

**REQUEST FOR PROPOSALS
FOR
GENERAL COUNSEL SERVICES**

RFP Issued: August 7, 2019
RFP Submission Deadline: August 29, 2019

Issued By: State Water Contractors
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Sacramento, CA 95814
916.447.7357
LStandlee@swc.org

SECTION 1 – INTRODUCTION

The State Water Contractors, Inc. (SWC) invites interested law firms with a minimum of 10 years' experience in litigation and transactional matters involving California water and environmental resources law to submit proposals to provide general counsel legal services for the SWC. Experience and understanding of issues associated with California water and related environmental issues and the State Water Project is required. The general counsel for SWC is retained by the Board of Directors and reports to the Board of Directors.

SECTION 2 – THE ORGANIZATION

State Water Contractors, Inc., (SWC) was established in 1982 to represent the interests of its member agencies, who contract for State Water Project (SWP) services with the California Department of Water Resources (DWR) for portions of their water supplies.

The SWP is one of the largest water and power systems in the world. It consists of 34 storage facilities, reservoirs and lakes; 20 pumping plants; four pumping-generating plants; five hydroelectric power plants; and more than 700 miles of canals and pipelines. It conveys an average of 2.4 million acre-feet of water per year through pumping plants in the Sacramento-San Joaquin Delta. The SWP is critical to California's economy. It supplies irrigation for 750,000 acres of farmland, which, in turn, contributes to the State's \$36 billion agricultural economy. The project provides fresh water for 27 million people and an array of industries in the San Francisco Bay Area, Central Valley and Southern California; essential benefits for fisheries and wildlife refuges; recreational opportunities; and hydroelectric energy production.

DWR owns and operates the SWP. Public water agencies that receive water from the project pay all costs associated with the system. SWC is the policy body for its member agencies and acts as the interface with DWR to ensure contractors receive reliable, adequate water deliveries at an affordable cost and to ensure DWR receives sufficient support and input on contractor needs. SWC's liaison role covers water operations, water rights, power generation and usage, and fiscal and management issues. The water produced by the SWP is a vital interest to many different stakeholders, and SWC plays a key role in helping to balance those interests and in maintaining accountability of public funds and natural resources. SWC also makes substantial investments in research activities to complement agency science programs, and engages in a number of planning and science arenas pertaining to SWP activities.

SWC's overall goal is to achieve the maximum water supply attainable in an environmentally responsible manner and at a reasonable cost. The objectives of SWC are as follows:

- **Provide Reliable Water Supplies.** SWC engages in all policy, regulatory, technical and legal activities necessary to assure adequate and on-time water deliveries for contractors and to help protect SWP water rights in regulatory and legal proceedings.
- **Maintain the Operational Integrity of the State Water Project.** SWC protects contractor interests by engaging with DWR through its business processes addressing equipment failures, maintenance and repair needs, and budget and funding concerns.
- **Improve Financial Management of the State Water Project.** SWC collaborates with DWR's management of the SWP and works to promote better cost management practices and more transparent fiscal reporting and accountability to contractors.
- **Provide Affordable and Reliable Electrical Supplies.** SWC works to keep fluctuating power expenses – the highest cost component for the project – within reasonable ranges and to ensure adequate future power supplies to meet operational needs.
- **Educate the Public About the Importance of SWP.** SWC participates in many conferences and public discussions to educate other water users and members of the public about issues related to the SWP.
- **Manage a Science Program to Address Management Questions.** SWC includes a science program that makes direct investments in research activities, structured decision-making, collaborative dialogue, and other science activities to improve the role of science in decision-making.

SWC activities necessarily interact with numerous agencies. The roles of SWC and other agencies are as follows:

- **State Water Contractors (SWC):** SWC is a non-profit corporation whose members include 27 of the 29 SWP contractors. SWC is focused on activities related to the SWP, including all aspects of SWP operations, water supply, maintenance and finance. SWC is the primary entity for enabling SWP contractors to be involved in water supply policy issues, such as water operations, financial management, and legal and administrative proceedings that could affect the quantity, quality and cost of water supplies. SWC also is the primary entity interfacing with DWR on day-to-day and long-term SWP issues.

