the Offeror's request and make a determination that specifies which portions of the proposal should be disclosed.

The Finance Authority may endeavor to contact the Offeror before releasing any information, but in no event will the Finance Authority 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 Finance Authority and its employees and officers harmless from any liability or costs associated with the release of any information.

- 1.9 No Obligation. This procurement does not obligate the Finance Authority to the eventual purchase of any professional services offered.
- 1.10 Termination. This RFP may be canceled at any time and any and all proposals may be rejected in whole or in part when the Finance Authority determines, in its sole discretion, such action to be in the best interest of the Finance Authority.
- 1.11 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 Finance Authority's decision as to whether sufficient budget, funding or ad authorizations are available will be accepted by the contractor as final.
- 1.12 Governing Law. This procurement and any agreement with Offerors that may result shall be governed by the laws of the State of New Mexico.
- 1.13 Basis for Proposal. Only information supplied by the Finance Authority in writing through the Procurement Manager or in this RFP should be used as the basis for the preparation of Offeror proposals.
- 1.14 Contract Terms and Conditions. The contract between the Finance Authority and any contractor shall be in substantially the format and contain the terms and conditions included in the sample contract attached hereto as Appendix C. 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 Finance Authority's terms and conditions, that Offeror must propose specific alternative language that is acceptable to the Finance Authority. General references to the Offeror's terms and conditions or attempts at complete substitutions are not acceptable to the Finance Authority 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 Finance Authority reserves the right to negotiate with a successful Offeror provisions in addition to those contained in this RFP.

- 1.15 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.
- 1.16 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.
- 1.17 Change in Contractor Representatives. The Finance Authority reserves the right to require a change in contractor representatives if the assigned representatives are not, in the opinion of the Finance Authority, meeting its needs adequately.
- 1.18 Finance Authority's Rights. The Finance Authority reserves the right to accept all or a portion of an Offeror's proposal.
- 1.19 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 Finance Authority. Other copies may be destroyed.

II. RESPONSE FORMAT AND ORGANIZATION

A. NUMBER OF RESPONSES

Each Offeror may submit only one proposal.

B. SUBMISSION OF PROPOSAL

Offerors shall only submit a proposal via email to the Procurement Manager. Proposals must be less than 30MB in size, or will be rejected.

Proposals shall be submitted to the Procurement Manager on or before the closing date and time for receipt of proposals.

C. PROPOSAL FORMAT AND CONTENTS

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 any resulting work, including all subcontractors who have been identified,. Offeror must show, at a minimum, the person's name, education, position, and total years and types of experience relevant to the performance of the work.
- 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.
- 1.6 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 Finance Authority.

- 1.6.1 If applicable, a detailed description of Offeror's knowledge and experience with respect to the issuance and sale of tax-exempt and taxable securities, and a description of five recent bond transactions performed, including the type and size of the notes in each transaction. A copy of the official statement and bond counsel opinion for the most recent of these transactions should be included.
- 1.6.2 If applicable, a list of tax-exempt and taxable bond issues for which the Offeror has acted as bond counsel or underwriters' counsel during the prior three (3) years, including the date of sale, issuer, dollar amount of the issue, rating, summary of significant structural features of the transaction and the total fees received by the Offeror for its legal services.
- 1.7 A detailed description of Offeror's and, if applicable, each subcontractor's technical and support capabilities for the issuance and sale of debt, i.e., ability to prepare voluminous documents in a timely manner, expertise of administrative support staff, etc.
- 1.8 A detailed description of the Offeror's policies and procedures regarding the identification and resolution of conflicts of interest which arise out of the Offeror's representation of clients with adverse or potentially adverse interests.
- 1.9 A list of three (3) references for the Offeror's work with other public entities.
- 1.10 The Offeror must provide a list and description of any legal action, administrative proceeding 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 professional association, state or federal board or commission, or other regulatory body. The list and description shall include the current status or final disposition of each such action.
- 1.11 A statement disclosing (i) any current or proposed business transaction between the Offeror and any member, officer or employee of the Finance Authority; and, (ii) any other conflict or potential conflict which may reasonably give rise to a claim of conflict of interest.

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 for public entities. 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. Included with the Offeror's proposed fee schedule shall be the Fee Schedule Form as outlined below.

<u>PROGRAM/LEGAL SERVICE</u>	<u>APPENDIX/FEE FORM</u>
PPRF Bond Counsel	Appendix C-1
Tax Counsel	Appendix D-1
Disclosure Counsel	Appendix E-1
PPRF Loan Counsel	Appendix F-1
GRIP Bond Counsel	Appendix G-1
Water Trust Board /Drinking Water Revolving Fund Loan Counsel	Appendix H-1
Colonias Loan/Grant Counsel	Appendix I-1
Private Entity Loan Counsel	Appendix J-1
Tax Credits Lending Counsel	Appendix K-1
Tax Credits Tax Counsel	Appendix L-1
Tax Credits Special Counsel	Appendix M-1
Special Assignments/Other Legal Services	Appendix N-1
Private Entity Bond Counsel	Appendix O-1
Drinking Water Bond Counsel	Appendix P-1

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 the Finance Authority's per diem and reimbursement policies as set forth in the Procurement Policy. An invoice for services provided and reimbursable expenses incurred, if any, must be presented before any payment under the contract shall be made.

2.3 Subcontracting. *Any fee of a subcontractor will be paid solely by the Contractor.* The Finance Authority will not pay a subcontractor separately. In addition to the

compensation, the Offeror shall be reimbursed for New Mexico gross receipts taxes paid to the New Mexico Taxation and Revenue Department, if applicable.

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:

FACTOR		Possible Points
1	Demonstrated Qualifications & Experience	20
2	Technical Capabilities	10
3	Fee Proposal	20
4	Knowledge of applicable law and financing	20
5	Capability to provide analysis/recommendations	20
6	Geographic location	10
Total Points		100

B. EVALUATION FACTORS

The award of a contract shall be made to the responsible Offeror(s) whose proposal is most advantageous to the Finance Authority 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 Finance Authority to select the Offeror who submits the lowest cost proposal. The Finance Authority 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.

1.0 Demonstrated Qualifications and Experience: 20 points

Offeror's qualifications and experience and if applicable those of any subcontractor of Offeror for the particular type of legal services to be provided, including:

1.1 Category of Services – PPRF Bond Counsel

Offeror's qualifications and experience with respect to the issuance and sale of tax-exempt securities, taxable securities, refunding bonds and similar obligations. Included herein are the following factors:

1.1.1 Offeror and/or subcontractor must be listed in the most recent edition of The Bond Buyer's Directory of Municipal Bond Dealers ("Red Book"). Failure to meet this criterion will result in rejection of the proposal.

1.1.2 Relevant experience of individuals who will perform the scope of work including litigation experience.

1.1.3 Comparable tax-exempt and taxable transactions performed in the past three years, including the type and size of bonds in each transaction

1.1.4 Other factors delineated in Appendix C

1.2 Category of Services – Tax Counsel

Offeror's qualifications and experience with respect to the issuance and sale of tax-exempt securities, taxable securities, refunding bonds and similar obligations. Included herein are the following factors:

1.2.1 Offeror and/or subcontractor must be listed in the most recent edition of The Bond Buyer's Directory of Municipal Bond Dealers ("Red Book").

