



California Public Employees' Retirement System
Legal Office
P.O. Box 942707
Sacramento, CA 94229-2707
TTY: (877) 249-7442
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www.calpers.ca.gov

August 18, 2016

TO: ALL INTERESTED PARTIES

FROM: CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

**SUBJECT: SEARCH FOR OUTSIDE FIDUCIARY COUNSEL
(No. 2016-8229)**

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

Background

CalPERS retains 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. The purpose of this invitation is to select a firm or firms to provide specialized fiduciary advice to the Board and staff.

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, subject to annual contract maximums.

CalPERS calls upon fiduciary counsel 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.

Fee proposals should recognize that CalPERS is a State agency with intense cost constraints.

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

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law firms to describe the firm's commitment to diversity initiatives and programs. Firms granted contracts may be asked to report annually regarding various diversity statistics.

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; and
- Have the experience described below. (See Application Process, paragraph D.3.)

Application Process

If you wish to be considered for this contract, please 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, **Attachment B**, pursuant to title 2, California Code of Regulations, section 559.1. This form must be signed by an individual who is authorized to bind the Proposer contractually;
- C. Complete and return the Contracting Act Declarations form (**Attachment C**).
- D. Prepare and return to CalPERS a Qualifications Statement, limited to three single-spaced pages, with at least the following information:
 1. The name of the attorney who would be the "lead" on a CalPERS contract;
 2. The name(s) of other attorney(s) who would 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

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- 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).**
- E. Prepare and return a Diversity Statement, limited to two single-spaced pages, describing 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; and**
 6. **[Optional] The firm's make-up in terms of the numbers of individuals of diverse backgrounds that comprise various positions. Attachment D, Outside Counsel Diversity Data report, may be utilized to provide this information.**

Fee Proposal

Submissions must include a fee proposal, including:

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

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2. A single hourly rate for partners, and a separate hourly rate for associates;¹
3. 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);
4. Any alternative billing proposal the firm may wish CalPERS to consider; and
5. 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 included as part of the proposal. CalPERS, in its sole discretion, may reject a firm's application if: (1) the firm declines to provide a description of the legal proceedings, if any, due to confidentiality reasons; or (2) the firm, or its business entities, or persons in its employ, are under criminal indictment.

CalPERS' No Contact Rule

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

Any firm that willfully violates these communication restrictions will be disqualified from the process.

Copies

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

¹ You should assume that the proposed contract would be for a five-year term. Any increases in the hourly rates during this term must be included in your proposal.

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Filing Deadline

Your complete submission package must be **received** at CalPERS' Legal Office by **September 19, 2016, 5:00 p.m. (PST).**

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

Thank you for taking the time to consider this invitation. If you have any questions, please email them to **Lourdes Trujillo, Analyst** at Lourdes.Trujillo@calpers.ca.gov by **September 9, 2016**. Please note that only questions regarding procedures will be answered. Otherwise, the communication restrictions described in **Attachment F** will apply.

Sincerely,



MATTHEW G. JACOBS
General Counsel

Attachments

- Attachment A: California Taxpayer and Shareholder Protection Act Declaration
- Attachment B: CalPERS Contract-Related Disclosure Form
- Attachment C: Contracting Act Declarations
- Attachment D: Outside Counsel Diversity Data Report
- Attachment E: CalPERS Policy Regarding Billing Practices and Format
- Attachment F: CalPERS Restricted Contact Policy (Government Code section 20153)



CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
California Taxpayer and Shareholder Protection Act Declaration

Firm's Name _____

The firm named above certifies, that the firm is eligible to contract with the State of California and CalPERS, pursuant to the provisions of the California Taxpayer and Shareholder Protection Act of 2003 (Public Contract Code section 10286 et. seq.).

I, the official named below, hereby declare that I am duly authorized to make this declaration on behalf of the above named firm. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on the date listed below.

