

FRESNO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION REQUEST FOR PROPOSAL FOR INVESTMENT COUNSEL LEGAL SERVICES

The Fresno County Employees' Retirement Association (FCERA) invites proposals from experienced attorneys and law firms in response to this Request for Proposals (RFP) to provide investment counsel legal services.

I. BACKGROUND

FCERA is a multiple employer, defined benefit, pension plan serving approximately 17,600 employees and retirees of five participating government agency employers. Located in Fresno, California, FCERA is established and governed under applicable federal law, the provisions of the County Employees' Retirement Law of 1937 (the '37 Act, California Government Code, §§ 31450-31898), the California Pension Protection Act of 1992 (California Constitution, Article 16, § 17), and the California Public Employees' Pension Reform Act of 2013 (PEPRA, California Government Code, §§ 7522-7522.74). FCERA has over \$4.5 billion in assets in trust for the benefit of members. FCERA's Board of Retirement (Board) is responsible for management of the trust assets.

FCERA employs outside counsel for investment, fiduciary, and board and general counsel. These attorneys provide legal advice to 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.

II. SCOPE OF SERVICES

FCERA is seeking a qualified firm with substantial experience advising and representing public pension boards and pension administrations with respect to investment issues. Legal counsel will be expected to provide advice and counsel regarding the matters set forth in Section II.A. of this RFP. A summary of FCERA's investment managers for the year ended 09/30/2017 is attached as **Attachment A**.

The selected firm is expected to provide services in investment related areas, including but not limited to the following:

A. Investment Matters:

- Review, negotiate and assist in drafting and/or restructuring alternative investment agreements, including but not limited to, agreements related to private equity, private credit, real estate direct funds, funds-of-funds, subscription agreements, limited partnership agreements, and other commingled fund arrangements.
- Draft and negotiate agreements for public market investments, transition managers, custodial bank, benefit distribution providers and other miscellaneous investment related matters.
- Advise, draft and negotiate investment advisory agreements, supplemental or secondary agreements and side letter agreements.

- Advise on the legal structure of investment funds, fund-of-funds, limited partnerships and on-shore and off-shore investments.
- Advise FCERA and the Board regarding SEC, CFTC, and other domestic, state, international and foreign regulatory agencies with compliance and oversight responsibilities in each of the above investment categories.
- Review amendments to investment agreements when a legal opinion is required.
- Provide advice and counsel regarding standard and non-standard terms, and which terms should be accepted or negotiated.
- Advise staff regarding Most Favored Nation (MFN) elections.
- Advise staff on Federal, State and investment policy compliance issues.
- Provide legal counsel as requested for other investment-related matters, including any disputes that might arise out of FCERA's investments, which may include litigation.
- Appear at Board meetings and make presentations to the Board, as needed and when requested by staff.

The firm selected will perform legal due diligence and will work with FCERA's general counsel and other legal representatives and advisors in connection with projects assigned by the Retirement Administrator. The selected firm will also work with FCERA's investment consultant and FCERA staff to ensure appropriate legal review of all investments and work with counsel practicing in the investment jurisdiction to ensure compliance with local regulations and foreign government regulations. FCERA will require the selected firm prepare and deliver hard budgets to FCERA in advance for all legal work that will result in fees to FCERA of more than \$10,000.

III. SEARCH SCHEDULE

March 30, 2018	RFP Posted to FCERA Website
April 13, 2018	Deadline for RFP Questions and Clarifications
April 20, 2018	Answers to RFP Questions Posted to FCERA Website
May 4, 2018	Deadline for Submission of Proposals
May 7-9, 2018	Proposals Evaluated by FCERA
May 16 and/or June 6, 2018	Finalist Interviews and Selection of Successful Proposer

IV. QUIET PERIOD (NO CONTACT)

FCERA policy prohibits direct contact between prospective service providers and FCERA Board members, consultants, or staff during this RFP process. This does not include communication with any of FCERA's incumbent service providers for normal business not related to this RFP selection process. From the date of release of this RFP until a firm is selected, and a contract awarded, all contacts and communications regarding this RFP are restricted to the Q&A process. Exceptions include communications with FCERA staff during negotiations, presentations, and contract award and execution. Violation of these conditions may result in rejection of a firm's proposal.

