



San Diego City Employees' Retirement System Request for Proposals for Tax Counsel Legal Services

The San Diego City Employees' Retirement System ("SDCERS") invites experienced attorneys and law firms to respond to this Request for Proposal ("RFP") to provide tax-related legal services.

I. BACKGROUND

SDCERS is a tax-qualified, charter-created public retirement system for the employees of the City of San Diego ("City"), the San Diego Unified Port District ("Port"), and the San Diego County Regional Airport Authority ("Airport"). Since 1927, SDCERS has provided retirement, disability, and death benefits to its participants, which include general, safety, and elected office members. Employees of the Port became members of SDCERS in 1963, and employees of the Airport became members in 2003. It is a contributory system; the contributions to fund SDCERS are paid by the City, Port and Airport, and their respective employees. SDCERS' Board of Administration ("Board") is currently responsible for managing \$8 billion in trust fund assets. The Board administers the defined benefit plans of public employees and their survivors under the City, Port and Airport plans. For more information, see SDCERS' Comprehensive Annual Financial Report and other documents at www.sdcers.org.

Since 2007, the Board has pooled the assets of its three plan sponsors into a Group Trust for investing purposes. Under the Group Trust, the City, Port and Airport plans are treated as separate plans. In 2009, the IRS issued a favorable determination letter with respect to the Group Trust. The City, Port and Airport plans are independent, qualified, single employer governmental defined benefit plans and trusts under Section 401(a) and 414(d) of the Internal Revenue Code of 1986.

The Board is dedicated to preserving the tax-qualified status of the Plan. In 2008, SDCERS entered into a compliance statement with the IRS as part of its voluntary correction program submission. Each of the plans has received a favorable determination letter from the IRS. Also, SDCERS has worked consistently with tax counsel to stay in compliance with IRS provisions that are relevant to governmental pension plans.

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II. SCOPE OF SERVICES

SDCERS seeks to hire outside counsel to provide legal services related to tax issues. Generally, your duties will be to:

1. Provide timely oral and written training and legal advice to the Board of Administration, Board members and/or Staff regarding tax and compliance issues.
2. Appear before the Board of Administration or Committees on tax matters, as requested.
3. Keep the Board of Administration and Staff up-to-date on tax laws.
4. Represent SDCERS in tax matters.
5. Assist in other tax matters, as requested.

III. CALENDAR OF EVENTS AND GENERAL INFORMATION

Issuance of RFP	May 13, 2019
Applicant Questions Due	May 24, 2019
Answers to Questions Published	May 31, 2019
Proposal Due Date	June 7, 2019
Interviews with Staff	June 10 – July 5, 2019
Candidate Interviews Before SDCERS' Business and Governance Committee	July 11, 2019
SDCERS Board of Administration Expected Decision	July 12, 2019

A. No Contact

No contact with SDCERS' Board of Administration, staff or consultants relating to the RFP is allowed while this RFP is pending, except as expressly allowed herein. Any contact relating to the RFP with said persons is grounds for disqualification. Notwithstanding, you may submit written questions via e-mail to Johnny H. Tran, General Counsel/Chief Compliance Officer, at JohnnyT@sdcers.org on or before the date listed above next to "Applicant Questions Due." Staff will publish answers to any questions received on its website (www.sdcers.org) on the date listed above next to "Answers to Questions Published."

B. No Reimbursement For RFP Expenses

SDCERS will not reimburse any expenses incurred in responding to this RFP including the costs of preparing the response, providing any additional information or attending an interview or interviews.

C. Notice Regarding The California Public Records Act And Open Meetings Laws

The proposal you submit in response to this RFP will be subject to the California Public Records Act (Cal. Gov. Code §6250 *et seq.*, the "Act"). The Act provides that all records relating to a public agency's business are open to public inspection and copying, unless an exception applies. In addition, if SDCERS chooses to hire or recommend you for hiring, your proposal may appear in a publicly posted agenda packet for a public meeting in accordance with the Ralph M. Brown Act (Cal. Gov. Code §54950 *et seq.*). If it is included in the agenda packet, your proposal will not be exempt from public disclosure.