Authorized Signature

Date

Name and Title (Please Print)

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CalPERS Contract-Related Disclosure Form
*(To be used if Contractor is not required to file a
Placement Agent Information Disclosure Form (2 CCR § 559))*

This form is to be used for all Contract-Related Disclosures, including Proposals.
Please refer to title 2 California Code Regulations section 559.1 (b)(1) through (b)(3),
prior to completing this form.

- a. Solicitation or Contract Number:

- b. Proposer or Contractor Name:

- c. Name of Individual Authorized to bind the Proposer or Contractor:

- d. Contact Person (if different than above):

- e. E-mail Address:

- f. Phone No:

- g. Name of CalPERS Contact (if applicable):

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Have you, your firm or your firm's principals, employees, agents, or affiliates compensated or agreed to compensate, directly or indirectly, any Agent as defined in section 559.1(a)(1) (whether or not employed by you) or any entity to act as Agent in connection with this Solicitation or Contract? (§559.1 (b)(1))

Yes. No.

If you checked Yes, please respond to questions 1 through 5 below, and sign and date the Form on the final page.

If you checked No, please respond to question 5 below, and sign and date this Form on the final page.

1. Please list the names and relationships for each Agent in connection with the CalPERS Solicitation or Contract, including a description of the relationship with the Proposer or Contractor. (Add an additional page if necessary.) Please check the box to the left if the Agent is a current or former CalPERS Board Member, Staff Member, consultant, or has a Familial Relationship with any such individual.

	Name	Relationship
<input type="checkbox"/>		
<input type="checkbox"/>		
<input type="checkbox"/>		
<input type="checkbox"/>		
<input type="checkbox"/>		

2. Please attach a copy of all contracts, agreements, or other documents memorializing the relationship between the Proposer or Contractor and the Agent. When an *entity* is retained as an Agent, please also include the requested information for any officer, director, or employee actively providing Agent services with regard to CalPERS or receiving more than 15% of the Agent fees.
3. Provide a description of any financial or Familial Relationship(s) between the Agent and a Board Member or Staff Member, including the names of the Board Member(s) and/or Staff Members:

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4. Describe any Things of Value given or offered by the Agent to a Board Member or Staff Member during the twelve (12) months preceding the date the Contract-Related Disclosure Form is due.

5. Describe any Things of Value given or offered by the Proposer or Contractor to a Board Member or Staff Member during the twelve (12) months preceding the date the Contract-Related Disclosure Form is due.

By executing this form the undersigned represents and warrants the information set forth herein is true and correct. The undersigned agrees to update this information within 14 calendar days of the date Proposer or Contractor knows or reasonably should have known of any defect or changes to this information.

The Contract-Related Disclosure Form and attachments shall be a public record subject to disclosure under the California Public Records Act. No confidentiality restrictions shall be placed on information submitted by the Proposer or Contractor.

The undersigned represents and agrees it shall make a representation and warranty as to the continuing accuracy of this information in any final written agreement between it and CalPERS.

I, the official named below, acknowledge and declare I have read and understand CCR section 559.1, and that the above-named firm has provided information required by section 559.1 and this Form. I am duly authorized to make this declaration on behalf of the above-named firm, and declare the foregoing is true and correct as of the date of execution of this document. I further acknowledge my firm's responsibility to provide updates in the event this information is determined to be incorrect or has changed.

Authorized Signature

Date

Name and Title

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CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

Contracting Act Declarations

CalPERS is prohibited from contracting with individuals or firms who do business subject to the following statutes. By signing this form, you are certifying that you or your firm is not prohibited from submitting a bid or proposal for a contract with CalPERS, a state agency.

SUDAN CONTRACTING DECLARATION:

Pursuant to Public Contract Code section 10477, a bidder or proposer who is a "scrutinized company" due to specific activities in Sudan (as defined in Public Contract Code section 10476), is ineligible to, and shall not, bid on or submit a proposal for a contract with a state agency for goods or services.

