

**REQUEST FOR PROPOSALS
FOR
BOND, DISCLOSURE, AND TAX COUNSEL
SERVICES**

RFP Issued: January 5, 2019
RFP Submission Deadline: January 24, 2019

Issued By: Delta Conveyance Finance Authority
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Sacramento, CA 95814
info@dcfinanceauthority.org

SECTION 1 – INTRODUCTION

The Delta Conveyance Finance Authority (DCFA or Authority) invites interested law firms with a minimum of 10 years' experience providing bond, disclosure and tax counsel services to public water agencies and/or joint powers authorities to submit proposals to provide such services to the DCFA. Experience and understanding of issues associated with California Water and California Water Law, the State Water Project, financing authorities, and the Joint Powers Act are highly desirable.

SECTION 2 - BACKGROUND INFORMATION

The California WaterFix (CWF) is a major water project that will deliver water from the Sacramento River near the northern end of the Sacramento-San Joaquin River Delta (Delta) to the existing State Water Project and Central Valley Project pumping plants located 42 miles away in the southern end of the Delta. CWF will upgrade the State Water Project by protecting water supplies from disruption due to seismic events, sea level rise, climate change, saline intrusion and levee failure, while moving activities away from endangered species and ensuring reliable deliveries from the Delta. The CWF has a cost estimate of \$16.7 billion (2017 dollars) and is anticipated to be constructed over a period of 10-14 years.

Environmental planning under the California Environmental Quality Act and the National Environmental Policy Act has been completed in the form of a final Environmental Impact Report/Environmental Impact Statement and the California Department of Water Resources has approved the project. A Draft Supplemental Environmental Impact Report/Environmental Impact Statement was issued for public comment outlining project refinements on July 17, 2018. Construction will not start until all required permits are received.

Respondents are encouraged to review the California WaterFix web site for further information on the project at www.californiawaterfix.com.

SECTION 3 – DELTA CONVEYANCE FINANCE AUTHORITY

The DCFA is a joint powers agency created to assist the Department of Water Resources and the public water agency participants (currently all of whom are State Water Project Contractors) finance all or a portion of the California WaterFix. The DCFA has been in existence since July 2018, and originally included five water agencies: Alameda County Water District, Alameda County Flood Control and Water Conservation District - Zone 7, Metropolitan Water District of Southern California, Santa Clara Valley Water District, and the San Geronio Pass Water Agency. Six additional agencies – Antelope Valley-East Kern Water Agency, Coachella Valley Water District, Desert Water Agency, Mojave Water Agency, San Bernardino Valley Municipal Water District, and Santa Clarita Valley Water Agency have approved joining the DCFA. Each agency is represented by one board member appointed by the agency. It is possible that other water agencies will join the DCFA over the next several months.

The DCFA is a conduit financing authority, and has no full-time staff. The DCFA is currently supported by a contract Executive Director and staff from the State Water Contractors and DCFA members. The DCFA intends to retain a contract general counsel and municipal advisor over the next few months. The DCFA submitted a Letter of Interest for a loan under the Water Infrastructure and Innovation Act (WIFIA) program administered by the Environmental Protection Agency, but was not invited to apply for a WIFIA loan. The DCFA expects to resubmit in another round of funding.

The JPA Agreement, agendas, and other documents are available at the Delta Conveyance Design and Construction Joint Powers Authority website: www.dcdca.org.

SECTION 4 – QUALIFICATIONS

1. The firm member with primary responsibility for the services provided to the DCFA (“Lead Counsel”) must be admitted to practice in the State of California, be a member in good standing with the State Bar of California, and have at least 7 years’ experience in California providing bond and disclosure counsel services for joint powers authorities, special districts (including irrigation districts, water districts, reclamation districts, county water districts), municipalities or other local public water agencies.
2. The firm and Lead Counsel will have demonstrated legal expertise in the following practice areas as they relate to joint powers authorities, governmental entities and special districts in California:
 - a) Laws and regulations that pertain to the financing and debt issuance of public entities including, but not limited to, California joint powers authorities, special districts, water districts, irrigation districts and municipalities.
 - b) Understanding of relevant Federal and California statutes and regulations governing the issuance and post-issuance compliance of municipal debt, use of proceeds, and disclosure requirements. In addition, the firm should have experience advising clients regarding federal loans, state revolving loans and grants. Understanding of the financing elements associated with various procurement practices, including design-bid-build, design-build, construction manager at risk, public private partnerships (P3) and other forms of risk transfer is also desired. Understanding of P3 related legal matters such as the Infrastructure Financing Act (CA Gov Code 5956 – 5956.10), and tax issues related to the P3 structure for a public facility financed with tax-exempt debt (e.g. Rev. Proc. 2017-13 safe harbor for management contracts).
 - c) Laws pertaining to funding the operations of a Joint Powers Authority and funding special projects, including financings via a Joint Power Authority such as tax-exempt and taxable municipal debt, leases, bank loans, commercial paper, and other short-term debt.

