



SCERS

SACRAMENTO COUNTY
EMPLOYEES' RETIREMENT SYSTEM

**Request for Proposal
Disability Retirement Legal Services**

February 3, 2020

I. BACKGROUND

Sacramento County Employees' Retirement System (SCERS) is a cost-sharing multiple-employer public employee retirement system, enacted and administered in accordance with the County Employees' Retirement Law of 1937 (CERL) and the California Public Employees' Pension Reform Act of 2013. Since its establishment by the Sacramento County Board of Supervisors in 1941, SCERS has provided retirement, disability, and survivors' benefits to eligible participants of the System. Under Article XVI, Section 17 of the Constitution of the State of California, the SCERS Board of Retirement (Board) is vested with plenary authority and fiduciary responsibility for the investment of monies and the administration of SCERS. Together, the provisions of the State Constitution and the 1937 Act establish SCERS as a separate and independent governmental entity from the public employers that participate in SCERS. Currently, SCERS' public employer participants include the County of Sacramento, the Sacramento County Superior Court, Sacramento Metro Fire Protection District, Sacramento County Fire Protection District, and nine Special Districts (Elk Grove-Cosumnes Cemetery, Fair Oaks Cemetery District, Galt Arno Cemetery, SETA, Mission Oaks Park District, Carmichael Park District, Sunrise Park District, Orangevale Park District, and Rio Linda Elverta Recreation and Parks District). SCERS currently has approximately 29,000 members.

Pursuant to the CERL (Gov. Code § 31720 et seq.), the Board may grant disability retirement benefits to members that have developed certain incapacitating conditions. The CERL recognizes two types of disability retirement. First, the Board grants "service-connected disability retirement" when an eligible member proves that he/she is permanently incapacitated from performing the duties of his/her job, and there is a causal link between the incapacity and the member's County service. Second, the Board grants "nonservice-connected disability retirement" when an eligible member proves that he/she is permanently incapacitated from performing the duties of his/her job, but without proving a causal link to service.

II. LEGAL SERVICES SOUGHT

SCERS seeks legal services relating to the legal challenges asserted by members when SCERS denies their disability retirement applications.

Disability retirement applications are subject to multiple stages of review. Upon receiving an application, SCERS staff must form a recommendation to the Board about whether to grant or deny the application. If staff intends to recommend denial, it must notify the applicant, who may then initiate an adversarial hearing process before an Administrative Law Judge (ALJ) at the Office of Administrative Hearings. Once the ALJ issues a Proposed Findings of Fact and Recommended Decision, the Board must decide whether to adopt the proposed decision. If the Board votes to adopt an ALJ decision denying the application, the applicant may challenge the Board's decision by filing a petition for writ of mandate in superior court (Code Civ. Proc. § 1094.5). Often, the applicant is unrepresented throughout this process.

SCERS seeks legal representation in connection with the administrative hearing process and the administrative mandamus process.

- With respect to administrative hearings, counsel will handle all phases of the pre-hearing and hearing process. Counsel will be responsible for, without limitation: drafting pleadings, submitting briefing, attending prehearing conferences, developing the evidentiary record, deposing witnesses, and presenting evidence and examining witnesses at hearing. Counsel will perform these tasks in close consultation with SCERS' Chief Benefits Officer and Benefits team.
- With respect to administrative mandamus, counsel will handle all phases of the litigation process. Counsel will be responsible for, without limitation: drafting pleadings, preparing the administrative record, submitting briefing, and presenting argument at hearing. Counsel will perform these tasks in close consultation with SCERS' General Counsel.

More details about SCERS' disability retirement application process can be found in SCERS' *Disability Retirement Procedures* booklet, available here: https://www.scers.org/sites/main/files/file-attachments/scers_disability_retirement_procedures_180701_1.pdf.) Respondents are encouraged to review this document before submitting a proposal.

III. ANTICIPATED CONTRACT TERMS

SCERS seeks to enter into a two-year contract with a law firm or attorney to perform the services described in Section II above. As with any attorney-client relationship, SCERS may, in its sole discretion, terminate the contract at any time.

Historically, SCERS sees approximately ten to twelve new administrative hearings, and approximately two new administrative mandamus cases, per year. However, SCERS makes no promises or guarantees as to the amount of disability retirement work that the successful Respondent will receive each year.

Respondents must agree to provide SCERS with audit access upon request during the term of the contract and for seven years thereafter.

SCERS reserves the right to modify any of the anticipated contract terms described above in the course of the negotiation process.

IV. PROPOSAL REQUIREMENTS

SCERS is soliciting proposals from law firms and/or attorneys ("Respondents") interested in contracting with SCERS to provide the legal services described above. Proposals must contain all of the elements identified in Section IV.A. and IV.B. below.

Clarity, completeness, and responsiveness are critical. Respondents must organize and number their responses in a manner corresponding to the following.