1.2.2 Failure to meet this criterion will result in rejection of the proposal.

1.2.3 Relevant experience of individuals who will perform the scope of work.

1.2.4 Comparable tax-exempt and taxable transactions performed in the past three years, including the type and size of bonds in each transaction.

1.2.5 Other factors delineated in Appendix D.

1.3 Category of Services – Disclosure Counsel

Offeror's qualifications and experience with respect to disclosure duties and issues relating to the issuance and sale of tax-exempt securities, taxable securities, refunding bonds and similar obligations. Included herein are the following factors:

1.3.1 Offeror and/or subcontractor must be listed in the most recent edition of the Bond Buyer's Director of Municipal Bond Dealers ("Red Book"). Failure to meet this criterion will result in rejection of the proposal.

1.3.2 Relevant experience of individuals who will perform the scope of work.

1.3.3 Comparable tax-exempt and taxable transactions performed in the past three years including the type and size of bonds in each transaction in which your firm had the principal role in preparing the disclosure information.

1.3.4 Other factors as delineated in Appendix E.

1.4 Category of Services – PPRF Loan Counsel

Offeror's qualifications and experience with respect to the following:

- 1.4.1 Loan documentation, secured transactions, collections and foreclosure.
- 1.4.2 Requirements of federal, state, and local law and such other requirements and issuers applicable to the loans which have been or may be made by the Finance Authority.
- 1.4.3 Other factors delineated in Appendix F.

1.5 Category of Services – GRIP Bond Counsel

Offeror's qualifications and experience with respect to the issuance and sale of tax-exempt securities, taxable securities, refunding bonds and similar obligations. Included herein are the following factors:

- 1.5.1 Offeror and/or subcontractor must be listed in the most recent edition of The Bond Buyer's Directory of Municipal Bond Dealers ("Red Book"). Failure to meet this criterion will result in rejection of the proposal.
- 1.5.2 Relevant experience of individuals who will perform the scope of work including litigation experience.
- 1.5.3 Comparable tax-exempt and taxable transactions performed in the past three years, including the type and size of bonds in each transaction.
- 1.5.4 Other factors delineated in Appendix G.

1.6 Category of Services – Water Trust Board Loan/Grant Counsel & Drinking Water Revolving Fund Loan Counsel

- 1.6.1 Requirements of federal, state, and local law and such other legal requirements and issues applicable to the loans/grants made from the Drinking Water Revolving Loan Fund and Loans and/or Grants made by the Water Trust Board.
- 1.6.2 Due diligence, Loan/Grant documentation, and efficiency in closing.
- 1.6.3 Experience in providing written legal opinions to the Finance Authority as to the validity and enforceability of each loan.
- 1.6.4 Other factors delineated in Appendix H.

1.7 Category of Services – Colonias Loan/Grant Counsel

Offeror's qualifications and experience with respect to the following:

- 1.7.1 Requirements of federal, state, and local law and such other legal requirements and issues applicable to the loans/grants made from the Colonias Infrastructure Project Fund.

1.7.2 Due diligence, Loan/Grant documentation, and efficiency in closing.

1.7.3 Experience in providing written legal opinions to the Finance Authority as to the validity and enforceability of each loan/grant.

1.7.4 Other factors delineated in Appendix I.

1.8 Category of Services – Private Entity Loan Counsel

Offeror's qualifications and experience with respect to the following:

1.8.1 Federal, state and local law and such other legal requirements and issues applicable to the private entity loans which have been or may be made by the Finance Authority.

1.8.2 Loan documentation, secured transaction, collections and foreclosure.

1.8.3 Providing written legal opinions to the Finance Authority as to the validity and enforceability of each private entity loan as required by the Finance Authority.

1.8.4 Other factors as delineated in Appendix J.

1.9 Category of Services – New Markets Tax Credits Commercial Lending Counsel

Offerors qualifications and experience with respect to the following:

1.9.1 Federal, state and local laws and other such legal requirements and issues applicable to documentation and security of equity and loan transactions that have been or may be made by Finance New Mexico, a qualified Community Development Entity.

1.9.2 Providing written legal opinions to the Finance Authority as to the validity and enforceability of each qualified low income community investment as required by the Finance Authority.

1.9.3 Relevant experience of individuals who will perform the scope of work.

1.9.4 Other factors delineated in Appendix K.

1.10 Category of Services – New Markets Tax Credits Tax Counsel

Offerors qualifications and experience with respect to the following:

1.10.1 Federal requirements and issues applicable to documentation and security of equity and loan transactions that have been or may be made by Finance New Mexico, a qualified Community Development Entity.

1.10.2 Providing written legal tax opinions to the Finance Authority related to each qualified low income community investment as required by the Finance Authority.

1.10.3 Relevant experience of individuals who will perform the scope of work.

1.10.4 Other factors delineated in Appendix L.

1.11 Category of Services – New Markets Tax Credits Special Counsel

Offerors qualifications and experience with respect to the following:

1.11.1 Federal requirements and issues applicable to documentation and security of equity and loan transactions that have been or may be made by Finance New Mexico, a qualified Community Development Entity.

1.11.2 State and Federal laws and requirements concerning formation, operation and tax treatment of limited liability companies.

1.11.3 Relevant experience of individuals who will perform the scope of work.

1.11.4 Other factors delineated in Appendix M.

1.12 Category of Services – Special Assignments/Other Legal Services

Offerors qualifications and experience with respect to the following:

1.12.1 Specialized knowledge of the Finance Authority and laws applicable to its programs.

1.12.2 Ability to address issues on an ad-hoc and expedited basis.

1.12.3 Relevant experience of individuals who will perform the scope of work.

1.12.4 Other factors delineated in Appendix N.

1.13 Category of Services – Private Entity Bond Counsel

Offeror's qualifications and experience with respect to the following:

1.13.1 Knowledge and experience with respect to issuance of private entity bonds or such other requirements and issues related to private entity

bonds issued by the Finance Authority under the Statewide Economic Development Finance Act.

1.13.2 Relevant experience of individuals who will perform the scope of work.

1.13.3 Comparable tax-exempt and taxable transactions performed in the past three years, including the type and size of bonds in each transaction.

1.13.4 Other factors delineated in Appendix O.

1.14 Category of Services – Drinking Water Revolving Fund Bond Counsel

Offeror's qualifications and experience with respect to issuance of tax-exempt or taxable securities or such other requirements and issues that are applicable to the Drinking Water Revolving Loan Fund bonds. Included herein are the following:

1.14.1 Offeror and/or subcontractor must be listed in the most recent edition of The Bond Buyer's Directory of Municipal Bond Dealers ("Red Book"). Failure to meet this criterion will result in rejection of the proposal.

1.14.2 Relevant experience of individuals who will perform the scope of work.

1.14.3 Comparable tax-exempt and taxable transactions performed in the past three years, including the type and size of bonds in each transaction.

1.14.4 Other factors delineated in Appendix P.

3.0 Technical Capabilities: 10 points

Offeror's technical capabilities and, if applicable the technical capabilities of any subcontractor of Offeror, will be evaluated on the basis of the Offeror's ability to handle the issuance and sale of tax-exempt and taxable securities and loan transactions and Demonstrated Qualifications and Experience in each legal services category.

