

**DETERMINATION AND FINDINGS
FOR
SOLE SOURCE PROCUREMENT**

1. **Authorizationⁱ**

- D.C. Code § 34-801
- D.C. Code § 34-804
- 15 D.C.M.R. § 3700

2. **Minimum Need**

The Office of the People’s Counsel for the District of Columbia (“OPC” or “Office”) requests the services of Saxton & Stump, LLC for the purpose of providing legal support for issues related to the District of Columbia Water and Sewer Authority’s financial and operational issues, which could potentially impact DC Water’s customer base.

3. **Estimated Fair and Reasonable Price**

The total contract (“not –to-exceed”) price is \$40,000.

4. **Facts That Justify a Sole Source Procurement**

- A. The Office of the People’s Counsel is an independent agency of the District of Columbia Government. By law, it is the advocate for consumers of natural gas, electric, water and landline telephone services in the District. District of Columbia law designates the Office as a party to all utility-related proceedings before the District of Columbia Public Service Commission (“PSC” or “DC PSC” or “Commission”). The Office also represents the interests of District ratepayers before federal regulatory agencies. The Office is authorized to investigate the operation and valuation of utility companies independently of any pending proceedings.
- B. The Office of the People’s Counsel is looking to contractually retain the legal services of Saxton & Stump, LLC. While OPC has never worked directly with Saxton & Stump, LLC before; it has however, worked with one of their lead attorneys in the past, Ms. Kathy Pape, Esq. on other similar issues. OPC is familiar with her work and feels confident that Saxton & Stump, LLC is well qualified to handle the tasks at hand. More specifically, the legal firm will be asked to review and analyze relevant statutes and related regulations as well as case law and provide recommendations regarding DC Water’s Rate Stabilization Fund (RSF), DC Water’s infrastructure metrics, considerations and implications of a mandatory flood insurance policy and DC Water’s September 20, 2020 rainfall After-Action Report. Based on the direct negative effect that heavy rainfall back in September 2020 had on DC Water’s customer base in the District of Columbia, OPC feels confident that sole source procurement is necessary to ensure adequate and needed legal services are retained in overseeing the on-going interests of DC ratepayers to ensure that they have safe and reliable local water services.

Saxton & Stump, LLC's professional legal services will be contractually retained to specifically accomplish the following:

Provide Analysis and Recommendations regarding DC Water's \$90 Million Stabilization Fund:

- Provide an analysis of how all or a portion of these funds may be legally used;
- Review the purpose and basis for the creation of the fund and whether there are legal restrictions on its use;
- Analyze the use of similar funds by large municipalities;
- Determine if the RSF can legally be used for customer assistance programs; and
- Review and analyze DC Water's bond rating and outlook and provide an assessment to determine whether the RSF is a primary determinant of the rating and if so, is there an opportunity to reduce the RSF without an impact on the bond rating.

Evaluate DC Water's Infrastructure Metrics:

- Work with the Office to impose an obligation on DC Water to report operational and infrastructure metrics, using as support customer impact felt from September 10, 2020 that caused significant wastewater backup and overflow for numerous DC residents;

Review DC Water's September 10, 2020 After-Action Report:

- Review the after-action report and make legal recommendations on infrastructure needed to mitigate the short and long-term impacts of more frequent and more extreme rainfall events.

Mandatory flood insurance consideration and legal implications:

- Determine whether there is a requirement for mandatory insurance, and if so, what are the legal implications of having such a requirement.

C. Saxton & Stump, LLC has extensive experience specializing in the public utility sector. Their legal team is highly experienced in matters involving compliance, licensing, ratemaking, and litigation for water and wastewater utilities, as well as telecommunications, natural gas and transportation companies. Their lead attorney that will be working directly with OPC has firsthand knowledge of the legal, finance and operational aspects of water and wastewater companies in more than twenty-five (25) states. Based on the nature and complexity of the issues at hand and based on the familiarity of the tasks to be performed within the timeframe required, OPC believes it is justified in awarding a sole source contract to Saxton & Stump, LLC.

D. It is for the reasons outlined herein that it is recommended that a sole source contract be awarded to Saxton & Stump, LLC.

5. **Certification by the Contracting Officer**

I hereby certify that the above facts are accurate and complete.

Christopher K. Sellers
Contracting Officer

Date

DETERMINATION

Based on the above findings and in accordance with the District of Columbia procurement regulations: *DC Law: 34-804; DC Law: 34-801; and 15 D.C.M.R. §3700*, I hereby determine that the award of a sole source contract for the services described herein is in the best interest of the Office of the People’s Counsel.

Eric Scott, Esq.
Chief Operating Officer

Date

ⁱ Procurement authority is vested in the Commission pursuant to § 13(c) (2) of the Residential Real Property Seller Disclosure, Funeral Services Date Charge, and Public service Commission Independent Procurement Authority Act of 1998 (D.C. Law 12-263). The Commission is statutorily exempt from the D.C. procurement rules as set forth in D.C. Official Code § 1-1181 et seq.

D.C. Code § 34-804, hereby established within the Public Service Commission of the District of Columbia, as established by D.C. Code § 34-801, as Office to be known as the “Office of the People’s Counsel.” The Office shall be a party, as of right, in any investigation, valuation, revaluation, or proceeding of any nature by the Public Service Commission of or concerning a public utility operating in the District of Columbia.

15 D.C.M.R. § 3700: Public Utilities and Cable Television – Public Service Commission Rules of Practice and Procedure.