
Meeting Date: May 17, 2023
Staff Contact: Charles Kolberg, General Counsel

TITLE: C-23-9 – Approval of Contract with Stelzner, Winter, Warburton, Flores & Dawes, PA as a result of P2023000007

ACTION: Recommend Approval

Summary:

The Albuquerque Bernalillo County Water Utility Authority issued the Request for Proposals (RFP) P20232000007, Legal Services, to solicit proposals from qualified attorneys for as needed legal services.

The RFP was posted on BidSync and advertised in the local newspaper. One (1) responsive Offer was submitted for evaluation. The Ad-Hoc Committee reviewed, evaluated, and scored the response in accordance with the evaluation criteria published in the RFP.

Based on the recommendation of the Ad-Hoc Committee, the Executive Director recommends the award of a contract to Stelzner, Winter, Warburton, Flores & Dawes, PA, as this vendor has the highest composite score, is qualified to perform the work, and meet the requirements of the RFP. The highest total composite score possible, without preferences applied, is one thousand. All scores listed are the combined average of all Committee members with applicable preferences applied.

<u>Offers</u>	<u>Total Composite Score</u>
Stelzner, Winter Warburton, Flores & Dawes	1100

Approval of this item will serve as delegation of authority for the Executive Director to enter into an agreement for Stelzner, Winter, Warburton, Flores & Dawes, PA to provide legal services as well as approve all future amendments to this agreement, if any.

FISCAL IMPACT:

The fiscal impact is expected to be \$3,500,000 (excluding NM GRT) for the four (4) year term of the agreement and is budgeted.

Memo

To: Mark S. Sanchez, Executive Director
Charles Kolberg, General Counsel

From: Lisa Molina, Administrative Specialist *Lmm*

Through: Candida Kelcourse, Purchasing Administrator *OK*
Jonathan Daniels, Chief Purchasing Officer *JD*

Date: April 11, 2023

Re: Recommendation of Award, P202300007, "Legal Services"

The Albuquerque Bernalillo County Water Utility Authority issued the referenced Request for Proposals (RFP) to solicit proposals from qualified vendors for Legal Services.

The RFP was posted on BidSync and advertised in the local newspaper. One (1) responsive offer was received and submitted for evaluation. The Ad Hoc Evaluation Committee reviewed, evaluated, and scored the response in accordance with the evaluation criteria published in the RFP.

Listed are all the respondents' average composite scores with all applicable preferences applied as indicated in the scoring details. The largest total composite score possible without preferences applied is 1000.

Offeror

Stelzner, Winter, Warburton, Flores & Dawes, P.A.

Total Composite Score

1100 (total includes additional preference points)

The committee recommends the award of contract to Stelzner, Winter, Warburton, Flores & Dawes, P.A., as this company had the highest average composite score after final scoring and is qualified to perform the work.

Purchasing concurs with the committee's recommendation.

Approved:

Mark S. Sanchez 4/11/23 12:18 MDT

Mark S. Sanchez Date
Executive Director

Recommended:

CKolberg 4/11/23 12:17 MDT

Charles Kolberg, Date
General Counsel

Enclosures: Composite Score Sheet

**Composite Score Tabulation
P202300007 Legal Services**

EVALUATION CRITERIA	EVALUATION FACTORS (Max pts)	Offers
		Stelzner
Admitted to practice in the state and federal courts in the State of New Mexico for a minimum of five (5) years.	100	100
Knowledge of and litigation experience in New Mexico with legal issues relevant to the Water Authority's operations including water resource management, municipal utility operation and franchise, labor and employment, contracts, real estate transactions, sale and acquisition of property.	250	244
Experience and qualifications of the Offeror and personnel as shown on staff resumes to perform tasks described in the Scope of Services.	250	250
One or more of the Offeror's personnel being recognized by the New Mexico State Bar Association as an attorney with a specialization in municipal, water or utility law, personnel and labor law, and real estate law.	200	175
Cost Proposal – The costs proposed by the Offeror to perform the tasks listed in the Scope of Services. Ability of the Offeror to describe in detail all costs to be incurred; alternative billing methods; cost effective methods.	200	181
TOTAL COMPOSITE SCORES		950
Resident/Native American Resident Business Preference	Up to 8%	80
Resident Veteran/Native American Veteran Business Preference	Up to 10%	
Recycled Content Goods Preference	Up to 5%	
Local Business Preference	Up to 5 %	50
Small Business Preference	Up to 5%	50
Pay Equity Preference	Up to 5%	
15% Preference Max		150
TOTAL COMPOSITE SCORES WITH PREFERENCES		1100
RANKING		1
		Stelzner

