

MEMORANDUM

DATE: March 5, 2021
TO: Ted Corrigan, CEO and General Manager
FROM: Amy Kahler, Chief Financial Officer/Director of Customer Service & Marketing
SUBJECT: Legal Services Review

Background

Records show DMWW last issued a Request for Proposals (RFP) for legal services in 1999. At the conclusion of the RFP process in 1999, the Board chose to continue with the then-current legal firm of Dickinson, Mackaman, Tyler & Hagen, P.C. and designated Richard Malm as legal counsel to the Board of Water Works Trustees. Mr. Malm has remained legal counsel to the Board since that time.

Since 1999, no formal RFP has been issued, although an informal review of other firms' billing rates occurred in 2011 to ensure Dickinson's hourly rates remained competitive.

A year or so ago, Mr. Malm advised the Board his title has changed to Of Counsel. In light of the amount of time that has passed since the last RFP, the Board has asked staff to prepare a Request for Proposals (RFP) for legal services.

Request for Proposals

A proposed draft RFP is attached to this memo. Staff recommends publishing notice of the RFP in the Business Record and sending an invitation to respond to the following firms:

- Ahlers & Cooney, P.C.
- Belin McCormick
- Bradshaw, Fowler, Proctor & Fairgrave, P.C.
- Brick Gentry, P.C.
- BrownWinick Law
- Davis Brown Law Firm
- Dickinson Law
- Dorsey & Whitney, LLP
- Grefe & Sidney, P.L.C.
- Hopkins & Huebner, P.C.
- Nyemaster Goode, P.C.
- Whitfield & Eddy Law

Once responses have been received, staff recommends the Finance & Audit committee and the CEO and General Manager review the proposals and make a recommendation to the Board.

Timeline

The following timeline is suggested for the RFP process:

Action	Timeline
Mail RFPs	March 15, 2021
Submit notice for publication in Business Record	March 15, 2021
Inquiries or questions by potential respondents due to Amy Kahler	April 9, 2021
RFP responses due	April 23, 2021
Distribute responses for evaluation	April 26, 2021
Evaluate responses	April 26 – May 7, 2021
F&A recommendation	May 11, 2021
Present recommendation to Board for approval	May 25, 2021
Notify respondents	May 26, 2021

Ongoing Legal Services Review Process

On a go-forward basis, staff recommends the utility evaluate sending an RFP for legal services at least every ten years. While five years is a frequently used timeframe for other professional relationships, it seems there is value in continuity of legal services over a longer period of time due to the complexity of laws, ensuring counsel has a deep understanding of the utility, etc.

There should also be a formal opportunity for the Board and legal counsel to touch base on an annual basis to review the working relationship.

Des Moines Water Works

REQUEST FOR PROPOSAL FOR LEGAL SERVICES

INQUIRIES AND PROPOSALS SHOULD BE DIRECTED TO:

**Amy Kahler
Chief Financial Officer
Des Moines Water Works
2201 George Flagg Pkwy
Des Moines, IA 50321
kahler@dmww.com**

I. GENERAL INFORMATION.

A. **Purpose.** This Request for Proposal (RFP) is to contract for legal services to be provided to Des Moines Water Works (hereinafter referred to as DMWW). The utility is seeking law firms with extensive experience representing municipal entities in the areas of municipal law and government operations, employment and labor law, construction law, contract preparation and review, and litigation.

B. **Who May Respond.** Only attorneys who are currently licensed to practice law in Iowa and maintain an office in Des Moines, Iowa or law firms including such attorneys, may respond to this RFP.

C. Instructions on Proposal Submission.

1. **Closing Submission Date.** Proposals must be submitted no later than **4:00pm CST on April 23, 2021.**

2. **Inquiries.** Inquiries concerning this RFP should be sent by April 9 to:

Amy Kahler
Chief Financial Officer
Des Moines Water Works
2201 George Flagg Pkwy
Des Moines, IA 50321
Or e-mailed to: kahler@dmww.com

3. **Conditions of Proposal.** All costs incurred in the preparation of a proposal responding to this RFP will be the responsibility of the Proposer and will not be reimbursed by DMWW.

