



Request for Quotations Legal Support for Water Transactions in the Columbia Basin

OPPORTUNITY & OVERVIEW

The National Fish and Wildlife Foundation (NFWF) seeks a qualified Contractor to assist the Columbia Basin Water Transactions Program (CBWTP) with legal support for water transactions.

The CBWTP funds water transaction development and implementation in the United States portion of the Columbia Basin and is the largest instream flow restoration program in the country. Since its inception in 2002, the CBWTP has implemented over 643 water transactions and secured 12.5 million acre-feet of water in flow-limited tributaries of the Columbia River Basin. The CBWTP works across portions of Oregon, Washington, Montana and Idaho, and its investments in water transactions have increased stream flows for the benefit of native fish species, including Pacific salmon, steelhead trout, and resident fish species. You can find more detail on the program goals and overview on NFWF's website, <https://www.nfwf.org/programs/columbia-basin-water-transactions-program>.

Funding for this program is primarily provided by Bonneville Power Administration (BPA). The funding from BPA may include areas of the Columbia River basin that are covered by the Columbia Basin Fish Accords. One award will be made for this contract. The period of performance is anticipated to be January 1, 2022 to September 30, 2022, with the possibility to extend in annual increments, pending satisfactory completion of tasks and funding availability.

SCOPE OF WORK

NFWF seeks a qualified contractor to assist with CBWTP transaction legal due diligence and review transaction proposals and documentation submitted by Qualified Local Entities (QLEs). The goal is to efficiently review, analyze, and track the legal requirements and needs for the purposes of both program improvement and program accountability. Program reviews and analyses should be able to inform adaptive management of the program and be able to justify efforts and dollars spent in certain streams and/or subbasins. The following tasks constitute the Scope of Work for this Request for Quotations. The Contractor should anticipate quarterly check-in calls with the CBWTP Program Manager throughout the duration of the project to discuss progress, address challenges, and develop a strategy for future efforts. All required reports and deliverables will be sent to the CBWTP Program Manager. Please provide time and cost quotes for each task using the Contractor Budget Template provided (through 9/30/22).

The purpose of this RFQ is to identify legal service providers who are interested and qualified to assist NFWF with legal review and any issues arising in the evaluation, selection, and funding of water transactions.

Program goals:

- ❖ Enhance streamflow to benefit species of concern (ESA-listed species, state species of concern, etc.)
- ❖ Secure water for in-stream tributary flows at a location(s) where low flows are a limiting factor to fish survival, productivity, and distribution and for the maximum reach of river legally and physically possible.

- ❖ Demonstrate innovative methods that increase tributary flows or the development of new transaction strategies for tributary flow enhancement during critical periods for targeted species
- ❖ Monitoring of instream water transactions in accordance with the [Flow Restoration Accounting Framework](#) (FRAF)
- ❖ Progress towards instream flow targets, integration with other habitat actions.
- ❖ Collaborate efforts with other entities and document how opportunities for cost-sharing, data sharing, and collaboration were considered and developed
- ❖ Move beyond proof-of-concept and focus on quantitative analysis and adaptive management

Task 1: Review water transaction proposals, necessary documents, and participate in the Technical Advisory Committee

In accordance with [NFWF's water transaction process](#), the CBWTP legal consultant will provide review of all necessary documents in order to see the transaction through from proposal to activation. This may include review of water transaction proposals, draft and signed landowner agreements or signed letter of intents, documentation of water rights, state agency orders, and title review requirements.

Proposals are reviewed by the Technical Advisory Committee (TAC) for a funding rating. The TAC currently consists of agency representatives from U.S. Fish and Wildlife Service (USFWS), National Oceanic and Atmospheric Administration (NOAA), and Bonneville Power Administration (BPA), and a hydrologist from the Northwest Power and Conservation Council (NPCC). NFWF typically has three transaction solicitations per year in which eligible QLEs can submit proposals for funding. The TAC meets three times a year, after proposal solicitations, to review and score submitted proposals. The scoring criteria is based on the Independent Scientific Review Panel's Evaluation Criteria ([Attachment 3](#)), which includes biologic components, hydrologic components, innovative concepts, monitoring, and a watershed context.

After TAC review, QLEs are required to provide a fully executed landowner agreement, to proceed. NFWF's legal consultant will then review the signed landowner agreement for completeness and consistency with the Program's funding requirements. All transactions must have an enforceable landowner agreement.