V. QUESTION AND ANSWER PROCESS

In an effort to clarify any issues with the RFP, FCERA will respond only to questions that are presented through email. Submit questions to dkendig@co.fresno.ca.us. FCERA must receive all questions by 5:00 p.m. PST on Friday, April 13, 2018. The questions and answers will be posted on the FCERA website at www.fcera.org on April 20, 2018. This will be the only distribution method of the questions and answers under this RFP.

VI. NO REIMBURSEMENT FOR RFP EXPENSES

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

VII. NOTICE REGARDING THE CALIFORNIA PUBLIC RECORDS ACT AND OPEN MEETINGS LAW

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 FCERA 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, FCERA will determine, in its sole discretion, whether the materials are subject to public disclosure. If FCERA determines that the materials requested are not subject to disclosure under the Act, FCERA will either notify you so you can seek a protective order at your own cost or expense and/or FCERA will deny disclosure of those materials. If FCERA denies disclosure, then by submitting your proposal you agree to reimburse FCERA for, and to indemnify, defend, save and hold harmless FCERA, its officers, trustees, fiduciaries, employees and agents from and against any and all claims, damages, losses, liabilities, suits, judgements, 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 FCERA’s non-disclosure. By submitting your proposal, you also agree to indemnify, save and hold FCERA harmless from and against any and all Claims arising from or relating to FCERA’s public disclosure of any such designated portions of your proposal if FCERA determines disclosure is required by law, or if disclosure is ordered by a court of competent jurisdiction.

VIII. AGREEMENT PERIOD

Either party may, in its sole discretion, terminate any agreement resulting from this RFP at any time, subject to California law or other applicable state or federal law, including ethical obligations to protect FCERA’s interests in the process of withdrawing.

IX. EVALUATION AND SELECTION

A. Evaluation Criteria

1. Experience counseling public pension systems regarding investment matters.
2. Quality and depth of expertise in investment matters, especially with California public pension systems.

3. Anticipated cost of services, including hourly rates, discounts and cost-effectiveness.¹
4. Commitment of time and resources to FCERA.
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 FCERA's sole discretion. Staff will evaluate all proposals based on the criteria stated above.

IX. PROPOSAL LIMITATIONS AND CONDITIONS

A. Limitations

1. This RFP does not commit FCERA to award an agreement, pay any costs incurred in the preparation of a response, or procure services of any kind whatsoever. FCERA 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. FCERA may terminate negotiations, at its sole discretion. FCERA reserves the right to award an agreement or agreements based upon proposals received; proposers should not rely upon the opportunity to alter your proposal (e.g. services, fees, etc.) during negotiations.
2. FCERA may request that a proposer clarify the contents of its proposal. Other than to provide such information requested by FCERA, no proposer 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 FCERA. FCERA reserves the right to use any and all ideas submitted in the proposals received.
4. FCERA may waive informalities or irregularities in a proposal, at FCERA's 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 include the following assurances:

- The proposal is complete as submitted;
- All prices, cost schedules, interest rates, and other significant factors contained in the proposal are valid for 180 days from the proposal closing date;
- Certification of non-discriminatory practices in the company's acquisition of all goods and services; and

Must be signed by a person authorized to legally bind the proposer.

¹ Although proposed fees will be given weight in the selection process, FCERA reserves the right to negotiate lower fees or a different fee structure than proposed with any selected applicant.

Three (3) bound hard copies and one (1) electronic PDF format copy 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:

FCERA
Attn: Donald C. Kendig, CPA
7772 N Palm Ave
Fresno, CA 93711

FCERA will not consider proposals received after this deadline, or faxed or emailed proposals, whenever received.

C. Errors and Omissions

If you discover an ambiguity, conflict, discrepancy, omission or other error in this RFP, immediately notify Donald C. Kendig, @ DKendig@co.fresno.ca.us and request clarification or modification of the document.