4.0 Fee Proposal: 20 points

The fee(s) charged by the Offeror for performance of the services contemplated in the Scope of Procurement section of this proposal.

5.0 Knowledge of Applicable Law & Financing: 20 points

Offeror will be evaluated on knowledge of New Mexico laws applicable to financing and familiarity with New Mexico issuers and legal services related to the programs administered by the Finance Authority and Demonstrated Qualifications and Experience in each legal services category.

6.0 Capability to Provide Analysis/Recommendations: 10 points

Offeror will be evaluated on capability to provide analyses and recommendations that are independent of interest of other issuers and legal services related to the programs administered by the Finance Authority and Demonstrated Qualifications and Experience in each legal services category.

7.0 Geographic Location: 10 points

Offeror's willingness to locate an office in the State, when practical, staffed with key personnel who will be responsible for performing services for the Finance Authority.

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.
- 1.1 The Procurement Manager may contact the Offeror for clarification of the response as specified in Section II(B)(1.5).
- 1.2 The Evaluation Committee may use other sources of information to perform the evaluation as specified in Section IV(B).
- 1.3 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 Finance Authority. The responsible Offeror(s) whose proposal is most advantageous to the Finance Authority, taking into consideration the evaluation factors in Section IV, will be recommended for contract award.

**APPENDIX A
LEGAL 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 _____, 2019.
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 C to this RFP.
6. The following material is considered by the Offeror to be trade secret information:
7. The Offeror hereby acknowledges that the Finance Authority 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 Finance Authority harmless for the release of any information, including information deemed confidential commercial information by the Offeror, if the Finance Authority reasonably believes the Finance Authority 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.

By: _____ Title: _____

Printed Name: _____

APPENDIX B FINANCE AUTHORITY PROGRAMS

Public Project Revolving Fund

(General relevance and specific for PPRF Bond, Tax, Disclosure and Loan Counsel)

The Public Project Revolving Fund (“PPRF”) is the Finance Authority’s flagship program. The PPRF was created in 1994 and assists a wide range of public entities in accessing the capital markets. The advantage is being able to offer all borrowers the Finance Authority’s high investment credit rating, regardless of their underlying ratings. The Authority’s main purpose is to coordinate the planning and financing of state and local public projects, provide long-term planning based on state and local capital needs and to improve cooperation among the executive and legislative branches of state and local governments. These goals are achieved primarily through the PPRF.

Over the past several years the fund has evolved from a broad-based financier of state and local government agencies to one that now includes a greater diversity of entities. This diversity has helped the PPRF attain higher bond ratings, lower costs of issuance to all borrowers, and give below-market interest rate loans to disadvantaged entities. It has also allowed the Finance Authority to continue to offer a variety of program enhancements to borrowers.

The PPRF is funded primarily through the Finance Authority's share of Government Gross Receipts Tax (GGRT), which provides approximately \$31.5 million per year, less an annual legislative reallocation of GGRT of \$6 to \$7 million. The Finance Authority uses this cash inflow to make loans to borrowers and then replenishes the fund by issuing tax-exempt bonds secured by the PPRF loans made to qualified entities.

PPRF Senior bonds are currently rated ‘AAA’ By Standard & Poor’s and ‘Aa1’ by Moody’s Investor Services. Public projects financed through the PPRF in amounts in excess of \$1 million per project require specific authorization by the Legislature. As of December 31, 2018, the Finance Authority had made 1,601 PPRF loans totaling approximately \$3.58 billion.

Governor Richardson’s Investment Partnership

(relevant for GRIP Bond Counsel)

In 2003, the State Legislature authorized the issuance of approximately \$1.6 billion in bonds to fund 40 statewide transportation expansion and improvement projects known as Governor Richardson’s Investment Partnership (“GRIP”). GRIP’s enabling legislation named the Finance Authority as the agent for the New Mexico Department of Transportation (NMDOT) and authorized the Finance Authority to issue approximately \$1.6 billion in bonds to finance the projects.

In 2008, House Bill 2 increased the original GRIP funding by slightly more than \$53 million to address the inflationary impact of construction materials, for which the NMDOT has had cost increases of more than 30%. \$235 million in bonds remain to be issued under the original 2003 authorization.

Drinking Water Revolving Loan Fund

(relevant for Water Trust Board & Drinking Water Revolving Fund Loan Counsel)

Created in 1997 as a partnership between the Finance Authority and the New Mexico Environment Department, the Drinking Water Revolving Loan Fund provides low-cost financing for the construction of and improvements to drinking water facilities throughout New Mexico in order to protect drinking water quality and the public health.

This federal program, managed by the Finance Authority on behalf of the State of New Mexico (“State”), is funded through a yearly federal capitalization grant of approximately \$8 million. The State is required to match the federal grant by 20%. The primary use of the funding is for zero- or two-percent loans to drinking water systems to fund vital water quality projects. The New Mexico Environment Department is allowed, under federal law, to use up to 27% of the funding to meet its duties under the federal Safe Drinking Water Act. The Finance Authority receives 4% for its management of the program.

To date, the State has received approximately \$208.9 million in Capitalization Grants and has provided the 20% State Match totaling approximately \$38.8 million. To date, all State Matches plus 69% of each Federal Capitalization Grant, now totaling approximately \$141.4 million, have been directed to the DWSRLF. The Finance Authority has entered into loan agreements for approximately \$220 million with approximately \$63 million (31.6%) loaned to small public water systems that serve a population of 10,000 or fewer and \$58.5 million (29.4%) has served disadvantaged public waters systems.

Water Project Fund

(relevant for Water Trust Board & Drinking Water Revolving Fund Loan Counsel)

Created by the 2001 Legislature, the Water Project Finance Act established the 16-member Water Trust Board to recommend to the Legislature projects to be funded through the Water Project Fund. Under the Act, the Board is authorized to recommend funding by the Finance Authority for five project categories:

- 1) water treatment, conservation or reuse
- 2) flood prevention
- 3) Endangered Species Act collaborative efforts
- 4) water storage, conveyance and delivery infrastructure improvements
- 5) watershed restoration and management initiatives

These categories reflect the State’s comprehensive effort to promote funding for projects that improve water quantity up & down the value chain, from the water source to its use.

The Finance Authority administers the program, making the loans and grants on behalf of the Water Trust Board. Since its inception, the Water Project Fund has provided funding to 363 projects totaling over \$381.2 million. The Water Project Fund is capitalized by the receipt of a percentage of severance tax bond proceeds and loan repayments. The Water Trust Board recently approved its 2018 cycle awards to roughly 14 projects in the amount of approximately \$17.305 million.

Colonias Infrastructure Fund
(relevant for Colonias Loan/Grant Counsel)

The Colonias Infrastructure Fund Board (CIFB) was established by the Legislature in 2010 through the enactment of the Colonias Infrastructure Act (“the Act”). The statutory purpose of the Colonias Infrastructure Board is to help address inadequate infrastructure in Colonia-recognized communities as provided for in the Colonias Infrastructure Act, NMSA 1978, Sections 6-30-1 – 6-30-8 that has resulted in poor social, health and economic conditions. Using the resources provided through the Colonias Infrastructure Project Fund, the CIFB support the planning and development of infrastructure in an efficient and cost-effective manner for projects that improve quality of life for Colonia residents and encourage economic development.