Task 2: Provide support to QLEs

CBWTP supports transactions that occur in flow-limited streams throughout the states of Oregon, Washington, Idaho, and Montana. The selected Contractor must have experience dealing with water rights and transaction legal expertise in each of these states or demonstrate the ability to gain knowledge of a state's system quickly and thoroughly. The selected Contractor will work closely with each QLE to provide legal support as needed as they develop transactions, submit them through the Program and meet legal requirements.

Task 3: Advise NFWF on program strategies and improvements

The selected contractor should use legal experience and expertise to advise NFWF on how to make improvements to the CBWTP and ensure that the policies and procedures are reviewed and updated as necessary to move beyond proof-of-concept and focus on quantitative analysis and adaptive management. Contractor should anticipate providing guidance on federal regulations and the Northwest Power Act,



provide informational presentations and trainings to Program participants, strategic communication with BPA, NPCC, federal and tribal partners, and advise on issues of strategic importance to the program.

Deliverable: Contractor should prepare an end-of-year report that summarizes the legal work on transaction review and those that required legal assistance or advice. The report should also formally include the program strategies and improvements suggested from Task 3. Due 9/30/2022.

REQUIRED EXPERTISE AND PROPOSED STAFF

A. Knowledge and track record: Applicants must demonstrate expertise and experience with legal needs and requirements of instream flow transactions, state change applications and final orders, and working with federal agencies.

B. Experience in CBWTP region: Preference will be given to providers who have experience working in or are otherwise familiar with the Columbia River Basin and specifically within subbasins that have been identified as priorities for flow and fisheries restoration by federal, Tribal, and state agencies. Providers must demonstrate familiarity and expertise with the Oregon, Washington, Idaho, and Montana legal systems, or show how they will learn any new systems.

C. Capacity and flexibility to deliver services: Providers must demonstrate that they have a degree of flexibility in how and where services are delivered, and that they have the ability to tailor content and delivery methods to meet the specific needs of the CBWTP.

CRITERIA FOR COMPETITIVE APPLICATIONS

Proposals will be evaluated and scored on the following criteria. Offerors should organize their Proposal Narrative based on these sections:

1. **Understanding of the Scope of Work.** The Scope of Work must demonstrate an understanding of the goals of the activities involved. This section should include a description of how you will communicate with NFWF and program stakeholders and report on progress, results, and deliverables. Weight: 10%
2. **Technical Approach.** The proposed technical approach for conducting the tasks should clearly describe the proposed methods necessary to conduct the project. The section must demonstrate that those methods are robust and appropriate for conducting the project and address any areas of complexity or uncertainty associated with conducting the project. Weight: 20%
3. **Qualifications of Proposed Personnel.** This section should clearly describe which tasks each member of the team will conduct and how their training and experience provide the requisite experience to do so successfully. Weight: 30%
4. **Contractor's Past Performance.** The proposal should include information on the primary investigator(s)'s past performance experience in the requested field. List recent (last 2-5 years) accomplishments and previous services related to the technical expertise offered. If subcontractors are to be used, information should be provided that demonstrates their past performance as well. Describe how that past performance is applicable to this evaluation. Weight: 20%



5. **Budget.** The proposed budget should itemize work in sufficient detail to enable reviewers to evaluate the appropriateness of the entire funding request. You must use attached Contractor Budget Template. You may add columns to the template for additional tasks if needed, but should not make any other changes. If applicable, please include the proposed budget for equipment purchase in the proposal separate from the Contractor Budget Template. Weight: 20%

ELIGIBLE OFFERORS & CONFLICT OF INTEREST STATEMENT

Eligible applicants include institutions of higher education, other nonprofits, commercial organizations, international organizations, and local, state and Indian tribal governments.