If deemed necessary, FCERA 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 FCERA of a known 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.

X. INSURANCE REQUIREMENTS

Without limiting FCERA's right to obtain indemnification from the selected firm or any third parties, the selected firm, at its sole expense, shall maintain in full force and effect the following insurance policies throughout the term of any agreement between the selected firm and FCERA:

A. Commercial General Liability

Commercial General Liability Insurance with limits of not less than Five Million Dollars (\$5,000,000) per occurrence and an annual aggregate of Five Million Dollars (\$5,000,000). This policy shall be issued on a per occurrence basis. FCERA may require specific coverages including contractual liability or any other liability insurance deemed necessary because of the nature of the selected firm's agreement with FCERA.

B. Automobile Liability

Comprehensive Automobile Liability Insurance with limits for bodily injury or property damages of not less than One Million Dollars (\$1,000,000) per accident. Coverage shall include owned and non-owned vehicles used in connection with any agreement between the selected firm and FCERA.

C. Professional Liability

Professional Liability Insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence, Three Million Dollars (\$3,000,000) annual aggregate.

This insurance shall include liability coverage covering the selected firm's liability arising from errors and omissions made directly or indirectly during the duration of any agreement between the selected firm and FCERA.

This coverage shall be issued on a per claim basis. The selected firm agrees that it shall maintain, at its sole expense, in full force and effect for a period of three (3) years following the termination of any agreement resulting from this RFP, one or more policies of professional liability insurance with limits of coverage as specified herein.

D. Worker's Compensation

A policy of Worker's Compensation insurance as may be required by the California Labor Code or other applicable law.

Within Thirty (30) days from the date the selected firm executes any agreement with FCERA, the selected firm shall provide certificates of insurance and endorsement as stated above for all of the foregoing policies, as required herein, to FCERA, Donald C. Kendig, Retirement Administrator, 7772 N Palm Avenue, Fresno, California 93711, stating that such insurance coverage have been obtained and are in full force; that FCERA, its officers, agents and employees will not be responsible for any premiums on the policies; that such Commercial General Liability insurance names FCERA, its officers, agents and employees, individually and collectively, as additional insured, but only insofar as the operations under the agreement are concerned; that such coverage for additional insured shall apply as primary insurance and any other insurance, or self insurance, maintained by FCERA, its officers, agents and employees, shall be excess only and not contributing with insurance provided under the selected firm's policies herein; and that this insurance shall not be cancelled or changed without a minimum of thirty (30) days advance, written notice given to FCERA.

In the event the selected firm fails to keep in effect at all times insurance coverage as herein provided, FCERA may, in addition to other remedies it may have, suspend or terminate its agreement with the selected firm upon the occurrence of such event.

All policies shall be with admitted insurers licensed to do business in the State of California. Insurance purchased shall be purchased from companies possessing a current A.M. Best, Inc. rating of A FSC VII or better.

XI. ASSURANCES

Any contract awarded under this RFP must be carried out in full compliance with The Civil Rights Act of 1964, The Americans With Disabilities Act of 1990, their subsequent amendments, and any and all other laws protecting the rights of individuals and agencies. FCERA has a zero tolerance for discrimination, implied or expressed, and wants to ensure that policy continues under this RFP. The selected firm must also guarantee that services, or workmanship, provided will be performed in compliance with all applicable local, state, or federal laws and regulations pertinent to the types of services, or project, of the nature required under this RFP. In addition, the selected firm may be required to provide evidence substantiating that their employees have the necessary skills and training to perform the required services or work.