This firm is not prohibited from submitting a bid or proposal for a contract with CalPERS, because (check the applicable box):

- This firm does not currently have, and has not had within the previous three years, business activities or other operations outside of the United States, and in accordance with Public Contract Code section 10478, this firm hereby certifies it is not a "scrutinized company" (as defined in Public Contract Code section 10476).
- This firm is a "scrutinized company" (as defined in Public Contract Code section 10476), but has received written permission from the Department of General Services (DGS) to submit a bid or proposal pursuant to Public Contract Code section 10477(b). A copy of the written permission from DGS is included with the firm's bid or proposal.
- This firm currently has, or has had within the previous three years, business activities or other operations outside of the United States, but hereby certifies that is not a "scrutinized company" due to specific activities in Sudan (as defined in Public Contract Code section 10476).

IRAN CONTRACTING DECLARATION:

Pursuant to the Iran Contracting Act of 2010 (Public Contract Code section 2201, et. seq.), if a bidder, at the time of the bid or proposal for a new contract, or renewal of an existing contract, has engaged¹ in investment activities in Iran (as described in Public Contract Code section 2202.5) it is ineligible, and shall not, bid on, submit a proposal for, or enter into or renew a contract with a public entity for goods or services for one million dollars (\$1,000,000) or more. (Public Contract Code section 2203(a)).

This firm is not prohibited from submitting a bid or proposal for a contract with CalPERS, because (check the applicable box):

¹ Or such person is identified on a list created by the Department of General Services pursuant to Section 2203(b) as a person engaging in investment activities in Iran.

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- This firm, or person, hereby certifies that it (or he or she) is not identified on the DGS list created pursuant to Public Contract Code section 2203(b) as a firm or person engaging in "investment activities" in Iran described in Public Contract Code section 2202.5(a) or 2202.5(b).
- The firm hereby certifies it is permitted to submit a bid or proposal to a public agency pursuant to Public Contract Code section 2203(c) because its investment activities in Iran were (1) made before July 1, 2010, (2) were not expanded or renewed after July 1, 2010, and (3) the firm has adopted, publicized, and is implementing a formal plan to cease the investment activities in Iran and to refrain from engaging in any new investments in Iran.
- This firm hereby certifies that although it is a financial institution that extends twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, the person who will use the credit to provide goods or services in the energy sector in Iran is a person permitted to submit a bid or proposal to the public agency pursuant to Public Contract Code section 2203(c). (See Public Contract Code section 2202.3(d)).

DEMOCRATIC REPUBLIC OF THE CONGO CONTRACTING DECLARATION:

Pursuant to Public Contract Code section 10490 and section 13 of the Securities Exchange Act of 1934 (15 U.S.C.A. § 78(m)), a scrutinized company (as defined in Public Contract Code section 10490(b)) is ineligible to, and shall not, bid on or submit a proposal for a contract with a state agency for goods or services related to products or services that are the reason the firm must comply with section 13(p) of the Securities Exchange Act of 1934.

This firm is not prohibited from submitting a bid or proposal for a contract with CalPERS, because (check the applicable box):

- This firm is not a "scrutinized company" or does not currently use any conflict mineral products that are necessary to the functionality or production of a product manufactured by the firm from the Democratic Public of the Congo or an "adjoining country" (see 15 U.S.C.A § 78(m)(p)), and section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub.L. No.111-203, (July 21, 2010) 124 Stat. 1376)).
- This firm has ceased to be regarded as a "scrutinized company" (as defined by Cal. Public Contract Code section 10490(b)) because (1) it is not in violation of section 13(p) of the Securities Exchange Act of 1934 (15 U.S.C.A. § 78(m)(p)); or (2) it has filed an amended or corrective filing under section 13(p) of the Securities Exchange Act of 1934, which filing corrected the violations; or (3) three years have passed since the date of the by final judgment or settlement entered in a civil or administrative action brought by the Securities and Exchange Commission (SEC).
- Disclosure requirements have been temporarily waived by the SEC because the President of the United States has transmitted a determination that the waiver or revision is in the national security interest of the United States, or the disclosure requirements have been terminated because the President has determined and certified to the appropriate congressional committees that no armed groups continue to be directly involved and benefitting from this firm's commercial activity involving conflict minerals.

