



CITY OF MERCED

REQUEST

FOR PROPOSALS

CONTRACT CITY ATTORNEY

RFP Released 2/14/2022

Deadline for Submissions 3/11/2022



678 W. 18th Street, Merced, CA 95340

www.cityofmerced.org

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I. INTRODUCTION

The City of Merced is accepting proposals from full-service law firms with experience in advising and representing California municipalities interested in performing the duties and functions of a City Attorney on a contract basis. Official proposals must be received by the City no later than 5:00 p.m. on March 11, 2022.

II. BACKGROUND & PURPOSE

The City of Merced is a dynamic community of more than 90,000 people, with friendly small-town living in a mid-size city. The University of California Merced campus, opened in 2005, provides new educational and economic opportunity, adding to the already-established growth of the region. Merced's population is youthful and diverse.

Located in the heart of California's agricultural Central Valley, Merced is the region's hub for education, culture, and business. The community offers abundant shopping, pleasant neighborhoods, and tree-lined streets. Bicycle paths along creeks link major City parks. Even with recent increases in prices, Merced's housing remains affordable compared to many other California locations. In addition, Merced's revitalized downtown is emerging as the area's entertainment center. Annual events and festivals bring regional and even national recognition.

Merced is a charter city operating under a Council/Manager form of government. There are six City Council Members currently elected by districts, serving over-lapping four-year terms. The Mayor is elected at-large for a four-year term. The Charter imposes a two-term limit on City Council Members and the Mayor. The City has approximately 500 full-time employees serving various departments and divisions, including the City Manager's Office, Finance, Economic Development and Housing, Support Services, Information Technology, Public Works (water, wastewater treatment, and solid waste collection), Planning, Inspection Services, Engineering, Parks, Police, Fire, and the City Attorney's Office. The City also operates a commercial service airport and has a small zoo.

The City Attorney is a Charter Officer, appointed by the City Council and provides legal advice and representation to the City of Merced. The City Attorney serves as the primary legal advisor to the City Council, City Manager, City departments, boards, and commissions. The City Attorney is generally tasked with ensuring that City decisions and policies comply with the law, representing the city in litigation, and coordinating assigned activities with outside counsel and agencies. The City Attorney's Office has historically been staffed by a full-time City Attorney, along with two Deputy City Attorneys, and two full-time support staff.

III. SCOPE OF SERVICES

Basic services to be provided by the contract City Attorney shall include representation of and advice to the City Council, its committees and commissions, and all City officials in legal matters of municipal government. The general responsibilities of the City Attorney include, but are not limited to, the following:

- a. Provide clear, concise, and timely legal advice and consultation on a daily basis as requested by members of the City Council, the City Manager, and City staff.
- b. Attend all City Council meetings and be prepared to advise the City Council on matters on the agenda, as well as procedural and/or substantive issues that may arise during said meetings.
- c. Attend all Planning commission meetings and meetings of other advisory commissions of the City Council as necessary.
- d. Provide guidance concerning requirements of the Brown Act, Conflicts of Interest, the Political Reform Act, the Public Records Act, Meyers-Millais-Brown Act, CEQA, tort liability and risk, civil and criminal enforcement, due process and other legal requirements imposed by statute and common law, as well as matters related to municipal employment practices and labor relations.
- e. Provide City Attorney representation and advice to staff on site at City Hall, off-site and remotely.
- f. Prepare, review and approve ordinances, resolutions, contracts, leases, deeds, staff reports, policies and procedures, and other legal documents relating to City business.
- g. Review and approve environmental impact reports and negative declarations, land use decisions, public improvements, easements, and provide advice and counsel regarding related land use matters.
- h. Negotiate and prepare development agreements for City Council consideration.
- i. Review and assist in updating the City's Municipal Code and Zoning Code as necessary, to include updates required by state and federal housing legislation.
- j. Provide advice and counsel regarding taxes, assessments, fees, Proposition 218, debt issuances, and other financial advice.
- k. Provide advice and counsel in related to code enforcement matters and prosecute civil actions and/or administrative proceedings related to code enforcement.