If a request is made pursuant to the Act for materials you have submitted, SDCERS will determine, in its sole discretion, whether the materials are subject to public disclosure. If SDCERS determines that the materials requested are not subject to disclosure under the Act, SDCERS will either notify you so you can seek a protective order at your own cost or expense and/or SDCERS will deny disclosure of those materials. If SDCERS denies disclosure, then by submitting your proposal you agree to reimburse SDCERS for, and to indemnify, defend, save and hold harmless SDCERS, its officers, Board members, fiduciaries, employees, and agents from and against any and all claims, damages, losses, liabilities, suits, judgments, fines, penalties, costs, and expenses including, without limitation, attorneys' fees, expenses and court costs of any nature whatsoever (collectively, "Claims") arising from or relating to SDCERS' non-disclosure. By submitting your proposal, you also agree to indemnify, save, and hold SDCERS harmless from and against any and all Claims arising from or relating to SDCERS' public disclosure of any such designated portions of your proposal if SDCERS determines disclosure is required by law, or if disclosure is ordered by a court of competent jurisdiction.

IV. AGREEMENT PERIOD

Either Party may, in its sole discretion, terminate the agreement at any time, subject to California law, including ethical obligations to protect SDCERS' interests in the process of withdrawing.

V. PROPOSAL REQUIREMENTS

Each applicant must provide the information described below. SDCERS may deem a proposal non-responsive and reject the proposal if it does not include all requested information.

A. Management and Qualifications

1. Describe the tax related legal services that you would provide to SDCERS, including your experience with those services. Provide the names of clients, dates of service, and matters handled by you that demonstrate the nature and extent of your expertise.

2. State the names of the attorneys who will be assigned to SDCERS' account. Please also state where the attorney is licensed to practice. Describe the expected services to be provided by each attorney and their resumes. Describe each attorney's experience working with public sector clients, specifically, public pension systems.

3. Provide three client references relating to engagements similar to the ones you are proposing to provide. In providing this information, you consent to and release SDCERS from liability regarding contacting your references and communicating with them about your prior engagements and their opinions regarding your work performed.

4. Identify any potential or actual conflicts of interest you have in providing services to SDCERS. Also, state whether you have ever represented SDCERS, the City, the Port, the Airport, or any employee group related to these entities. If so, state the name of each such client, contact information, and the nature and time frame of your representation. In providing this information, you consent to and release SDCERS from liability regarding contacting the client(s) and communicating with them about your current or prior engagement(s) and conflict(s). Also, please describe how you intend to resolve any actual or potential conflict of interest.

5. Identify any past, pending or threatened litigation (e.g., malpractice) or administrative or state ethics board or similar body proceedings to which you, your firm or any of the attorneys listed in the above section are a party related to performing legal services.

6. Identify all public sector clients who have terminated their working relationship with you in the past five years and a brief statement of their reasons for doing so. Provide each client's counsel's contact information. In providing this information, you consent to and release SDCERS from liability regarding contacting your past clients and communicating with them about their opinions regarding your work performed and reason for termination.

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B. Billing

Proposals must contain the following:

1. The rates at which the services of partners, associates, and non-attorney law clerks, paralegals or other para-professionals would be provided to SDCERS for the next three years.¹
 - a. For each attorney please list the normal hourly rate for this provider and the hourly rate you propose to charge SDCERS.
 - b. For each applicable category of billable, non-attorney personnel, including law clerk, paralegal, or other para-professional, please list the normal hourly rate for this provider and the hourly rate you propose to charge SDCERS.
2. State that you have read and agree to abide by the SDCERS Legal Billing Guidelines, attached as Exhibit A.
3. State any special considerations with respect to billing or payment of fees and expenses that you offer and that you believe would differentiate you from other applicants and make your services more cost effective to SDCERS.
4. SDCERS expects to receive the lowest rate charged by you for your governmental and non-profit clients. If for any reason you are not prepared to do so, please indicate your reasons.