Pursuant to the act, the Finance Authority may make loans and grants awards from the Colonias Infrastructure Fund to qualified entities for projects prioritized by the CIFB on the terms and conditions established by the Finance Authority. By statute, six types of projects may be funded from the Colonias Infrastructure Fund:

1. Water infrastructure
2. Waste water infrastructure
3. Solid waste infrastructure
4. Flood and drainage control
5. Road infrastructure
6. Housing pre-development infrastructure

The Colonias Infrastructure Fund is capitalized through the receipt of severance tax bond proceeds. Since its inception, the Colonias Infrastructure Fund has provided funding, through loans and grants, to 186 projects totaling over \$84.1 million. The Colonias Infrastructure Board recently approved its 2018 cycle awards to roughly 18 projects in the amount of approximately \$8.8 million.

Primary Care Capital Fund
(relevant for Private Entity Counsel)

The Primary Care Capital Fund was created by the 1994 Legislature with an initial appropriation of \$5 million to be used as a revolving fund that provides financial assistance to small primary care health clinics for infrastructure, construction and capital equipment purchases with a useful life of more than 3 years.

Clinics in New Mexico communities such as Peñasco, Silver City, Pecos and Anthony have borrowed from the fund to expand their existing medical facilities for mental and dental services in addition to the construction of new facilities. These communities benefit tremendously from the primary care services because the program allows for a 20 percent annual loan forgiveness if the borrower agrees to a contract-for-services to provide free medical care or reduced prices to sick and indigent clients.

These loans, some of which have been in repayments since 1997, have repaid approximately \$10 million to the fund. Currently, the Finance Authority has approximately \$3.5 million in available funds.

Behavioral Health Capital Fund
(relevant for Private Entity Counsel)

Tailored after the successful Primary Care Capital Fund, this program provides low cost capital to behavioral health clinics in rural and underserved areas of the state. Capitalized by the Finance Authority with \$2.5 million, this small loan program provides 3 percent loans to non-profit behavioral health care providers. With its partners at the Department of Human Services, the Finance Authority has funded four projects totaling \$2.8million, including a \$1.2 million loan to La Familia in Dona Ana County which closed in FY 2018.

Child Care Revolving Loan Fund
(relevant for Private Entity Counsel)

Created by the 2005 Legislature and funded by the Governor with \$250,000 of federal funds, the Child Care Facility Loan Fund partners the Finance Authority with Children Youth and Families Department (CYFD) to provide low-cost financing to licensed child care providers to fund improvements to their facilities.

In 2008, the Finance Authority and CFYD stepped up their efforts to make certain child care providers were positioned to take advantage of this critical, low-cost funding. However, recent declines in employment and budget tightening at the state level have impacted the number of clients that are able to undertake loans. To date, the Finance Authority funded a \$50,000 loan to Connie’s Day Care in Las Cruces for the expansion of this home-based day care center.

Smart Money (SWEDFA)
(relevant for Private Entity Counsel)

Created in 2003, the Statewide Economic Development Finance Act authorizes the Finance Authority to issue bonds, make loans and provide loan and bond guarantees on behalf of private entities. In 2005, the Finance Authority, in partnership with the Economic Development Department, successfully amended the law to create the Smart Money Initiative, a business lending program designed to use a \$7 million appropriation to create greater access to capital throughout rural and underserved areas of New Mexico.

Through the Smart Money Initiative, the Finance Authority has secured partners from more than 30 participating financial institutions operating throughout the state. To date, the Finance Authority has purchased 5 loan participations totaling approximately \$5.7 million, which has leveraged additional financing from the Smart Partner banks of more than \$15.8 million. These loans are funding new and expanding businesses located in Raton, Las Vegas, Alamogordo, Las Cruces and Hobbs. More importantly, the funding will create at least 200 new jobs for New Mexicans over a five year period.

Conduit Bonds (SWEDFA)
(relevant for Private Entity Counsel)

Created in 2003, the Statewide Economic Development Finance Act authorizes the Finance Authority to issue bonds, make loans and provide loan and bond guarantees on behalf of private entities. Until FY 2010, only the Smart Money Loan Participation Program has been implemented by the Finance Authority. However, during FY 2010, the Finance Authority implemented the rules and policies necessary to help businesses and communities take advantage of changes in federal tax law by becoming an active conduit bond issuer. Through this program, the Finance Authority can help for-profit and not-for-profit businesses, particularly in rural and underserved areas of New Mexico, access the national bond market and take advantage of federal programs that can lower their interest rates.

New Markets Tax Credits
(relevant for Tax Credits Lending, Tax and Special Counsel)

To enhance the Smart Money Initiative, the Finance Authority formed a subsidiary for-profit company called Finance New Mexico LLC, to pursue an allocation of federal tax credits available under the New Markets Tax Credit (NMTC) program. Recognizing the lack of allocation to New Mexico, the Legislature and Governor supported—with enactment of legislation in 2006—creation of this company for the sole purpose of participating in this specific federal program.

The purpose of the NMTC program is perfectly aligned with the goal of the Smart Money Initiative, which is to provide private businesses in rural or underserved areas of the state with greater access to capital. The incentive to investors is a 39 percent federal income tax credit earned over seven years for every dollar invested in a qualified low income community enterprise. Surprisingly, until 2007, no single entity within New Mexico had received an allocation of these important incentives, and only one single deal had been completed in this state for \$6 million, despite more than \$11.5 billion of tax credits having been allocated nationwide.

Under its subsidiary company Finance New Mexico, the Finance Authority has been awarded, through four applications, \$246 million; all of which has been obligated. The Finance Authority has an application pending with the U.S. Department of Treasury for additional allocation.

APPENDIX C

RESPONSIBILITIES OF PPRF BOND COUNSEL (Not exhaustive)

When authorized by the Finance Authority in a written authorization:

1. Advise the Finance Authority on the Requirements of federal, state and local law and such other legal requirements and issues that are applicable to the bonds or such other obligations that have been or may be issued by the Finance Authority.
2. Provide and deliver to the Finance Authority written Bond Counsel opinion as to the validity and enforceability of the bonds or other obligations as to which Contractor serves as bond counsel.
3. Provide a written tax opinion as to the exemption from state and federal income taxation of interest on the bonds, unless independent tax counsel is used or the bonds are taxable.
4. Assist the Finance Authority and its underwriters with the structuring of proposed issues of bonds and other obligations or loans.
5. Prepare and assist in the preparation and review of all documents required to be adopted by the Finance Authority for the issuance and sale of bonds and other obligations, including the preparation of board resolutions, and other determinations, legal and tax notices, bond resolutions and such other documents as may be necessary or appropriate to the issuance of bonds or other obligations.
6. Review and negotiate bond purchase agreements and prepare representation letters, escrow agreements and appropriate certificates in connection with the issuance and sale of bonds or other obligations.
7. Prepare and assist in the preparation of all applicable notices pertaining to any hearings required in connection with the issuance of bonds or other obligations, and conduct or assist with the conduct of such hearings, as directed by the Finance Authority.
8. Conduct all closings of transactions involving the issuance and sale of bonds or other obligations and preparation of transcripts of all documents necessary to closing the issuance of bonds or other obligations.
9. Attend such hearings and/or meetings as requested by the Finance Authority; and
10. Provide such other legal counsel and assistance related to the Finance Authority's statutory responsibilities and operations as may be specifically requested by the Finance Authority.