**AGREEMENT
BETWEEN
THE ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY
AND
STELZNER, WINTER, WARBURTON, FLORES, & DAWES, P.A
P2023000007 LEGAL SERVICES**

THIS AGREEMENT is made and entered into on the date of the last signature entered below by and between the Albuquerque Bernalillo County Water Utility Authority, a New Mexico political subdivision, P.O. Box 568, Albuquerque, New Mexico 87103-0568 (hereinafter referred to as the "Water Authority"), and Stelzner, Winter, Warburton, Flores & Dawes, PA, (hereinafter referred to as the "Contractor"), a New Mexico Corporation, whose address is P.O. Box 2067, NM 87504 (hereinafter called "Contractor").

In consideration of mutual obligations stated herein, the parties agree as follows:

1. Scope of Services: The Contractor shall provide the services described in Exhibit A attached hereto (hereinafter the "Services") in a satisfactory and proper manner, as determined by the Water Authority.

2. Term of Agreement: This Agreement shall commence on the date of final execution by the Water Authority and continue for a period of four (4) years. This term may be extended by mutual written agreement of the parties up to the maximum number of years allowed by the Procurement Ordinance.

3. Compensation and Method of Payment:

3.1 *Compensation.* For performing the Services specified in Section 1 hereof, the Water Authority agrees to pay the Contractor up to the amount of Three Million Five Hundred Thousand Dollars (\$3,500,000.00), plus any applicable gross receipts taxes. Such amount shall constitute full and complete compensation for the Contractor's Services under this Agreement, including all expenditures made and expenses incurred by the Contractor in performing such Services.

3.2 *Method of Payment.* Such amount shall be paid to the Contractor in accordance with Exhibit B, Payment Schedule, upon receipt by the Water Authority of a properly documented invoice for payment as determined by the budgetary and fiscal guidelines of the Water Authority and on the condition that the Contractor has accomplished the Services to the satisfaction of the Water Authority. Applicable taxes will be stated separately on each invoice and paid by the Water Authority at current rates. Taxes may not be billed more than sixty (60) days after completion of the Services to which they apply.

3.3 *Appropriations.* Notwithstanding any other provisions in this Agreement, the terms of this Agreement are contingent upon the Water Authority Board making the appropriations necessary for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the Water Authority Board, this Agreement may be terminated at the end of the Water Authority's then current fiscal year upon written notice given by the Water Authority to the Contractor. Such event shall not constitute an event of default. All payment obligations of the Water Authority and all of its interest in this Agreement will cease upon the date of termination. The Water Authority's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

3.4 *Non-Exclusivity.* Unless specifically provided herein, this Agreement is not exclusive to the Contractor and the Water Authority may contract with other businesses to provide similar services at any time. In addition, if this Agreement is for the purchase of Services on an as needed basis, the Water Authority is not obligated to make any purchase of Services hereunder.

4. Independent Contractor: Neither the Contractor nor its employees are considered to be employees of the Water Authority for any purpose whatsoever. The Contractor is considered as an independent contractor at all times in the performance of the Services described in Section 1. The Contractor further agrees that neither it nor its employees are entitled to any benefits from the Water Authority under the provisions of the Workers' Compensation Act of the State of New Mexico, or to any of the benefits granted to employees of the Water Authority under the provisions of the Merit System Ordinance as now enacted or hereafter amended.