VI. EVALUATION AND SELECTION

A. Evaluation Criteria

The Board or staff will evaluate the proposals based upon the following factors:

1. Experience counseling public pension systems regarding tax matters.
2. Quality and depth of your expertise in tax matters, especially with California public pension systems.
3. Anticipated cost of services, including hourly rates, discounts and cost-effectiveness.²
4. Commitment of time and resources to SDCERS.

¹ Note that billing rates are fixed for three-years.

² Although proposed fees will be given weight in the selection process, SDCERS reserves the right to negotiate with any applicant selected lower fees or a different fee structure than proposed.

5. Information provided by references.
6. Communication skills.
7. Overall organization, completeness, and quality of proposal, including cohesiveness, conciseness, and clarity of response.

B. Selection Process

Staff will review all proposals to determine timeliness and completeness. Any proposal that does not address all requested requirements or is untimely may be rejected, at SDCERS' sole discretion. Staff will evaluate all proposals based on the criteria stated above.

Staff may interview applicants they believe are qualified to perform the services requested, based upon the criteria listed in this RFP. Applicants selected for interviews will be notified in advance of the proposed interview date.

VII. PROPOSAL LIMITATIONS AND CONDITIONS

A. Limitations

1. This RFP does not commit SDCERS to award an agreement, pay any costs incurred in the preparation of a response, or procure services of any kind whatsoever. SDCERS reserves the right, in its sole discretion, to negotiate with any or all applicants considered, or to postpone, delay or cancel this RFP in whole or in part. SDCERS may terminate negotiations, at its sole discretion. SDCERS reserves the right to award an agreement or agreements based upon proposals received; you should not rely upon the opportunity to alter your proposal (e.g., services, fees, etc.) during negotiations.
2. SDCERS may request that an applicant clarify the contents of their proposal. Other than to provide such information requested by SDCERS, no applicant will be allowed to alter their proposal after the RFP due date.
3. All material submitted in response to this RFP is the sole property of SDCERS. SDCERS reserves the right to use any and all ideas submitted in the proposals received.
4. SDCERS may waive informalities or irregularities in a proposal, at SDCERS' sole discretion.

B. Proposal Submission

Proposals must include a cover letter indicating the mailing address of the office submitting the proposal, the name of the individual who will represent the firm as the primary contact person for the proposal, and the telephone, fax and e-mail information of the primary contact person.

The proposal cover letter must state that the proposal is irrevocable for 180 days and be signed by an authorized person.

Three (3) bound hard copies and one (1) electronic copy (in Microsoft Word and PDF formats on a flash drive or disk) of your proposal are due no later than **5:00 P.M.** (PST) on the due date listed above. All proposals must be delivered to:

SDCERS
Attention: Johnny H. Tran, General Counsel/Chief Compliance Officer
401 West A Street, Suite 400
San Diego, CA 92101

SDCERS will not consider proposals received after this deadline, or faxed or e-mailed proposals, whenever received.

C. Errors and Omissions

If you discover an ambiguity, conflict, discrepancy, omission or other error in this RFP, immediately notify Johnny H. Tran at JohnnyT@sdcers.org and request clarification or modification of the document.

If deemed necessary, SDCERS may modify this RFP. Notice of any modification will be given by written notice to all applicants who have furnished a proposal or notice of intent to propose.

If an applicant fails to notify SDCERS of a known error or an error that reasonably should have been known before the final filing date for submission, the applicant assumes the risk. If awarded an agreement, the applicant will not be entitled to additional compensation or time by reason of the error or its late correction.

VIII. AGREEMENT APPROVAL

SDCERS' selection of one or more successful applicants will not be binding until it has been approved by authorized Staff, Committee or the Board of Administration.

