

**ENCINA WASTEWATER AUTHORITY
REQUEST FOR PROPOSALS
FOR GENERAL COUNSEL LEGAL SERVICES**

The Encina Wastewater Authority (EWA) is a Joint Powers Authority of the City of Carlsbad, City of Vista, City of Encinitas, Leucadia Wastewater District, Vallecitos Water District and Buena Sanitation District. EWA operates the Encina Water Pollution Control Facility (EWPCF), the Carlsbad Water Recycling Facility (CWRF) and 4 remote sewage pumping stations that are owned by member agencies in the Carlsbad, California area. More information about EWA is available on www.encinajpa.com.

Through its General Manager, EWA is soliciting proposals for general counsel legal services, and invites interested attorneys and interested law firms which have the necessary experience and qualifications to submit a written proposal to serve as EWA's contracted general counsel. Interested firms may download a copy of the Request for Proposals (RFP) located on the EWA website at <https://www.encinajpa.com/work-with-us/procurement>. EWA reserves the right to revise the RFP prior to the date that the Proposals are due. All interested consultants must register with the EWA Secretary of the Board (jbasco@encinajpa.com) to receive Addenda.

All questions relative to this project should be addressed in writing to the General Manager:

Scott McClelland
Encina Wastewater Authority
smcclelland@encinajpa.com

Proposals will be received by the General Manager at the Encina Water Pollution Control Facility, 6200 Avenida Encinas, Carlsbad, California 92011 until **2 p.m. (local time) on Tuesday, June 6, 2023**.

The EWA Board of Directors reserves the right to reject any or all Proposals and to waive any irregularities in the information contained therein.

Approved to Advertise as Written:



Date:

May 12, 2023



REQUEST FOR PROPOSALS

General Counsel Legal Services

for the

ENCINA WASTEWATER AUTHORITY

Ref: Admin.23-15508

Proposals Due – Tuesday, June 06, 2023 at 2:00 p.m. (local time) at:

Encina Wastewater Authority

6200 Avenida Encinas

Carlsbad, California 92011

(760) 438-3941

Attention: Scott McClelland, General Manager

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I. INTRODUCTION

The Encina Wastewater Authority (EWA) is a Joint Powers Authority of the City of Carlsbad, City of Vista, City of Encinitas, Leucadia Wastewater District, Vallecitos Water District and Buena Sanitation District. EWA operates the Encina Water Pollution Control Facility (EWPCF), the Carlsbad Water Recycling Facility (CWRP) and 4 remote sewage pumping stations that are owned by member agencies in the Carlsbad, California area. More information about EWA is available on www.encinajpa.com.

Through its General Manager, EWA is soliciting proposals for general counsel legal services, and invites interested attorneys and interested law firms which have the necessary experience and qualifications to submit a written proposal to serve as EWA's contracted general counsel. It should be noted that throughout this RFP, the term "General Counsel" is used, whether an individual or a firm is making the proposal.

The General Counsel's primary roles are to:

- Provide knowledgeable, comprehensive and practical legal advice to the General Manager and the Board;
- Independently represent the Authority or make arrangements for representation on a range of transactional, advisory, and litigation matters.
- Work closely with the General Manager to develop and implement proactive strategies to position the Authority to best meet its legal, regulatory, and policy objectives.

The selected General Counsel will work closely through and with the General Manager, but ultimately serve at the pleasure of the Board of Directors. The Encina Wastewater Authority is the client.

All individuals and firms offering to provide services must demonstrate basic experience with public wastewater authorities, water or wastewater agencies or similar entities providing these types of public service. EWA works collaboratively with many other water and sewer agencies including its participating 6 Agencies. EWA exists in a highly regulated environment, which includes federal, state and regional regulatory agencies such as the San Diego Regional Water Quality Control Board and the State Water Board, the San Diego Air Pollution Control District, the Fair Political Practices Commission and others.

All attorneys and firms are responsible for complying with the Code of Professional Conduct, the California Business and Professions Code, and any other applicable professional standards to avoid conflicts of interest.

II. BACKGROUND INFORMATION

EWA is a public agency located in Carlsbad, California. EWA provides wastewater treatment services to more than 380,000 residents in northwestern San Diego County. EWA's facilities and services are essential for protecting the local ocean environment, preserving public health, and providing valuable water resources for the region.