5. Personnel:

5.1 The Contractor represents that it has, or will secure at its own expense, all personnel required in performing all of the Services required under this Agreement in a timely manner. Such personnel shall not be employees of or have any contractual relationships with the Water Authority.

5.2 All the Services required hereunder will be performed by the Contractor or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such Services.

5.3 None of the work or Services covered by this Agreement shall be subcontracted without the prior written approval of the Water Authority. Any work or Services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Agreement.

6. Indemnity: The Contractor agrees to defend, indemnify and hold harmless the Water Authority and its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against said parties because of any injury or damage received or sustained by any person, persons or property to the extent arising out of or resulting from the negligent acts, errors, omissions, and performance by the Contractor under this Agreement or by reason of any asserted act or omission, neglect or misconduct of the Contractor or Contractor's agents or employees or any subcontractor or its agents or employees. The indemnity required hereunder shall not be limited by reason of the specification of any particular insurance coverage in this Agreement.

7. Insurance:

7.1 *General Conditions.* The Water Authority will require the successful Offeror, referred to as the Contractor, to procure and maintain at its expense during the term of the Agreement resulting from the RFP, insurance in the kinds and amounts hereinafter provided with insurance companies authorized to do business in the State of New Mexico, covering all operations of the Contractor under the Agreement. Upon execution of the Agreement and on the renewal of all coverages, the Contractor shall furnish to the Water Authority a certificate or certificates in form satisfactory to the Water Authority as well as the rider or endorsement showing that it has complied with these insurance requirements. All certificates of insurance shall provide that thirty (30) days written notice be given to the Risk Program Manager, Albuquerque Bernalillo County Water Utility

Authority, P.O. Box 568, Albuquerque, New Mexico 87103, before a policy is canceled, materially changed, or not renewed. Various types of required insurance may be written in one or more policies. **With respect to all coverages required other than professional liability or workers' compensation, the Albuquerque Bernalillo County Water Utility Authority shall be named an additional insured.** All coverages afforded shall be primary with respect to operations provided.

7.2 *Approval of Insurance.* Even though the Contractor may have been given notice to proceed, it shall not begin any work under the Agreement until the required insurance has been obtained and the proper certificates (or policies) filed with the Water Authority. Neither approval nor failure to disapprove certificates, policies, or the insurance by the Water Authority shall relieve the Contractor of full responsibility to maintain the required insurance in full force and effect. If part of the Agreement is sublet, the Contractor shall include any or all subcontractors in its insurance policies, or require the subcontractor to secure insurance to protect itself against all hazards enumerated herein, which are not covered by the Contractor's insurance policies.

7.3 *Coverage Required.* The kinds and amounts of insurance required are as follows:

7.3.1 Commercial General Liability Insurance. A commercial general liability insurance policy with combined limits of liability for bodily injury or property damage as follows:

\$1,000,000	Per Occurrence
\$1,000,000	Policy Aggregate
\$1,000,000	Products Liability/Completed Operations
\$1,000,000	Personal and Advertising Injury
\$ 50,000	Fire Legal
\$ 5,000	Medical Payments

Said policy of insurance must include coverage for all operations performed for the Water Authority by the Contractor and contractual liability coverage shall specifically insure the hold harmless provisions of the Agreement.

7.3.2 Automobile Liability Insurance. An automobile liability insurance policy with liability limits in amounts not less than \$1,000,000 combined single limit of liability for bodily injury, including death, and property damage in any one occurrence. The policy must include coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment both on and off work.

7.3.3 Workers' Compensation Insurance. Workers' compensation insurance policy for the Contractor's employees, in accordance with the provisions of the Workers' Compensation Act of the State of New Mexico, (the "Act"). If the Contractor has determined that it is not subject to the Act, the Contractor will certify, in a signed statement to that effect. The Contractor will notify the Water Authority and comply with the Act if it becomes subject to the Act during the term of the Agreement.

7.3.4 **Professional Liability Insurance.** Professional liability insurance in an amount not less than \$1,000,000.00 per claim and in the aggregate.

