



REQUEST FOR PROPOSAL (RFP) FOR FIDUCIARY COUNSEL

Issued September 1, 2023

Proposal Due Date:

September 29, 2023, 5 p.m., Pacific Standard Time

Late proposals or fax-transmitted proposals will not be accepted.

INTRODUCTION

Contra Costa County Employees' Retirement Association (CCCERA) invites proposals from interested legal firms for fiduciary counsel services related to a defined benefit public employee retirement plan.

GENERAL INFORMATION

The Contra Costa County Employees' Retirement Association (CCCERA) is a public retirement system organized under and governed by the County Employees Retirement Law of 1937 (1937 Act), codified as California Government Code §31450 *et seq.* Under provisions of the 1937 Act, management of CCCERA, including general administration, disability matters, and control of investment assets, is vested in the Board of Retirement (Board). The Board is composed of twelve members: the County Treasurer, four members and one alternate appointed by the Contra Costa County Board of Supervisors, three members and one alternate elected by the active membership, and one member and one alternate elected by the retirees. CCCERA's funding is generated from three sources: employer contributions, employee contributions, and earnings on investments.

Members of CCCERA are retired and active employees of the County of Contra Costa and special districts situated in the County and are classified as either General or Safety. The 1937 Act provides for a defined benefit retirement system; benefits are set by statute. The types of benefits provided to members are service retirement, disability retirement (both service and non-service connected), death benefits, and survivor's benefits.

At present, there are approximately 10,082 active members, 3,974 deferred members, and 10,561 retired members and beneficiaries of CCCERA. The current market value of CCCERA's net assets is approximately \$10.6 billion.

SCOPE OF SERVICES

The Board seeks proposals from firms interested in serving as its fiduciary counsel. The scope of services to be provided or coordinated by the firm will include, but not be limited to, the following:

- Respond to opinion requests from the CCCERA Board and staff, usually directed through CCCERA's Chief Executive Officer or General Counsel.
- Provide advice and recommendations on a variety of matters, including issues involving the application of Article 16 Section 17 of the California Constitution, trust law principles generally, the County Employees Retirement Law of 1937 (CERL), the California Public Employee's Pension Reform Act of 2013 (PEPRA), and other sections of the Government Code and California law applicable to CERL systems.
- Provide such other legal services as requested by CCCERA.

In addition to the foregoing, fiduciary counsel must have excellent oral and written communication skills, sound judgment, the ability to work well with and maintain the confidence of the Board and staff, and the ability to deliver services in a timely and cost-effective manner.

MINIMUM QUALIFICATIONS

To be considered for selection, proposing firms must have the following minimum qualifications:

1. Be capable of, and licensed to, provide the full scope of services as requested by the Board.
2. Possess relevant experience in providing fiduciary counsel services for other Retirement systems of comparable size, preferably to other public employee retirement systems in California.
3. Personnel assigned to the account who are committed to and capable of serving the Board.
4. Specify the type of malpractice insurance, the carrier, and any applicable limits for fiduciary work.

COVER LETTER

A cover letter is required, which includes the following statements:

1. The attached proposal is complete as submitted.
2. All prices, cost schedules, and/or other significant factors contained in the proposal are valid for 90 days from the proposal closing date.
3. Certification of non-discriminatory practices in the firm's services.
4. Mandatory signature of the representative(s) who are authorized to legally bind the vendor.

PROPOSAL REQUIREMENTS

Proposals will remain in effect for ninety days from the designated date of receipt unless mutually extended.

Proposals should include the following information, presented in a clear, comprehensive, and concise manner to illustrate the firm's capabilities:

- The firm name, principal(s) who will be performing services, address, and telephone numbers. Identify the designated "lead" attorney who would be assigned to CCCERA, and team members, if appropriate. Include résumés.
- The location of the office from which the assigned principal(s) will be working.
- The primary "point of contact" for RFP questions, should they arise.
- A description of your proposed services as they relate to the Scope of Services.
- A brief description of similar consulting experience, with client references, specific qualifications, and experience of key personnel. Specifically, please relate past experience and qualifications to the services itemized under the Scope of Services. Include the address and telephone numbers of references.
- A brief description of the firm's expertise and the assigned principal's familiarity with all aspects of retirement and fiduciary law relating to public entities.

