

## **DRAFT**

### **CITY OF SAN JOSE REQUEST FOR QUALIFICATIONS (RFQ) LEGAL CONSULTANT – SAN JOSE ELECTIONS COMMISSION**

The City of San Jose is seeking to contract with an attorney or firm with a background in and experience with ethics and election, campaign finance or political law to serve as a legal consultant (Legal Consultant) to the City of San Jose Elections Commission (Elections Commission or Commission) in coordination with the City Attorney's Office.

#### **GOAL**

The City's goal is to obtain a complete, thorough and expeditious evaluation of the following questions:

1. Whether, and if so, how, the San Jose Municipal Code should be amended, or other action taken such as education or auditing, to address:
  - a. Accepting campaign contributions before the campaign contribution start date (SJMC § 12.06.290 and 12.06.330);
  - b. Failing to disclose names of contributors (Government Code § 85700 and SJMC § 12.06.910);
  - c. Failing to disclose expenditures made by subvendors (Government Code § 84303 and FPPC Reg. 18431);
  - d. Failing to disclose late expenditures in a timely manner (Government Code § 84204); and
  - e. Reporting contributions in excess of the \$500 per person limit (SJMC § 12.06.540).
2. Whether the San Jose Municipal Code should be amended to regulate political party expenditures to ensure full disclosure (comparable to the rules promulgated in the City of San Diego);
3. Whether the San Jose Municipal Code can be amended to impose limits on contributions to independent expenditure committees;
4. How the San Jose Municipal Code can be amended to prohibit unlimited contributions in the form of paid campaign workers;

5. Whether, and if so, how, the San Jose Municipal Code should be amended to address:
  - a. Requiring a committee spending money in San Jose to file a report in San Jose with the City Clerk's Office within 24 hours of making the expenditure;
  - b. Increasing penalties for violations of the campaign finance ordinance dramatically, possibly as much as the expenditure;
  - c. Increasing the budget and staff of the Elections Commission and allowing the Elections Commission to use the District Attorney's Office to investigate election complaints;
  - d. Penalizing the consultant as well as the committee for failing to follow independent expenditure laws;
  - e. Prohibiting the coordination of candidate committees and party organizations in non-partisan races;
  - f. Requiring independent committees to disclose on written material a disclaimer that states "This piece was paid for by an independent committee with funds that were raised in amounts greater than the limits imposed on campaign committees" and requiring the same disclaimer to be read on all radio and television commercials; and
  - g. Prohibiting consultants from working for a candidate committee and an independent committee supporting the same candidate.
6. Whether implementing an Instant Run Off system could save the City money in future elections.

To assist in the evaluation of the foregoing questions, the Legal Consultant will receive information from an audit of and report on the contributions received and expenditures made by candidates, candidate-controlled committees and independent committees during the primary and runoff elections for Mayor and/or Councilmember in San Jose in 2002, 2004, 2005, 2006 and 2007.

The evaluation must be conducted within the highest legal and ethical standards and must include in-depth and sound analysis of the facts in a written report. The Legal Consultant must be neutral and impartial and must not have or appear to have any reason for any bias or favoritism towards the Mayor, any Councilmember or any candidate for Mayor or Council in any way.

The Elections Commission will select the Legal Consultant who will be hired by Agreement. The Agreement with the Legal Consultant will be subject to termination at the pleasure of the Elections Commission. The Agreement will have to be terminated if any circumstances arise which, in the judgment of the Commission, would compromise the appearance of neutrality.

## **GENERAL BACKGROUND INFORMATION**

The San Jose Elections Commission is established by ordinance of the City Council to monitor compliance with all City of San Jose campaign and ethics ordinances contained in Title 12 of the San Jose Municipal Code. Title 12 includes the following ordinances:

Chapter 12.02	General Provisions
Chapter 12.04	San Jose Elections Commission
Chapter 12.06	Municipal Campaign and Officeholder Contributions
Chapter 12.08	Prohibition of Gifts
Chapter 12.10	Revolving Door Restrictions
Chapter 12.12	San Jose Municipal Lobbying
Chapter 12.14	Concurrent Employment of City Council Members or City or Agency Employees
Chapter 12.15	Prospective Employment
Chapter 12.16.	Disclosure of Fundraising Solicitations

The Elections Commission also investigates complaints alleging violations of the City's Campaign Contribution Ordinance contained in Chapter 12.06 of the San Jose Municipal Code. Additionally, the Commission can make recommendations to the City Council with regard to campaign and ethics regulations and policies.