7.4 *Increased Limits.* If during the term of the Agreement, the Water Authority requires Consultant to increase the maximum limits of any insurance required herein, an adjustment in

Contractor's compensation will be made in the amount of the actual cost of additional insurance attributable directly to the Agreement.

7.5 *Additional Insurance.* The Water Authority may, as a condition of award of a contract, require a successful Offeror to carry additional types of insurance. The type and limit of additional insurance is dependent upon the type of Services provided by the successful Offeror.

8. Reports and Information: At such times and in such forms as the Water Authority may require, there shall be furnished to the Water Authority such statements, records, reports, data and information, as the Water Authority may request pertaining to matters covered by this Agreement. Unless authorized by the Water Authority, the Contractor will not release any information concerning the work product including any reports or other documents prepared pursuant to the Agreement until the final product is submitted to the Water Authority.

9. Establishment and Maintenance of Records: Records shall be maintained by the Contractor in accordance with applicable law and requirements prescribed by the Water Authority with respect to all matters covered by this Agreement. Except as otherwise authorized by the Water Authority, such records shall be maintained for a period of three (3) years after receipt of final payment under this Agreement and shall be available to the Water Authority until all applicable statutes of limitation have run. This Section 9 shall survive and continue beyond the termination of this Agreement or any of its provisions.

10. Audits: At any time during normal business hours and as often as the Water Authority may deem necessary, there shall be made available to the Water Authority for examination all of the Contractor's records with respect to all matters covered by this Agreement. The Contractor shall permit the Water Authority to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement.

11. Publication, Reproduction and Use of Material: No material produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country. The Water Authority shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement.

12. Ethical Conduct: The Contractor warrants that it will perform the Services under this Agreement in compliance with the Ethical Conduct provisions (§2-390) and Unfair Business Practices provisions (§2-376) of the Procurement Ordinance, the Water Authority Code of Conduct, the Governmental Conduct Act (Sections 10-16-1 through 10-16-18, NMSA 1978), the New Mexico criminal statutes prohibiting bribes, gratuities and kickbacks, (Sections 30-41-1 through 30-41-3 NMSA 1978), and any other Water Authority or New Mexico laws, ordinances, rules and regulations, policies, procedures and administrative instructions applicable to ethical conduct. Contractor warrants that it presently has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of this Agreement.

13. Unfair Business Practices: The Contractor agrees to comply with the Unfair Business Practices provisions (§2-376) of the Procurement Ordinance and the New Mexico Unfair Practices Act, Section 57-12-1 et seq. NMSA 1978 (the "Act"). If during the term of this Agreement the Contractor has been found to engage in any Unfair Business Practices the Contractor agrees to

report that finding to the Water Authority Central Purchasing Office. Unfair Business Practices are defined as a system or pattern of acts or practices that a federal or State enforcement agency has made a formal finding within the last three (3) years to be discriminatory, deceptive, fraudulent, or abusive (or similar terms) under the Act, or an applicable federal or State consumer protection law relating to the Scope of this Agreement or that have violated a relevant criminal statute, as evidenced by a public enforcement order or judgment, settlement with the enforcement agency or other formal finding by the relevant enforcement agency with regulatory enforcement authority under the applicable consumer protection law, or criminal conviction.

14. Compliance with Laws: In providing the Services outlined herein, the Contractor shall comply with all applicable laws, ordinances, and codes of the federal, State, and local governments, including, but not limited to the New Mexico Human Rights Act, Title VII of the federal Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and all federal, State and local statutes, regulations and executive orders relating to civil rights.

15. Changes: If changes occur in the terms and conditions of this Agreement, scope of services, or the description of the Project, a supplemental agreement may be negotiated at the request of either party.

16. Assignability: The Contractor shall not assign any interest in this Agreement and shall not transfer any interest in this Agreement (whether by assignment or novation), without the prior written consent of the Water Authority thereto.

