



Sites Project Authority

Request for Proposal Bond Counsel Services RFP No. 17-03

April 11, 2018

Proposal Submittal Deadline

April 30, 2018

4:00pm Pacific Standard Time (PST)

Form of Submission

Electronic Submittal Only

jtrapasso@sitesproject.org

Contact Person

Joe Trapasso

Program Operations Manager

Sites Reservoir Project

jtrapasso@sitesproject.org

Sites Project Authority Request for Proposal Bond Counsel Services RFP No. 17-03

1.0 Overview/Background

The Sites Project Authority (Authority) is soliciting proposals from firms (each a Proposer) interested in serving as its Bond Counsel Services representation for the implementation of the Sites Reservoir Project (Project), and for providing the Authority with other services as requested by the Authority.

It is the intent of the Authority to award a contract to the best-qualified firm that demonstrates experience serving as bond counsel on bond issues tailored to the Authority's needs and the structuring of any potential debt financing transactions.

The Authority, Reservoir Committee, and the Project

The Authority is a joint exercise of powers authority formed on August 26, 2010 pursuant to Government Code Section 6500 *et seq* and is currently governed by a 13-member Board of Directors (15 agencies) that includes several local water agencies and both Colusa and Glenn Counties, all of whom have executed a Joint Exercise of Powers Agreement (reference Attachment 1). Further, the Authority is the lead agency working with 20 other local and regional stakeholders and water agencies located statewide to advance the construction of the Project. Of these 35 entities (refer to Attachment 2), 27 have executed a separate participation agreement (reference Attachment 3) to fund the primary studies needed to develop a project that is eligible for both California Proposition 1 and Federal WIIN Act funding and can be permitted by state and federal resource agencies. The participation agreements provide for a Reservoir Committee consisting of one representative of each entity signing a participation agreement. These costs are apportioned to each of the 27 entities based on a requested acre-foot of water the Project could divert into storage for beneficial uses.

Together, the Authority and Reservoir Committee are working in partnership with both, the U.S. Bureau of Reclamation and the California Department of Water Resources to improve the operation of the state's interdependent water system for both consumptive and environmental beneficial uses. Participants in the Project through its Authority voting members and Reservoir Committee members represent 39 of California's 53 congressional districts.

The proposed Project will consist of constructing a new 1.8 million acre-foot reservoir offstream of the Sacramento River, new ancillary facilities, and integrating with the existing Tehama-Colusa Canal and Glen-Colusa Irrigation District's main canal. It can also provide electrical power through both conventional hydropower and pumped-storage that can integrate with renewable energy sources. In keeping its commitment to move the Project forward on behalf of the region, the

Authority has spent the last six years working towards this goal by engaging the public, various stakeholders, state and federal agencies and landowners, initiating the required environmental planning process, and conducting feasibility studies, among other efforts. The Authority is working in close coordination with other stakeholders in the region interested in eventual construction of the Project.

The Project's direct construction is expected to cost approximately \$3 billion (dollars in year 2015). Funding for the Project is expected to come from local, federal and state sources. The Authority is currently requesting \$1.33 billion of funding from the California Water Commission (CWC) under its Water Storage Investment Program funded by Proposition 1 which was approved by California voters in November 2014 (reference Attachment 4 for the application's executive summary). The application included a request for early funding to support federal, State, and local environmental compliance and approvals in the amount of \$45.9 million.

The Authority and the United States Bureau Reclamation released a joint public draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS) in August 2017. In addition to needing to complete the final EIR/EIS and related decision documents per the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA), several other permits and authorizations will be required prior to the Water Commission encumbering funds for final design and construction, which is expected to occur by January 1, 2022. Many of these permit applications require a sufficient level of engineering design, field surveys (some multiple year), public review, and agency input and review which can, in many cases, take multiple years to complete. As such, multiple activities need to be initiated to maintain the Project's schedule including continued engineering design to finalize all facility locations, permit application development and required surveys, and review of anticipated impacts and proposed/required impacts minimization and mitigation measures. Some level of debt financing may be needed to ensure sufficient financial resources are available to complete these efforts.