- A Fee Schedule with hourly rates for all individuals proposed to perform services under the Scope of Services. Outline additional expenses such as travel, etc., that would be billed on top of fees.
- Alternatively, a retainer fee proposal including any additional fees, restrictions, limitations, or charges in addition to the retainer fee.
- Your employee turnover experience in professional, para-professional, and support staff within the last three years and reasons for turnover.
- List of clients for whom you provide services similar to those under the Scope of Services.
- A brief discussion of your understanding of the County Employees' Retirement Law of 1937 (CERL), the California Public Employee's Pension Reform Act of 2013 (PEPRA), trust law, IRS regulations, and conflict of interest laws as they apply to qualified defined benefit plans.
- Describe quality control, peer review, and due diligence policies and procedures of the firm.
- Identify any potential conflicts of interest that may arise with respect to the firm's provision of legal services to CCCERA and how the firm proposes to resolve such potential conflicts.
- Provide a copy of your standard agreement for legal services. Identify whether and to what extent you would accept modifications.
- Identify any claims of negligence or malpractice made in the past 10 years against the firm or any of the firm's attorneys listed in the response and the disposition of those claims.

The conditions of a proposal must remain valid for a minimum contract term of three years. The Board will also be willing to consider extending the contract if performance has been satisfactory.

EVALUATION OF PROPOSALS

Proposals will be screened initially to determine if they have met the conditions set forth under Minimum Qualifications. Proposals that are non-compliant will be eliminated. After minimum qualifications have been satisfied, the evaluation criteria will be the following:

- **Ability.** The firm's ability to provide the requested services.
- **Related Experience.** The firm's demonstrated, related experience in providing services comparable to the Board's needs. Expertise in all aspects of fiduciary law, preferably as it relates to public entities and the 1937 Act.
- **Qualified Personnel** assigned to provide necessary services.
- **Firm Stability.** The firm's stability and standing as compared to other legal advisory firms.
- **Assigned Individual.** The credentials and experience of the person(s) who would be assigned to CCCERA's account.
- **Fee Proposal.** The fee structure proposed by the firm.
- **Reasonableness and competitiveness** of fees/costs for services.
- **General quality and adequacy of response,** including completeness of response, and conformity to terms and conditions.
- **Quality of references.** Level of satisfaction of present and/or former clients.
- **Potential conflicts.** The extent to which the firm's representation of CCCERA may be compromised by potential conflicts of interest.
- **Other Factors.** Any other factors that would be in the best interest of the Board to consider that were not previously described.

PROPOSAL PROCESS

The Board has made every effort to include enough information in this proposal for a firm to prepare a responsive proposal. No contact with CCCERA Board members and CCCERA staff regarding the contents of this RFP will be allowed during the pendency of this RFP, except for written questions submitted to the contact listed below. Proposals will be evaluated by a review team.

During the evaluation process, CCCERA may identify areas where additional information or clarification may be needed. If required, CCCERA will provide each semi-finalist firm with a description of issues to be explored. These areas may include fees, personnel availability, or any other matter the evaluation team may need further information about for assessment. These issues will be exclusive to each semi-finalist; under no circumstances will the issues be disclosed between prospective firms. When this process is completed, final scores will be tallied. The successful firm (or firms) will be selected. Award will be made to the responding firm(s) whose proposal is deemed to be the most advantageous to CCCERA, taking into consideration all stated criteria and evaluation factors.

The Board anticipates that the proposal submittal, review, and selection process will take approximately 60 days. The process timeline follows.

- A. **Distribution of Proposals.** Proposals will be mailed to vendors on September 1, 2023.
- B. **Information Requests.** Written requests for additional information must be received by the Board no later than September 8, 2023. If additional information is desired, requests should be in email, with a hard copy delivered by overnight mail to:

Christina Dunn, Acting Chief Executive Officer
Contra Costa County Employees' Retirement Association
1200 Concord Avenue, Suite 300
Concord, CA 94520
info@cccera.org

- C. **Information Response.** The Board will mail responses to requests for additional information on September 15, 2023. Inquiries and the Board's responses (if any) to questions critical to the competitive selection process will be mailed to all firms participating in the proposal process.

- D. **Proposal Submission.** Proposals must be received by 5 p.m., Pacific Standard Time on September 29, 2023. Late proposals or fax-transmitted proposals will not be accepted.

The outside of the sealed response package must be clearly marked:
“RESPONSE TO REQUEST FOR PROPOSAL – Fiduciary Counsel”

Please submit five hard copy proposals and related information (one original and four copies) *and* one emailed Microsoft Word file to:

Christina Dunn, Acting Chief Executive Officer
Contra Costa County Employees’ Retirement Association
1200 Concord Avenue, Suite 300
Concord, CA 94520
info@cccera.org

Notification to vendors of CCCERA’s decision to award a contract for fiduciary counsel services will be by mail, no later than 5:00 p.m., PST, Friday, November 17, 2023.

- E. All proposals shall be firm and may not be withdrawn or modified for a period of 30 days following the date of submission.
- F. **Proposal Review.** The review team will schedule sessions to review and evaluate the proposals. The review team anticipates selecting two or more firms as finalists by October 13, 2023.
- G. **Notification.** The review team anticipates sending written notification during the week of October 16, 2023, to those firms selected for an interview. Firms not selected for an interview will also be notified that their proposal will no longer be considered unless the Board concludes that additional firms should be interviewed.
- H. **Interviews.** If required, the Board will schedule presentations of the finalists on November 1, 2023. Note that there may not be any oral presentations; each proposal is expected to be complete in and of itself.
- I. **Contract Effectiveness.** The approved firm(s) will officially become the Board’s provider of fiduciary counsel services on January 1, 2024.