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I, the official named below, hereby declare that I am duly authorized to make these declarations on behalf of the above-named firm. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on the date listed below.

Authorized Signature

Date

Name and Title (Please Print)

Firm Name (Please Print)

The categories above are obviously not mutually exclusive. We also realize the titles afforded attorneys in your firm's hierarchy may vary. Please answer to the best of your ability.

- **NATIVE AMERICAN OR ALASKAN NATIVE-** Persons having origins in any of the tribal peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.
- **ASIAN-** Persons having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian Subcontinent. This includes China, Japan, and Korea.
- **AFRICAN AMERICAN:** Persons having origins in any of the black racial groups of Africa.
- **FILIPINO-** Persons having origins in any of the original peoples of the Philippine Islands.
- **HISPANIC-** Persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.
- **PACIFIC ISLANDERS-** Persons having origins in the Pacific Islands, such as Samoa.
- **LGBT –** Indicates individuals who are openly Lesbian, Gay, Bisexual or Transsexual.

Firms contracting with CalPERS as an Outside Counsel Firm, will be required to annually update this form, and may also periodically update it at the firm's discretion.

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CalPERS' OUTSIDE COUNSEL BILLING REQUIREMENTS

CalPERS relies on and appreciates the quality and efficiency of the professional services provided by the attorneys and firms we engage. Our objective and fiduciary duty is to obtain superior legal services in the most cost-effective manner possible. These Outside Counsel Billing Requirements ("Requirements") help us achieve that objective and discharge that duty. Failure to comply with these Requirements is likely to result in the reduction or nonpayment of invoices. **By submitting an invoice to CalPERS, counsel is affirmatively representing and certifying that its billing complies with these Requirements.**

I. Prior Approval

The CalPERS Legal Office ("Legal Office") must authorize all outside counsel services before work commences.

II. Assignment Staffing

- A. Outside counsel must obtain the Legal Office's approval before assigning any specific attorney or other biller to work on a CalPERS matter.
- B. Counsel should staff matters in the most efficient and cost effective manner. Attorneys assigned to CalPERS matters must have the level of skill and experience necessary to perform the assigned tasks. CalPERS will not pay for time required for an attorney to become competent in the matter(s) for which the firm was retained.
- C. Whenever possible, counsel should assign tasks to a less expensive biller if there will be no loss in competency or efficiency.
- D. Unless the Legal Office agrees in advance, the number of firm attorneys working on a specific matter must not exceed the following:

Transactional Matters (e.g., real estate, infrastructure, and private equity): For transactional matters, no more than three attorneys, with no more than one being a junior attorney. These individuals are the "Key Persons" and must be identified in writing and approved by CalPERS at the outset of the engagement. This pre-approval may be obtained either as the need arises or through the budget process (discussed below).

Litigation Matters: For routine litigation matters (e.g., disability retirement, final compensation, tenant and leasing disputes), no more than one attorney. For complex litigation matters, no more than three attorneys. These individuals are the "Key Persons" and must be identified in writing and approved by CalPERS at the outset of the engagement. If counsel is unclear whether a case is routine or complex, counsel should contact the Legal Office in advance (this may also be resolved through the budget process, discussed below).

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All Other Matters: For all other matters, no more than two attorneys. These individuals are the "Key Persons" and must be identified in writing and approved by CalPERS at the outset of the engagement.