- d) Preparation, review and adoption of legal opinions, contracts, memoranda of understanding (including risk transfer and avoidance provisions), resolutions, and policies.

SECTION 5 – SCOPE OF SERVICES

Bond Counsel will provide issuer counsel services, and will prepare all necessary financing documents including the resolution authorizing the sale, bond purchase agreement, and all other documents required for the issuance of the Bonds (including as needed, installment sale or purchase agreements, etc.) The list below is a summary of services expected to be provided by Bond Counsel:

1. Services shall include preparing and reviewing all customary and all necessary legal documents pertaining to the issuance of tax-exempt indebtedness, including, without limitation, the authorizing resolution of the Authority's Board of Directors, installment sale/purchase agreements, bond purchase agreement, bond counsel opinion, tax certificate and any other documents required for the issuance of any bonds or other forms of debt, including private placements and bank loans. This work will include preparation of the initial financing documents for the Authority, and assisting in the negotiation of documents as necessary.
2. Review of Authority reports and presenting documents or information to the Board of Directors, as necessary;
3. Preparation and submittal of forms and notices necessary to ensure compliance with California public notification requirements as well as to comply with any contractual requirements of the Authority;
4. Provide advice on eligibility of financing options, including the eligibility and application process for federal loans such as WIFIA, grants and other state loans.
5. Provide advice on potential financing structures as the Authority was formed to support the Department of Water Resources and State Water Project Contractors issue debt to finance the California WaterFix. Bond counsel will play an integral role in the development of the financing structure to meet needed legal considerations.
6. Participate as needed in meetings and conference calls with Authority staff, the municipal advisor, underwriter (including their counsel), Board members, Participating State Water Project Contractors, and other financing team participants;
7. Delivery of the opinions of counsel, as required, including the legality and validity and tax-exemption of the debt, source of payment and security, and any other representations required to permit the offering and delivery of the obligations.
8. Assist in the rating process (if necessary) by providing descriptions of the legal

framework within which the debt will be issued.

9. Provide advice on post-issuance compliance.
10. Provide other services related to bond counsel work as requested.

Disclosure Counsel will provide services with respect to necessary disclosure for any debt issued by the Authority. The below list is a summary of services expected to be provided by Disclosure Counsel:

1. Prepare the preliminary and final official statement and advise the Authority to ensure compliance with applicable securities laws.
2. Deliver advice on ongoing disclosure requirements and prepare certificates and agreements required to comply with all applicable federal securities laws, including providing training to board and staff regarding continuing disclosure obligations and drafting a suitable disclosure policy for the Authority. Work with the participating Members to help ensure continuing disclosure requirements are understood and met.
3. Participate as needed in meetings and conference calls with the Authority staff, the municipal advisor, underwriter (including their counsel), State Water Project Contractors, and other financing team participants.
4. Provide advice on post-issuance compliance related to tax issues.
5. Provide other services related to tax counsel work as requested.

Promptly following closing of the transaction, counsel shall furnish the complete transcript of the transaction converted from its final form into Adobe Acrobat PDF and provide it on CD-ROM. Tabs shall be used in formatting the Acrobat document and be text searchable, such that a single query will search the entire transcript. The final version of all electronic word-processing and spreadsheet files produced by Counsel shall be provided to the District on CD-ROM or by email in Microsoft Word or Microsoft Excel format.

