

**CITY OF SAN JOSE  
REQUEST FOR QUALIFICATIONS (RFQ)  
EVALUATOR (ATTORNEY) AND INVESTIGATOR –  
SAN JOSE ELECTIONS COMMISSION**

The City of San Jose is seeking to contract with a law firm or attorney licensed by the State of California with a background in and experience with ethics, election or political law to serve as an independent and neutral Evaluator for the City of San Jose Elections Commission (Elections Commission or Commission). In addition, the Evaluator would either employ or contract with an investigator experienced in conducting law enforcement, ethics or employment-related investigations to serve as an independent and neutral Investigator for the Commission.

**GOAL AND OBJECTIVE**

The City's goal and objective is to obtain complete, thorough and expeditious investigations and evaluations of complaints which are filed with the Elections Commission. The investigations and evaluations of complaints must be conducted within the highest legal and ethical standards. The evaluations and investigations must include in-depth and sound analysis of the facts, evidence and legal issues relating to complaints alleging violations of the "Ethics Provisions" contained in Title 12 of the San Jose Municipal Code, including the Municipal Campaign Contributions Ordinance and the San Jose Municipal Lobbying Ordinance (Chapters 12.06 and 12.12, respectively, of the San Jose Municipal Code).

Evaluator

The Evaluator will review and investigate complaints and prepare a written Report and Recommendations to the San Jose Elections Commission for each complaint. The evaluation and investigation process, including the report and recommendations of the Evaluator, will be required to be done on an expedited basis. The Evaluator must be neutral and impartial and must not have or appear to have any bias or favoritism toward any person or entity involved in any way with any complaint or investigation. The Evaluator, in order to avoid any potential or actual conflicts of interest, should be located outside of the County of Santa Clara and must forgo any involvement in political campaigns in the County of Santa Clara.

Investigator

The Investigator must have experience in investigative practices and procedures including skills in obtaining information and facts through interview and observation. In addition, it would be valuable for the Investigator to have familiarity with conflict of interest, campaign finance and lobbying laws. The Investigator must be willing to forgo involvement in political campaigns in the County of Santa Clara. The Investigator will review and investigate complaints and prepare a written report to either the Elections

Commission or the Commission's Evaluator when asked to assist with investigations of complaints which are conducted by the Commission's Evaluator. The investigation process, including the report of the Investigator, will be required to be done on an expedited basis. Additionally, at the request of the Commission, the Investigator will monitor compliance with the requirements of Title 12 of the Municipal Code and conduct audits. The Investigator must be neutral and impartial and must not have or appear to have any bias or favoritism toward any person or entity involved in any way with any complaint or investigation.

The Elections Commission will select the Evaluator/Investigator who will be hired by Agreement. The Commission will present the Agreement with the selected candidate to the City Council for approval on a public agenda. The Agreement with the Evaluator/Investigator will have up to a two-year term and will be subject to termination at the pleasure of the Elections Commission. The Agreement will be terminated if any circumstances arise which, in the judgment of the Commission, would compromise the appearance of neutrality.

Investigations by the Evaluator/Investigator and Elections Commission hearings are governed by Regulations and Procedures adopted by Resolution No. 75260 of the City Council of the City of San Jose, a copy of which is attached to this RFQ as Attachment C.

## **GENERAL BACKGROUND INFORMATION**

The San Jose Elections Commission is established by ordinance of the City Council to monitor compliance with all 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 and Definitions
Chapter 12.04	San Jose Elections Commission
Chapter 12.05	Elections
Chapter 12.06	Municipal Campaign 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
Chapter 12.18	Removal from Office
Chapter 12.19	Income and Time Disclosure
Chapter 12.20	Nepotism and Consensual Personal Relationships

The Elections Commission also investigates complaints alleging violations of the Municipal Campaign Contributions and San Jose Municipal Lobbying ordinances contained in Chapters 12.06 and 12.12 of the San Jose Municipal Code, respectively.

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.

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, but does not participate in investigations of complaints filed with the Commission. The Chair of the Commission or the Evaluator may consult with the City Attorney at any time about procedure or an interpretation of the Municipal Code, in general, and not as it applies to facts that are the subject of a pending complaint.

## **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 points with one-inch margins**. The Statement must address each of the questions and requests for information below. The attachment of a firm or individual's resume in lieu of responding to one or more of the information requests set forth below will be deemed **non-responsive**. Each proposer should submit one (1) original and seven (7) copies of the Statement of Qualifications.