- E. Two or more billers should not perform the same task on a matter when one biller would be sufficient. Generally, only one attorney should bill for attending trials, arbitrations, mediations, depositions, meetings, conferences, and the like without the Legal Office's prior approval.
- F. If outside counsel needs to increase the number of billers assigned to a matter due to staff departures, an unforeseen increase in the scope of the work, or for any other reason, counsel must obtain the Legal Office's prior approval. In such instances, the firm should not bill for the new biller to obtain familiarity or fluency on the matter.
- G. All firm personnel billing on a CalPERS matter must either be partners/members or firm employees. Counsel must obtain the Legal Office's prior approval to retain contract or temporary personnel to work on a CalPERS matter. In such instances, CalPERS will not pay more than the firm's cost of such personnel plus a nominal markup for overhead.
- H. Clerical, secretarial, and administrative work is part of law office overhead and cannot be billed to CalPERS, regardless of who performs it.
- I. On litigation matters, CalPERS expects its lead counsel to personally perform the following tasks: depose plaintiffs, critical witnesses and experts; prepare critical defense witnesses for deposition and trial; prepare for and attend critical CalPERS defendant depositions, mediations, settlement conferences and arbitrations, confer with the Legal Office on litigation and trial strategy, and fulfill other responsibilities as the Legal Office requests. If lead counsel cannot personally perform these tasks, he or she must discuss the matter with the Legal Office well in advance of the scheduled date.

III. Billing Format

- A. Invoices must itemize all work performed on a matter in chronological order by individual task or activity.
- B. Invoices must reflect activity for only one case or matter.
- C. If numerous tasks are undertaken in one day, each task must be separately identified with a specified time for performing that task. "Block billing," *i.e.*, combining into one time entry several different tasks performed by a biller during a single period, is not acceptable.
- D. Each entry on an invoice must include a detailed description of the task and/or activity to enable CalPERS to determine its purpose and necessity. Generic descriptions such as the following are not acceptable: "attention to file," "review

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correspondence," "interoffice conference," "review correspondence or documents," "work on project, case or file," "prepare for meeting," "prepare discovery," "trial preparation," and any other nondescript activity. Entries for telephone calls and meetings must specify the participants and the subject matter discussed.

- E. Entries must be for the actual amount of time expended on the task to the nearest tenth of an hour. CalPERS will not pay for quarter-hour entries or for minimum fixed times for specified tasks, such as a minimum of "0.3 hours" on a task regardless of the actual time spent on it.
- F. Invoices must be for services provided by month, and must include not only the monthly billing totals and totals per assignment, but also the total billed to date for the contract year. When CalPERS adopts billing software, counsel will be required to submit their invoices in a compatible form.

IV. Budgets

- A. Pre-approved written budgets are required before beginning work on any assignment unless the Legal Office specifically agrees to waive this requirement. Budgets should be in the following format unless the Legal Office agrees to a different one:

Transactional Matters:

1. Identify the Key Person(s) proposed to work on the matter.
2. Identify and describe with as much specificity as possible the broad tasks or phases expected to be required. For example, counsel can usually predict the key documents that will have to either be reviewed or drafted and the types of issues that will need to be researched and addressed (e.g., land use/zoning questions, environmental issues, tax questions, control/liability concerns). If these are known, identify them and approximate the number of hours required to perform them.
3. Describe the broad tasks that might be required. If a particular task is only a possibility rather than a likelihood, describe it and approximate the number of hours required.
4. Describe any anticipated travel and/or out-of-town meetings and approximate the cost of each.
5. Identify any need for local counsel, special consultants, and other significant out-of-pocket expenses, and approximate the cost.

Litigation Matters

Depending on the type of case, counsel may wish to submit a budget either for its complete handling (from assignment through resolution) or for particular temporal periods (e.g., by quarter-year) or significant phases (e.g., through demurrer, through summary judgment).

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1. Identify the Key Person(s) proposed to work on the matter.
2. Identify and describe with as much specificity as possible the broad tasks or phases expected to be required.
3. Describe the broad tasks that might be required. If a particular task is only a possibility rather than a likelihood, describe it and approximate the number of hours required.
4. Describe any anticipated travel and/or out-of-town meetings or hearings and approximate the cost of each.
5. Identify any need for local counsel, expert witnesses, and other significant out-of-pocket expenses, and approximate the cost.