Tax Counsel will be expected to provide tax advice on all aspects of State and Federal tax law with respect to both the delivery of any Authority debt and management of that debt, including (but not limited to) rendering necessary opinions on the tax-exempt status of the Authority's debt and providing advice on the application of Federal and State tax law on the Authority's debt and associated agreements.

SECTION 6 - PROPOSAL REQUIREMENTS AND FORMAT

Proposals must be structured as follows, including responses to questions noted below. **Proposals are limited to 15 pages, including a cover letter.** Detailed resumes may be included in an appendix, and will not count toward the page limit.

1. **Cover letter.** The cover letter should provide an overview of the firm's qualifications, including a brief description of the Lead Counsel's background and skills.

2. **Qualifications.** This section should be a description of the firm's and Lead Counsel's capabilities and its ability to meet the minimum qualifications noted in Section 4 and provide the scope of services noted in Section 5. This section should demonstrate the firm's and Lead Counsel's experience and expertise in providing bond, disclosure and tax counsel services to joint power agencies, financing authorities, and public water agencies in California.

3. **Personnel.** Provide summary resumes for all personnel expected to provide service to the DCFA. Please include the qualifications, training, and certifications of Lead Counsel and all other attorneys and staff who will perform the services outlined.

4. **References.** Please provide three client references for whom your firm has had a longstanding relationship extending at least five years. Include the name and contact information of an appropriate individual with each client.

5. **Additional Firm Information.** Please include the following: (a) the Firm's scope of practice (national, regional, statewide, or local), and founding date; (b) Number of firm partners, "of counsel," associates, paralegals and other employees; (c) Location of primary office; and (d) Number of firm clients.

6. **Questions.** Please respond to the following questions:

- a) Please indicate if you are responding to serve as bond, disclosure, or tax counsel (or any combination.)
- b) Please describe any potential conflicts of interest in serving as the DCFA's bond, disclosure or tax counsel. In particular, please indicate if you are representing any other clients involved in the California WaterFix, and if you anticipate the need to receive a conflict waiver if your firm is selected as the DCFA's bond, disclosure or tax counsel. If the Firm were selected to represent the DCFA, do you anticipate that it would be able to obtain such conflict waivers from any currently existing firm client?
- c) Are you aware of any other ethical conflicts or other related issues which would preclude the firm from providing services to the DCFA?
- d) Please describe your experience serving California water clients who are State Water Project Contractors. Please include a complete list of all State Water Project Contractors who have been your clients over the past five years. Discuss your firm's experience in supporting the structuring and closing of financing documents for inaugural credits, in particular those involving financing authorities similar to the DCFA. Please describe two relevant projects that are similar to the DCFA.

e) Provide a summary of the services and the work products that your firm proposes to provide to the Authority. Describe the overall relationship you envision for your firm’s role as counsel to the Authority. What unique services or approach would your firm provide? What distinguishes your firm from your competitors?

f) Within the last five (5) years, has the firm been subject to any litigation for malpractice, ethics violations, negligence, errors and omissions or improper practices arising out of its performance of legal services for any firm client? If so, please provide the: (a) name and court case identification number for each case;(b) the jurisdiction in which it was filed; and (c) the outcome of the litigation, i.e. whether the case is pending, a judgment was entered, a settlement was reached, or the case was dismissed.

7. Fee Schedule. Fees are one consideration in the selection process.

a) Please provide a description of the fee structure and estimated fees to perform the scope of services outlined in this Request for Proposals in the following table. For purposes of estimating a fixed fee related to the initial issuance, please assume the Authority’s initial issuance will be a private placement with a par amount of \$300 million.

	Bond Counsel	Disclosure Counsel	Bond and Disclosure Counsel
Fixed Fees for Legal Services			
Out-of-Pocket Expenses			

Please provide a fixed fee schedule for the following:

1. New money and refunding of variable rate and fixed rate bonds by method of sale (i.e., competitive, negotiated, or private placement).
2. New, renewal, and replacement of liquidity facility.

The Authority may seek services on a time and material basis. Please include a table with hourly rates for personnel to be assigned to work with the DCFA, and indicate if these rates reflect discounts for public agencies. Please include other billing items, including reimbursable expenses.

b) Please provide a sample contract that the Firm proposes to use for this engagement with the insurance and indemnification requirements listed in Section 7 below. The sample contract should be included as an appendix.