Exhibit A

SAN DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM

LEGAL BILLING GUIDELINES

The San Diego City Employees' Retirement System (SDCERS) maintains a comprehensive legal management program to control legal costs without sacrificing results. The following principles and procedures have been developed to define the relationship between SDCERS and its outside counsel. These procedures were prepared to supervise outside counsel efficiently and to achieve results that are both economical and prudent to the interests of SDCERS and its Members.

These principles and procedures are an integral part of the terms under which you are engaged. We request that you provide a copy of these guidelines to **each** individual working on matters for us, and ask each to be familiar with them.

We expect our outside counsel to have high ethical standards, a strong sense of professionalism and superior legal skills.

We also expect our outside counsel to have strong substantive legal knowledge in the area for which they have been retained, practical judgment, effective communication skills, efficiency, aggressiveness, creativity, perseverance and the ability to work well with our inside attorneys and staff members.

Our overall objective is to achieve the best possible resolution of legal matters at the lowest practical cost by the earliest possible time. We expect that time spent working on our matters will be carefully controlled and performed by staff members of the appropriate level of experience, that unnecessary work will not be done, and that the results achieved will be thorough, professional, and cost effective.

COMMUNICATION

When we select an attorney to represent SDCERS, we engage that attorney personally, even though technically we may be engaging the services of the law firm. We expect the attorney selected to exercise **active, personal control** over all aspects of the assignment and to be directly involved in all major decisions. We expect **prompt, immediate communication** on all major developments.

The individual you will contact within the Legal Services Division is: Johnny H. Tran, General Counsel/Chief Compliance Officer. You should address any questions regarding these procedures to SDCERS' Legal Department at 401 West A Street, Suite 400, San Diego, CA 92101-4298, (619) 525-3600.

You must advise in-house counsel of all communication you have with SDCERS' personnel or Board members. Correspondence and documents sent by or to SDCERS'

personnel must be sent to the Legal Department as soon as possible after each communication. In addition, any correspondence or document relating to SDCERS sent to outside counsel by any third party or sent from outside counsel to a third party must be provided to the Legal Department.

CONFLICT

Before beginning work on a matter, you must review your records to ascertain whether there is any potential or actual conflict of interest in handling the matter on our behalf. If any conflict exists, you must notify the Legal Department immediately.

BILLING FORMAT

We appreciate that your firm has its own billing system but we require that you strictly adhere to our billing procedures. Billing that does not comply with our procedures will not be approved.

1. **Invoices must include the following:**
 - (a) The title of the matter being billed.
 - (b) The time devoted to **each specific activity** broken down into tenths (.10) of an hour.
 - (c) The identity of the attorney who did the work, the date the work was done and the amount charged for that specific activity.
 - (d) Itemized disbursements, including **per page copying and facsimile charges**.
 - (e) The total monthly fees and disbursements.
 - (f) The name and hourly billing rate of each partner, and associate and paralegal who rendered services, with a monthly summary of hours and charges for each.
 - (g) A summary of monthly fees, year-to-date fees and fees from inception.
2. **Billing Procedure:**
 - (a) All billing must be submitted on a **Monthly Basis** to the Legal Department.
3. **Attorneys' Fees:**
 - (a) Invoices must contain a detailed description of the services

performed. For example, “preparation for trial” is insufficient. This activity should be detailed to explain what was actually discussed or done, as in the following example: “conferences with a partner re: order of witnesses”; “review of 5th set of interrogatories”; “preparation of a witness (give name)”; “telephone conference with a client (name of person) re: expert testimony.”

- (b) For each specific activity described, indicate the:
- time devoted to each specific activity;
 - identity of the attorney who did the work;
 - date the work was done; and
 - amount charged by each attorney.
- (c) **We will not approve your invoice if it has “Block Billing”** or we cannot identify the specifics of the work done. Block billing refers to a number of different specific activities that are billed in a block format with a single time charge.