The Authority has already retained separate legal counsel to address NEPA/CEQA, federal Endangered Species Act/California Endangered Species Act (ESA/CESA), and permitting needs. In addition, the Authority plans to separately retain legal counsel for construction contracts and procurement matters. Proposers will not be expected to provide legal services with respect to these matters, except in a support capacity with respect to financing aspects of the foregoing, as the Authority may request from time to time.

The Authority has retained a registered municipal advisor (the Municipal Advisor) to prepare a compressive financial plan considering financing options and structures for the Project. The Project is expected to go through several rounds of funding (reference Attachment 5, phase-level schedule), the selected Bond Counsel will play a critical role in developing the overall strategy for the early rounds and permanent financing of the Project. The selected firm will be expected to work closely with the Municipal Advisor in developing the financial plan, including financing structure and applicable agreements.

2.0 Scope of Services

The Authority plans to retain bond counsel to assist the Authority in connection with the financing of the Sites Project. The Authority intends to manage the services contracted through the execution of a task order-based contract as provided in 4.0 below. It is anticipated that as the Project evolves, new information will inform how best to finance, which could affect the tasks, sequencing, and/or effort needed to complete each task.

2.1 Bond Counsel Services

Bond Counsel services may include the following, as requested from time to time by the Authority:

1. Review existing Authority and Reservoir Committee formation and operating documents (Attachments 1 and 3 respectively) and recommend modifications to assure that they contain all necessary provisions to support both fixed and variable rate tax-exempt and taxable financing in both the public and private markets, as well as debt supported by bank credit and/or liquidity agreements.
2. Review existing Authority and Reservoir Committee formation and operating documents (Attachments 1 and 3 respectively) and recommend modifications to assure that they contain all necessary provisions to support state and federal loan programs such as State Revolving Fund loans and Federal Water Infrastructure Finance and Innovation Act loans. Assist with the preparation of any such loan applications and the negotiation of terms and documentation for such loans.
3. Assist the Authority and the Municipal Advisor in determining eligibility for and applying for state and federal grants, loans or loan guarantees.
4. Advise on all Proposition 218 and 26 matters pertinent to any financings or financing agreements.
5. Advise the Authority on the potential need for a validation action or other mechanisms for ensuring enforceability of debt repayment/minimizing litigation.
6. Advise the Authority concerning the legal aspects of various financing mechanisms and structures in relation to state and federal bond and securities laws.
7. Provide legal advice and opinions regarding pending or proposed federal or state legislation or regulatory agency rules, actions or policies which have a bearing on prospective financing of Authority projects or currently authorized or outstanding financings.
8. Assist Authority staff and its financing team in the drafting of debt policies and guidelines.
9. Assist the Authority and the Municipal Advisor in preparing the financial plan, including assisting the Authority and its financing team in the evaluation of financing alternatives as it prepares its plans for interim financing and long-term financing for the Project.

10. Assist in the development of water storage agreements, water purchase agreements and power purchase agreements that will serve as the basis for the payment of operating costs and the repayment of Authority debt.
11. Assist the Authority as requested with state and federal regulatory briefings, applications and permitting required for development of hydroelectric resources associated with the Project.
12. Prepare and review all customary and all necessary legal documents pertaining to the issuance of tax-exempt and/or taxable indebtedness, including, without limitation, the authorizing resolution of the Authority's Board of Directors, master participation agreement, bond indenture, bank loan documentation, bond purchase agreement, bond and other opinions, tax certificate and any other documents required for the issuance of the Bonds or other indebtedness by the Authority.
13. Provide legal advice and opinions on a continuing basis regarding legal tax consequences and options or alternatives available to the Authority for past and anticipated financings, inclusive of post-issuance compliance.
14. Provide such assistance and render such opinions as may be required in connection with any participant financing of the Project.
15. Assist the Authority in negotiating bond purchase or direct bank placement agreements, or similar documents related to issuance of securities, with underwriters and other parties or purchasers involved with such issuance, including documents related to credit enhancement.
16. Provide presentations to the Authority's Board of Directors on financing matters.
17. Provide tax and non-arbitrage and other certificates or opinions, as necessary.
18. Assist in the preparation and review of the Authority's disclosure documents including Official Statements or Remarketing Statements and any disclosure undertakings.
19. As requested, represent the Authority before rating agencies.
20. Assist in the representation of the Authority in litigation or administrative agency proceedings regarding financing matters.
21. Make all California Debt and Investment Advisory Commission (CDIAC) and other required filings on behalf of the Authority.
22. Additional bond-related legal services as required from time to time.