8. Required Forms. Please attach the following forms as appendices.

a) Signed Acknowledgement Form - refer to Exhibit "A" attached hereto.

b) Signed Conflict of Interest Form - refer to Exhibit "B" attached hereto.

SECTION 7 - TERMS AND CONDITIONS

1. Acknowledgement of DCFA Contract Provisions.

Interested firms should review and acknowledge in the Proposal that the following provisions will be included in the proposed contract: The Firm shall procure and maintain the insurance required (shown below), for the duration of the contract, to insure against claims for injuries to persons or damages to property arising from or in connection with the performance of legal services performed.

2. Insurance Requirements.

a. Commercial General Liability: Coverage should include \$1,000,000 per occurrence, \$2,000,000 aggregate, as applicable. Prior to the start of work, the selected firm shall provide to the DCFA evidence of insurance from an insurer(s) certifying the coverage and that the DCFA and its Directors, officers, employees, agents and volunteers are added as insureds. Additional insured endorsements shall be provided on Commercial General Liability form ISO 20 10 11 85 (or form ISO 20 10 10 01 accompanied by form ISO 20 3710 01).

b. Business Automobile Liability: Business Automobile Liability insurance insuring all owned, non-owned and hired automobiles - coverage code 1 "any auto" (Insurance Service Office policy form CA 0001 or insurer's equivalent) in the amount of \$1,000,000 combined single limit per accident for bodily injury and property damage.

c. Workers' Compensation and Employer's Liability Insurance: Shall be furnished in accordance with statutory requirements of the State of California and shall include Employer's Liability coverage of \$1,000,000 per accident for bodily injury or disease.

d. Professional Liability Insurance: For the full term of the contract, the firm shall procure and maintain errors and omissions liability insurance appropriate to the legal profession. Such coverage shall have minimum limits of no less than one million dollars (\$1,000,000.00) per claim.

e. Commercial General Liability and Workers' Compensation and Employer's Liability Insurance: Policies shall contain a waiver of transfer of rights of recovery ("waiver of subrogation") against the DCFA, its Directors, officers, employees, agents and volunteers for any claims arising out of the work of the firm.

f. Additional Insured Requirements: The CGL Coverage and the Automobile Liability Insurance shall contain an endorsement naming the DCFA, its Directors, officers, employees, agents and volunteers as additional insureds.

3. Responsibility; Indemnification

To the fullest extent permitted by law, the Firm shall indemnify, keep and save harmless the DCFA, and its board members, officers, agents, and employees against any and all suits, claims, actions, damages, liabilities, costs, and expenses (collectively, "Liabilities") for any personal injury (including death, bodily injury, emotional or mental distress, and loss of consortium), property damage, intellectual property infringement, or financial or economic loss that arises out of, pertains to, or relates to the negligence, recklessness, or the willful misconduct of the Firm, its employees, subcontractors, or agents to the extent that such Liabilities arise out of the performance (or non-performance) of this Agreement. This duty to indemnify includes any proceedings, actions, damages, or penalties due to the violation of any governmental law or regulation, the compliance with which is the responsibility of the Firm, its employees, subcontractors, or agents. Firm further agrees to defend any and all such actions, suits, or claims, and pay all charges of attorneys and all other incurred costs and expenses relating to the investigation, defense, negotiation, or settlement of any action, suit, or claim, and to reimburse the Authority for any and all legal and other costs and expenses incurred by the Authority in connection with the defense of such actions, suits, or claims. If any judgment is rendered against the Authority or any of the other individuals enumerated above in any such action, Firm shall, at its expense, satisfy and discharge the same to the extent that the judgment is based on the Firm's agreement to indemnify as set forth in this section. This indemnification obligation will survive the termination or expiration of this Agreement. Firm shall require its subcontractors (if any) to similarly indemnify, defend, and keep and save harmless, the Authority.