- l. Represent the City in litigation for actions brought by or against the City, its elected officials, appointed officers, and agents and oversee services provided by other outside legal counsel engaged by the City for specific legal matters.
- m. Advice and counsel related to City personnel issues requiring legal attention.
- n. Provide written legal opinions when requested by at least four members of the City Council.
- o. Keep the City Council and City Manager informed of the status of litigation involving the City. The City Attorney shall submit a quarterly status report briefly outlining the status of each litigation matter. This status report shall be submitted between the first and fifteenth of the following months: April, July, October and January. The City Attorney shall also advise the City Council and City Manager of significant developments in litigation involving the City as soon as they occur.
- p. Assist the City Council, City Manager, and appropriate staff in continuing to identify feasible options toward implementing and achieving the goals, policies, and objectives of the City Council.
- q. The City may propose additional tasks as deemed necessary.

IV. QUALIFICATIONS

The City of Merced seeks a contract City Attorney with a minimum of eight years experience in advising mid-sized cities in California, preferably within the central valley, and active membership in the California State Bar


V. SUBMISSION REQUIREMENTS

All proposals shall include the following information, organized as separate sections of the proposal. The proposal should be concise and to the point.

Section One: Introductory Letter.

All proposals shall be accompanied by a transmittal letter addressed to Stephanie Dietz, City Manager, signed by an officer authorized to commit firm resources. The letter shall include the following:

- a. The name of the proposing firm, the primary contact, mailing and physical address, telephone number and email address.
- b. Certification that (1) all information submitted in the proposal is true and correct, (2) the person signing the proposal has the full authority to do so on behalf of the firm, (3) the fees proposed have not been knowingly disclosed, directly or indirectly, to any other firm responding to this RFP, and (4) no attempt has been made by the proposing firm to induce



any other company to submit or not submit a response to this RFP for the purpose of restricting competition.

Section Two: General Information

All proposals should include a brief discussion of the proposing firm, its history, and its general approach to providing municipal legal services that demonstrates the proper understanding of the needs of the City of Merced and the proposer's ability to address them. In addition, proposals should explain why the law firm is best suited to act as the City Attorney for the City of Merced.

Section Three: Staffing

All proposals should include a work plan that identifies the personnel to be assigned to City tasks, the expected amount of time that will be devoted to the City, and the expected response time to inquiries and/or requests for legal services by the City. Proposals should clearly identify who will be the City Attorney and who will be the day-to-day contact person for the work, if different. Proposals should specify any individuals you would propose as an Assistant or Deputy City Attorney and/or who would be designated as a substitute or back-up attorney in the event the primary contract City Attorney is unavailable.

Section Four: Qualifications

All proposals should discuss the overall capabilities, qualifications, training and areas of expertise for each of the partners and associates that may be assigned to work with the City. At a minimum, said discussion should include the following:

- a. The Name of the individual(s) and resume for each.
- b. Specialization, legal training, years of practice, years of experience in municipal law.
- c. Knowledge and practice of law related to land use and planning, CEQA, NEPA, general plans, and real estate.
- d. Knowledge and experience related to personnel matters, workers' compensation, general liability and labor relations.
- e. Knowledge and experience in the area of negotiating, drafting and interpreting contracts.
- f. Knowledge and experience in the area of municipal code enforcement.
- g. Knowledge and experience in the area of the Brown Act, conflicts of interest, Public Records Act, and the Elections Code.
- h. Any relevant management level experience.



Section Five: References

All proposals shall include a minimum of three client references, with at least one reference being a recent municipal client. References should include the client name, contact person, mailing address, telephone number and email address.