Promptly following closing of a transaction, Bond 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 Bond Counsel shall be provided to the Authority on CD-ROM or by email in Microsoft Word or Microsoft Excel format.

2.2 Other Services (optional)

Provide as a separate attachment to the proposal with no more than 4 pages suggested other services to be covered under the Bond Counsel Services. The Authority reserves the right to not consider any optional submissions or to bid them separately under a separate request for proposals.

The Authority reserves the right to select a separate Disclosure Counsel in the event the Authority undertakes a public offering.

3.0 Proposal Submittal

General Requirements

Receipt of the following material is **required by 4:00pm PST on April 30, 2018**, for a Proposer to be considered:

- An electronic copy of the proposal and all its appendices in a single pdf should be addressed to:

Joe Trapasso
Sites Project Authority
Program Operations Manager
jtrapasso@sitesproject.org

- The proposal shall include:

Cover Letter listing RFP No. 17-03

Sections: Must be limited to no more than 15 pages (page size of 8.5 by 11 and 12-point font minimum, not including cover page or table of contents, unless otherwise specified)

1. Firm Profile and Qualifications
2. Experience and Qualifications of Project Team
3. Recommended Approach to Scope of Services
4. Fee Proposal (can be submitted on either 8.5 by 11 or 11 by 17)

Appendices: Will not be counted within the proposal page limit

- A. Disclosure of Legal Actions and Conflicts
- B. Firm's standard form contract
- C. Other Required Information (refer to Specific Requirements)
 - Item 1b: Client References
 - Items 2a b: 2-page resumes of Lead key personnel

- Other items requested in Appendix 2C (e.g. Insurance)

Specific Requirements:

Cover Letter

The cover letter should not exceed one page and be signed by the representative of the Proposer who is authorized to negotiate on behalf of and to contractually bind the Proposer during the evaluation. The letter should summarize the key points contained in the proposal, as well as provide the name, title, address, email address and telephone and fax numbers of the key contact person.

1. **Firm Profile and Qualifications**

a. **Firm Overview**

Provide an overview of Proposer, including ownership, staff size, organizational structure, and business strategy. Specify the office and its address that would serve as the “lead office” for this Project and its primary functions. Include a discussion of the Proposer’s resources, including personnel by category (e.g., management, professional, and clerical).

b. **Firm Experience**

Indicate Proposer’s bond counsel experience for California water clients who are under contract with either the Department of Water Resources to receive water from the State Water Project and/or the United States Bureau of Reclamation to receive water from the Central Valley Project, including particular experience in supporting the structuring and closing of financing documents for Joint Exercise of Powers Authority water credits, including in particular, new water credits, in California or outside California. List relevant experience providing services to or for Joint Powers Authorities, water resource infrastructure projects, State and/or Federal cost-shared projects or other large relevant infrastructure projects. List at least three relevant projects. Include any experience in advising on bonds structuring water sales or similar agreements.

For each listing of experience, list the dates services were provided, client, project name, type and size of project, and the name of Proposer’s lead professional on the project. If the project was shared with another firm, provide the other firm’s name and role.

c. **Client References**

For each of the projects listed in 1b, provide the clients references for which the Proposer has provided services similar to those sought by the Authority. In addition, provide client references for which the Proposer has had a long-standing relationship extending at least 10 years. For both, provide the name, address, telephone number, email address, contact person(s) and title(s) of an appropriate individual with each client. Briefly summarize the main services or initiatives the Proposer provided to the referenced client.

2. Experience and Qualifications of Project Team

a. Experience and Qualifications of Project Lead Attorney

Describe the experience of Proposer's lead counsel who will be assigned to the Project. Describe the project attorney's qualifications as public bond counsel and his/her knowledge and understanding of California law relating to bonds and knowledge of the highly technical provisions of federal tax law that are applicable to municipal bonds and trends as they relate to Authority's requirements.