Each Statement of Qualifications will be reviewed to determine if all required documentation and information was 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, licensure (either as an attorney licensed by the State of California or as a private investigator licensed by the California Department of Consumer Affairs, Bureau of Security and Investigative Services or both) and professional background.
- Information regarding the Proposer's familiarity and experience with City, State and federal campaign, election, conflicts of interest and ethics laws.
- Information regarding the Proposer's experience in conducting investigations and experience and skills in gathering and evaluating facts and legal principles.  
Proposers should submit at least one sample of a written investigation, report,

decision and/or brief which demonstrates the experience and skills required for the position of Evaluator/Investigator.

- The Proposer's overall approach for delivering services to the Elections Commission as requested in this RFQ, including the Proposer's plan for fulfilling the role of Investigator. Information on the ability of the Proposer to meet the timelines and deadlines in the Commission's Regulations and Procedures should also be submitted, and the Proposer should be prepared to discuss the ability to meet expedited deadlines if an interview is scheduled with the Elections Commission.
- Identification of any potential conflicts of interest that the Proposer might have in providing services to the Commission and the City.
- Any current or past working or contractual relationships of the Proposer 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 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 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 City 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 item 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 the Proposal that 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 firm must not discriminate, in any way, against any person on the basis of race, sex, 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 Commission reserves the right to interview prospective individuals or firms before making its selection. The Commission 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 firm to serve as its Evaluator. The City, however, may decide to engage a different individual or firm to provide these services from the pool of individuals or firms established through this RFQ process. In order to be included in the pool, an individual or firm 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 A,

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

1. Experience (65 points)
  - a. Quality and depth of the Proposer's experience with City, State and federal campaign, election, conflicts of interest and ethics laws.
  - b. The Proposer's experience in conducting investigations and skills in gathering and evaluating facts and legal principles. If available, this will include evaluation of samples of written investigations, reports, decisions and/or briefs submitted to demonstrate the experience and skills required for the position of Evaluator/Investigator.
  - c. The Proposer's overall approach for delivering services to the Elections Commission as requested in this RFQ. If available, this will include evaluation of information on the ability of the Proposer to meet the timelines and deadlines in the Commission's Regulations and Procedures.
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

RD:LH  
Evaluator/Investigator RFQ

200 East Santa Clara Street  
San Jose, CA 95113  
Attn: RFQ Review

One (1) signed original and seven (7) 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., Thursday, October 28, 2010**. Responses to the RFQ may be emailed to the City Clerk addressed to: [city.clerk@sanjoseca.gov](mailto:city.clerk@sanjoseca.gov).

Responses received after the indicated time may 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>			
The following determinations have been made with respect to this procurement: (for official use only)			
<b>Type of Procurement</b>	<input type="checkbox"/> Bid	<input type="checkbox"/> Request for Quote	<input checked="" type="checkbox"/> Request for Proposal
<b>Type of Preference</b>	<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>	
<b>In order to be considered for any preference you must fill out the following statement(s) under penalty of perjury.</b>			
<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)

**\*LOCAL BUSINESS ENTERPRISE (LBE) PREFERENCE**  
 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>	

**\*\*SMALL BUSINESS ENTERPRISE (SBE) PREFERENCE**  
 In order to qualify as an SBE you must qualify as an LBE and have 35 or fewer employees. This number is for your **entire** business - NOT just local employees, or employees working in the office address given above.

**Please state the number of employees that your Business has:**

Based upon the forgoing information I am requesting that the Business named above be given the following preferences (*please check*):

Local Business Enterprise       Small Business Enterprise

I declare under penalty of perjury that the information supplied by me in this form is true and correct.

Executed \_\_\_\_\_, California

at: \_\_\_\_\_

Date: \_\_\_\_\_

Signature \_\_\_\_\_

Print name \_\_\_\_\_

## **ATTACHMENT B**

### **INSURANCE**

EVALUATOR, at EVALUATOR'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 EVALUATOR, 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**

EVALUATOR 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: EVALUATOR will reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, employees, agents and contractors; or EVALUATOR will 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, EVALUATOR; products and completed operations of EVALUATOR; premises owned, leased or used by EVALUATOR; and automobiles owned, leased, hired or borrowed by EVALUATOR. The coverage will contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents and contractors.
  - b. Contribution Not Required. EVALUATOR's insurance coverage will 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 EVALUATOR's insurance and must 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 EVALUATOR must not affect coverage provided CITY, its officers, employees, agents, or contractors.
  - d. Coverage. Coverage must state that EVALUATOR'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**

EVALUATOR 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 must 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 E. Santa Clara Street  
San Jose, CA 95113

G. **Subcontractors**

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