

**REQUEST FOR PROPOSALS
FOR
GENERAL COUNSEL SERVICES**

RFP Issued: November 8, 2018
RFP Submission Deadline: December 5, 2018

Issued By: Delta Conveyance Finance Authority
1121 L Street, Suite 1045
Sacramento, CA 95814
info@dcmfinanceauthority.org

SECTION 1 – INTRODUCTION

The Delta Conveyance Finance Authority (DCFA or Authority) invites interested law firms with a minimum of 10 years' experience representing public water agencies and/or joint powers authorities in general governmental procedures (including Brown Act and conflict of interest codes), compliance, contracts and transactions, financing, and civil litigation, to submit proposals to provide general counsel legal services for 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 also desired. The general counsel for the Authority is retained by the Board of Directors and reports to the Board of Directors.

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. Two agencies have recently approved becoming members of the DCFA – the Mojave Water Agency and San Bernardino Municipal Water District. Each agency is represented by one board member

appointed by the agency. It is expected 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 bond and disclosure counsel, tax counsel and a municipal advisor over the next few months to prepare for its initial borrowing. 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, and was recently informed the letter was not accepted. The DCFA expects to resubmit in the next 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. All attorneys performing services for the DCFA must be admitted to practice in the State of California and be members in good standing with the State Bar of California.
2. The firm member with primary responsibility for the services provided to the DCFA (“Lead Counsel”) must have at least 10 years’ experience providing general counsel legal services for joint powers authorities, special districts (includes irrigation districts, water districts, reclamation districts, county water districts), municipalities or other local public water agencies.
3. 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 governance of public entities including, but not limited to, California joint powers authorities, special districts, water districts, irrigation districts and municipalities. The relevant laws and regulations include, but are not limited to, the Ralph M. Brown Act; the California Public Records Act; Political Reform Act; conflicts of interest laws; general public entity and municipal law; the California Government Code and California Water Code; municipal finance and operating procedures and rules of order relative to the conduct and operations of joint powers authorities and public water agencies.
 - b) Understanding of relevant California statutory provisions which may be applicable to the public works procurement and contracting for professional services, including the California Public Contract Code and Labor Code. Understanding of various procurement practices, including design-bid-build, design-build, contract manager at risk, public private partnerships and other forms of risk transfer.

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.

e) Governance in joint powers authorities, including amendments and bylaws, and experience in interfacing with counsel for joint powers member agencies.

f) Other areas pertaining to joint powers authorities and public water agencies and relevant law, including liability claims, legal compliance, ethics, and risk avoidance.

Additional desired expertise includes:

a) Environmental law, including: California Environmental Quality Act (CEQA); federal National Environmental Policy Act (NEPA); California and federal Endangered Species Acts; federal Clean Water Act and the California Porter Cologne Water Quality Act.

b) Real estate law, easements, rights-of-way, encroachment permits, and other related agreements and negotiations.

SECTION 5 – SCOPE OF SERVICES

1. Lead Counsel shall attend all Board and Committee meetings (regular meetings are currently scheduled at 11:00 a.m. on the third Thursday of each month, although additional special meetings and committee meetings will also require attendance), and the firm must be accessible to provide legal assistance to the DCFA as required.
2. Preparing legal memos, provide legal advice during all board and committee meetings, and assist the Executive Director in developing contracts for professional services, leases and other agreements.
3. Reviewing and preparing board and committee agendas and reports as required.
4. Assisting the Executive Director in preparing and filing state required documents, including annual filing requirements with CDIAC.
5. Developing legal and litigation strategy, including assisting in the selection of special counsel.

6. Representing the DCFA at meetings with State Water Contractors, DCFA members, federal and state agencies, and other meetings with legal counsel.
7. Work with bond counsel, disclosure counsel, tax counsel and special counsel as required. Prepare necessary opinions as part of financing activities. Provide advice and counsel and help negotiate financing documents, including leases, bank loans, etc.

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 capabilities and its ability to meet the minimum qualifications noted in Section 4, demonstrating the firm's experience and expertise in: (a) counseling; (b) transactional; and (c) litigation matters for each subject area.
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 backup attorney (if any), 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 describe any potential conflicts of interest in serving as the DCFA's general counsel. If the Firm were selected to represent the DCFA, do you anticipate that it would be able to obtain conflict waivers from any currently existing firm client?
 - b) Are you aware of any other ethical conflicts or other related issues which would preclude the firm from providing general counsel services to the DCFA?

c) Briefly describe your firm's experience and expertise in advising public water agencies on questions of law involving: (a) the Brown Act; (b) conflict of interest laws; (c) water rights; and (d) public contracting.

d) What type of tasks does your firm assign to paralegals or law clerks?

e) Within the last five (5) years, has the firm been subject to any civil litigation for malpractice 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. 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 an estimate of the monthly cost for providing general counsel services to the DCFA – including travel and other reimbursable costs, assuming a minimum of 10 regularly scheduled meetings during a year, to be held in Sacramento.

c) Please provide a sample contract that the Firm proposes to use for this engagement with the insurance 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.

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 November 18, 2018 to:

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

Copies to: Linda Standlee, lindastandlee@dcfinanceauthority.org, Brian Thomas, brianthomas@dcfinanceauthority.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 exclusively during the conduct of this RFP process, and are prohibited from communicating with any other representatives of the DCFA or its member agencies regarding the RFP. 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 December 5, 2018.** The Proposal must be sent to info@dcfinanceauthority.org, with a copy to Linda Standlee at lindastandlee@dcfinanceauthority.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. The Proposals will be initially screened by the DCFA evaluation team and an invitation to interview with the DCFA Board will 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 January.

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 general 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, and the DCFA may, in its discretion, hire an employee to serve as General Counsel.

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 General Counsel Legal Services 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 general legal counsel services. **THIS COMPLETED FORM MUST BE INCLUDED WITHIN THE PROPOSAL SUBMITTED TO THE DCFA PRIOR TO 3:00 P.M. on December 5, 2018.**

EXHIBIT “B” CONFLICT OF INTEREST FORM

Request for Proposals for General Counsel Legal 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., Interim 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. December 5, 2018.**