Advice/Opinions

1. Identify the Key Person(s) proposed to work on the matter.
 2. Identify with as much specificity as possible the number of attorney hours and/or total fees to be expected.
 3. Identify any other costs expected and the approximate cost of each.
- B. Contact the Legal Office for guidance regarding budgets for matters not addressed above.
- C. CalPERS understands the difficulty in predicting the amount of work that will be required in a particular matter, and that much depends on the actions and reactions of third parties. CalPERS simply asks that counsel make a conscientious effort to advise us with respect to how much a matter might reasonably cost so that we can make an informed decision regarding whether and how to proceed with the work. If counsel later decides that the matter requires work beyond the budgeted amount, the Legal Office will work with counsel to evaluate the additional need. However, counsel must keep the Legal Office informed if it anticipates exceeding its budget. Otherwise, counsel's invoices may exceed CalPERS' contractual ability to pay them.

V. Scope of Services

- A. As stated above, CalPERS will only pay for services it has specifically requested. CalPERS will not pay for work counsel thinks is "in CalPERS' best interests" or "something CalPERS would be interested in." The Legal Office is counsel's sole guide as to CalPERS' interests. This applies to new issues, assignments, and contacts with third parties, as well as to litigation strategy.
- B. In litigation matters, counsel should not file any significant pleading or paper without obtaining the Legal Office's approval. Counsel should also not conduct significant research (more than 2-3 hours of attorney time), or draft any pleadings, briefs or memos, without first obtaining the Legal Office's approval.
- C. All CalPERS matters must be treated as confidential. Unless the Legal Office expressly agrees otherwise, outside counsel should not speak to the media about CalPERS matters. If counsel is contacted by the media or otherwise

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becomes aware that the matter he or she is handling has attracted or will attract media attention, counsel must immediately notify the Legal Office.

- D. Counsel must maintain the highest ethical and professional standards when working on CalPERS matters. This includes establishing and maintaining cordial and professional working relationships with opposing counsel, the judiciary, third parties, and anyone else with whom counsel interacts.
- E. Counsel must identify and disclose to the Legal Office any existing or prospective engagement for another client that could create an actual or potential conflict of interest with counsel's representation of CalPERS. CalPERS maintains complete discretion to waive a conflict if counsel requests such a waiver. No conflict waiver is valid unless it is in writing and signed by an attorney in the Legal Office.

VI. Legal Fees

All rates must be negotiated during the contracting process. CalPERS does not consent to and will not pay unilateral fee increases (annual or otherwise).

VII. Right to Audit

CalPERS reserves the right to audit all invoices and files for any CalPERS matter. On CalPERS' or its authorized agent's request, outside counsel is required to produce all documentation that would support the billings it has submitted and to produce for interview any individual who has billed time on the matter and any firm personnel who would have knowledge or information regarding any billing. CalPERS may utilize either its own personnel, another government agency, an outside auditing service, or such other company or service as CalPERS designates, to perform such audits.

VIII. Reimbursable Costs and Expenses

- A. Absent written agreement to the contrary, CalPERS will reimburse outside counsel for actually incurred out-of-pocket expenses and costs with no mark-up or administrative fees, provided those expenses and costs are reasonable and comply with these Requirements. CalPERS will reimburse for pre-approved fees for court related expenses or IRS filings, messenger services to deliver documents to the court and as otherwise provided below.
- B. Other administrative services such as routine photocopying, postage, telephone charges, facsimile and internet charges, legal research services, administrative support services, secretarial overtime, and all other overhead costs shall be reimbursed by a flat fee to be calculated monthly at 3.5% of the hourly billings for each account.
- C. CalPERS expects outside counsel to use his or her best efforts to minimize reimbursable out-of-pocket expenses and costs.