XII. CONFLICTS OF INTEREST

FCERA shall not contract with, and shall reject any bid or proposal submitted by the persons or entities specified below, unless the Board of Retirement finds that special circumstances exist which justify the approval of such contract:

- A. Employees of FCERA or public agencies for which the Board is the governing body.
- B. Profit making firms or businesses in which employees described in Section XII.A., serve as officers, principals, partners or major shareholders.
- C. Persons who, within the immediately preceding twelve (12) months, came within the provisions of Section XII.A., and who were employees in positions of substantial responsibility in the area of service to be performed by the contract, or participated in any way in developing the contract or its service specifications.
- D. Profit making firms or businesses in which the former employees described in Section XII.C., serve as officers, principals, partners or major shareholders.
- E. No FCERA employee, whose position in FCERA enables him to influence the selection of a firm for this RFP, or any competing RFP, and no spouse or economic dependent of such employee, shall be employees in any capacity by a bidding firm, or have any other direct or indirect financial interest in the selection of a firm under this RFP.
- F. In addition, no FCERA employee will be employed by the selected firm to fulfill the firm's contractual obligations to FCERA.

XIII. AGREEMENT APPROVAL

FCERA's selection of one or more successful applicants will not be binding until it has been formally approved and executed by authorized Staff, Committee, and/or the Board.

XIV. PROPOSAL REQUIREMENTS

FCERA may select one firm to provide all services or separate firms to provide portions of the services listed. In setting forth your qualifications, you must provide the information described below. FCERA may deem a proposal non-responsive and reject the proposal if it does not include all of the required information.

A. Management and Qualifications

- 1. Identify your firm's background, size, and history pertinent to the requested services.
- 2. Within the last three years, have there been any significant developments in your firm such as changes in ownership or restructuring? Do you anticipate any significant changes in the future? If so, please describe.
- 3. State the names and California State Bar numbers of the attorneys who would be assigned to FCERA's account. Attach as **Exhibit A** the curriculum vitae, a short biography, and a summary of each attorney's experience working with public sector clients, particularly public pension funds or retirement systems, and the scope of services the attorney will provide. Indicate the attorneys' state(s) of licensure and associated bar number(s), include a statement that each attorney is currently in good standing with the California State Bar.
- 4. Attach as **Exhibit B** a list containing the name, address, telephone number and contact person for three (3) current clients to serve as a reference for your firm, preferably public pension plans. By providing this information, you consent to and hereby release FCERA from any liability that may arise from contacting your

references, communicating with them about your prior engagements and soliciting an opinion regarding the work performed for them.

5. Describe your experience related to the services you are proposing to provide, include the names of clients, dates of service, and matters handled by you that demonstrate the nature and extent of your expertise.

B. Fee Proposal

Attach as **Exhibit C** your Fee Proposal. Fee Proposals must contain the following:

1. For each attorney identified in your response, list the attorney's normal rate and the rate you propose to charge FCERA for the next three years.
2. For each applicable category of billable, non-attorney personnel who will comprise part of your team assigned to the FCERA account, list the normal hourly rate for that service provider and the hourly rate that you propose to charge FCERA for the next three years.
3. Your rates for any other potential costs that might be incurred during the term of the contract (e.g., research fees, copying fees).
4. Provide a statement agreeing the billing rates identified in your responses to the preceding questions will be fixed for the three-year term.
5. State any special consideration with respect to billing or payment of fees and expense your firm offers that you believe differentiates your firm from other proposals and makes your firm's services more cost effective to FCERA.
6. State that you have read and agree to abide by the FCERA Legal Billing Guidelines, attached to this RFP as **Attachment B**.
7. FCERA expects the lowest rate charged by your firm for its governmental and non-profit clients. If for any reason your firm is unwilling or unable to charge the lowest rate, please explain why.