4. **Disbursements:**

- (a) Invoices must contain an itemized description of all costs and disbursements. These include travel expenses; filing costs or fees; copy charges; court reporter charges; retention of experts, investigators and consultants; laboratory testing; research services; and computerization of documents.
- (b) State each individual cost or disbursement exceeding \$50 separately.
- (c) We expect to be charged **exactly** what you have paid for disbursements. Disbursements may not include charges for routine secretarial work, word processing, office supplies or telephone charges, which we consider part of overhead. We will not pay for any surcharge that is an allocation of overhead.
- (d) Disbursements for overtime should be charged **only** if required for client effort and not because of other firm priorities necessitated by other clients.
- (e) Photocopying done within your firm will be reimbursed at **your cost. Your actual per page copying charges must be listed on your invoice.** We will not pay more than \$.10 per page for in-house photocopying. We expect you to use outside photocopying services for jobs exceeding 1,000 pages and we will pay actual cost for these services.
- (f) You will charge us only for necessary computerized research at the

cost you actually pay. Generally, vendors will have a substantial discount on such research, or has access to such research on a “flat fee” basis which is part of overhead. If so, you cannot pass those costs onto us. You will ask for permission before undertaking computerized research (such as LEXIS) resulting in a separate fee. If research materials are photocopied because of their absence from your own library and you anticipate using such materials for future matters, we expect that cost to be absorbed by you.

- (g) Facsimile transmissions will be reimbursed at your cost. **Your actual per page transmission charge must be listed on your bill.**
- (h) While traveling, we will reimburse for coach class transportation; comfortable and convenient hotel accommodations (subject to the pre-negotiated room rates in San Diego); and reasonably priced meals, not to exceed the U.S. G.S.A. per diem rate. We expect you to incur minimum travel expenses consistent with providing a competent work product.
- (i) We must pre-approve significant disbursements, such as retention of experts, investigators, consultants, laboratory testing, research services, computerization of documents or extensive copying.

5. **Bills:**

All bills are subject to audit. Any disputed bill will not be paid until the dispute is resolved.

INITIAL EVALUATION AND BUDGET

We recognize it is difficult at an early stage to evaluate a matter fully, determine what activity will be necessary to bring the matter to a successful conclusion and to project the legal costs accurately. Our Legal Department, however, must project their costs and work within a budget. Accordingly, within 30 days of your receipt of a non-litigation matter, you must provide a timeline for completion of the project and a budget of the projected fees and costs associated with the project. For litigation matters, in addition to a budget of projected fees and costs, you must also submit a discovery outline, including any anticipated costs. Any amounts billed in excess of the budget must be pre-approved by the Legal Department.

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STAFFING

After a matter has been referred to you and your firm, you must discuss the staffing requirements of the matter with and have them approved by, the Legal Department. **You must provide us with the names and hourly rates of all partners, associates, and paralegals that will work on our matters** and the expected division of labor. If it becomes necessary to substitute an attorney or add additional attorneys, you must obtain approval from the Legal Department in advance. Staffing will be reviewed periodically.

SDCERS' matters may be staffed by only as many attorneys and paralegals as are necessary. Only one partner may be assigned to our matter absent prior approval. Attorneys assigned to a particular matter must have the appropriate level of experience and billing rates to ensure that anticipated tasks will be performed properly and cost-effectively, with a minimum of inter-office conferencing and communication. Re-staffing decisions should be made in the interest of producing a cost-effective product, not for other reasons related to the needs of the firm or its other clients.

If an attorney or associate is removed from the matter due to your decision, we will not pay for: (1) the time the new attorney requires to relearn the case and to become familiar with the file, or (2) the increased rates of a more senior attorney who may be required to perform associate level tasks because no associate sufficiently familiar with the case is available.

We require staff to be used properly. You must obtain prior approval if you require multiple staffing (*i.e.*, several attorneys or staff members reviewing the same assignment, attending the same meeting, reviewing the same documents) or multiple levels of conferences (*i.e.*, junior associate with senior associate, senior associate with senior associate, senior associate with partner) on each issue. We will not pay for an attorney or attorneys to complete multiple drafts of documents.