APPENDIX C-1

FEE SCHEDULE FORM

PPRF BOND COUNSEL

Fixed Fee for Public Project Revolving Fund

Amount of Issuance	Cost Proposal
\$0---\$20,000,000	\$ per million
\$20,000,001---\$50,000,000	\$ per million
\$50,000,001---\$100,000,000	\$ per million
\$100,000,001---\$250,000,000	\$ per million
Greater than \$250,000,000	\$ per million

The Finance Authority reserves the right to negotiate a fixed fee for any specific assignment. If the bond issue requires simultaneous closing with a loan or another bond issuance, the Finance Authority will negotiate a firm “not to exceed” fee for the bond issuance.

APPENDIX D

RESPONSIBILITIES OF TAX COUNSEL (Not exhaustive)

When authorized by the Finance Authority in a written authorization:

1. Prepare and deliver to the Finance Authority the Contractor's written opinion relating to state and federal tax laws, including but not necessarily limited to arbitrage for all issues of tax-exempt securities of the Finance Authority. Render advice as to maintaining the tax-exempt status of bonds of the Finance Authority.
2. Attend such hearings or meetings as requested by the Finance Authority; and
3. Provide such other legal counsel and assistance related to the Finance Authority's statutory responsibilities and operations as may be specifically requested by the Finance Authority.

APPENDIX D-1

FEE SCHEDULE FORM

TAX COUNSEL

Fixed Fee for Department of Transportation Funds

Amount of Issuance	Cost Proposal
\$0---\$20,000,000	\$ per million
\$20,000,001---\$50,000,000	\$ per million
\$50,000,001---\$100,000,000	\$ per million
\$100,000,001---\$250,000,000	\$ per million
Greater than \$250,000,000	\$ per million

The Finance Authority reserves the right to negotiate a fixed fee for any specific assignment. If the bond issue requires simultaneous closing with a loan or another bond issuance, the Finance Authority will negotiate a firm “not to exceed” fee for the bond issuance.

APPENDIX E

RESPONSIBILITIES OF DISCLOSURE COUNSEL (Not exhaustive)

When authorized by the Finance Authority in a written authorization:

1. Disclosure Counsel, when requested to do so by the Finance Authority, shall advise the Finance Authority regarding state and federal securities law disclosure requirements in connection with the issuance and sale of bonds or other obligations by the Finance Authority under the NMFA Act or any other law authorizing the Finance Authority to issue bonds or other obligations. Including but not limited to assistance in the preparation of disclosure documents and continuing disclosure documents, and preparation and delivery to the Finance Authority the Contractor's written advice concerning the adequacy of the Finance Authority's disclosure documents under state and federal securities law. The Contractor shall attend all meetings and closings pertaining to bonds issued by the Finance Authority for which contractor has acted as disclosure counsel, when deemed necessary by the Finance Authority.
2. Attend such other hearings or meetings as requested by the Finance Authority; and
3. Provide such other legal counsel and assistance related to the Finance Authority's statutory responsibilities and operations as may be specifically requested by the Finance Authority.

APPENDIX E-1

FEE SCHEDULE FORM

DISCLOSURE COUNSEL

**Fixed Fee for Public Project Revolving Fund Transactions and Department of
Transportation Funds**

Amount of Issuance	Cost Proposal
\$0---\$20,000,000	\$ per million
\$20,000,001---\$50,000,000	\$ per million
\$50,000,001---\$100,000,000	\$ per million
\$100,000,001---\$250,000,000	\$ per million
Greater than \$250,000,000	\$ per million

The Finance Authority reserves the right to negotiate a fixed fee for any specific assignment. If the bond issue requires simultaneous closing with a loan or another bond issuance, the Finance Authority will negotiate a firm “not to exceed” fee for the bond issuance.

APPENDIX F

RESPONSIBILITIES OF PPRF LOAN COUNSEL (Not exhaustive)

When authorized by the Finance Authority in a written authorization:

1. Advise the Finance Authority on the requirements of federal, state and local law and such other legal requirements and issues that are applicable to the loans which have been or may be made by the Finance Authority;
2. Provide a written legal opinion to the Finance Authority as to the validity and enforceability and tax-exempt status of each loan as required by the General PPRF Indenture and Subordinate PPRF General Indenture.
3. Assist the Finance Authority and its underwriters with the structuring of loans.
4. Prepare or assist in the preparation and review of all documents required to be adopted by the Finance Authority for the making of loans, including the preparation of board resolutions and other determinations, legal and tax notices and such other documents as may be necessary or appropriate to the making of loans.
5. Prepare or assist in the preparation of all applicable notices pertaining to any hearings required in connection with the making of loans, and conduct or assist with the conduct of such hearings, as directed by the Finance Authority.
6. Conduct all closings of transactions involving the making of loans and assemble all documents necessary to the making of loans including a transcript of proceedings.
7. Attend such hearings or meetings as requested by the Finance Authority; and
8. Provide such other legal counsel and assistance related to the Finance Authority's statutory responsibilities and operations as may be specifically requested by the Finance Authority.

APPENDIX F-1

FEE SCHEDULE FORM

NEW MEXICO FINANCE AUTHORITY PPRF LOAN COUNSEL

Fixed Fee per transaction

Type of Loan	Cost Proposal
Equipment Loans Issued Against State Fire/Law Fund	\$
Utility infrastructure based – Net System Revenue and/or Gross Revenue Tax	\$
Loans/Bond backed by general obligations – with Issuers Counsel	\$
Loans/Bond backed by general obligations – without Issuers Counsel	\$
Building & Capital improvement project – funded through Gross Revenue Tax or Lease Revenue	\$

The Finance Authority reserves the right to negotiate a fixed fee for any specific assignment. If the bond issue requires simultaneous closing with a loan or another bond issuance, the Finance Authority will negotiate a firm “not to exceed” fee for the bond issuance.

APPENDIX G

RESPONSIBILITIES OF GRIP BOND COUNSEL

When authorized by the Finance Authority in a written authorization:

1. Advise the Finance Authority on the Requirements of federal, state and local law and such other legal requirements and issues that are applicable to the bonds or such other obligations that have been or may be issued by the Finance Authority.
2. Provide and deliver to the Finance Authority written Bond Counsel opinion as to the validity and enforceability of the bonds or other obligations as to which Contractor serves as bond counsel.
3. Provide a written tax opinion as to the exemption from state and federal income taxation of interest on the bonds, unless independent tax counsel is used or the bonds are taxable.
4. Assist the Finance Authority and its underwriters with the structuring of proposed issues of bonds and other obligations or loans.
5. Prepare and assist in the preparation and review of all documents required to be adopted by the Finance Authority and the State Transportation Commission for the issuance and sale of bonds and other obligations, including the preparation of board resolutions, State Transportation Commission resolutions involving state transportation bonds, and other determinations, legal and tax notices, bond resolutions and such other documents as may be necessary or appropriate to the issuance of bonds or other obligations.
6. Review and negotiate bond purchase agreements and prepare representation letters, escrow agreements and appropriate certificates in connection with the issuance and sale of bonds or other obligations.
7. Prepare and assist in the preparation of all applicable notices pertaining to any hearings required in connection with the issuance of bonds or other obligations, and conduct or assist with the conduct of such hearings, as directed by the Finance Authority.
8. Conduct all closings of transactions involving the issuance and sale of bonds or other obligations and preparation of transcripts of all documents necessary to closing the issuance of bonds or other obligations.
9. Attend such hearings and/or meetings as requested by the Finance Authority; and
10. Provide such other legal counsel and assistance related to the Finance Authority's statutory responsibilities and operations as may be specifically requested by the Finance Authority.