The Elections Commission has five members who are appointed by no less than two-thirds vote of the City Council. Generally, members of the Commission serve up to two four-year terms for a maximum of eight years. However, in early 2007, two Commissioners resigned and the term of the Commission's Chair, Tom Mertens, was set to expire on March 1, 2007. Thus, because of the Commission's considerable workload and Chair Mertens's experience on the Commission and in the subjects of publicly financed elections and campaign contribution issues, the City Council agreed on February 7, 2007, to extend Chair Tom Mertens's term for up to one additional year, to March 1, 2008, to enable the Commission to complete its work.

The City Attorney's Office provides legal advice to the Commission related to non-complaint matters or general interpretations of the Municipal Code or relevant state or federal law.

## INFORMATION REQUESTED

### A. Statement of Qualification Requirements

The Statement of Qualifications submitted in response to this RFQ must be no more than **10 pages** (excluding attachments and appendices) using a typeface font of no less than **12 pitch**. The Statement must address each of the questions and requests for information below. The attachment of an individual's or firm's resume in lieu of responding to one or more of the information requests set forth below will be deemed **non-responsive**.

Each Statement of Qualifications will be reviewed to determine if all required documentation and information has been included with the submittal and if the Proposer has met the qualifications.

If a Proposer fails to provide the required documentation and information, the Statement of Qualifications will be deemed non-responsive.

Proposers are requested to provide:

- A complete statement detailing the Proposer's educational, employment and professional background.
- Information regarding the Proposer's familiarity and experience with city, state and federal campaign, elections, conflicts of interest and ethics laws.
- Information regarding the Proposer's experience and skills in gathering and evaluating facts and legal principles. If available, Proposers should submit samples of written reports, decisions and/or briefs which demonstrate the experience and skills required for the position of Legal Consultant.
- A Proposer should submit an overall written approach for delivering the services to the Elections Commission as requested by the Commission in this RFQ. Information on the ability of the Proposer to meet the timelines and deadlines in the Commission's Regulations and Procedures should also be submitted.
- Proposers must identify any potential conflicts of interest that the individual and/or organization might have in providing services to the Commission and the City.
- Proposers must disclose any current or past working or contractual relationships with current or former elected officials of the City of San Jose.

B. Reference Statement

Proposers are required to provide a list of at least two (2) professional references including any firms, organizations or entities which have used or are familiar with Proposer's services in the past five years.

C. Description of Fees/Rates

Proposers are required to provide a schedule of fees or rates on an hourly basis as well as an estimate of the amount of time required to provide the services requested in this RFQ. Additionally, Proposers should also include information as to whether or not a retainer is required during the term of the Agreement and should specify the dollar amount of any such retainer.

**CONDITIONS OF RESPONDING TO RFQ**

A. Verification of Statements

The submission of statements and information within a proposal will be considered to constitute the Proposer's approval and consent for the Commission or the City to check, verify and certify all such information and statements. Additional information may be required by the Commission.

B. Terms and Conditions

1. The Elections Commission will not pay any costs incurred in the submission of a response. Each Proposer should be aware that the California Public Records Act (Gov. Code §§ 6250 et seq.) considers most documents provided to the Commission to be public records subject to public disclosure. The Commission is obligated to comply with the Act and cannot assure candidates that information provided to the Commission is confidential.
2. The Commission reserves the right to reject any items or groups of items submitted in response to this RFQ.
3. The Commission reserves the right to waive any minor informality or irregularity in any response.
4. The Commission reserves the right to negotiate any and all terms of an agreement with one or more Proposers, including scope of services and compensation, whether or not these terms are consistent with those prescribed in the RFQ.

5. The Commission, may, for any reason, decide not to award an Agreement as the result of this RFQ or decide to accept that Proposal which will, in the Elections Commission's opinion, be most advantageous to the Commission.
6. It is the City's policy that the selected individual or organization must not discriminate, in any way, against any person on the basis of race, gender, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of City of San Jose contracts and agreements.

## **SELECTION PROCESS AND EVALUATION CRITERIA**

### **A. Selection Process**

Set forth below are the criteria that the Elections Commission will use to evaluate responses to this RFQ. The Commission or a subcommittee of the Commission will evaluate the Statements of Qualifications of the Proposers. The City reserves the right to interview prospective individuals or organizations prior to making its selection. The City also reserves the right to rely on information from sources other than the information provided by the Proposers.