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- D. Outside counsel must obtain prior approval before incurring extraordinary expenses. Such items include, but are not limited to, the costs associated with electronic discovery systems, data management, use of document management systems, retention of experts, consultants, investigative services, litigation support services, videotaping of depositions, extensive travel and so forth.
- E. CalPERS will reimburse for the actual cost for the reasonable and necessary use of the following:
1. Messenger delivery service;
 2. Overnight mail delivery service; and
 3. Volume photocopy (up to \$.10 per page).

IX. Travel Time and Travel-Related Expenses

- A. CalPERS expects outside counsel to avoid unnecessary travel and only reimburses for reasonable travel expenses incurred, provided that outside counsel obtains approval before incurring such expenses, and such expenses are for reasonable airfare, lodging, meal and related expenses incurred in providing services to CalPERS. Expenses that exceed the amounts specified in the Contract (Travel and Per Diem Reimbursement) will not be paid. Travel billing should indicate the actual round trip travel time, reduced by the usual commuting time from home to the office or vice versa, if appropriate. Absent written agreement to the contrary, CalPERS will not pay for the following:
1. Airfare that is not the lowest available or which is in business or first-class.
 2. Luxury transportation, including, but not limited to, limousines and full-sized or above car rentals.
 3. Meals or other incidental expenses for attorney or staff members when they are working in their normal (geographic) office location.
 4. Personal incidental expenses incurred while working on CalPERS matters.
- B. Absent written agreement to the contrary, CalPERS will pay for time spent traveling as follows:
1. For time spent traveling locally (less than 100 miles round trip), CalPERS will pay at one-half of the biller's hourly rate.
 2. For time spent traveling long distances (100 miles or more round trip) CalPERS will pay at one-half of the biller's hourly rate, unless the biller is actually working on CalPERS matters, for which time CalPERS will pay the biller's regular hourly rate except to the extent that such time is spent performing services for another client (including *pro bono* clients), in which case no travel time will be paid.

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X. Nonbillable and Nonreimbursable Items

A. Services

CalPERS expects outside counsel to bill only for authorized, reasonable and necessary services. Absent written agreement to the contrary, CalPERS will not pay for any of the following:

1. Time or services for any activity not expressly authorized by CalPERS.
2. Time for reviewing or analyzing the firm's conflict of interest issues.
3. Time required for a firm's attorneys to become competent in his or her area of expertise. CalPERS will not pay for "learning," "training," or "orientation" time.
4. Intra-office conferences between firm personnel.
5. Time billed for more than one attorney or paralegal to perform the same task or duplicate review, analysis, or legal research of or on documents.
6. Time for repetitive reviewing of work product caused by case reassignment, training and development, or other inefficiencies.
7. Time for more than one attorney attending court appearances, arbitrations, mediations, depositions, meetings, conference calls, and so forth.
8. Work performed by summer associates or law clerks who are not licensed to practice law.
9. Time for case administration (e.g., reviewing the status of assignments given to firm personnel, preparing or reviewing bills).
10. Time and/or expenses incurred due to change or departure of law firm personnel.
11. Clerical or other work performed by an attorney that could have been performed by a paralegal or secretary.
12. Work customarily performed by secretaries and other administrative personnel.
13. Staff overtime charges.

B. Costs and Expenses

CalPERS expects outside counsel to anticipate and include the following types of expenses and disbursements as part of firm overhead. Therefore, absent written agreement to the contrary, CalPERS will not reimburse for any of the following:

1. Routine copying charges (day-to-day).
2. Routine postage.
3. Office supplies.
4. Telephone charges.
5. Word processing time.
6. Lexis, Westlaw, and other database legal search costs.
7. All work customarily performed by secretaries and other administrative personnel (e.g., filing opening, file organization, and other administrative charges).

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8. Storage costs.
9. Items traditionally associated with fixed overhead costs such as rent, utilities, and the like.
10. Equipment, books, periodicals, research materials, and so forth.
11. Local meals and alcoholic beverages.
12. Local transportation or luxury transportation for long-distance travel.
13. Expenses/disbursements without supporting invoices.

(Rev. 12/08/14)