APPENDIX G-1

FEE SCHEDULE FORM

GRIP BOND COUNSEL

Fixed Fee for GRIP Bond

Amount of Issuance	Cost Proposal
\$0---\$20,000,000	\$ per million
\$20,000,001---\$50,000,000	\$ per million
\$50,000,001---\$100,000,000	\$ per million
\$100,000,001---\$250,000,000	\$ per million
Greater than \$250,000,000	\$ per million

The Finance Authority reserves the right to negotiate a fixed fee for any specific assignment. If the bond issue requires simultaneous closing with a loan or another bond issuance, the Finance Authority will negotiate a firm “not to exceed” fee for the bond issuance.

APPENDIX H

RESPONSIBILITIES OF WATER TRUST BOARD LOAN/GRANT COUNSEL AND DRINKING WATER REVOLVING FUND LOAN COUNSEL (Not exhaustive)

When authorized by the Finance Authority in a written authorization:

1. Advise the Finance Authority on the requirements of federal, state and local law and such other legal requirements and issues that are applicable to the loans made from the Drinking Water Revolving Loan Fund and loans or Grants made by the Water Trust Board which have been or may be made by the Finance Authority.
2. Assist the Finance Authority with the structuring of loans.
3. Perform due diligence on all loans and grants to ensure compliance with Finance Authority policies and applicable law.
4. Prepare or assist in the preparation and review of all documents required to be adopted or executed by the Borrowers, Grantee, and Finance Authority for the making of loans/grants, including the preparation of board resolutions and other determinations, legal and tax notices and such other documents as may be necessary or appropriate to the making of loans/grants.
5. Prepare or assist in the preparation of all applicable notices pertaining to any hearings required in connection with the making of loans/grants, and conduct or assist with the conduct of such hearings, as directed by the Finance Authority.
6. Conduct all closings of transactions involving the making of loans/grants and assemble all documents necessary to the making of loans/grants including a transcript of proceedings.
7. Attend such hearings or meetings as requested by the Finance Authority; and
8. Provide such other legal counsel and assistance related to the Finance Authority's statutory responsibilities and operations as may be specifically requested by the Finance Authority's and operations as may be specifically requested by the Finance Authority.

**APPENDIX H-1
FEE SCHEDULE FORM**

**WATER TRUST BOARD COUNSEL AND
DRINKING WATER REVOLVING FUND LOAN/GRANT COUNSEL**

Loan/Grant Amount	Cost Proposal ***	
	Fixed Fee**	Hourly Rate with Negotiated Max**
\$50,000*	\$	per hour
\$150,000*	\$	per hour
\$300,000*	\$	per hour
\$600,000*	\$	per hour
\$1,500,000*	\$	per hour

Description of Miscellaneous Fees	Costs

- * The listed fees will be reduced by the following amounts in the following circumstances:
- Two (2) to three (3) loans having the same type of pledged revenues and borrowers subject to substantially the same legal requirement simultaneously assigned – 10% reduction.
 - Four (4) to five (5) loans having the same type of pledged revenues and borrowers subject to substantially the same legal requirements simultaneously assigned – 15% reduction.
 - Six (6) or more loans having the same type of pledged revenues and borrowers subject to substantially the same legal requirements simultaneously assigned – 25% reduction

** Fees for loans with principal amounts between the listed amounts will be set at the fee amount applicable to the closest principal amount of loan listed.

The Finance Authority reserves the right to negotiate a fixed fee for any specific assignment.

APPENDIX I

RESPONSIBILITIES OF COLONIAS INFRASTRUCTURE PROJECT FUND LOAN/GRANT COUNSEL (Not exhaustive)

When authorized by the Finance Authority in a written authorization:

1. Advise the Finance Authority on the requirements of federal, state and local law and such other legal requirements and issues that are applicable to the loans/grants made from the Colonias Infrastructure Project Fund which are administered by the Finance Authority.
2. Assist the Finance Authority with the structuring of loans/grants.
3. Perform due diligence on all loans and grants to ensure compliance with Finance Authority policies and applicable law.
4. Prepare or assist in the preparation and review of all documents required to be adopted or executed by the Borrowers, Grantee, and Finance Authority for the making of loans/grants, including the preparation of board resolutions and other determinations, legal and tax notices and such other documents as may be necessary or appropriate to the making of loans/grants.
5. Prepare or assist in the preparation of all applicable notices pertaining to any hearings required in connection with the making of loans/grants, and conduct or assist with the conduct of such hearings, as directed by the Finance Authority related to this program.
6. Conduct all closings of transactions involving the making of loans/grants, assemble all documents necessary to the making of loans/grants including a transcript of proceedings.
7. Attend such hearings or meetings as requested by the Finance Authority; and
8. Provide such other legal counsel and assistance related to the Finance Authority's statutory responsibilities and operations as may be specifically requested by the Finance Authority.

**APPENDIX I-1
FEE SCHEDULE FORM**

COLONIAS LOAN/GRANT COUNSEL

Loan/Grant Amount	Cost Proposal ***	
	Fixed Fee**	Hourly Rate with Negotiated Max**
\$50,000*	\$	\$ per hour
\$150,000*	\$	\$ per hour
\$300,000*	\$	\$ per hour
\$600,000*	\$	\$ per hour
\$1,500,000*	\$	\$ per hour

Description of Miscellaneous Fees	Costs

- * The listed fees will be reduced by the following amounts in the following circumstances:
- Two (2) to three (3) loans having the same type of pledged revenues and borrowers subject to substantially the same legal requirement simultaneously assigned – 10% reduction.
 - Four (4) to five (5) loans having the same type of pledged revenues and borrowers subject to substantially the same legal requirements simultaneously assigned – 15% reduction.
 - Six (6) or more loans having the same type of pledged revenues and borrowers subject to substantially the same legal requirements simultaneously assigned – 25% reduction

** A lower fee will be established for grants that will be comparable to the fee for WTB Grants if applicable.

*** Fees for loans with principal amounts between the listed amounts will be set at the fee amount applicable to the closest principal amount of loan listed.

The Finance Authority reserves the right to negotiate a fixed fee for any specific assignment.