4. **Instructions to Prospective Contractors.** Your proposal should be addressed as follows:

Amy Kahler
Chief Financial Officer
Des Moines Water Works
2201 George Flagg Pkwy
Des Moines, IA 50321

It is important that the proposal be submitted in a sealed envelope clearly marked in the lower left-hand corner with the following information:

SEALED PROPOSAL For Legal Services
Firm Name and mailing address

It is the responsibility of the Proposer to ensure that the proposal is received by DMWW, by the date and time specified above. Late or unsealed proposals will not be considered. *Please note the DMWW general office is closed to the public at this time*

due to the pandemic. If you are delivering your proposal by courier, please coordinate with Amy Kahler in advance of delivery.

5. **Right to Reject.** DMWW reserves the right to reject any and all proposals received in response to this RFP. A contract for the accepted proposal will be drafted based upon the factors described in this RFP.
6. **Notification of Award.** It is expected that a decision selecting the successful Firm will be made approximately four (4) weeks after the closing date for the receipt of proposals. Upon conclusion of final negotiations regarding the successful proposal, all other Proposers will be informed, in writing, of the name of the successful Proposer.
7. **Initial Engagement.** It is expected that the engagement will be administered through a Legal Services Contract. The initial contract shall have a duration of five years with provisions for extension beyond the initial term. The contract and the terms of representation shall be reviewed and amended as needed at least every five years.

D. Description of Entity. Des Moines Water Works is a municipal utility which exists under the provisions of Chapter 388 and other relevant statutes of the Code of Iowa. DMWW provides drinking water to approximately 500,000 people in Des Moines, surrounding communities, and to many cities and entities in central Iowa by wholesale contract. DMWW is the largest water utility in Iowa, among the largest 100 utilities in the country and is recognized as an industry leader. DMWW is proud to have the next-to-highest revenue bond rating in the water utility industry.

DMWW has an annual budget of approximately \$77 million and is governed by the Board of Water Works Trustees of the City of Des Moines, Iowa. The five-member Board is appointed by the Mayor of Des Moines with the approval of the City Council. Trustees serve for six-year staggered terms.

DMWW employs approximately 212 employees. Approximately, 75% of the DMWW employee population is represented by AFSCME Council 61 and its Affiliated Local 3861.

- II. SCOPE OF SERVICES.** DMWW's use of legal services is focused on the following major subject areas outlined below. We seek strategic relationships that provide high quality and consistent service at a predictable cost. Commitment to diversity and the highest standards of ethics and business conduct are expected.

The Proposer shall be readily available to perform the following legal services:

- a. Attend monthly Board of Trustee meetings, and Committee meetings as necessary
- b. Review, draft, and negotiate contracts and leases
- c. Advise on legal issues related to municipal utility status
- d. Advise on individual labor and employment actions and lead employment litigation
- e. Advise on construction contracts and claims
- f. Drafting and/review for legal correctness and acceptability; legal documents, contracts,

settlement agreements, severance agreements, releases, collective bargaining agreements and other legal drafting, as requested.

- g. Review personnel, fiscal and other policies, as well as Board policy manual
- h. Advise on government grant and contract issues
- i. Advise on responses to subpoenas, court orders, and requests for information from third parties
- j. Defend lawsuits, administrative claims, or other legal claims
- k. Conduct litigation as necessary
- l. Other legal services as needed