Describe the project attorney's authority to make decisions and commitments on behalf of the Proposer.

b. Experience and Qualifications of Assigned Professionals

Identify the professionals on the team who would be assigned in the case of a temporary absence of the Project attorney and describe their qualifications and experience in serving in such a role, including confirmation they are licensed to practice law in California.

Provide an organization chart of all key personnel in the appendix prior to the resumes.

Provide a brief resume (no more than 2 pages) for each team member who would be assigned to this engagement and his/her role in the Project. All resumes may be included in an appendix to the response to this RFP and will not be counted in the 15-page limit for the submittal. If Proposer is teaming with or planning to subcontract services to another firm, also list their professionals.

The Authority reserves the right to approve the Lead Counsel and any requested key personnel changes during the contract.

3. Recommended Approach

a. Describe the Proposer's envisioned approach to the scope of work, including method and lines of communicating with the Authority and Reservoir Committee, determining the Authority's needs and goals, and supporting the drafting of documents utilized in the bond issue structuring and closing of the financing. Demonstrate the Proposer's knowledge of local political, economic, legal or other issues that may affect the ability of the Authority to finance the Project.

b. Provide a summary of the services and the work products that Proposer proposes to provide to the Authority. Describe the overall relationship Proposer envisions for Proposer's role as bond counsel to the Authority. What unique services or approach would Proposer provide? What specific benefits does Proposer feel its team will bring?

c. Describe Proposer's involvement in supporting the development of a financing strategic plan and documents that outlines the implementation of a jointly funded State &/or Federal and Local Agency financed project.

d. Describe any other directly related or unique services Proposer might be able to provide to the Authority.

4. Fee Proposal

Describe the type of fee structure and estimated fee(s) the Proposer proposes to charge to perform the list of tasks included in Section 2.1. The Authority may structure the early tasks based on time and materials and subsequent tasks negotiated fixed fee. In addition, provide the hourly rates and other personnel billing practices; reimbursable costs; fees charged on a fixed fee or not-to-exceed basis; and all other fees and costs. If hourly rates are different for individuals assigned to the account, such rates should be presented for each individual in tabular form. State how long the rates will remain in effect and the proposed basis for escalating such rates and whether any portion of the fees will be contingent upon the issuance of bonds.

Appendices:

A. Disclosure of Legal Actions and Conflicts

Provide information regarding the following:

- Any pending investigations of the Proposer and any enforcement, settlements, or disciplinary actions taken within the past five years by any regulatory body and any litigation challenging the manner in the Proposer has provided services in the past five years.
- Any finder's fee, fee splitting, payments to consultants, or other contractual arrangements of the Proposer that could present a real or perceived conflict of interest.
- The Authority anticipates that it may enter into negotiations with one or more California water agencies for the sale of water from the Sites Project, including one or more agencies in California. The Proposer must disclose all California water agencies that it represents as bond counsel and discuss how it would handle any potential conflict of interest.
- The Proposer's affiliation or relationship with any bank or broker dealer and whether any personnel of the Proposer who would provide advice to the Authority or Reservoir Committee were associated with a broker-dealer firm within the two years preceding the RFP.
- Any actual or potential conflicts of interest between the Authority, its Board members, its Reservoir Committee members, Project staff, and any other person or entity represented by Proposer to this RFP. Identify any Authority members or Reservoir Committee members that the Proposer has represented in the last five years.

B. Standard Form Contract

Provide Proposer's standard contract terms and conditions for consideration for this contract.

C. Other Required Information

Evidence of insurance, including amounts and types of insurance carried, including the deductible amount, to cover errors and omission, improper judgments, or negligence.