APPENDIX J

RESPONSIBILITIES OF PRIVATE ENTITY LOAN COUNSEL (Not exhaustive)

When authorized by the Finance Authority in a written authorization:

1. Advise the Finance Authority on the requirements of federal, state and local law and such other legal requirements and issues that are applicable to the private entity loans which have been or may be made by the Finance Authority; and provide written opinions on such matters when requested by the Finance Authority.
2. Assist the Finance Authority with the structuring of loans.
3. Prepare or assist in the preparation and review of all documents required to be adopted by the Finance Authority for the making of loans, including the preparation of the board resolutions and other determinations, legal and tax notices and such other documents as may be necessary or appropriate to the making of loans.
4. Prepare or assist in the preparation of all applicable notices pertaining to any hearings required in connection with the making of loans, and conduct or assist with the conduct of such hearings, as directed by the Finance Authority.
5. Conduct all closings of transactions involving the making of loans and assemble all documents necessary to the making of loans including a transcript of proceedings.
6. Attend such hearings or meetings as requested by the Finance Authority; and
7. Provide such other legal counsel and assistance related to the Finance Authority's statutory responsibilities and operations as may be specifically requested by the Finance Authority.

**APPENDIX J-1
FEE SCHEDULE FORM**

PRIVATE ENTITY LOAN COUNSEL

Professional	Amount
Partner/Shareholder	\$ per/hour
Associates/Attorneys	\$ per/hour
Legal Assistants	\$ per/hour
Other Support Staff	\$ per/hour

Description of Miscellaneous Fees	Costs

The Finance Authority reserves the right to negotiate a capped fee for any specific assignment.

APPENDIX K

RESPONSIBILITIES OF NEW MARKETS TAX CREDITS COMMERCIAL LENDING COUNSEL (Not exhaustive)

When authorized by the Finance Authority in a written authorization:

1. Prepare Community Development Entity (CDE) operating agreement for Finance New Mexico entity that will be participating in the transaction.
2. Prepare fee agreements or servicing agreements.
3. Review all documentation for the investment in the CDE and all loans made to the qualified business with particular emphasis on tax requirements pursuant to Section 45D of the Internal Revenue Code of 1986, as amended and other pertinent regulations or laws.
4. Review indemnification and recapture documents related to Finance New Mexico and deliver an opinion that Finance New Mexico is a qualified CDE under federal tax rules.
5. Provide other services as requested by the Finance Authority.

**APPENDIX K-1
FEE SCHEDULE FORM**

NEW MARKETS TAX CREDITS COMMERCIAL LENDING COUNSEL

Professional	Amount
Partner/Shareholder	\$ per/hour
Associates/Attorneys	\$ per/hour
Legal Assistants	\$ per/hour
Other Support Staff	\$ per/hour

Description of Miscellaneous Fees	Costs

The Finance Authority reserves the right to negotiate a capped fee for any specific assignment.

APPENDIX L

RESPONSIBILITIES OF NEW MARKETS TAX CREDITS TAX COUNSEL (Not exhaustive)

When authorized by the Finance Authority in a written authorization:

1. Prepare CDE operating agreement for Finance New Mexico entity that will be participating in the transaction.
2. Prepare fee agreements or servicing agreements.
3. Review all documentation for the investment in the CDE and all loans made to the qualified business with particular emphasis on tax requirements pursuant to Section 45D of the Internal Revenue Code of 1986, as amended and other pertinent regulations or laws.
4. Review indemnification and recapture documents related to Finance New Mexico and deliver an opinion that Finance New Mexico is a qualified CDE under federal tax rules.
5. Provide other services as requested by the Finance Authority.

**APPENDIX L-1
FEE SCHEDULE FORM**

NEW MARKETS TAX CREDITS TAX COUNSEL

Professional	Amount
Partner/Shareholder	\$ per/hour
Associates/Attorneys	\$ per/hour
Legal Assistants	\$ per/hour
Other Support Staff	\$ per/hour

Description of Miscellaneous Fees	Costs

The Finance Authority reserves the right to negotiate a capped fee for any specific assignment.

APPENDIX M

RESPONSIBILITIES OF NEW MARKETS TAX CREDITS SPECIAL PROGRAM COUNSEL (Not exhaustive)

When authorized by the Finance Authority in a written authorization:

1. Assist in preparation of amendment, if any, of New Mexico Tax Credits (“NMTC”) policies/procedures.
2. Provide legal opinions as Special Program Counsel for the Allocation Agreement with the CDFI Fund for NMTC entities.
3. Provide legal opinions as Special Program Counsel for the Allocation Agreement with the CDFI Fund and with each amendment adding sub-CDE’s to the Allocation Agreement with CDFI.
4. Review contracts and engagement letters with Finance Authority consultants in the NMTC Program.
5. Review and advise the Finance Authority and the Advisory Board on NMTC matters.
6. Review term sheet agreements, indemnification agreements and other documents related to each transaction.
7. Coordinate with the Finance Authority’s General Counsel, NMTC tax counsel and commercial/lending NMTC counsel on all transactions.
8. Provide counsel on post-closing matters which may arise for all NMTC transactions.
9. Attend Economic Development Committee, Advisory Board, and Finance Authority Board meetings.
10. Provide other services as requested by the Finance Authority.

**APPENDIX M-1
FEE SCHEDULE FORM**

NEW MARKETS TAX CREDITS SPECIAL PROGRAM COUNSEL

Professional	Amount
Partner/Shareholder	\$ per/hour
Associates/Attorneys	\$ per/hour
Legal Assistants	\$ per/hour
Other Support Staff	\$ per/hour

Description of Miscellaneous Fees	Costs

The Finance Authority reserves the right to negotiate a capped fee for any specific assignment.

APPENDIX N

RESPONSIBILITIES OF SPECIAL ASSIGNMENTS/OTHER LEGAL SERVICES

(Not exhaustive)

The Finance Authority may request other legal counsel, including litigation matters, and assistance related to the Finance Authority's statutory authority responsibilities as may be specifically requested by the Finance Authority. The Finance Authority will determine the selected firm or firms' qualifications for specific special assignments from the firms' respective proposals if selected for an award of contract.

**APPENDIX N-1
FEE SCHEDULE FORM**

SPECIAL ASSIGNMENTS/OTHER LEGAL SERVICES COUNSEL

Professional	Amount
Partner/Shareholder	\$ per/hour
Associates/Attorneys	\$ per/hour
Legal Assistants	\$ per/hour
Other Support Staff	\$ per/hour

Description of Miscellaneous Fees	Costs

The Finance Authority reserves the right to negotiate a fixed fee for any specific assignment. If the special assignment involves a bond issue which requires simultaneous closing with a loan or another bond issuance, the Finance Authority will negotiate a firm “not to exceed” fee for the bond issuance.

APPENDIX O
RESPONSIBILITIES OF PRIVATE ENTITY BOND COUNSEL
(Not exhaustive)

When authorized by the Finance Authority in a written authorization:

1. Contractor, as bond counsel for private entity bonds issued by the Finance Authority under the Statewide Economic Development Finance Act (“SWEDFA”), when requested to do so by the Finance Authority and in coordination with other counsel as directed by the Finance Authority, shall render the following professional legal services to the Finance Authority:
 - a. Proceedings. Prepare and deliver to the Finance Authority all proceedings, transcripts and minutes required to be adopted by the Finance Authority relating to the prospective issuance of bonds of the Finance Authority under SWEDFA.
 - b. Approving Opinion. Prepare and deliver to the Finance Authority the Contractor’s original approving opinion relating to the validity and enforceability of the issuance of bonds of the Finance Authority under SWEDFA and to the tax exempt status of such bonds of the Finance Authority (unless tax matters with respect to a particular issue are being addressed by special tax counsel); provided, however, the Contractor may refuse to render such opinion if, in its sole discretion, it determines that such approving opinion shall not be issued according to the facts and law pertaining to the particular issue.
2. Attend such hearings or meetings as requested by the Finance Authority; and
3. Provide such other legal counsel and assistance related to the Finance Authority’s statutory responsibilities and operations as may be specifically requested by the Finance Authority.