ATTACHMENT A

FCERA Investment Counsel Services Request for Proposal

FCERA INVESTMENT MANAGERS

As of September 30, 2017

	% of Portfolio	Market Value
Total Domestic Equity	17.5	793,368,067
State Street Global Advisors S&P 500	3.7	166,443,396
Ivy	5.5	247,751,948
Aronson Johnson Ortiz	5.3	239,406,577
Systematic Small/Mid Cap Value	1.6	71,794,088
Total International Equity	20.3	920,319,201
Artisan International Growth	4.6	208,382,749
Research Affiliates International Equity	5.1	230,636,000
Mondrian International Small Cap	3.2	145,728,214
Mondrian Emerging Markets	7.4	335,572,238
Total Fixed Income	33.0	1,495,343,484
Western Asset Investment Grade Credit	4.7	210,860,852
Loomis Sayles High Yield	6.7	301,344,773
Eaton Vance Senior Loan Fund	5.9	268,891,881
Eaton Vance Institutional Senior Loan Plus Fund	0.5	20,527,699
State Street Global Advisors TIPS	3.6	161,183,555
Brandywine Global Sovereign	6.7	304,670,431
PIMCO Emerging Local Bonds Ins	5.0	227,864,292
Total Real Estate	4.6	207,958,421
Invesco Core Real Estate	3.7	165,678,179
Kennedy Wilson Real Estate Fund V*	0.5	24,333,310
Gerding Edlen Green Cities III*	0.3	14,449,213
TA Realty IX*	0.1	3,497,719
Total Infrastructure	3.1	140,310,110
IFM Infrastructure	3.1	140,310,110
Total Hedge Fund	7.0	318,693,650
Grosvenor	3.5	160,596,638
GCM Better Futures Fund**	3.5	158,097,012
Total Commodities	2.6	116,331,852
Invesco Commodities	2.6	116,331,852
Total Cash Overlay	2.5	112,212,450
Parametric	2.5	112,212,450
Total Portfolio	100	4,525,519,224

ATTACHMENT B

FCERA Investment Counsel Services Request for Proposal

FCERA BILLING GUIDELINES

By responding to this RFP, Legal Counsel ultimately retained by FCERA agrees to comply with the following billing guidelines:

1. **Monthly Invoices:** The Firm shall send FCERA a monthly invoice, setting forth the fees for services performed and other expenses incurred during the previous billing period.
2. **Staffing:** The Firm agrees that, in most instances, only those attorneys and other non-attorney staff members who have been identified in the Firm's RFP response as being assigned to the FCERA account (FCERA Team) and who have been approved by FCERA shall incur expenses for work on the FCERA account. FCERA reserves the right to continued approval of the composition of the FCERA Team and to withdraw or withhold consent to any existing or proposed FCERA Team member.
3. **Hourly Increments:** Firm shall charge hourly rates in increments of one-tenth (.1) of an hour.
4. **Duplicate Billing:** The Firm will not charge for, and FCERA will not be responsible to pay for, duplicate work performed by staff at the same professional level. The Firm will make the most efficient use of its personnel to minimize charges incurred on FCERA's behalf. For example, the Firm should not have two attorneys appearing on the same matter, reviewing the same documents or reviewing each other's work without prior consent of FCERA. FCERA will allow reasonable expenses for a senior attorney's review of less experienced counsel or non-lawyer staff over which the attorney must exercise supervision.
5. **Itemization of Charges Billed:** The Firm will itemize each service performed separately. Group itemization is not acceptable. Each itemized billing shall contain the following in support of the amount charged.
 - a. The identity of the person performing the work;
 - b. The amount of time expended for such work; and,
 - c. A sufficient description of the work performed to allow FCERA to identify the scope of the work and the reasonableness of the charges.
6. **Out of Town Travel:** All out of town travel and estimated expenses therefore must be approved by FCERA in advance. FCERA will only be charged and is only responsible to pay for reasonable costs of transportation, meals, lodging and other necessary out-of-town travel expenses incurred by the Firm's personnel for travel approved by FCERA.
7. **Cost and Expenses:** FCERA will pay reasonable "overhead" costs and expenses incurred by the Firm at the rate identified in the Firm's RFP response, except to the extent that the Firm has indicated such overhead costs are a component of its hourly fee. Such overhead costs and expenses commonly include long distance phone calls, messenger overnight mail and other similar delivery fees, and postage. FCERA will not pay costs and expenses incurred for items other than reasonable overhead costs unless FCERA has pre-approved such costs and expenses.

ATTACHMENT C

**FCERA Investment Counsel Services
Request for Proposal**

SUBMISSION CHECKLIST

Item	Included in RFP Response
Cover Letter	
Answers to all Questions in Technical Proposal	
Exhibit A – C.V. and Biographies of Proposed Team Members	
Exhibit B – List of References	
Exhibit C – Fee Proposal	