17. Termination for Cause: If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations under this Agreement or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Agreement, and fail to cure any such default within fifteen (15) days after receipt of a notice of default from the Water Authority, the Water Authority shall thereupon have the right to terminate this Agreement without further notice to the Contractor. The notice of default shall specify the date of termination. In the event of termination for cause, all finished or unfinished documents, data, and reports prepared by the Contractor under this Agreement shall, at the option of the Water Authority, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. Notwithstanding the above, the Contractor shall not be relieved of liability to the Water Authority for damages sustained by the Water Authority by virtue of any breach of this Agreement by the Contractor, and the Water Authority may withhold any payments to the Contractor for the purposes of set-off until such time as the exact amount of damages due the Water Authority from the Contractor is determined.

18. Termination for Convenience of the Water Authority: The Water Authority may terminate this Agreement at any time by giving at least thirty (30) days' notice in writing to the Contractor. If the Contractor is terminated by the Water Authority as provided herein, the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. If this Agreement is terminated due to the fault of the Contractor, the preceding Section hereof relative to termination shall apply.

19. Construction and Severability: If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of the Agreement is reasonably capable of completion.

20. Enforcement: The Contractor agrees to pay to the Water Authority all costs and expenses including reasonable attorney's fees incurred by the Water Authority in exercising any of its rights or remedies in connection with the enforcement of this Agreement.

21. Entire Agreement: The RFP and Contractor's Proposal submitted in response to the RFP, and all Exhibits and other documents attached or referred to in this Agreement are hereby incorporated into and made a part hereof as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms. In the event of a conflict, the documents shall have precedence as follows: Exhibits, Agreement, RFP and Proposal.

This Agreement and incorporated documents contain the entire agreement of the parties and supersede any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

22. Applicable Law: This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New Mexico, and the ordinances, rules and regulations of the Water Authority.

23. Approval Required: This Agreement shall not become effective or binding until approved by the Executive Director of the Water Authority.

IN WITNESS WHEREOF, the Water Authority and the Contractor have executed this Agreement as of the last date written below.

**ALBUQUERQUE BERNALILLO COUNTY
WATER UTILITY AUTHORITY**

**CONTRACTOR: STELZNER, WINTER,
WARBURTON, FLORES, & DAWES, P.A**

Approved By:

Mark S. Sanchez, Executive Director

Date: _____

By: _____

Title: _____

Date: _____

Reviewed by:

Charles Kolberg, General Counsel

Date: _____

EXHIBIT A

SCOPE OF SERVICES

Provide a variety of legal services as assigned and requested by the Water Authority's Executive Director and General Counsel. These generalized services would include providing formal legal opinions and legal guidance as needed to the Water Authority governing body to comply with local, state and federal laws, regulations and policies. Areas of legal expertise needed may include:

- Water resource management and development to include filings with the New Mexico State Engineer and associated litigation;
- Municipal utility operation to include rate setting, franchise and right-of-way agreements, development agreements, construction contracting, intergovernmental agreements and associated litigation;
- Personnel, labor and employment and associated litigation; and
- Real estate transactions to include the sale and acquisition of property, right-of-way and easements through lease, purchase, or condemnation and associated litigation.

The purpose of this RFP is to establish a contract with a qualified attorney or firm to provide cost-effective, competent representation of the Water Authority and other legal services as needed.

The Water Authority reserves the right to contract with attorneys who have not submitted proposals pursuant to this process if the need for specialized services or expertise arises.

Contractor must bill the Water Authority in 0.1 hour billing units.

Contractor must obtain advance approval before incurring costs, including but not limited to expenses related to travel, depositions, computer research, expert witnesses, and long-distance telephone calls. The Water Authority will reimburse pre-approved items and filing fees at cost, instate mileage at then current IRS mileage rates and copies at \$0.15/page.

Billings for costs must not include gross receipts taxes or outside costs for which such taxes have already been paid.

Contractor must be located in the Albuquerque area, or agree not to bill the Water Authority for travel time between its office and Albuquerque, without prior approval.