SECTION 8 - REQUESTS FOR CLARIFICATION

A firm requesting clarification pertaining to this RFP shall submit all requests through written correspondence via email and received no later than 5:00 p.m. on January 11, 2019 to:

Delta Conveyance Finance Authority
Attention: Brian Thomas, Executive Director
Email: info@dcfinanceauthority.org

Copies to: Linda Standlee, lindastandlee@dcauthority.org, Brian Thomas, brianthomas@dcauthority.org

All questions and responses related to the RFP will be distributed via email to all firms that have received a copy of the RFP. Proposers are advised that they are limited to communicating with Mr. Thomas and Ms. Standlee exclusively during the conduct of this RFP process, and are prohibited from communicating with any other representatives of the DCFA, including board members regarding the RFP. Communication with existing clients that are members of the DCFA or other State Water Project Contractors is permitted as long as such communication is limited to the member or State Water Contractor's relationship with your firm (e.g., conflict checks, etc.) This communication restriction applies from the time the Public Notice is published for this RFP until the DCFA Board of Directors approves the final agreement for services with the firm, decides to reject all proposals, or cancels this RFP process. Violation of this provision by any Proposer and/or their agent may lead to disqualification of the Proposer's Proposal from consideration.

SECTION 9 – SUBMISSION OF PROPOSALS

To be considered, **the Proposal must be received by the DCFA via e-mail no later than 3:00 p.m. on January 24, 2019.** The Proposal must be sent to info@dcauthority.org, with a copy to Linda Standlee at lindastandlee@dcauthority.org.

SECTION 10 – SELECTION PROCESS AND EVALUATION CRITERIA

Proposals will be examined for compliance with all of the requirements in this RFP. The DCFA, in its sole discretion, may waive any omission it deems to be non-essential or inconsequential. A DCFA evaluation team will evaluate each proposal submitted for completeness, including all of the information requested in this RFP. Proposing firms should note that the fee proposal and pricing, while important, will not be the only deciding factor in final selection, but rather the ability of the firm to provide and perform the required duties on behalf of the DCFA as outlined herein. Oral presentations and written questions for further clarifications may be required of some or all firms. Final selection will be based on evaluation of the Proposal and interview (if required). The Proposals will be initially screened by the DCFA evaluation team and an invitation to interview with the DCFA Board may be extended to selected firms. The DCFA reserves the right to modify the process. Firms shall bear the cost of the proposals and any interviews or meetings with the Board of Directors. It is anticipated that the DCFA Board of Directors will select a qualified firm at its regularly scheduled meeting in February or March.

SECTION 11 - PUBLIC RECORDS ACT

All Proposals submitted in response to this RFP will become the property of the DCFA upon submission and will be a matter of public record pursuant to applicable law. The

DCFA reserves the right to make copies of all Proposals available for inspection and copying by interested members of the public as records of the DCFA and the DCFA shall be under no obligation to the firm to withhold such records. The DCFA is subject to the Public Records Act under California Government Code section 6250, *et. seq.* As such, all required submitted information is subject to disclosure to the general public. Firms are further advised that all the terms and conditions, including fees and fee structures, forming part of any agreement entered into shall, upon such agreement being executed, become a public record of the DCFA and subject to full disclosure, and each firm submitting a Proposal waives any right to object to any such disclosure.

SECTION 12 - PROPOSAL ACCURACY

A Proposal which is incomplete, irregular, or conditional may be rejected. By submitting a Proposal, the submitting firm agrees that any significant inaccuracy in information given by the firm to the DCFA will constitute good and sufficient cause for rejection of the Proposal.

SECTION 13 - DISCLAIMER

The DCFA reserves the right:

- 1) To enter into agreements for legal services at any time (for bond counsel, disclosure counsel, tax counsel or special counsel legal services) with persons or firms who do not respond to this RFP;
- 2) To waive any irregularities, and to accept or reject any or all Proposals regardless of qualifications either in whole or part with or without cause;
- 3) To withdraw this solicitation at any time without prior notice;
- 4) To award its total requirements to one respondent or to apportion those requirements among two or more respondents as the DCFA may deem to be in its best interests;
- 5) To negotiate a final contract with any respondents as necessary to serve the best interest of the DCFA; and
- 6) To amend this RFP.

The DCFA does not make any representations that any contract will be awarded to any firm responding to this RFP.