III. PROPOSAL CONTENTS. The Proposer, in its proposal, shall at a minimum, include the following:

- a. **Cover Letter.** Include a cover letter from a contact person who has authority to bind the firm contractually, giving his or her title. The letter must certify that all of the information contained in the submission is accurate and complete.
- b. **Firm Overview.** Provide a brief background of the firm, areas of practice, and number of attorneys employed. Identify the specific experience of the firm in the areas listed in the Scope of Work with emphasis on experience related to public sector entities, water utilities and utility Boards.
- c. **Qualifications.** Provide resumes of attorneys who will be assigned the work, including education, position in firm, years and types of experience and continuing professional education will be considered. All assigned attorneys must be licensed in good standing to practice law in the state of Iowa.
- d. **References.** Provide addresses, phone numbers, and e-mail addresses of at least two (2) recent clients and one (1) former client as references. DMWW may contact any other known clients, whether offered as references or otherwise, to obtain information that will assist DMWW in evaluating the proposal.
- e. **Fee structure.** All fees should be clearly stated in the proposal and must remain in effect for a period of three (3) years. Fees for years four and five of the initial term and any extensions will be negotiated. List fees per hour for principal attorneys, other firm attorneys, and support personnel. Identify the minimum increment of time billed. Provide a schedule of reimbursable costs such as mileage and travel time. Provide information regarding the firm's willingness to accept alternative billing arrangements such as fixed fee, hourly rates, volume discount, blended hourly rate, dedicated attorney and incentive billing. Once the desired firm(s) has been identified, DMWW reserves the right to negotiate additional terms and conditions, including hourly rates, or other method of compensation, with such firm(s).
- f. **Billing.** Provide information on the firm's billing procedures.
- g. **Terms of Representation.** Provide an example of the firm's standard terms of representation.

- h. **Conflicts.** Identify any current or potential conflicts of interest and indicate what procedures your firm would utilize to identify and resolve future conflicts of interest. It is of the utmost importance that no real or apparent conflict of interest exists between Proposer and DMWW, including its officials and employees. Therefore, Proposer shall disclose in writing in its proposal any real or possible conflicts of interest which exists or may exist. In addition, the firm shall be responsible to promptly disclose to DMWW any situations which may create possible conflicts of interest during the term of the agreement so that appropriate action can be taken. See Attachment A for a partial list of DMWW's frequent business contacts to be considered in the conflict review.
- i. **Additional Information.** Provide any other information that may be helpful in assessing the firm's ability to perform the work and in applying the evaluation criteria set out in the Request for Proposals.

IV. PROPOSAL EVALUATION

- A. **Submission of Proposals.** All proposals shall include one (1) original and five (5) copies.
- B. **Evaluation Procedure and Criteria.** DMWW will conduct a comprehensive, fair and impartial evaluation of all proposals received in response to this Request for Proposals. Each proposal will be analyzed to determine the Proposer's overall responsiveness and qualifications under the Request for Proposals.

DMWW may select all, some, or none of the Proposers for interviews. DMWW may also request additional information which may be used in the evaluation from all or some of the Proposers at any time prior to final approval of a selected Proposer. Final approval of a selected Proposer(s) is subject to the action of the Board of Water Works Trustees.

DMWW will consider the following evaluation criteria, not necessarily listed in order of importance:

1. Qualifications and experience of the individual or firm in the areas listed in the Scope of Work, as well as experience in municipal law issues.
2. Qualifications, experience, knowledge and demonstrated competence of the assigned attorneys and the prior experience of the individual attorneys with respect to the Scope of Work.
3. Capability and resources to handle the DMWW's work.
4. Responses from references and other contacts.
5. Hourly rates for each class of personnel, expected out-of-pocket costs, discounts for multi-year commitments, hourly rates/fees for additional services and alternative billing measures offered.
6. Additional factors, including but not limited to: local Des Moines metropolitan area presence, demonstration of special knowledge, experience or capabilities and any other significant items brought forward in the evaluation process and interview, if held, that may be of particular advantage to DMWW.
7. Interviews, if conducted.

C. **Required Format for Proposals.** All proposals must follow the required format. Failure to follow the required format may result in disqualification of a proposal:

1. Page Limit: 15, including cover page
2. Attorney Qualifications section should be attached and is not included in the page limit
3. Page Size: 8 ½ x 11; portrait
4. Font Size: 12
5. Double-spaced
6. Margins: 1” minimum on the top, bottom, and sides of all pages
7. Do not use material in proposals dependent on color distinctions, animated electronics, etc.
8. Do not include attachments other than those requested or required by this RFP.

V. **PROPOSAL TIMELINE.**

During the period from your organization’s receipt of this Request for Proposals and until a contract is awarded, your organization shall not contact any employee of DMWW for additional information except in writing directed to Amy Kahler at kahler@dmww.com.