SWC is governed by a nine-member Board. There are eight organizational classes of contractors, with one Board member appointed from each of seven classes and two Board members appointed from one class, serving one-year terms. SWC has nine employees and the FY2018-2019 budget is approximately \$9.8 million.

- **Department of Water Resources (DWR):** DWR is a State department that manages and operates the SWP. Management of the SWP involves financial and billing activities, planning, design and construction of new facilities, maintenance of existing

facilities, and management of power operations for the SWP. It is also directly responsible for compliance with all water rights and environmental compliance activities.

SECTION 3 – SERVICES

Under administrative direction from the Board of Directors, the General Counsel provides legal advice to SWC's Board of Directors and member agencies with respect to issues that impact the SWCs; collaborates with the Board of Directors and executives to develop legal strategies; manages SWC's outside legal counsel; represents SWC in hearings and court proceedings; ensures SWC contracts with vendors are legally protective of SWC; coordinates SWC legal affairs with other public water agencies, State Water Resources Control Board (SWRCB) and regulatory agencies; and performs other duties as assigned.

The General Counsel firm serves in a subject matter expert capacity with respect to the enforcement and protection of SWC's and its member agencies' interests. The assigned attorney and other members of the firm assist the General Manager and the Board of Directors in executing a long-term strategy for legal matters pertaining to the SWC objectives described above. This assigned attorney exercises a high level of discretion, independent judgment and decision making to influence legal and policy matters, which impact SWC and its member agencies. Responsibilities include collaborating with member agencies' counsel and other stakeholders to achieve its strategic water rights management and enforcement objectives.

The selected law firm shall provide the full normal range of services of the General Counsel as described above. Among other things, the General Counsel shall have expertise on California and Federal water law, the California Environmental Quality Act, National Environmental Policy Act, California and Federal endangered species acts, and the State Water Project. Knowledge of public finance and energy law is additionally desirable. While SWC is not a public agency, it does hold one Brown Act meeting per year related to its PERS contract. Further, all of its member agencies are public agencies subject to the Brown Act. For these reasons, it would also be beneficial for the General Counsel firm to have expertise on the Ralph M. Brown Act as well as the California Public Records Act, California conflict of interest law, and the California Political Reform Act,

The General Counsel firm shall establish and maintain services to the SWC in case of the unavoidable absence of the Lead Counsel through temporary or backup legal services satisfactory to the SWC.

Duties and responsibilities of the position may include, but are not limited to:

- Provides professional and expert legal advice to SWC's executives, Board of Directors, and member agencies with respect to matters which impact all parties including, but not limited to, water rights, agreements, enforcement, regulatory or

permitting issues, litigation, and compliance requirements for a diverse range of state and federal laws, statutes and regulations.

- In collaboration with the Board of Directors, member agency legal counsel, and SWC's executive team, develops and implements SWC's legal affairs program goals and objectives; formulates strategies to achieve same; continuously monitors and evaluates the efficiency and effectiveness of legal strategy and confers with leadership to determine whether other strategies should be adopted.
- Leads and coordinates the SWC Legal Committee that is comprised of counsel from a number of SWC member agencies.
- Confers with and advises SWC staff, executives and the SWC Board of Directors concerning their respective duties, powers, functions, and obligations and prepares legal opinions on same.
- Manages SWC's contracts with external legal counsel; identifies the most appropriate legal resources to be used with respect to specific matters; collaborates in the acquisition and selection of legal services; directs the work of attorneys engaged in SWC legal affairs including litigation; ensures these services meet SWC's stated scope of work and professional standards; reviews outside counsel bills to ensure accurate billing for work performed.
- Manages SWC's contracts and agreements with external organizations and agencies; prepares and/or reviews Memoranda of Understanding (MOU), agreements, contracts, declarations, and other documentation which impact SWC's rights, operations and legal obligations.
- Serves as SWC's legal representative for administrative hearings and other judicial proceedings for a diverse range of matters including, but not limited to, water rights disputes, permit compliance, and regulatory matters.
- Oversees, and/or conducts litigation; prepares legal pleadings, opinions, briefs, motions, writs, and other legal documentation; conducts depositions; negotiates settlements; represents SWC in either a prosecution or defense capacity before California and federal trial and appellate courts.
- Evaluates legal claims filed against SWC and recommends appropriate action.
- Attends and participates in professional group meetings; stays abreast of new trends and innovations in the field of corporate and environmental law.
- Monitors proposed legislation and court decisions related to water rights, regulatory compliance, and related legal matters; evaluates their impact on SWP operations and recommends appropriate actions.