Section Six: Law Firm Clients and Projects

All proposals shall include the following:

- a. A list of major clients and/or projects to which the law firm/lawyer is currently committed to provide significant legal services.
- b. A list of any other public entity for whom the law firm/lawyer currently provides services as a City Attorney or otherwise.
- c. Identify any foreseeable or potential conflicts of interest that could result from the law firm/lawyer's representation of the City of Merced and the proposed solution to resolve any such conflicts of interest.
- d. Identify all matters within the past five years in which the law firm/lawyer has been adverse to public entities in pending litigation.
- e. If, in the past five years, the law firm or lawyer who is proposed to be the City Attorney for the City has been dismissed, fired, or a contract for legal services has not been renewed, please explain the circumstances.
- f. At least three recent writing samples of an ordinance, resolution, staff report, or legal memorandum regarding a unique or complex issue drafted by the proposer.


Section Seven: Fee Proposal

All proposals shall include a detailed explanation of the fees and costs to be charged to the City for the services described in this RFP. The City will consider any of the following fee structures:

- a. A standard hourly rate of all services.
- b. A fixed monthly rate.
- c. A hybrid rate to include a fixed monthly rate for "basic services" as defined in Section III above, and a separate hourly rate for "special services."

Section Eight: Additional Services

Please identify any "special" services the proposing law firm/attorney can provide and whether such services would be subject to additional costs to the City. Special services may include, but is not necessarily limited to labor relations, workers compensation, general litigation, personnel



investigations, risk management, human resources, and in-house trainings on the Brown Act, conflicts of interest/ethics, Political Reform Act, and the Public Records Act.

VI. APPLICATION REVIEW & SELECTION

Proposals will be evaluated in accordance with the criteria outlined in the in the section entitled Submission Requirements. Proposals will be evaluated for specificity, completeness, qualifications of personnel, demonstrated knowledge and experience, breadth and depth of legal services contemplated to be provided as described in the section entitled Scope of Services.

The law firm/attorney will be selected based on qualifications and demonstrated competence and the agreement may not necessarily be awarded to the lowest responsible proposer. When selecting the law firm/attorney, the skill and ability of the entity or person performing the services is a key component of the selection criteria. The City will select the law firm/attorney based on demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required.

The following criteria will be considered in the application review process:

1. Qualifications of the proposed team members including prior experience.
2. Ability to communicate effectively both verbally and in concise written form.
3. Ability to work effectively with management, attorneys, and staff.
4. Cost and availability of services.
5. The overall quality of the response and conformance with RFP requirements for content and clear understanding of City of Merced needs.
6. References.

The City Council will review and score submitted proposals and a group of proposals may be elevated for additional review. Additional review may include one or more interviews, in person or by phone. A reference check will be conducted with the finalists. The ad-hoc committee will make recommendations for the City Council's consideration upon the conclusion of the review and interviews with qualified firms.

The City reserves the right to evaluate other service providers based on its needs, the level of cooperation displayed by proposers, including in the negotiation of contract terms, at any time and without notice.

Ultimate acceptance or rejection of the recommended proposal and execution of a contract agreement thereto is the independent sole legal prerogative of the City.

VII. NOTIFICATION

All applicants will be notified of Council's decision of award within ten (10) days of the Council's action. The City reserves the right to reject any and all proposals and to waive informalities and irregularities.

VIII. AWARD OF CONTRAT FOR SUCCESSFUL APPLICATANTS

Upon approval of funding by the Council, the successful Applicant organization or entity will be required to enter into a Contractual agreement with the City of Merced. Applicants will be required to submit invoices for payment monthly.

IX. SPECIAL MATTERS & REQUIREMENTS

Representations. Proposers are advised to become familiar with all conditions, instructions, and specifications of this RFP. By submitting a proposal, proposer represents and warrants that it has thoroughly examined and is familiar with work required under this RFP, that proposer has conducted such additional investigation as it deems necessary and convenient, that proposer is capable of providing the services requested by the City in a manner that meets the City's objectives and specifications as outlined in this RFP, and that proposer has reviewed and inspected all materials submitted in response to this RFP. Once the consultant has been selected, a failure to have read the conditions, instructions, and specifications herein shall not be cause to alter the contract or for proposer to request additional compensation.

