



**San Diego City Employees' Retirement System
Board of Administration
Request for Proposals for Fiduciary Counsel Legal Services**

The San Diego City Employees' Retirement System ("SDCERS") Board of Administration ("BOARD") invites proposals from experienced and licensed California attorneys and law firms in response to this Request for Proposals ("RFP") to provide fiduciary counsel legal services.

I. SCOPE OF SERVICES

The BOARD seeks to hire outside counsel to provide legal services related to its fiduciary duties. Generally, the duties will include:

1. Provide legal advice to the BOARD, Board Members, and Staff.
2. Appear before the BOARD or Committees.
3. Advise the BOARD, Board Members and/or Staff regarding their fiduciary duties, conflicts of issues, and California pension law.
4. Keep the BOARD and Staff up-to-date on relevant laws.
5. Provide training to the BOARD, Board Members and/or Staff.
6. Provide the services detailed in the BOARD's Fiduciary Counsel Policy, attached hereto.
7. Assist in other matters, as requested.

II. CALENDAR OF EVENTS AND GENERAL INFORMATION

Issuance of RFP	September 8, 2023
Applicant Questions Due	September 22, 2023 by 5:00 P.M.
Answers to Questions Published	September 29, 2023 by 5:00 P.M.
Proposal Due Date	October 6, 2023 by 5:00 P.M.
Potential Committee Interview Dates	October 9 – 20, 2023

A. No Contact

No contact with the BOARD, 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 and 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. Whether or not you are selected, if a request is made pursuant to the Act for materials you have submitted, SDCERS will produce all materials provided in response to this RFP in its sole discretion. Accordingly, do not submit any confidential information to SDCERS as part of your proposal.

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 the disclosure or non-disclosure of your material. Additionally, you agree to indemnify, save, and hold SDCERS harmless from and against any and all Claims arising from or relating to SDCERS’ public disclosure of your firm’s proposal.

III. AGREEMENT PERIOD

The Agreement period for any firm selected is anticipated to be (3) years with up to two one-year extensions. Notwithstanding, 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.

IV. 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”). It is a contributory system; the contributions to fund the System are paid by the City, the Port and the Airport, and their respective employees. All System funds are segregated from Plan Sponsor funds and placed in a separate trust fund under the BOARD’s exclusive control. These trust funds may be used only for retirement system purposes. The BOARD is currently responsible for managing an approximately \$11 billion defined benefit plan.

The members of the BOARD are fiduciaries and, as such, must act in the highest good faith towards the SDCERS beneficiaries. Charter section 144 grants the BOARD the sole authority to determine the rights to benefits from SDCERS, administer SDCERS, and invest the SDCERS trust fund.

SDCERS currently employs two in-house attorneys, who provide legal advice to the system and the BOARD in a variety of areas, handle litigation, and address issues regarding plan interpretation, meeting procedures, policy development, contract review, and management of the trust. Fiduciary counsel exclusively represents the BOARD, but works closely with SDCERS’ in-house attorneys on a variety of legal issues.

V. PROPOSAL REQUIREMENTS

In setting forth its qualifications, an 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 legal services concerning the BOARD’s fiduciary duties, conflicts of issues, and California pension law that your firm would provide to SDCERS.
2. Provide the names of the attorneys who would be assigned to SDCERS’ account. Describe the expected services to be provided by each attorney and provide their resumes. Describe each attorney’s experience working with public sector clients, specifically, public pension systems and confirm that each attorney assigned to SDCERS’ account is either: (1) licensed to practice law in California, (2) providing services under an attorney licensed to practice law in California – and name the licensed attorney, (3) the date by which the attorney is expected to be licensed in California, or (4) why qualification is exempt or unnecessary.
3. Provide three client references relating to engagements similar to the ones your firm is proposing to provide. In providing this information, your firm consents to and releases the BOARD, SDCERS, and Staff from liability regarding contacting your firm’s references and communicating with them about your firm’s prior engagements and their opinions regarding your firm’s work performed.

4. Describe your firm's experience related to the services your firm is proposing to provide, including the names of clients, dates of service, and matters handled by your firm that demonstrate the nature and extent of your expertise.
5. Identify any potential or actual conflicts of interest your firm may have in providing services to the BOARD and SDCERS. Also, state whether your firm has ever represented the BOARD or 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, your firm consents to and releases the BOARD and SDCERS from liability regarding contacting the client(s) and communicating with them about your firm's current or prior engagement(s) and conflict(s). Also, please describe how your firm intends to resolve any actual or potential conflict of interest.
6. Provide information regarding your company's ethics and legal compliance program and explain how you prevent bad actors and employees from performing illegal acts in your company.
7. 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 under Section V(A)(2) are a party related to performing legal services.
8. Identify all public sector clients who have terminated their working relationship with your firm in the past five years and a brief statement of the reasons for doing so. Provide each client's contact information. In providing this information, your firm consents to and releases SDCERS from liability regarding contacting your firm's past clients and communicating with them about their opinions regarding your firm's work performed and reason for termination.
9. Identify your current malpractice or E&O carrier, coverage limits, applicable deductibles, as well as any riders or exceptions/limitations to coverage. Also, provide proof of coverage with your proposal. If your firm is selected, you are required to maintain the same or greater coverage during your engagement with the BOARD.