- Performs other duties as assigned.

SECTION 4 – QUALIFICATIONS

1. All attorneys performing services for SWC 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 SWC (“Lead Counsel”) must have at least 10 years’ experience in litigation and transactional matters involving California water and environmental resources law. Experience in public finance, energy law, and in 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 is additionally desirable.

The selected candidate should have knowledge of:

- Federal, State, and local laws, statutes and ordinances with emphasis on water rights and California and federal environmental regulatory compliance.
- Principles and procedures of complex civil law, environmental, and administrative law as they relate to SWC’s legal affairs program.
- Methods and techniques of developing strategies to address a diverse range of legal matters in multiple areas of law.
- Rules of evidence in diverse court proceedings.
- Judicial procedures in state, federal and appellate courts.
- Principles and practices of preparing legal materials including, but not limited to, opinions, agreements, contracts, deeds, declarations, land grants, pleadings, motions and related documentation.
- Principles and practices of negotiating settlements.
- Prior case law for matters of significance in SWC’s legal program.
- Methods and techniques of conducting effective legal research.
- Techniques for effectively representing SWC in contacts with governmental agencies, community groups, and various business, professional, regulatory, and legislative organizations.

- Techniques for providing a high level of customer service by effectively dealing with the public, vendors, contractors, and SWC staff.
- Techniques in leading and/or coordinating a diverse legal team representing individual SWC members.

In addition, Lead Counsel should be able to:

- Serve as a legal advisor to SWC's Board of Directors.
- Present legal information and advice clearly and persuasively in public sessions.
- Determine short- and long-term strategic approaches to managing SWC's legal matters.
- Analyze and prepare a wide variety of legal documents.
- Represent SWC in hearings and other judicial proceedings.
- Strategize, prepare for, and represent SWC in state and federal court proceedings.
- Present statements of facts, law, policy, and argument clearly, concisely, and logically in both written and oral form.
- Interpret, apply, and ensure compliance with Federal, State, and local policies, procedures, laws, and regulations.
- Plan, organize, direct, and coordinate the work of outside legal counsel.
- Conduct effective negotiations and effectively represent SWC in meetings with governmental agencies, various businesses, professionals, regulatory, and legislative organizations.
- Prepare clear and concise legal, business and administrative reports, correspondence, policies, procedures, and other written materials.
- Direct the establishment and maintenance of a variety of filing, record keeping, and tracking systems.
- Organize and prioritize a variety of projects and multiple tasks in an effective and timely manner; set priorities, and meet critical time deadlines.
- Operate modern office equipment including computer equipment and typical software applications programs.
- Work collaboratively with SWC staff.

- Use English effectively to communicate in person, over the telephone, and in writing.
- Use tact, initiative, prudence, and independent judgment within general policy, procedural, and legal guidelines.
- Establish, maintain, and foster positive and harmonious working relationships with those contacted in the course of work.