SECTION 14 - CONFLICTS OF INTEREST

The DCFA is subject to the Political Reform Act and to conflicts of interest provisions under California Government Code section 1090, *et seq.* To protect the DCFA, all

potential contracting parties with the DCFA shall be required to complete a Conflict of Interest Questionnaire prior to the award, if any, of a contract. Refer to Exhibit “B” attached hereto.

SECTION 15 – DISCRIMINATION

The firm and all subcontractors must not discriminate, nor permit discrimination, against any person on the grounds of race, national origin, sex, handicap, sexual orientation, veteran status, or any other protected class in their employment practices, in any of their contractual arrangements, in all services and accommodations they offer the public or in their business operations.

EXHIBIT “A” ACKNOWLEDGMENT FORM

Request for Proposals for Bond Counsel, General Counsel and/or Tax Counsel For the Delta Conveyance Finance Authority

PART A The proposing firm warrants the following: 1. That it will not delegate or subcontract its responsibilities under contract without the express, prior written permission from the DCFA. 2. That all information provided in connection with this Proposal is true and correct.

Firm Name (Respondent to RFP):

Address:

City:

State:

Zip:

Contact Name: _____

Title: _____

Telephone No: _____

Email: _____

Signature:

PART B The above listed firm is responding to a Request for Proposals for a qualified and experienced firm to provide bond counsel, disclosure counsel and/or tax counsel services. **THIS COMPLETED FORM MUST BE INCLUDED WITHIN THE PROPOSAL SUBMITTED TO THE DCFA PRIOR TO 3:00 P.M. on January 24, 2019.**

EXHIBIT “B” CONFLICT OF INTEREST FORM

Request for Proposals for Bond Counsel, Disclosure Counsel and/or Tax Counsel Services For the Delta Conveyance Finance Authority

The DCFA and California state law prohibit its Directors and staff from making a decision in which they may have certain financial or personal relationships with a contracting party. The questions that follow are intended to alert the DCFA to potential code of conduct conflicts. If conflicts of only a remote interest exist, a contract may nonetheless be awarded as disclosure allows the DCFA to choose processes for negotiation, award, and administration of contracts to avoid such conflicts. However, the DCFA reserves the right to review and make a final determination regarding whether any actual or potential conflicts would violate the DCFA’s policies or California law and thus preclude a contracting party’s participation in this award. All contracting parties and proposed sub-consultants must respond to each of the following questions. For responses answered “yes,” the DCFA may require additional information to evaluate potential conflicts prior to award. Failure to fully disclose conflicts will result in rejection of the proposal or immediate termination of any contract awarded therefrom.

1. To the best of your knowledge, do any current DCFA Directors or contractors (i.e., Executive Director) have any of the following financial relationships with your Firm or with proposed sub-consultants?

- Owner [Yes] [No]
- Member [Yes] [No]
- Partner [Yes] [No]
- Officer [Yes] [No]
- Employee [Yes] [No]
- Contractor; Consultant [Yes] [No]
- Broker [Yes] [No]
- Major Stockholder [Yes] [No] (Major stockholder means ownership of 3% or more of firm stock.)

If “Yes” to any of the above, did this Board member or employee participate in formulating your submittal? [Yes] [No]

2. Are you or, to the best of your knowledge, are any officers or key employees of your firm or proposed sub-consultants an immediate family member of any current DCFA Director or contractor? [Yes] [No]

3. To the best of your knowledge, is a DCFA Director or contractor seeking or being considered for employment by your firm or by proposed sub-consultants? [Yes] [No]

4. To the best of your knowledge, have you or any officers or key employees of your firm or any proposed sub-consultants provided contributions directly or indirectly to a DCFA Director while this potential new contract is pending before DCFA? [Yes] [No]

5. To the best of your knowledge, have you or any officers or key employees of your firm or any proposed sub-consultants ever served on the DCFA 'Board? [Yes] [No]

6. On a separate sheet, identify and disclose any business relationship(s), direct or indirect, past, present, or pending, with any associated entity which has engaged in past or present litigation against the DCFA or any of its members.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Name (type or print)

Signature

Title

Date

Firm Name

**THIS COMPLETED FORM MUST BE INCLUDED WITHIN THE PROPOSAL
SUBMITTED TO THE DCFA PRIOR TO 3:00 P.M. ON JANUARY 24, 2019.**