4.0 Contractual

- 4.1 Contract: The Authority intends to use the Proposer's standard contract as the basis to negotiate acceptable terms and conditions.
- 4.2 Contract Term: The Authority is planning to execute a contract with a term expected to commence on May 21, 2018. The Authority will determine the term of the contract, in its sole discretion, at the time of the negotiation of the contract with the selected Proposer. The term the Authority implements may include a contract that extends through the end of Phase 2 (which is currently estimated to occur by December 31, 2021) or it may extend, either initially or with extension options, through the end of Task 3. The contract shall state the conditions under which the contact can be terminated, including termination for convenience by the Authority upon 30 days' notice.
- 4.3 Time Extension: The Authority will determine contract term extension options at the time of the negotiation of the contract with the selected Proposer.
- 4.4 Scope of Services: The Authority reserves the sole right to not execute a task and to terminate the task before its completion pending 30-day written notice.
- 4.5 Indemnification: The Proposer shall defend, indemnify and hold harmless the Authority, Reservoir Committee and their respective directors, members, officers, employees and agents from any claim or liability related to or arising from the services provided for under the contact, except to the extent caused solely by the gross negligence or willful misconduct of the Authority, Reservoir Committee and their respective directors, members, officers, employees and agents.
- 4.6 Insurance: The Proposer shall identify the nature and extent of insurance policies that it has and will keep in place during the term of the contact, including general liability, workers compensation and professional liability.
- 4.7 Other: Provisions generally included in such service contracts.

5.0 Evaluation and Selection Procedure

A proposal evaluation team comprised of Authority project staff will evaluate each written proposal relative to the criteria listed below. The firms judged to be best qualified by the proposal evaluation team may be invited to participate in an interview and make a presentation to an interview panel that is expected to consist of Authority Board and/or Reservoir Committee members, project staff, and/or technical advisors. After the interview(s), the Interview panel will then recommend the selected firm to the Reservoir Committee Finance and Economic ad hoc Work Group. The Work Group will make a recommendation to the Reservoir Committee who will then make a recommendation to the Authority Board of Directors for their consideration. Based on the Board's decision, the services contract will be negotiated. If acceptable terms and conditions with the recommended Proposer cannot be reached in a timely manner, the Proposer ranked second will be contacted to begin negotiations. However, the Authority is not bound to accept the recommendation or award the contract to the recommended or second recommended Proposer.

The Authority reserves the right to select the Proposer which in its sole judgement best meets the needs of the Authority for the bond counsel services contract and the Authority reserves the right to select the services of more than one firm if it deems the services of more than one firm will best meet its needs.

The Authority will evaluate qualifications submittals based on the following criteria:

- Proposal completeness
- Relevant and applicable experience and qualifications of the Proposer and the key staff that would specifically be assigned to work with the Authority
- Record of past performance of the Proposer and individual staff in client relationship and delivering services on scope, quality, schedule, and budget
- A demonstrated understanding of the Authority's financial situation, including ideas on how the Authority might approach the financing of the Project
- Other unique services and approaches to meeting the Authority's needs
- Suitability of the Firm's proposed standard form contract
- Legal issues or conflicts
- Proposed fee structure and budget
- Cost and risk management

6.0 Proposal Submission Instructions and Tentative Schedule

All questions and requests for clarification or additional information must be made by **in writing by email, prior to April 16, 2018, at noon PST**, and sent to the attention of the contact person listed below. All questions/clarifications submitted and responses to them, will be emailed to all firms sent this RFP.

Proposals are due on April 30, 2018 at 4:00pm, PST. Proposals received after this time will not be accepted.

RFP Contact Person

Joe Trapasso
Program Operations Manager
Sites Reservoir Project
jtrapasso@sitesproject.org

Tentative Solicitation Schedule

Authority Issuance of RFP	April 11, 2018
Deadline for Submission of Questions	April 16, 2018 noon
Deadline for Proposals due to Authority	April 30, 2018 4:00pm
Authority Review of Proposals/Firms Selected for Interview	May 1 – May 4, 2018
Notification of Interviews, if appropriate	May 4, 2018
Interviews, at Authority’s discretion	May 11, 2018
Notification of Recommended Consultant/Contract Negotiation	Week of May 14, 2018
Authority Board review and approve contract award	May 21, 2018

7.0 Solicitation Disclaimer

The Authority reserves the right to reject any and/or all responses, negotiate with any Proposer that submits a response or waive any informality or irregularity. All responses to this RFP become the property of the Authority upon submission. The costs of preparing a proposal and participating in an interview are at the sole expense of the Proposer.

8.0 Attachments and Additional Information

Attachment 1: Joint Exercise of Powers Agreement

Attachment 2: List of current Project participants

Attachment 3: Reservoir Committee Project (participation) Agreement

Attachment 4: Authority’s WSIP Application Executive Summary

Attachment 5: Phase-level Schedule

For more information on the Sites JPA, please visit <https://www.sitesproject.org/>