The Commission's preference is to select one individual or organization. The City, however, may determine to engage a different individual or organization to provide these services from the pool of individuals or organizations established through this RFQ process. In order to be included in the pool, an individual or organization must receive a minimum score of **70 points**.

Effective June 18, 2004, the City adopted Ordinance 27136, which established a Local and Small Business Preference Policy for the procurement of supplies, materials, equipment, general services and consulting services. In order for you or your firm to be eligible for local and/or small business preference, you must complete Attachment A1, Request for Contracting Preference for Local and Small Business. If you fail to complete this form, you or your firm will be denied consideration for local/small business preference. The requested information cannot be submitted after the deadline.

### **B. Evaluation Criteria**

The City will evaluate responses to this RFQ based on the following factors:

1. Experience (65 points)
  - a. Quality and depth of experience(s) and expertise regarding familiarity and experience with city and state campaign and election law.

- b. Information regarding the Proposer's experience and skills in gathering and evaluating facts and legal principles. If available, Proposers should submit samples of written reports, decisions and/or briefs which demonstrate the experience and skills required for the position of Legal Consultant.
  - c. Proposer should submit an overall written approach for delivering the services to the Elections Commission as requested by the Commission in this RFQ.
- 2. Fee Structure (20 points).
  - 3. Local or Small Business Enterprise (10 points).
    - a. Qualified Local Business Enterprise. (5 points)
    - b. Qualified Small Business Enterprise. (5 points)
  - 4. Responsiveness of Statement of Qualifications (5 points).

Overall organization and quality of Statement of Qualifications, including cohesiveness, conciseness, clarity of response and attention to detail.

## **PROPOSAL SUBMITTAL INFORMATION AND DEADLINE**

Responses to the RFQ and Statements of Qualifications from Proposers must be submitted to:

San Jose Elections Commission  
c/o Lee Price, City Clerk  
City of San Jose  
200 East Santa Clara Street  
San Jose, CA 95113  
Attn: RFQ Review

One (1) signed original and 5 copies of the responses to the RFQ must be submitted in sealed envelopes to the above address and responses must be received no later than 5:00 p.m., \_\_\_\_\_. Responses to the RFQ may be emailed to the City Clerk addressed to: \_\_\_\_\_

Responses received after the indicated time will not be considered for award of the proposed contract.

ATTACHMENT A

<b>City of San Jose</b> <b>Request for Contracting Preference for Local and Small Businesses</b>		
<p>Chapter 4.06 of the San Jose Municipal Code provides for a preference for Local and Small Businesses in the procurement of contracts for supplies, materials and equipment and for general and professional consulting services. The amount of the preference depends on whether the vendor qualifies as a Local Business Enterprise* or Small Business Enterprise** and whether price has been chosen as the determinative factor in the selection of the vendor.</p> <p>In order to be a Local Business Enterprise (LBE) you must have a current San Jose Business Tax Certificate Number and have an office in Santa Clara County with at least one employee. If you qualify as an LBE you can also qualify as a Small Business Enterprise (SBE) if the total number of employees (<i>regardless of where they are located</i>) of your firm is 35 or fewer.</p> <p>There are two ways in which the preference can be applied. In procurements where price is the determinative factor (<i>i.e. there are not a variety of other factors being considered in the selection process</i>) the preference is in the form of a credit applied to the <b>dollar value</b> of the bid or quote. For example, a non-local vendor submits a quote of \$200 per item and a LBE submits a quote of \$204 per item. The LBE receives a 2.5% credit on the quote, which equals approximately \$5 and thus the LBE will win the award because the quote is evaluated as if it had been submitted as \$199.</p> <p>In procurements such as a RFP there are usually a variety of factors evaluated to determine which proposal best meets the City's needs. In procurements such as these where price is not the determinative factor, an LBE or SBE will be given an <b>additional 5% to 10% points</b> in the <b>scoring</b> of their proposal.</p>		
<p>The following determinations have been made with respect to this procurement:            (for official use only)</p>		
<b>Type of Procurement</b>	<input type="checkbox"/> Bid	<input type="checkbox"/> Request for Quote
<input checked="" type="checkbox"/> Request for Proposal	<input type="checkbox"/> Price is Determinative	<input checked="" type="checkbox"/> Price is Not Determinative
<b>Amount of Preference</b>	LBE preference = 2.5% of <b>Cost</b> SBE preference = 2.5% of <b>Cost</b>	LBE preference = 5% of <b>Points</b> SBE preference = 5% of <b>Points</b>
<p><b>In order to be considered for any preference you must fill out the following statement(s) under penalty of perjury.</b></p>		
<b>Business Name</b>		
<b>Business Address</b>		