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 for the next three years.¹

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

- a. For each attorney please list the normal hourly rate for this provider and the hourly rate your firm proposes to charge.
 - 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 your firm proposes to charge.
2. State any special considerations with respect to billing or payment of fees and expenses that your firm offers and that you believe would differentiate your firm from other applicants and make your firm's services more cost effective to.

VI. EVALUATION AND SELECTION

A. Evaluation Criteria

The BOARD will evaluate the proposals based upon the following factors:

1. Experience counseling public pension systems regarding fiduciary matters.
2. Quality and depth of your firm's expertise in fiduciary 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.
5. Ability to provide the services stated in the Board's Fiduciary Counsel Policy, attached hereto.
6. Information provided by references.
7. Communication skills.
8. Overall organization, completeness, and quality of proposal, including cohesiveness, conciseness, and clarity of response.

B. Selection Process

SDCERS will review 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. SDCERS will evaluate all proposals based on the criteria stated above.

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.

Staff and/or Board Members may interview applicants it believes 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 the BOARD or SDCERS to award an agreement, pay any costs incurred in the preparation of a response, or procure services of any kind whatsoever. The BOARD and 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. The BOARD and SDCERS may terminate negotiations, at its sole discretion. The BOARD and SDCERS reserve the right to award an agreement or agreements based upon proposals received; you should not rely upon the opportunity to alter your firm's proposal (e.g., services, fees, etc.) during negotiations.
2. The BOARD may request that an applicant clarify the contents of their proposal. Other than to provide such information requested, no applicant will be allowed to alter its proposal after the RFP due date.
3. All material submitted in response to this RFP is the sole property of SDCERS. The BOARD and SDCERS reserves the right to use any and all ideas submitted in the proposals received.
4. The BOARD and SDCERS may waive informalities or irregularities in a proposal, at their 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.

One (1) electronic copy (in PDF format) of your proposal is 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
JohnnyT@sdcers.org // (619) 525-3644
401 West 'A' Street, Suite 800
San Diego, CA 92101

The BOARD and SDCERS may 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 it deems necessary, the BOARD 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 the BOARD 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

The selection of one or more successful applicants will not be binding until it has been approved by the BOARD.

SDCERS FIDUCIARY COUNSEL POLICY

PURPOSE

1. SDCERS' Board of Administration ("Board") recognizes the need to retain fiduciary counsel to assist the Board, on an as-needed basis, in discharging its fiduciary responsibilities. The Board shall retain fiduciary counsel for this purpose. This Policy defines the relationship between SDCERS' Board Members, Independent Non-Board Members, staff, and fiduciary counsel.

SCOPE

2. This Policy covers the role of SDCERS' fiduciary counsel as well as the process for communications between SDCERS' fiduciary counsel, and the Board, Committee members, and staff.

POLICY

3. The Role of SDCERS' Fiduciary Counsel:

Fiduciary counsel is the attorney for the Board. The attorney/client relationship is between fiduciary counsel and the Board. Fiduciary counsel shall report to the Board President. Notwithstanding, the General Counsel, Chief Compliance Officer ("CCO"), or Chief Executive Officer ("CEO") may ask fiduciary counsel to perform specific tasks and collaborate with fiduciary counsel. In doing so, they are engaging fiduciary counsel, on behalf of the Board. The contract for fiduciary counsel shall contain termination provisions consistent with the Board's Contracting Policy and Delegation of Authority to Execute Contracts and Other Documents.

The role of the Board's fiduciary counsel is to assist the Board in discharging its fiduciary duties. Fiduciary counsel shall not provide opinions or advice to the Board in non-fiduciary law matters (e.g., employment, investment transactions, or securities law) unless requested to do so by the Board, the Board President, General Counsel, CCO, or the CEO. Because of its issue-specific role, fiduciary counsel is not required nor expected to attend every Board meeting. Fiduciary counsel may attend Board and/or committee meetings, including any special meetings or closed session meetings, at the request of the Board, any Board Member, General Counsel, CCO, or the CEO. Also, fiduciary counsel shall:

- Provide fiduciary training to Board and Independent Non-Board Members and staff annually;
- Provide advice on conflict of interest matters;
- Review the Board agenda and material prior to each meeting, identify any agenda items or material that contemplate a fiduciary issue, and provide comment and guidance to the Board on its fiduciary duty as to that issue. Fiduciary counsel should provide their comments to the Board in advance of any Board or Committee meeting;

and

- Provide oral and written legal opinions regarding fiduciary law issues involving SDCERS and its Members, at the request of the Board, any Board Member, General Counsel, CCO, or the CEO.

4. **Communications Between Fiduciary Counsel and SDCERS:**

Fiduciary counsel's primary contact for the Board shall be the Board President but may communicate through the General Counsel. Any and all non-privileged or attorney/client communications between fiduciary counsel and any SDCERS staff member, Board Member, Independent Non-Board Member, or any other individual regarding SDCERS' business must be reported by fiduciary counsel to the Board President, General Counsel, CEO, or CCO, as appropriate. "Communications" includes in-person conversations, telephone calls, emails, correspondence, or any other writing regarding SDCERS' business, employees, or interests. Notice to Board President, General Counsel, CEO, or CCO of such communications must be immediate and intended to fully advise the recipient of the substantive content of the communications.

POLICY REVIEW & HISTORY

5. The Board shall review this Policy at least every three years to ensure that it remains relevant and appropriate.