Non-Discrimination. By submitting a proposal, the proposer represents that it and its subsidiaries do not and will not discriminate against any employee or applicant for employment on the basis of race, religion, sex, color, national origin, sexual orientation, gender identity or gender expression, ancestry, marital status, physical condition, pregnancy of pregnancy-related conditions, political affiliations or opinion, age, or medical condition.

Conditions of Acceptance. This RFP does not commit the City to award a contract, to pay any costs incurred in the preparation of a proposal for this RFP, or to procure or contract for any services. The City reserves the right to waive any minor irregularities or informalities contained within this RFP, and/or reject any or all proposals received as a result of this request; negotiate with any qualified source or to cancel the RFP in part or whole. The City of Merced reserves the right to award in whole or in part, by item or group of items, by section or geographic area, when such action serves the best interest of the City.

Public Records. Proposals and all other information and documents submitted in response to this RFP are subject to the California Public Records Act, California Government Code §§ 6250 through 6276.48 (CPRA), which generally mandates the disclosure of documents in the possession of the City upon the request of any person, unless the content of the document falls within a specific exemption category.

Non-Liability. By participating in the RFP process, each respondent agrees to hold the City and its and their officers, employees, agents, representatives, and consultants harmless from all claims, liabilities, and costs related to all aspects of this RFP.

No Conflict of Interest. Selected consultant/firm shall not employ any City employee or City official in the work performed pursuant to this RFP. No officer or employee of the City shall have any financial interest in the proposed RFP that would violate California Government Code Sections 1090 et seq. If the RFP results in an Agreement being made in violation of Government Code section 1090 et seq., the entire Agreement is void and consultant will not be entitled to any compensation for services performed pursuant to said Agreement, including reimbursement of expenses, and consultant/firm will be required to reimburse the City for any sums paid to the consultant/firm. Consultant/firm understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code Section 1090 and, if applicable, will be disqualified from holding public office in the State of California.

Terms of Agreement and Service Requirement. The selected consultant/firm will be required to enter into an agreement with the City of Merced containing the terms and conditions set forth in the City of Merced's standard agreement. A copy of this standard agreement is in Exhibit 1 of this RFP. If consultant/firm has any exceptions to the standard agreement, requested changes must be submitted as a supplement to the agreement. If the consultant/firm has additional terms or conditions to be included in the agreement, or an alternative service agreement format, these must be submitted as a supplement to the proposal with a clear explanation of modifications or alternate language sought. The City will review but is not obligated to accept any proposed changes or alternative service agreement formats.

Insurance Requirements and Responsibilities. Consultant shall provide and maintain insurance in accordance with the City of Merced's standard service agreement, section 10. Upon execution of the service agreement, evidence of insurance will be required and annually thereafter upon expiration of the policies.

X. QUESTIONS OR TECHNICAL ASSISTANCE

All questions and requests for technical assistance concerning this RFP are to be directed to the official contact person via email or mail and shall be submitted no later than **February 16, 2022 at 5:00 p.m. (PDT)**.

Email: dietzs@cityofmerced.org

Mail: City Manager of the City of Merced, Stephanie R. Dietz
678 W. 18th Street, Merced, California 95340

All written questions received within the prescribed deadline will be answered and posted on the City's website by no later than **February 23, 2022**.

From the date this RFP is issued until a firm or entity is selected and selection is announced, firms and entities are not allowed to communicate outside the process set forth in this RFP with any

City employee other than the contracting officer listed above regarding this RFP. The City reserves the right to reject any proposal for violation of this provision. No questions other than written will be accepted, and no response other than written will be binding upon the City.

Official proposals must be received via mail on March 11, 2022 by 5:00 PM (PDT) at the address listed above

XI. TIMELINE (dates are subject to change)



February 14, 2022

Issuance of RFP



February 16, 2022

Questions/Technical Assistance Due

February 23, 2022

Response to Questions Due



March 11, 2022

Proposals due by 5:00 p.m. (PST)



March 14-18, 2022

Evaluation of proposals and selection of applicants for interview.



March 21-25, 2022

Interview of firms by City Council



April 4, 2022

Contract award and execution



April 5, 2022

Commence work as City Attorney