<b>Telephone No.</b>			
<b>Type of Business</b>	<input type="checkbox"/> Corporation	<input type="checkbox"/> LLC	<input type="checkbox"/> LLP
	<input type="checkbox"/> General Partnership	<input type="checkbox"/> Sole proprietorship	<input type="checkbox"/> Other (explain)
<b>*LOCAL BUSINESS ENTERPRISE (LBE) PREFERENCE</b> In order to qualify as an LBE you must provide the following information: <b>Current San Jose Business Tax Certificate Number</b>			
<b>Address of Principal Business Office or Regional, Branch or Satellite Office with at least one employee located in Santa Clara County:</b>			
<b>**SMALL BUSINESS ENTERPRISE (SBE) PREFERENCE</b> In order to qualify as an SBE you must qualify as an LBE and have 35 or fewer employees. This number is for your <b>entire</b> business --NOT just local employees, or employees working in the office address given above. <b>Please state the number of employees that your Business has:</b>			
Based upon the forgoing information I am requesting that the Business named above be given the following preferences ( <i>please check</i> ): <input type="checkbox"/> Local Business Enterprise <input type="checkbox"/> Small Business Enterprise I declare under penalty of perjury that the information supplied by me in this form is true and correct.			
Executed at:		, California	
Date:		_____	
Signature		_____	
Print name		_____	

## **ATTACHMENT B**

### **INSURANCE**

LEGAL CONSULTANT, at LEGAL CONSULTANT's sole cost and expense, must procure and maintain for the duration of this AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by LEGAL CONSULTANT, its agents, representatives, employees or subcontractors.

#### **A. Minimum Scope of Insurance**

Coverage must be at least as broad as:

1. The coverage described in Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and
2. The coverage described in Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 "any auto", or Code 2 "owned autos" and Endorsement CA 0025. Coverage must also include Code 8 "hired autos" and Code 9 "nonowned autos"; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. Professional Liability Errors & Omissions.

#### **B. Minimum Limits of Insurance**

LEGAL CONSULTANT must maintain limits no less than:

1. Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit will apply separately to this project/location or the general aggregate limit will be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident; and

4. Professional Liability Errors & Omissions \$1,000,000 Aggregate Limit.

**C. Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to, and approved by CITY's Risk Manager. At the option of CITY, either: the insurer must reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, employees, agents and contractors; or LEGAL CONSULTANT must procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the CITY's Risk Manager.

**D. Other Insurance Provisions**

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages
  - a. Insured. The City of San Jose, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, LEGAL CONSULTANT; products and completed operations of LEGAL CONSULTANT; premises owned, leased or used by LEGAL CONSULTANT; and automobiles owned, leased, hired or borrowed by LEGAL CONSULTANT. The coverage must not contain any special limitations on the scope of protection afforded to CITY, its officers, employees, agents and contractors.
  - b. Contribution Not Required. LEGAL CONSULTANT's insurance coverage shall be primary insurance as respects CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or contractors will be excess of LEGAL CONSULTANT's insurance and will not contribute with it.
  - c. Provisions Regarding the Insured's Duties After Accident or Loss. Any failure to comply with reporting provisions of the policies by LEGAL CONSULTANT will not affect coverage provided CITY, its officers, employees, agents, or contractors.
  - d. Coverage. Coverage must state that LEGAL CONSULTANT's insurance will apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. All Coverages

Each insurance policy required by this AGREEMENT must be endorsed to state that coverage will not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to CITY's Risk Manager.

E. **Acceptability of Insurers**

Insurance is to be placed with insurers acceptable to CITY's Risk Manager.

F. **Verification of Coverage**

LEGAL CONSULTANT must furnish CITY with certificates of insurance and with original endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the Risk Manager:

CITY OF SAN JOSE  
Department of Finance  
Debt & Risk Management Division  
200 East Santa Clara Street  
San Jose, CA 95113

G. **Subcontractors**

LEGAL CONSULTANT must include all subcontractors as insureds under its policies or must obtain separate certificates and endorsements for each subcontractor.