EWA is owned by six public agencies governed by a Joint Powers Agreement. Under this Agreement, owners share in the operational and management costs of EWA, the objective being to cooperatively fund economical and high-tech facilities for the treatment of wastewater.

Member Agency Facilities: EWA is also responsible for the operations and maintenance of facilities belonging to specific member agencies. These facilities include the following pump stations; Aqua

Hedionda Pump Station (AHPS), Buena Creek Pump Station (BCPS), Buena Vista Pump Station (BVPS), Raceway Basin Pump Station (RWPS), and the Carlsbad Water Reclamation Facility (CWRF).

EWA employs a staff of approximately 75 full-time public employees, who primarily work from offices at the EWPCF facility.

III. GENERAL COUNSEL QUALIFICATIONS

The ideal General Counsel will have the following minimum qualifications:

- A. All attorneys performing services, whether solely or as a firm, must be actively admitted to practice in the State of California and be in good standing with the California State Bar and any other state bar to which he/she has been admitted.
- B. Physical presence and accessibility are important. General Counsel must maintain an office in California (preferably Southern California) that is open during regular business hours and be available by telephone during those hours and after hours as needed. As discussed in the Scope of Work section, attendance and participation in all meetings of the full EWA Board shall be required as well as certain committee meetings. Proposals should discuss physical presence at the Authority on a regular basis, including day-to-day working relationships with senior management staff of the Authority.
- C. Proposals submitted which involve firms or more than one attorney shall include a discussion of billing arrangements with an objective of economy and efficiency, taking advantage of the skills necessary for the work and the level of expertise appropriate for such work, and making the maximum efficient use of secretarial, paralegal, associate and partner time in minimizing costs to the Authority.
- D. In addition to the basic experience requirements set forth elsewhere, General Counsel should have ten years of legal expertise or demonstrated knowledge in the following areas relating to public wastewater agencies:
 1. Laws, regulations, and practices concerning Joint Powers Authorities.
 2. All applicable statutes, regulations and case law governing the operations of a JPA exercising its authority in compliance with California Water District law, including, but not limited to, the California Government Code, California Health and Safety Code, California Water Code, Cortese-Knox-Hertzberg Local Government Reorganization Act, Fair Political Practices Commission regulations, Ralph M. Brown Act, Political Reform Act.
 3. Experience and expertise in public labor and public employment laws and policies, including retirement (ENA is a member of CalPERS), workers' compensation, and labor agreements.
 4. Applicable portions of CCR Titles 17 and 22 governing:
 - Collection and treatment of wastewater
 - Production of recycled water.
 5. Regulations and operating procedures of federal, state and regional regulatory agencies including, but not limited to, CalEPA, Department of Water Resources, Regional Water Quality Control Boards, San Diego Air Pollution Control District, and State Water Resources Control Board, Federal and State Fish & Wildlife, California Coastal Commission.
 6. General familiarity with the California regulatory approach to ocean dischargers.

7. Laws and regulations governing the public procurement process including the bidding, awarding, contracting, and construction of public works and improvements, and the California Labor and Public Contracting Codes.
8. Laws and regulations pertaining to the compliance with and enforcement of prevailing wage requirements.
9. Requirements for compliance with emergency response and emergency management preparedness.
10. Experience in claims processing and tort liability, including familiarity and experience with the Government Tort Claims Act, as well as both defense and prosecution of civil or criminal matters arising under waste discharge law.
11. CEQA, NEPA-related regulations, case law and compliance documentation.
12. Knowledge of insurance law and litigation.
13. Understanding of the preparation, review, and the adoption process of ordinances and resolutions, and experience with public hearing and other special Authority board action.
14. Knowledge of real estate and property law including experience with easements, encroachment permits, licenses, rights-of-way, and other real property agreements and negotiations.
15. Experience in response to proposed or pending state legislative enactments, including reviewing current and developing proposed legislation and regulations.
16. Experience coordinating and managing other attorneys or firms which may provide service to the EWA from time to time.
17. Experience with the California Association of Sanitation Agencies and/or its member agencies.

IV. GENERAL EXPECTATIONS/SCOPE OF WORK

A written agreement for the General Counsel position will be expected and such agreement shall contain all of the economic terms and conditions regarding the work of General Counsel as well as a Scope of Work to address the ongoing nature of the relationship. The following are the key expectations.