SECTION 5 – SCOPE OF SERVICES

1. Lead Counsel shall attend all Board and appropriate Committee meetings (regular meetings are currently scheduled at 8:30 a.m. on the third Thursday of each month, and the Wednesday before the third Thursday, although additional special meetings and committee meetings will also require attendance), and the firm must be accessible to provide legal assistance to the SWC as required.
2. Lead and coordinate the SWC Legal Committee that is comprised of counsel from a number of SWC member agencies.
3. Preparing legal memos, provide legal advice during all board and committee meetings, and assist the SWC General Manager in developing contracts for professional services, leases and other agreements.
4. Reviewing and preparing board and committee agendas and reports as required.
5. Developing and implementing legal and litigation strategy, including assisting in the selection of special counsel and technical experts, and collaborating and coordinating with co-counsel.
6. Representing the SWC at meetings with federal and state agencies, and other meetings with legal counsel.

SECTION 6 - PROPOSAL REQUIREMENTS AND FORMAT

Proposals must be structured as follows. **Proposals are limited to 15 pages, including a cover letter**

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 services to SWC. Please include the qualifications, training, years with firm, 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 primary office of proposed General Counsel; and (d) Number of firm clients.

Detailed resumes and responses to the questions listed below should be included in an appendix, and will not count toward the page limit.

6. Questions. Please respond to the following questions:

- a) Please describe any potential conflicts of interest in serving as the SWC’s general counsel. If the Firm were selected to represent the SWC, do you anticipate that it would be able to obtain conflict waivers from all currently existing firm clients?
- 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 SWC?
- c) Briefly describe your firm’s experience and expertise in advising public water agencies on questions of law involving: (a) environmental regulations, including CESA, ESA, CEQA, and NEPA; (b) water rights; and (c) the State Water Project.
- 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 SWC, and indicate if these rates reflect discounts. Please include other billing items, including reimbursable expenses.

b) Please provide an estimate of the monthly cost for providing general counsel services to the SWC – including travel and other reimbursable costs for 24 meetings 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 SWC 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. A policy covering errors and omissions compliant with State of California requirements.

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 August 29, 2018 to:

State Water Contractors
1121 L Street, Suite 1050

Sacramento, CA 95814
916.447.7357

Email: LStandlee@swc.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 Jennifer Pierre, SWC General Manager, exclusively during the conduct of this RFP process, and are prohibited from communicating with any other representatives of the SWC or its member agencies regarding the RFP. This communication restriction applies from the time the Public Notice is published for this RFP until the SWC 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 SWC via e-mail no later than 3:00 p.m. on August 29, 2019.** The Proposal must be sent to LStandlee@swc.org.

SECTION 10 – SELECTION PROCESS AND EVALUATION CRITERIA

Proposals will be examined for compliance with all of the requirements in this RFP. The SWC, in its sole discretion, may waive any omission it deems to be non-essential or inconsequential. A SWC 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 SWC 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 SWC evaluation team and an invitation to interview with the SWC Board, or a committee of the Board, will be extended to selected firms. The SWC 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 SWC Board of Directors will select a qualified firm at its regularly scheduled meeting in September.

SECTION 11 - 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 SWC will constitute good and sufficient cause for rejection of the Proposal.

SECTION 12 - DISCLAIMER

The SWC 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 SWC 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 SWC; and
- 6) To amend this RFP.

The SWC does not make any representations that any contract will be awarded to any firm responding to this RFP, and the SWC may, in its discretion, hire an employee to serve as General Counsel.

SECTION 13 – 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 State Water Contractors

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 SWC. 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 SWC PRIOR TO 3:00 P.M. on August 29, 2019.

EXHIBIT “B” CONFLICT OF INTEREST FORM

Request for Proposals for General Counsel Legal Services For the State Water Contractors

The SWC 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 SWC to potential code of conduct conflicts. If conflicts of only a remote interest exist, a contract may nonetheless be awarded as disclosure allows the SWC to choose processes for negotiation, award, and administration of contracts to avoid such conflicts. However, the SWC reserves the right to review and make a final determination regarding whether any actual or potential conflicts would violate the SWC’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 SWC 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 SWC Directors or employees 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 SWC Director or employee? [Yes] [No]

3. To the best of your knowledge, is a SWC Director or employee 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 SWC Director while this potential new contract is pending before SWC? [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 SWC 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 SWC 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 SWC PRIOR TO 3:00 P.M. August 29, 2019.**