**California Public Employees' Retirement System**
**Legal Office**
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www.calpers.ca.gov

March 20, 2014

TO: ALL INTERESTED PARTIES

FROM: CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

SUBJECT: **SEARCH FOR OUTSIDE FIDUCIARY COUNSEL (No. 2014 – 7079)**

The California Public Employees' Retirement System (CalPERS) is seeking to contract with one or more private law firms to advise the CalPERS Board of Administration on questions of fiduciary duty. On behalf of CalPERS, I invite you to submit an application for this position.

## Background

CalPERS is the largest public retirement system in the nation, with an active and retired membership of over 1.6 million. The System's assets, as of March 20, 2014, are valued in excess of $283 billion and invested principally in bonds, stocks, mortgages, and real estate.

CalPERS retains, through five-year contracts, various law firms to assist in-house legal staff in providing legal services to the CalPERS Board and staff. These firms have various areas of expertise, including investment transactions, fiduciary issues, health care issues, bankruptcy, tax, and securities law. The existing fidiciary counsel contracts will expire on December 31, 2014. The purpose of this invitation is to select fiduciary counsel firms for the period of January 1, 2015 through December 31, 2020. Counsel under the existing contracts are eligible to re-bid for this new contract.

CalPERS outside fiduciary counsel respond to opinion requests from the CalPERS Board and staff, directed through the System's General Counsel. In-house counsel provide technical assistance, serve as liaison to System personnel, and monitor outside counsel for billing practices and responsiveness to client needs. CalPERS pays outside counsel for actual work performed, in arrears. This is subject, however, to annual contract maximums.

Outside counsel is called upon to provide advice and recommendations on issues involving the application of California Constitution article XVI, section 17, coupled with other trust law principles, to various situations. The 1992 amendment of article XVI, section 17 by voter initiative (Proposition 162) potentially raises issues with respect to

the Board's role. Other recurring issues include questions about conflicts of interests, and the Board's responsibilities relative to its investment authority.

As has been well publicized, the State of California is under immense budgetary pressures. CalPERS is not immune from those pressures and we seek to control costs in this incredibly tough fiscal environment. Fee proposals should reflect this environment.

CalPERS recognizes diversity as a competitive advantage, and places a high value on a diverse working environment. As part of this invitation, CalPERS is asking responding law firms to describe the firm's commitment to diversity and diversity initiatives and programs. Firms granted contracts may be asked to report annually regarding various diversity statistics, including the number of individuals of diverse backgrounds employed as attorneys, partners, and shareowners.

General information regarding CalPERS can be found at http://www.calpers.ca.gov.

**Minimum Qualifications**

Law firms wishing to be considered for this contract must meet the following minimum qualifications:

- Employ attorneys who are licensed to practice in the State of California.
- Have malpractice insurance, or be self-insured.
- Have the experience described below. (See Application Process, paragraph C.3.)

**Application Process**

If you wish to be considered for this contract, you must follow these steps:

A. Prepare and return to CalPERS the California Taxpayer and Shareholder Protection Act Declaration **(Attachment A).**

B. Proposers must complete and return the CalPERS Contract-Related Disclosure Form, (the "Contract-Related Disclosure Form"), **Attachment B**, pursuant to title 2, California Code of Regulations section 559.1. The Contract-Related Disclosure Form must be signed by an individual who is authorized to bind the Proposer contractually.

C. Prepare and return to CalPERS a Qualifications Statement, limited to no more than three single-spaced pages, with a minimum of the following information:

1. The name of the attorney who will act as "lead" on a CalPERS contract;

2. The name(s) of other attorney(s) who will be part of a CalPERS team;

3. The experience of the attorneys named above in advising:

   i) the fiduciaries of retirement plans; please indicate the size (by asset value) of the plans; whether the plans are publicly or privately funded; and the type of issues on which you provided advice; and

   ii) governmental clients; please indicate the types of issues on which you provided advice;

4. A brief narrative describing the unique characteristics of your firm and the attorneys who you believe would be best suited to CalPERS' needs;

5. Contact information for two client references in the area of trust or fiduciary law; and

6. A statement that the firm meets the Minimum Qualifications described above. (Documentation of Qualifications may be required before contract award).