The review team will make every effort possible to administer the proposal process in accordance with the terms and dates discussed in this section; however, the review team reserves the right to modify the proposal process and dates if necessary.

PRIVILEGED COMMUNICATION

All confidential communications between CCCERA and the prospective firms, whether oral or written, and all documentation prepared by a prospective firm or supplied by CCCERA, will be considered privileged communication and will not, except as required by law, be communicated to any public or private agency, insurance company, rating organization, contractor, vendor or consultant, without the express prior consent of Christina Dunn, Acting Chief Executive Officer, CCCERA. If communications are approved, or required by law, the vendor will provide Christina Dunn, Acting Chief Executive Officer, two copies of each written communication and/or two summaries of each oral communication.

PUBLIC RECORD REQUESTS

During the RFP review, presentation, and discussion period, CCCERA will not disclose any information derived from the submissions. Once an award is made, the proposals become public record and may be disclosed upon request.

The California Public Records Act, Government Code sections 7920.000, *et seq.*, provides that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in the state. Public records are defined as any writing relating to the conduct of the public's business and are open to inspection during normal business hours.

There are specific exceptions to the Public Records Act. In the event CCCERA receives a request for any proposal submitted pursuant to this Request for Proposal, it is the responsibility of the organization whose proposal has been requested to assert any rights to confidentiality that may exist. CCCERA will not make that assertion on behalf of the proposer. Absent a judicial determination that the documents are exempt from disclosure, they will be subject to inspection.

If you are submitting any information you consider to be trade secrets, confidential, or proprietary, the information must be marked as such. Please be aware, that the marking of information as trade secrets, confidential or proprietary does not necessarily preclude its disclosure. Should a public information request be presented, the laws of the State of California will prevail.

Submission by a vendor constitutes a complete waiver of any claims whatsoever against CCCERA, and/or its agents, officers, or employees, that CCCERA has violated a vendor's right to privacy, disclosed trade secrets, or caused any damage by allowing the proposal to be inspected.

Fee and pricing proposals are not considered "TRADE SECRET," "CONFIDENTIAL," or "PROPRIETARY".

If CCCERA denies public disclosure of any materials designated as “TRADE SECRETS,” “CONFIDENTIAL,” or “PROPRIETARY”, the respondent agrees to reimburse CCCERA for, and to indemnify, defend, and hold harmless CCCERA, its Boards, officers, fiduciaries, employees, and agents from and against:

1. 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 CCCERA’s non-disclosure of any such designated portions of a proposal; and
2. Any and all Claims arising from or relating to CCCERA’s public disclosure of any such designated portions of a proposal if CCCERA determines disclosure is required by law, or if the disclosure is ordered by a court of competent jurisdiction.

RFP WITHDRAWAL OR MODIFICATION

Proposals may be withdrawn or modified by a written or faxed request from the respondent no later than 3 business days prior to the RFP closing date.

ERRORS/CLARIFICATIONS

If any ambiguity, conflict, discrepancy, omission, or other error is discovered in this RFP, the firm should immediately notify CCCERA, Attention Christina Dunn, in writing, requesting modification or clarification of the document. Modifications of material consequence will be made by addenda issued to all participating respondents.

COLLUSION AFFIDAVIT/CONFLICT OF INTEREST

By submitting a proposal, the firm certifies that the quoted prices are genuine and not the result of collusion or any other activity that would tend to influence the process directly or indirectly.

The firm further certifies that firm has no real or potential conflicts of interest that would prevent the firm from acting in the best interests of CCCERA.

FINAL COMMENTS

The Board reserves the right to reject any and all proposals, with or without cause, and to request additional information from the proposing firms.

CCCERA will not reimburse responding firms for any expenses incurred in preparing proposals and/or presentations in response to this RFP. All responses and accompanying documentation become the property of CCCERA at the time the proposals are opened.

A response to this RFP must be prepared and submitted according to the specifications set forth in this document. Failure to adhere to these specifications may be cause for rejection of the proposal. Any correction and/or resubmission of a proposal shall be submitted prior to the bid submission deadline.

All proposals shall be firm and may not be withdrawn for a period of 90 days following the date of submission of proposals.

CCCERA reserves the right to conduct discussions with prospective firms, to accept revisions of proposals, if solicited, and to negotiate pricing changes.

CCCERA reserves the right to use all available means to evaluate the firms, including review of submitted proposals, reference checks, interviews, and presentations. The evaluation team is under no obligation to contact firms for clarification of proposals but may do so at any time prior to contract award.