Contractor must comply with the New Mexico Rules of Professional Conduct. In the event counsel are hired as "conflict" counsel, each contact will provide for accountability of counsel and maintaining professional responsibility to the client.

Contractor must provide the Water Authority with notice of any client representation which could conflict with the representation of the Water Authority during the term of the contract with the Water Authority.

In order to be considered for the assignment of a case or project, Contractor must provide an initial evaluation of the claim, an estimate of the total cost of litigation, including costs and witness fees, and an analysis of the theories for recovery and for defense of the claim upon request. If the case is assigned, this evaluation will serve as a measurement of the attorney's performance for the Water

Authority's case management review.

Only attorneys and legal assistants/paralegals set out in the proposal submitted shall provide services to the Water Authority, unless the Water Authority approves in writing its request for a change in personnel.

The following procedural guidelines are required:

- use of personnel with the lowest billing rate when their skills are commensurate with the required tasks;
- billing for only one attorney, unless authorized in advance, if more than one attends a conference or deposition on the Water Authority's behalf;
- no billing of administrative guidance and coordination of secretaries, legal assistants/paralegals, and associates;
- no billing of partner or attorney rates for routine activities of clerical, secretarial or legal assistant paralegal personnel conducting "conflict" checks, preparing form letters, setting up files, or other overhead activities;
- billing travel time at no greater than one-half of the traveling party's billing rate;
- provide regular status reports with bills which include the current status of litigation or the project and summary of the activities undertaken and future activities planned;
- provide quarterly reports and reports of major developments;
- identify a contact person to handle billing questions and problems;
- monthly or quarterly billing which identifies the billing party, the service provided and the billing rate;
- obtaining prior approval from the Water Authority's Executive Director and/or General Counsel for hiring expert witnesses, scheduling and taking depositions, in-house conferences which will result in billings from several members of the firm, and other extraordinary costs and expenses, including travel.
- keep travel costs to a minimum; and
- other procedural guidelines implemented by the Water Authority from time to time.

MINIMUM QUALIFICATIONS AND REQUIREMENTS

Attorneys must be licensed to practice law in the State of New Mexico for at least five (5) years.

Attorneys or firms must have prior experience in all four (4) requested areas of law equal to the following:

- certified specialization in the area of practice;
- three (3) years of trial, teaching, appellate or other non-trial experience as an attorney in the area, acquired during the last five (5) years; or
- equivalent practical experience as determined by the Water Authority.

EXHIBIT B

III. COST INFORMATION REQUIRED

Hourly Rates and Costs:

The offeror proposes to provide Attorney Services for the following charges plus applicable gross receipts taxes:

<u>Attorney</u>	<u>Hourly rate</u>
Jaime L. Dawes	\$225.00
Juan L. Flores	\$225.00
Sofia L. Flores	\$200.00
Dan Gershon	\$225.00
Dahl L. Harris	\$225.00
Keith W. Herrmann	\$225.00
Quentin Smith	\$225.00
Eleanor Werenko	\$225.00
Nann M. Winter	\$225.00
James C. Brockmann	\$275.00
Jay F. Stein	\$275.00
Paralegal	\$125.00
Law Clerk	\$ 85.00

Other items not identified in **Section III of the RFP** will be billed at actual cost. For example: Costs associated with matters include, but are not limited to, court filing fees, research fees, process serving fees, legal research fees, deposition of witnesses, telephone conferencing fees, and other costs as may be necessary (investigations) are billed at actual cost to the Stelzner Firm.

Minimum Billing Unit

We define a billable hour as 60 minutes of actual work on behalf of a client by a lawyer, law clerk, or paralegal, billed in increments of 0.1 of an hour, which is the Firm's minimum billing unit.

Costs Billed to the Water Authority

In-house photocopy expenses will be billed at \$0.15 per page.

With respect to travel, we will bill for actual travel **at half-time**.

We do not bill for clerical support, facsimiles, scanning, long distance calls or unsuccessful attempts to reach people by phone (although these items may be noted on invoices for documentation purposes).