D. Prepare and return a Diversity Statement, limited to no more than two single-spaced pages, describing, at a minimum, the following:

1. The firm's written strategy for increasing diversity at the firm.

2. The firm's hiring and mentoring programs targeted to women and persons of diverse backgrounds.

3. The firm's participation in diversity surveys, such as Vault/MCCA, including results from those surveys.

4. The firm's diversity manager and that person's role in the firm.

5. The firm's willingness and ability to abide by CalPERS Legal Office annual diversity reporting requirements, including reporting the number of individuals of diverse populations in each classification of attorneys employed by the firm.

6. [Optional] The firm's make-up in terms of the numbers of individuals of diverse backgrounds that comprise various positions. **Attachment C**, Outside Counsel Diversity Data report, may be utilized to provide this information.

**Fee Proposal**

Competing law firms must submit a fee proposal, including:

1. Whether the firm is willing to comply with CalPERS' billing procedures, as described in **Attachment D;**

2. Whether the firm is willing to comply with the California State Franchise Tax Board's requirement regarding state income tax withholding requirements for nonresident vendors (see Section VI-Billing Procedures – Attachment D). This requirement may apply to outside counsel firms.

3. A single hourly rate for partners, and a separate hourly rate for associates;[1]

4. A statement that the firm's administrative costs will be charged at 3.5% of the hourly billings (except for travel expenses and court fees); and

5. Any alternative billing proposal the firm may wish CalPERS to consider.

6. Whether the firm is willing to prepare and provide training to CalPERS legal staff. The statement should include: (i) the number of training hours that the firm would provide per calendar year at no charge, and (ii) the number of training hours that the firm would provide per calendar year at a discounted hourly rate, including the proposed discounted hourly rate.

**Legal Proceedings**

Please provide a description of legal proceedings (including grand jury proceedings) brought against the firm, any of its business entities, or persons or entities providing services to or on behalf of the firm or any of its business entities as part of the proposal. If the firm declines to provide a description of legal proceedings, if any, due to confidentiality reasons, CalPERS may reject the application. If the firm, or its business entity, or persons in its employ, are under criminal indictment in relation to the business of the firm, CalPERS, in its sole discretion, may reject the application.

[1] We remind you that the proposed contract is for a five-year term. Any increases in the hourly rates during this term must be proposed as part of your proposal.

**CalPERS' No Contact Rule**

This contract invitation process is subject to subsection (a) of Government Code section 20153 **(Attachment E).** Pursuant to section 20153, applicants are prohibited from communicating with CalPERS Board or staff members concerning any topic, except as expressly provided in subsection (a) of Government Code section 20153.

Any applicant who willfully violates these communication restrictions will be immediately disqualified from the invitation process. If you have any questions concerning the process, please direct your questions to Christina Elliott, Policy Manager, via email, as noted below.

**Copies**

Please submit the original plus three (3) copies of your submission package.

**Filing Deadline**

Your complete submission package must be **received** at CalPERS' Legal Office by **April 21, 2014, 5:00 p.m. (PST). Packages received after this date will not be considered.**

General Delivery

California Public Employees'
Retirement System
Attn: Legal Office
P.O. Box 942707
Sacramento, CA 94229-2707

Express Delivery

California Public Employees'
Retirement System
Attn: Legal Office, Lincoln Plaza North
400 Q Street, Room 3340
Sacramento, CA 95811

Packages will be evaluated by CalPERS staff, who may thereafter conduct interviews of selected semi-finalists; these interviews, if deemed necessary, are anticipated to take place during May or June. Finalists will then be asked to make a presentation before the CalPERS Board at either its September 17, 2014 or October 15, 2014 meeting.

Thank you for taking the time to consider this invitation. If you have any questions, please email them to Christina Elliott, Policy Manager, at Christina.Elliott@calpers.ca.gov **no later than April 8, 2014.** Any questions received after **April 8, 2014,** will not be answered. Please note that only questions regarding procedures will be answered. Otherwise, the communication restrictions relayed in **Attachment E** will apply.

Sincerely,

Gina M. Ratto

GINA M. RATTO
Interim General Counsel