VI. **QUESTIONS.**

Questions for the purpose of clarifying the RFP must be submitted by email and must be received no later than **April 9, 2021**. Questions must be emailed to Amy Kahler at kahler@dmww.com. Please note that submissions of questions for response do not in any way enhance or guarantee the chances of receiving a contract through this proposal. DMWW is not required to respond to any query submitted but, if DMWW does reply, may make your query as well as DMWW’s answer to it available to all known bidders.

VII. **GENERAL INFORMATION.**

- A. **Contract Award.** DMWW reserves the right to award the contract in a manner deemed to be in the best interests of DMWW.
- B. **Stability of Proposed Prices.** Any price offerings from Proposers must be valid for a period of 60 days from the due date of the proposals.
- C. **Amendment or Cancellation of the RFP.** DMWW reserves the right to cancel, amend, modify, or otherwise change this RFP at any time if it deems it to be in the best interests of DMWW.
- D. **Proposal Modifications.** No additions or changes to any proposal will be allowed after the proposal due date, unless such modification is specifically requested by DMWW. DMWW, at its option, may seek Proposer retraction and clarification of any discrepancy or contradiction found during its review of proposals.
- E. **Proposer Presentation of Supporting Evidence.** Proposers must be prepared to provide any evidence of experience, performance, ability, and/or financial surety that DMWW deems necessary or appropriate to fully establish the performance capabilities represented in their

proposals.

- F. **Proposer Demonstration of Proposed Services.** Proposers must be able to confirm their ability to demonstrate the services they would provide.
- G. **Erroneous Awards.** DMWW reserves the right to correct inaccurate awards. This includes revoking the awarding of a contract to a Proposer and subsequently awarding the contract to a different Proposer. Such action shall not constitute a breach of contract on the part of DMWW because the contract with the initial Proposer will be deemed voided as if no contract were ever in place.
- H. **Ownership of Proposals.** All proposals shall become the property of DMWW and will not be returned.
- I. **Ownership of Subsequent Products.** Any product, whether acceptable or unacceptable, developed under a contract awarded as a result of this RFP shall be the sole property of DMWW unless otherwise stated in the contract.
- J. **Oral Agreement or Arrangements.** Any alleged oral agreements or arrangements made by Proposers with DMWW will be disregarded in any proposal evaluation or associated award.
- K. **Not a Contract.** This RFP is not a contract and, alone, shall not be interpreted as such. Rather, this RFP serves only as the instrument through which proposals are solicited. DMWW will pursue negotiations with the strongest proposal. If, for some reason, DMWW and the initial Proposer fail to reach consensus on the issues relative to a contract, then DMWW may commence contract negotiations with other Proposers. DMWW may decide at any time to start the RFP process again. The selected Proposer will be required to sign a formal contract.
- L. **Subcontractors.** DMWW must approve any and all subcontractors utilized by the successful Proposer prior to any such subcontractor commencing any work. Proposers acknowledge by the act of submitting a proposal that any work provided under the contract is work conducted on behalf of DMWW and that the DMWW CEO AND GENERAL MANAGER or designee may communicate directly with any subcontractor as DMWW deems necessary or appropriate. It is also understood that the successful Proposer shall be responsible for all payment of fees charged by the subcontractor(s). A performance evaluation of any subcontractor shall be provided promptly by the successful Proposer to DMWW upon request. The successful Proposer must provide the majority of services described in the specifications.

ATTACHMENT A

DMWW Frequent Business Contacts

The following is a partial list of DMWW's frequent business contacts to be considered for conflict review.

Berwick Water Association

City of Alleman

City of Altoona

City of Ankeny

City of Bondurant

City of Clive

City of Cumming

City of Des Moines

City of Johnston

City of Norwalk

City of Pleasant Hill

City of Polk City

City of Runnells

City of Urbandale

City of Waukee

City of West Des Moines

City of Windsor Heights

Polk County

Polk County Rural Water District #1

Urbandale Water Utility

Warren Rural Water District

West Des Moines Water Works

Xenia Rural Water District

Waste Reclamation Authority (WRA)

Iowa Department of Natural Resources

Mid-American Energy

Construction contractors, engineering consulting firms and architects specializing in water utility work