

Committee Report

Joint Business Item No. 2021-243

Environment Committee

Meeting date: September 14, 2021

Management Committee

Meeting date: September 22, 2021

For the Metropolitan Council meeting of October 13, 2021

Subject: PFAS Legal Services Contract, Contract 21P096

Proposed Action

That the Metropolitan Council authorizes its Regional Administrator to negotiate and execute a contract for PFAS legal services, projects 807849 and 808941, contract 21P096, to Barnes & Thornburg LLP for legal services including legal advice and consultation on PFAS-related issues in an amount not to exceed \$5,000,000.00.

Summary of Environment Committee Discussion/Questions

Committee Member Zeran inquired what services are included in the contract. Staff stated we will be obtaining hourly professional services to help the Council develop a legal strategy to address PFAS issues. It could include negotiations with the Minnesota Pollution Control Agency or other agencies, working with other impacted entities, participating in litigation, including administrative proceedings, and hiring technical consultants.

Chair Lindstrom asked if there is a concerted effort with plants like ours to think about legal strategies or liabilities. Staff stated the National Association of Clean Water Agencies (NACWA), a trade group, is very involved in legal strategy. The law firm selected has a PFAS group in addition to a municipal wastewater group. Minnesota is moving faster than other states.

Chair Lindstrom inquired if we are concerned about liability about PFAS, around land application. Staff stated this is within the scope to evaluate potential liability as well as proposed federal and state legislation.

Committee Member Sterner asked about the hourly rate or retainer. Staff stated there is no monthly retainer. The hourly rate ranges from \$435 to \$695 per hour, which are market rates. The work is highly specialized work.

Committee Member Sterner inquired who is responsible for managing the contract. Staff stated the Office of General Counsel will work closely with outside counsel, Office of General Counsel reviews invoicing and passes along to MCES to process for payment.

Committee Member Sterner asked if we inquired about a possible lesser amount for the contract award. Staff clarified the awarded amount was set to provide flexibility due to uncertainty. Once a law firm is hired, it is difficult to do a future procurement if the contract is exhausted.

Committee Member Fredson asked about coordination and communication with other agencies and to assure outside counsel are looking out for the Council's best interest. Staff stated we are unsure if the MPCA has retained outside counsel. This is not a shareable cost. We work cooperatively with the agency; however, our representation needs to be able to represent the Council's interest including in any administrative proceedings.

Chair Lindstrom asked where the firm is headquartered. Staff stated the firm is headquartered in Chicago. They do have a Minneapolis office, but Minneapolis staff do not have the expertise needed. Lead attorneys would be from Chicago or Michigan.

The proposed action was approved with a vote of 4 to 2 (Sterner, Zeran) and forwarded to the September 22, 2021 Management Committee meeting for approval.

Summary of Management Committee Discussion/Questions

No comments or questions.

The proposed action was approved and forwarded to the October 13, 2021 Council meeting for approval.

Environment Committee

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District(s), Member(s): All districts and members

Policy/Legal Reference: FM14-2 - Expenditures for the Procurement of Goods and Services Policy; Minn. Stat. § 473.129, subd. 3.

Staff Prepared/Presented: Daniel Abelson, 651-602-1713; David Brown, 651-602-1072

Division/Department: MCES c/o Leisa Thompson, 651-602-8101; Office of General Counsel c/o Ann Bloodhart, 651-602-1105

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Background

MCES solicited proposals for legal services including legal advice and consultation on per- and polyfluoroalkyl substances (PFAS) related issues including legal strategy and potential regulatory impacts. This area of law is complicated, evolving, and multi-faceted. As such, the contract term is for five years to cover the potential myriad of issues the Council may face with respect to PFAS.

A Request for Proposals was issued on May 12, 2021. A pre-proposal meeting was hosted by Council staff on May 27, 2021, that outlined the solicitation requirements, discussed project specifications and responded to plan holder inquiries. There were twenty-three registered plan holders, nineteen law firms, three consultants, one plan room, and four plan holders identified as minority, woman, small or disadvantaged business enterprises. The Office of Equal Opportunity did not assign any Metropolitan Council Underutilized Business (MCUB) / Disadvantaged Business Enterprise (DBE) goals for this highly specialized project.

Rationale

The Council received eight proposals on June 14, 2021, to be evaluated for the consideration of contract award. Evaluation consensus meetings were held by the evaluation panel on July 14 and 15, 2021, after which the panel decided to interview the three highest ranked proposers on July 23 and 26, 2021. After the interviews, the panel reached consensus that Barnes & Thornburg LLP was the highest ranked and most technically qualified firm to perform the services required for this project. The services from this contract will be assigned on an as-needed basis and authorized by the Council. The execution of a professional services contract in excess of \$500,000 requires Council approval.

Office of Equal Opportunity

The Office of Equal Opportunity (OEO) thoroughly reviewed this procurement for opportunities to include MCUB firms. OEO identified legal services, technical experts and consultants as potential subcontracting opportunity on this contract. Several conversations with the Council's General Counsel staff provided OEO with the details of the complexity of this work and the specific expertise that would

be needed to perform in these areas. With the information given, OEO researched and assessed the marketplace but could not identify any MCUB firms that could provide the services required in this contract and therefore did not assign an MCUB goal.

Thrive Lens Analysis

This action advances the Thrive outcome of stewardship and prosperity by efficiently and effectively investing public financial resources to provide, maintain, and advance the region's wastewater infrastructure which protects the region's natural resources.

Funding

Funding is provided in the 2021 Authorized Capital Program.

Known Support / Opposition

There is no known opposition.