By submitting a proposal in response to this solicitation, the offeror warrants and represents that it does not currently have any apparent or actual conflict of interest, as described herein. In the event an offeror currently has, will have during the life of the contemplated contract, or becomes aware of an apparent or actual conflict of interest, in the event an award is made, the offeror must notify NFWF in writing in the Statement of Quotations, or in subsequent correspondence (if the issue becomes known after the submission of the Statement of Quotations) of such apparent or actual conflicts of interest, including organizational conflicts of interest. Conflicts of interest include any relationship or matter which might place the contractor, the contractor's employees, or the contractor's subcontractors in a position of conflict, real or apparent, between their responsibilities under the award and any other outside interests, or otherwise. Conflicts of interest may also include, but are not limited to, direct or indirect financial interests, close personal relationships, positions of trust in outside organizations, consideration of future employment arrangements with a different organization, or decision-making affecting the award that would cause a reasonable person with knowledge of the relevant facts to question the impartiality of the offeror, the offeror's employees, or the offeror's future subcontractors in the matter. Upon receipt of such a notice, the NFWF Contracting Officer will determine if a conflict of interest exists and, if so, if there are any possible actions to be taken by the offeror to reduce or resolve the conflict. Failure to resolve conflicts of interest in a manner that satisfies NFWF may result in the proposal not being selected for award.

By submitting a proposal in response to this solicitation, the Offeror warrants and represents that it is eligible for award of a Contract resulting from this solicitation and that it is not subject to any of the below circumstances:

Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an Contract with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless the agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government; or

Was convicted (or had an officer or agent of such corporation acting on behalf of the corporation convicted) of a felony criminal violation under any Federal or State law within the preceding 24 months, where the awarding agency is aware of the conviction, unless the agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government; or



Is listed on the General Services Administration's, government-wide System for Award Management Exclusions (SAM Exclusions), in accordance with the OMB guidelines at 2 C.F.R Part 180 that implement E.O.s 12549 (3 C.F.R., 1986 Comp., p. 189) and 12689 (3 C.F.R., 1989 Comp., p. 235), "Debarment and Suspension," or intends to enter into any subaward, contract or other Contract using funds provided by NFWF with any party listed on the SAM Exclusions in accordance with Executive Orders 12549 and 12689. The SAM Exclusions instructions can be found here: <https://www.sam.gov/SAM/>

SUBMISSION REQUIREMENTS

Proposals must be submitted under the same cover at the same time, in three distinctly labeled and separate documents: 1) Technical Proposal, 2) Budget, and 3) Evidence of Financial Stability.

Interested parties should submit proposals electronically to the CBWTP Program Manager, Kate Morgan (Katherine.Morgan@nfwf.org) using the requirements below:

1. Technical Proposal

- Format: Proposals must be provided in Word format or searchable PDF with a font size no smaller than 11 pt.
- Contact information: Primary contact person, company name, address, phone, email, website, DUNS number, and EIN/Taxpayer ID#.
- Narrative: Concise (10-page limit) description of the work plan and a summary of the applicant's expertise and experience, organized by the Criteria for Competitive Applications.
- Biographies: Resumes and/or Vitae of key staff and their role in the proposed work area.
- References: List two clients who have received services from the applicant that is similar in nature to the proposed work; include names, phone numbers, and email address.

2. **Budget:** The budget proposal must be submitted using the following NFWF [budget template](#).

3. **Evidence of Financial Stability:** The applicant shall provide proof of financial stability in the form of financial statements, credit ratings, a line of credit, or other financial arrangements sufficient to demonstrate the applicant's capability to meet the requirements of this solicitation.

SELECTION PROCEDURE

A panel of NFWF staff will review the proposals. Offerors may be asked to modify objectives, work plans, or budgets prior to final approval of the award. Only one award will be made for this project. If multiple institutions are involved, they should be handled through subcontracts.

SUBMISSION DEADLINES

November 16, 2021 Deadline for questions about the solicitation to NFWF. Offerors should submit questions regarding this solicitation via email to **Kate Morgan** (Katherine.Morgan@nfwf.org). NFWF will post all the questions and responses to all questions so that all offerors have access to them at the same time. In order to provide equitable responses, all questions must be sent to NFWF **no later than 5:00 PM PST / 8:00 PM EST on November 16, 2021.**



NFWF

- November 17, 2021** NFWF will post the questions submitted regarding the solicitation and responses on the NFWF website.
- December 1, 2021** Deadline for receipt by NFWF of proposals. Proposals must be sent electronically as an email attachment to **Kate Morgan** (Katherine.Morgan@nfwf.org) by **5:00 PM PST / 8:00 PM EST December 1, 2021**. Proposals must be provided in Word format or searchable PDF.
- Late December 2021** Contract award to selected Offeror