The ideal General Counsel shall provide the primary legal representation of the Authority. This will mean advising the General Manager, staff, and the Board of Directors on all legal matters pertaining to the functions of the Authority. This will occur in a variety of ways and settings.

A. Governance

The General Counsel is expected to personally attend and be actively engaged in all regular or special meetings of the full Board. Attendance is also expected at meetings of the various Board and Board/staff committees on an as-needed basis. It shall be the responsibility of General Counsel to assure that such meetings are conducted in compliance with all applicable procedural laws related to such meetings, such as those regarding public notices, parliamentary procedure, public participation, Board procedure and related requirements. General Counsel will be expected to coordinate and communicate with the General Manager ahead of any meetings to discuss agenda matters and ensure that matters are presented in a thoughtful, coordinated, and well-planned manner.

The General Counsel is expected to also provide substantive legal advice on matters considered at such meetings either as necessary or as requested. General Counsel shall

endeavor to provide such advice at the time requested or provide a specific timeline or follow up in the event further research or review is required.

While attendance and participation by a single individual leads to desirable relationships, and should be the norm, trusted associates or other attorneys may attend on behalf of the General Counsel at times. Likewise, occasional participation via telephone or video is acceptable, provided the participation occurs as required by law. All such appearances should be coordinated with the General Manager in advance.

B. Organizational

General Counsel is expected to assure the rank and file of the Authority functions properly from a legal perspective. General Counsel is expected to form and maintain a close relationship with the Authority's General Manager and participate as a key member of the management team of the Authority. This will include providing advice regarding organizational matters to assure compliance with the law, including personnel matters, labor relations, public contracting, purchasing, risk management and risk analysis, and regulatory compliance.

The General Counsel is expected to play an active role in risk avoidance and regulatory compliance in the day-to-day functions of the Authority. This shall include Research and interpret laws, court decisions and other authorities and provide legal opinions to advise the Authority on legal matters pertaining to the Authority and its activities; Review and analyze proposed or enacted State and federal legislation and/or regulations and judicial decisions, which could affect the Authority. Suggest actions to affect the outcome of those proposals or, once implemented, changes needed in Authority policies, procedures and operations to ensure compliance.

On an ongoing basis, General Counsel will be responsible for close cooperation with the General Manager to prepare budgets and anticipate costs to enable the Authority to factor in ongoing costs, impacts of litigation, and similar matters in preparing annual Authority budgets. In all matters, the General Counsel is expected to employ billing procedures and work assignments that are both economical and efficient and minimize costs to the Authority and thus the member agencies.

The responsibilities of Authority staff are "7/24" and General Counsel may need to be available at all times for consultation by the General Manager. Likewise, it shall be a basic expectation that the General Counsel communicates thoroughly and frequently with General Manager, and the Board pursuant to organizational norms and using all means necessary and appropriate.

C. Litigation and Enforcement

From time to time, the Authority may need to defend against claims and litigation. Likewise, there may be occasions where it is appropriate to initiate litigation, or even initiate civil or criminal enforcement actions to carry out the Authority's regulatory responsibilities. In all such cases, General Counsel is expected to provide prompt, candid, and practical advice towards the end of resolving such matters promptly, efficiently, and in the best interest of the Authority.

V. PROPOSAL REQUIREMENTS

A. EWA requires the applicant to submit a concise proposal, clearly addressing all of the requirements outlined in this RFP. The proposal must provide specific answers to all questions and requests for information. Applicants may include the information in narrative form as well, and should endeavor to provide a concise, easy to read proposal that does not exceed fifteen pages, not including letters of reference and individual attorney resumes. The following checklist should be used in providing the proposal:

1. Describe the nature of your law firm's practice and your qualifications for providing general legal services for EWA.
2. Provide the areas of expertise contained within your firm. Describe how legal services will be provided for those areas of the law outside your firm's expertise. Describe how any individual attorneys have demonstrated legal expertise in substantive areas required by this RFP.
3. Provide written references from at least three California public agencies, preferably water or wastewater districts, which have utilized your services, including addresses and phone numbers of elected officials or key public agency staff who are familiar with your performance during the number of years served.
4. Individual resumes should include Legal training and years of practice (including date of admission to the California Bar), years of experience related to providing the experience required in this RFP, types of clients and years representing each, litigation experience, and any other notable qualifications.
5. Intended office location, business hours, etc. to fulfill the requirements set forth in this RFP.
6. Scholastic honors and professional affiliations or published works by the firm or individual attorneys.
7. Any adverse action against attorneys or firms by any governmental entity, whether civil, criminal, or disciplinary, and a brief description of the matter and the outcome.
8. Any other "value-added" qualifications or services, if any, which have not been listed in this RFP that you feel EWA should consider when making its selection. Such services would include those which could be made available to the EWA Board of Directors or General Manager at no cost or at a significantly reduced cost (e.g., a library of existing opinion letters that might apply to the needs of the Authority; a firm-sponsored, client-only research webpage; and/or the opportunity to attend firm-sponsored or firm-provided training on topics such as sexual harassment prevention).

B. Current Clients/Conflict of Interest

1. List all current or former clients (including pro bono) with real property ownership, residence, or principal place of business within the boundaries of the Authority within the past three years.
2. List all public clients for which you or your firm currently provide services under a fee for services basis or on a retainer basis.
3. Identify any foreseeable or potential conflicts of interest which would result from such representation and the manner in which you would propose to resolve such conflicts.

C. Compensation, Reimbursement, Risk Transfer

1. Describe how your firm proposes to be compensated for its services, i.e., on the basis of a retainer and/or time and expenses schedule.
2. If a retainer-based compensation schedule is preferred by EWA's Board of Directors, please provide the retainer fee your firm would charge and the list of services included therein.
3. If a time and expense compensation schedule is proposed by your firm, please indicate the hourly rate EWA would be billed by attorney and/or type of service.
4. If the EWA Board of Directors wishes to consider a combination of a retainer and time and expense-based compensation, please provide as detailed an explanation as possible of your proposed retainer fee, time and expense billing methodology, and the services included under each compensation type.
5. Provide the hourly billing cost that would be charged to EWA for special projects/contracted work requested by the General Manager per question #4 above.
6. Describe how your firm would bill for legal services provided by another legal firm under your direction/supervision. Explain if your firm would include a surcharge/markup on the charges from the outside firm.
7. Provide the limits of your professional liability insurance coverage. The Authority will require risk transfer provisions in its contract with the selected firm.

VI. SUBMITTAL REQUIREMENTS

Five copies of the proposal must be received (by email or delivery) no later than 2:00 p.m. (local time) on **Tuesday, June 6, 2023** at the offices of:

Encina Wastewater Authority
6200 Avenida Encinas
Carlsbad, California 92011
Attention: Scott McClelland, General Manager
smcclelland@encinajpa.com

Proposals should provide a straightforward and concise presentation adequate to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of contents. EWA reserves the right, without qualification, to:

- Select any proposal based on written or oral communication with any or all of the firms when such action is considered to be in the best interest of the Authority.
- Reject all proposals.
- Exercise discretion and apply its judgment with respect to any proposals submitted.

All proposals will be deemed confidential to the extent allowed by open meetings and public records laws, and will be retained by EWA.

Inquiries (clarifications only) can be directed to Scott McClelland, General Manager, Encina Wastewater Authority, 760-438-3941 or smcclelland@encinajpa.com.

VII. EVALUATION AND SELECTION PROCESS

Proposals will be screened by an internal review committee that may include up to two Board members. Qualifications for top candidates will be verified and candidates will be checked by the General Manager or his designee. The top candidates will be submitted to the Board ad hoc committee and interviews will be scheduled.

In reviewing the proposals, the Authority will carefully weigh:

1. Depth and breadth of experience and expertise in the practice of law, most specifically in those areas most often encountered in special district/water agency operations;
2. Capability to perform legal services promptly and in a manner that permits the Authority and staff to meet established deadlines and to operate in an effective and efficient manner;
3. Degree of availability for quick response to inquiries that arise out of day-to-day operating questions or problems;
4. Degree to which firm and individual attorneys stay current through continued professional development and active communication with practitioners in special district/water agency law;
5. Communication skills;
6. Cost of services; and
7. Other qualifications/criteria as deemed appropriate by EWA's staff and Board of Directors.

The EWA General Manager will negotiate a final contract. As a final step, the Board of Directors will formally approve the contract and appoint the next legal counsel for EWA. Work is anticipated to begin on the 1st day of the 2nd month, following the approval of the contract by the Board.