A. Respondent's Qualifications

Respondents must provide the following materials and information about their qualifications:

1. A firm resume and resumes for each attorney that would be assigned to SCERS matters.
2. For each attorney that would be assigned to SCERS matters, his/her prior experience (if any) with:
 - a. Disability retirement law;
 - b. Worker's compensation law;
 - c. Other litigation involving medical conditions, medical experts, and medical records;
 - d. Administrative hearings;
 - e. Administrative mandamus.

Please note that inexperience with disability retirement law is not necessarily disqualifying, as SCERS will and can provide supplemental training to otherwise qualified counsel.

3. Any clients, cases, or matters that the Respondent firm and attorneys have handled that could pose a conflict of interest to their representation of SCERS (please err on the side of disclosure).
4. Any cases or matters that the Respondent firm and attorneys have handled as counsel for Sacramento County, the Sacramento County Superior Court, Elk Grove-Cosumnes Cemetery, Fair Oaks Cemetery District, Galt Arno Cemetery, Sacramento Metro Fire Protection District, Sacramento County Fire Protection District, SETA, Mission Oaks Park District, Carmichael Park District, Sunrise Park District, Orangevale Park District, and/or Rio Linda Elverta Recreation and Parks District.
5. For each attorney that would be assigned to SCERS matters, information about his/her history of State Bar discipline, court sanctions, and malpractice disputes.
6. Client references (preferably, governmental clients) along with contact information.

B. Proposed Payment Arrangements

Respondents must provide the following information pertaining to a proposed payment arrangement:

1. For each timekeeping attorney and paraprofessional that would be assigned to SCERS matters, his/her proposed hourly rate.
2. SCERS expects not to pay for attorney or paraprofessional travel time unless substantive work is performed during such travel. Please address how the Respondent intends to address travel time.
3. Any alternative fee arrangement that the Respondent would propose for administrative hearings and/or administrative mandamus litigation – e.g., flat fees, capped fees, proposed trial periods, etc. (Because disability retirement disputes present discrete and predictable issues, it is estimated that each administrative hearing matter can be handled by efficient counsel in a total of 45 to 50 hours on average.) Respondents are encouraged to consider and propose such an alternative fee arrangement.
4. Any factors that would give the Respondent firm or attorney(s) an advantage over competitors with respect to cost-effectiveness – e.g., firm organization, work allocation strategy, experience, etc.
5. Confirmation that SCERS will receive the lowest rate charged by the Respondent to their governmental and/or non-profit clients. (If the Respondent cannot provide such confirmation, please state the reason.)

C. Cover Letter

The proposal must be accompanied by a cover letter stating (1) the mailing address of the Respondent law firm or attorney(s), (2) the name of a primary contact for the Respondent, and (3) contact information for such primary contact, including a direct number and email address. The cover letter should state that all information contained in the proposal packet is true, correct, and reliable, and that the Respondent's proposal is valid and irrevocable for 180 days from the date of the letter. The cover letter should be signed by a person with authority to bind the Respondent.

D. Terms and Conditions

By submitting a proposal to SCERS, the Respondent shall be deemed to agree to all of the following terms and conditions:

- All proposal materials submitted to SCERS will become the sole property of SCERS.

- All proposal materials submitted to SCERS will remain confidential until the RFP process has concluded. Thereafter, proposal materials may become subject to public inspection in the event of a request under the California Public Records Act.
- Respondents will not be reimbursed for any expenses associated with drafting or submitting a proposal.
- SCERS reserves the right to award a contract to more than one Respondent, or to none of the Respondents.
- SCERS may communicate with any Respondents before and after the submission deadline for the purpose of answering questions and obtaining clarification.
- SCERS may engage in negotiations with Respondents and/or seek revisions in their bid or proposal.

V. EVALUATION, SELECTION, AND APPROVAL PROCESS

1. Questions about this RFP may be directed to General Counsel Stephen Lau at laus@saccounty.net or (916) 874-5706.
2. A proposal packet containing all of the materials described in Section IV is due no later than 5:00 p.m. on Friday, March 20, 2020. The proposal packet should be formatted as a searchable PDF and submitted via email to Stephen Lau at laus@saccounty.net. In addition, three printouts of the proposal packet should be mailed to:

Stephen Lau
Sacramento County Employees' Retirement System
980 9th Street, Suite 1900
Sacramento, California 95814

SCERS staff may contact respondents to clarify the contents of their proposal.

3. SCERS' CEO, Chief Benefits Officer, and General Counsel will review proposals in the first instance. Respondents will be evaluated primarily on the basis of three factors: (1) expertise and competence, (2) professionalism and ethics, and (3) cost-effectiveness.
4. SCERS' CEO, Chief Benefits Officer, and/or General Counsel may conduct interviews with the top three or four Respondents at SCERS' offices at 980

9th Street, Suite 1900 in Sacramento, California. Respondents will be notified well in advance of the proposed interview date.

5. After the interview process, SCERS staff will recommend one or more Respondents for approval by the Board of Retirement at the following Board meeting.
6. All Respondents will be notified in writing once one or more Respondents have been selected.