**APPENDIX O-1
FEE SCHEDULE FORM**

PRIVATE ENTITY BOND COUNSEL

Fixed Fee per transaction

Amount of Issuance	Cost Proposal
\$0---\$20,000,000	\$ per million
\$20,000,001---\$50,000,000	\$ per million
\$50,000,001---\$100,000,000	\$ per million
\$100,000,001---\$250,000,000	\$ per million
Greater than \$250,000,000	\$ per million

The Finance Authority reserves the right to negotiate a fixed fee for any specific assignment. If the bond issue requires simultaneous closing with a loan or another bond issuance, the Finance Authority will negotiate a firm “not to exceed” fee for the bond issuance.

APPENDIX P

RESPONSIBILITIES OF DRINKING WATER REVOLVING FUND BOND COUNSEL (Not exhaustive)

When authorized by the Finance Authority in a written authorization:

1. Advise the Finance Authority on the requirements of federal, state and local law and such other legal requirements and issues that are applicable to the loans made from the Drinking Water Revolving Loan Fund bonds.
2. Prepare and deliver to the Finance Authority a written opinion as to the validity and enforceability and tax exempt status of the Drinking Water Revolving Fund bonds as to which Contractor serves as bond counsel.
3. Provide a written tax opinion unless independent tax counsel has been retained or the Drinking Water Revolving Fund bonds are taxable.
4. Assist the Finance Authority and its underwriters with the structuring of loans.
5. Prepare or assist in the preparation and review of all documents required to be adopted by the Finance Authority for the issuance and sale of all Drinking Water Revolving Fund bonds, including the preparation of board resolutions and other determinations, legal and tax notices, bond resolutions and such other documents as may be necessary or appropriate to the issuance of bonds.
6. Review and negotiate bond purchase agreements and prepare representation letters, escrow agreements and appropriate certificates in connection with the issuance and sale of Drinking Water Revolving Fund Bonds.
7. Prepare or assist in the preparation of all applicable notices pertaining to any hearings required in connection with the issuance of bonds or other obligations, and conduct or assist with the conduct of such hearings, as directed by the Finance Authority.
8. Conduct all closings of transactions involving the issuance and sale of Drinking Water Revolving Fund Bonds and preparation of transcripts of all documents necessary to closing the issuance of bonds or other obligations.
9. Attend such hearings or meetings as requested by the Finance Authority; and
10. Provide such other legal counsel and assistance related to the Finance Authority's statutory responsibilities and operations as may be specifically requested by the Finance Authority.

**APPENDIX P-1
FEE SCHEDULE FORM**

DRINKING WATER REVOLVING FUND BOND COUNSEL

Fixed Fee per transaction

Amount of Issuance	Cost Proposal
\$0---\$20,000,000	\$ per million
\$20,000,001---\$50,000,000	\$ per million
\$50,000,001---\$100,000,000	\$ per million
\$100,000,001---\$250,000,000	\$ per million
Greater than \$250,000,000	\$ per million

The Finance Authority reserves the right to negotiate a fixed fee for any specific assignment. If the bond issue requires simultaneous closing with a loan or another bond issuance, the Finance Authority will negotiate a firm “not to exceed” fee for the bond issuance.

**APPENDIX Q
FORM OF 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 (“Finance Authority”) and [INSERT- Contractor Name] (“Contractor”), collectively referred to as the “Parties”.

WHEREAS,

The Parties agree as follows:

1. Scope of Work.

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

[INSERT SOW DESCRIPTION]

2. Compensation.

a. Services: The Finance Authority shall pay to the Contractor as compensation for services rendered upon full and satisfactory completion, in the sole discretion of the Finance Authority, 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 Finance Authority. If requested by the Finance Authority, a detailed estimate of all

items for which the Contractor will request reimbursement will be provided to the Finance Authority in advance of actual expenditures.

c. Gross Receipts Taxes and Expenses. The Contractor shall bill the Finance Authority 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 Finance Authority. The Contractor shall not bill the Finance Authority 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 Finance Authority's legal and equitable rights and remedies, the Finance Authority 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 Finance Authority 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 Finance Authority.

b. Termination for No Cause: The Finance Authority may terminate this Agreement at any time for no cause, subject only to the Finance Authority'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 principle 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 Finance Authority. 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 Finance Authority 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. Insurance

The Contractor shall, at all times during the pendency of this agreement, maintain adequate liability insurance in the amounts proscribed by the Finance Authority namely, **[INSERT COVERAGE AMOUNTS]**

8. Status of Contractor.

The Contractor is an independent contractor performing professional services for the Finance Authority as described above, and nothing herein contained shall be deemed to create an agency relationship between Contractor and the Finance Authority and Contractor is not an employee of the Finance Authority. In no event shall Contractor be entitled to participate in, or be entitled to receive any benefits from, the Finance Authority's employee benefit plan, nor shall Contractor be entitled to accrue leave, retirement, insurance, bonding authority, use of Finance Authority vehicles, or any other benefits, except as specifically set forth in this Paragraph 7, accorded to employees of the Finance Authority 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.

9. 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 Finance Authority 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 Finance Authority of such investigation or lawsuit promptly, and in any event within five (5) calendar days after learning of such investigation or lawsuit.

10. 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 Finance Authority.

11. Subcontracting.

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without prior approval of the Finance Authority. 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 Finance Authority 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.

12. Products and Services/Copyright.

All materials developed or acquired by the Contractor under this Agreement are the property of the Finance Authority and shall be delivered to the

Finance Authority 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 “Finance Authority” or designs of the Finance Authority.

13. 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 Finance Authority and its authorized representatives. The Finance Authority shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Finance Authority to recover excessive or illegal payments.

14. Release.

The Contractor shall, upon final payment of the amount due under this Agreement, release the Finance Authority, 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 Finance Authority to any obligations not assumed herein by the Finance Authority, 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 Finance Authority.

Contractor shall wholly and fully indemnify the Finance Authority 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 Finance Authority 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: General Counsel
 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 Finance Authority, 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 Finance Authority (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 Finance Authority is not obligated to offer Contractor any further employment opportunities with the Finance Authority and that Contractor is performing such Services only for the duration of the Term of this Agreement, unless the Finance Authority, in its sole discretion, determines to do otherwise.

27. Full Authority.

Contractor and the Finance Authority represent that (i) each has all rights, power and authority necessary to enter into and perform this Agreement, (ii) that neither Contractor nor the Finance Authority has granted any third party rights inconsistent with the rights and obligations of the other party, and (iii) both Contractor and the Finance Authority 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 _____, 2019.

[Signature Page Follows]

NEW MEXICO FINANCE AUTHORITY

By: _____
John Gasparich
Chief Executive Officer

Reviewed and approved by the Office of General Counsel.

By: _____
Daniel C. Opperman
General Counsel

[INSERT]

(CONTRACTOR)

By: _____

N.M. Tax I.D. #: