

ARKANSAS PUBLIC EMPLOYEES RETIREMENT SYSTEM (“APERS”)

124 West Capitol Avenue
Suite 400
Little Rock, AR 72201

REQUEST FOR QUALIFICATIONS (“RFQ”) FOR OUTSIDE LEGAL COUNSEL

Securities Litigation, Class Action Monitoring and Advice; Asset Recovery

Deadline: Responses must be received by APERS before 5:00 p.m. (Little Rock, AR time) on Tuesday, April 30, 2019.

1. INTRODUCTION: The Arkansas Public Employees Retirement System (“APERS”) seeks to identify outside counsel qualified to provide legal services in, but not limited to, the areas of securities litigation, class action monitoring and advice, and asset recovery (See “Scope of Services” below for detailed description).

The following are attached to this RFQ:

Contact Data Sheet (to be completed and returned with response)

Specimen Contract and Grant Disclosure and Certification Form (subject to change)

2. BACKGROUND ON THE ARKANSAS PUBLIC EMPLOYEES RETIREMENT SYSTEM.

2.1. PURPOSE: APERS is a \$9 billion public pension plan created by the State of Arkansas pursuant to Act 177 of 1957 and is governed by the State’s retirement laws (A.C.A. §24-4-101, *et seq.*) APERS is a combination contributory/non-contributory multiple-employer defined-benefit pension plan qualified under IRC § 401(a). APERS administers a program of benefits (retirement, disability and survivor’s) for eligible employees and elected officials of Arkansas state and local governmental entities and their beneficiaries. APERS plan participants and annuitants number more than 97,000 persons. APERS invests employer and member contributions to the pension trust fund and administers the system for the exclusive benefit of pension plan members, annuitants, and their survivors or beneficiaries. As a public pension plan, APERS is not subject to Title I of ERISA.

2.2 ORGANIZATION: APERS is governed by a nine-member Board of Trustees, six of whom are appointed by the Governor. In addition, the State Treasurer, the State Auditor, and

the State Chief Fiscal Officer serve as *ex-officio* trustees. The APERS Executive Director, who is appointed by the Board of Trustees, is responsible for the overall administration of APERS and the programs of benefits it administers. APERS employs a professional staff to administer the pension plan and to manage its investment program.

2.3 INVESTMENTS: APERS may invest in any kind of property or type of investment consistent with the standards of A.C.A. §24-2-601 et seq., the prudent investor rule, and the APERS investment policies. To fund plan benefits, APERS invests in public equities, fixed income securities, and alternative assets, such as real estate, timberland and certain private placements. The APERS portfolio is externally managed. APERS delegates investment discretion to external managers. APERS engages a custodian bank to hold its assets and clear and settle public securities trades through broker-dealers. The custodian is authorized to lend APERS securities held by the custodian. The custodian appoints sub-custodians in foreign jurisdictions where APERS managers invest in locally traded securities of public issuers. APERS engages expert consultants and advisors to assist and advise the APERS board and staff regarding investment matters.

3. APERS OUTSIDE COUNSEL ENGAGEMENTS AND SCOPE OF SERVICES

3.1 GENERAL MATTERS REGARDING USE OF OUTSIDE COUNSEL: The Office of the Attorney General of Arkansas generally provides legal representation to APERS.

The purpose of this RFQ is to identify counsel qualified to provide legal services in, but not limited to, the areas of securities litigation, class action monitoring and advice, and asset recovery (See "Scope of Services" below for detailed description). Engagements are subject to approval by the Arkansas Attorney General. Counsel may be required to work in close cooperation with the Attorney General in any litigated matter.

Attorneys submitting qualifications must be licensed and admitted to practice in both federal and state courts.

The selected firm or individual will be expected to enter into negotiations with APERS to define further the services provided and the compensation of such services and the length of the engagement. Cost and experience will be particularly important.

Counsel's primary contact at APERS will be the Executive Director or his or her designee, and counsel's engagement will generally be coordinated through the APERS Executive Director. If requested by the Executive Director or Board of Trustees, counsel will attend APERS board meetings to present information and advice or to respond to questions.

The Executive Director must authorize use of the services of counsel pursuant to an engagement.

3.2 SCOPE OF SERVICES: Services will include, but not be limited to, the following:

3.2.1 Securities Litigation, Class Action Monitoring, and Asset Recovery: APERS will engage outside counsel to provide legal services in, but not limited to, the areas of securities

litigation, class action monitoring and advice, and asset recovery. Counsel will be expected to provide expert legal advice, services, and representation concerning securities litigation, including class action monitoring and advice; lead plaintiff status; calculation of losses, damages and claims; proofs of claim; possible objections to lead plaintiffs or to fee applications; investment policies; and potential liabilities of trustees and other APERS fiduciaries.

Securities law and litigation counsel must be experienced and qualified in matters relating primarily to class action shareholder litigation (fraud and related theories of recovery), including representation in either class or individual actions in federal or state courts. Due to the nature of the services requested, APERS prefers a large, multi-city, multi-office national law firm with expertise in these areas. To be qualified, counsel must be admitted to practice in both federal and state courts.

Counsel may be asked to advise APERS with respect to the best method for asserting securities fraud claims in litigation (*e.g.*, lead plaintiff vs. class member vs. separate federal or state action), and must be qualified to represent APERS either as sole plaintiff or as lead plaintiff in a class action. Counsel may also be asked to analyze APERS trading data for purpose of calculating losses and class-period damages for lead plaintiff and claims purposes and to advise APERS regarding fee requests by lead counsel and class action settlement proposals. Counsel may be asked to intervene and appear in class action litigation on behalf of APERS to object to fee requests or settlement proposals. (APERS generally files proofs of claim in class actions).

APERS endeavors to take every opportunity to recover lost pension fund assets. In furtherance of this effort, APERS prefers to engage outside counsel that is able to conduct ongoing client portfolio monitoring (tracking portfolio trading and cross-referencing the trading against potential securities claims). In this regard, outside counsel will be expected to review the System's portfolio losses on a regular basis, investigate potential claims and prepare detailed reports of findings, and present the findings to APERS so that informed decisions can be made. Preference will be given to firms that have the ability to monitor the APERS portfolio in this regard through access to the APERS custodial account, rather than requesting APERS staff for information regarding securities holdings.

Outside counsel will provide specialized legal advice on matters involving the exercise of the fiduciary responsibilities of the board and key staff members and on matters involving potential trustee liability. Fiduciary counsel must be able to demonstrate substantial practical knowledge, skill, and experience with respect to the legal duties of trustees, including without limitation the common law of trusts as set forth in the Restatements of the Law of Trusts, the Arkansas statutory law of trusts as found in the Arkansas Code, and relevant cases.

Counsel must be conversant with investment matters generally, including portfolio theory. Preferably, counsel should be acquainted with the special legal concerns of public pension systems and institutional investors. Additionally, it will be helpful if counsel has experience (and must be able to develop expertise) with ERISA (APERS is not subject to ERISA), the Internal Revenue Code as it relates to qualified governmental plans, and actuarial funding of pension plans, particularly defined benefit plans.

Familiarity and experience with state-law open government requirements is a positive factor that may be considered in selecting outside counsel. Finally, counsel should be able to demonstrate political sophistication and sensitivity to conflicts of interest questions and related ethical issues.

If requested by the Executive Director or the Board of Trustees, counsel will attend APERS committee or board meetings to present information and advice and to respond to questions.

Counsel may be required to work in close cooperation with the Arkansas Attorney General in any litigated matter.

3.3 TERMS OF AGREEMENT:

3.3.1 All engagements must be evinced by a standard APERS form of Outside Counsel Agreement. A typical term for an engagement would be for a fiscal year (July 1 – June 30), with optional renewals by APERS for one or more additional fiscal years as needed. At its option, APERS may seek approval from the Arkansas Attorney General and the Department of Finance and Administration and review by the Arkansas Legislative Council for additional renewals or for an extended initial term. Services under this RFQ will not commence before July 1, 2019. Each agreement is subject to the inclusion of all applicable statutory requirements and any required internal and external approvals, including the approval of the Arkansas Attorney General, as applicable.

Billing proposals will be evaluated in terms of minimizing costs and maximizing recoveries.

APERS retains the right to terminate the agreement for any reason and at any time.

3.3.2 Counsel must agree to comply with Governor's Executive Order 98-04, the disclosure and certification requirements thereunder, and the conflict of interest provisions of the agreement.

3.3.3 Counsel must execute the required State of Arkansas disclosure forms as well as any other required forms as the occasion may warrant. A copy of the disclosure forms is attached to this RFQ.

4. RESPONSE INSTRUCTIONS:

4.1 Response Form and Format:

4.1.1 To be considered, responses must be received by APERS no later than 5:00 p.m. (Little Rock, AR time) on April 30, 2019. APERS reserves the right and sole discretion to consider responses received after the deadline when deemed by APERS to be in the best interest of APERS. Responses must be submitted to the attention of Frank J. Wills, III, Deputy Executive Director, Arkansas Public Employees Retirement System, 124 West Capitol Avenue, Suite 400, Little Rock, AR 72201. A response must set forth each question or request for information required by Section 5 below, followed by the narrative answer. Supplemental information (such

as general firm information or attorney resumes), if any, must be restricted to appendices following the responses.

4.1.2 The attached Contact Data Sheet should be completed and included as the first page of the applicable response (it is not included in the page count). The pages of each response submitted must be numbered sequentially (beginning after the Contact Data Sheet), with the name of the firm printed on each page. A response, inclusive of appendices and any title page, must be on standard white or buff 8-1/2" x 11" paper in at least 10-point type, and may not exceed ten pages for each subject matter area. Three stapled copies of each submission, punched for standard three-hole binder, must be submitted under a cover letter on firm letterhead.

RESPONSES SHOULD BE NARROWLY FOCUSED ON FIRM AND ATTORNEY COMPETENCY, QUALIFICATIONS, AND EXPERIENCE IN SUBSTANTIALLY SIMILAR CLIENT MATTERS FOR SIMILAR CLIENTS.

APERS reserves the right to accept or reject any or all of the responses submitted. The information contained in this RFQ is intended to serve only as a general description of the services that may be needed by APERS. APERS intends to use responses as a basis for further negotiation of specific details with the responding counsel, including additions, deletions or modifications to the terms of the responses submitted. This request does not commit APERS to pay any costs incurred prior to the execution of an agreement with Counsel. Issuance of this request for qualifications does not obligate APERS to enter into a contract or to pay any costs incurred in the preparation of a response.

For additional information concerning the requirements of this RFQ, please contact Frank J. Wills, III, Deputy Executive Director, at 501-682-7856, or by email: jay.wills@arkansas.gov. This should be the only point of contact with APERS regarding this RFQ. Contact with APERS Board members or other decision makers regarding this matter prior to selection of counsel may be grounds for disqualification.

5. REQUESTED INFORMATION:

5.1 If an individual, please provide a resume' and biographical sketch describing your education, experience, speaking engagements or other activities, and publications.

5.2 If with a firm, please provide a description of your law firm, including historical background, number and location of firm offices, number of attorneys, and major areas of practice.

5.3 Please state whether your response excludes any services contemplated by the RFQ as set forth in the scope of services in section 3.2.

5.4 Please state whether your firm is able to conduct ongoing client portfolio monitoring (tracking portfolio trading and cross-referencing the trading against potential securities claims)

by reviewing the System's portfolio losses on a regular basis, investigating potential claims, preparing detailed reports of findings, and presenting the findings to APERS.

5.5 Please state whether your firm has the ability to monitor the APERS portfolio in this regard through access to the APERS custodial account, rather than requesting information regarding securities holdings from APERS staff.

5.6 Subject to the consent of clients as required by applicable ethics rules, please provide a listing of representative clients. Responses may, with the consent of the clients, include names and phone numbers of specific references. Subject to the clients' consent, identify specifically any pension plans or other major institutional investors, either private or public, to which you render or have rendered significant legal services concerning the relevant subject area(s) during the past year. If no clients consent, or if you elect not to request such consent, please so state and describe the representative clients in general terms to support your firm's qualification and experience to represent APERS.

5.7 Please provide a very brief summary resume describing the education, legal or investment experience, recent speaking engagements, and a list of significant, relevant publications of the attorney or attorneys proposed to work as lead attorney(s).

5.8 Please provide a very brief summary general description of your firm's practice in the subject matter areas covered by this RFQ, including the size and scope of the practice and any other resources of your firm that are relevant to your practice in those areas.

5.9 Please provide a very brief summary description of not more than ten (10) significant transactions or cases in which your firm has provided extensive legal services involving pension funds or other institutional clients relating to the subject matter areas covered by this RFQ.

5.10 Please describe proposed billing arrangements, including contingency fees, for securities litigation. If other than contingency fees are contemplated, please state the range of hourly billing rates, by timekeeper status (paralegal, 1st to 3rd year associate, etc., staff attorney, shareholder or partner, of counsel, etc.), of all attorneys and paralegals proposed for assignment to APERS matters. In addition, please state what discount, if any, to these rates the firm proposes to provide to APERS. While this RFQ primarily seeks the services of one lead attorney, the involvement of other firm attorneys may be required from time to time, depending on the matter.

5.11 Please state any inability to comply with terms of the engagement as described in Section 3.3 of this RFQ. If any such inability exists, please be specific.

5.12 Please identify any known relationship, either business or personal, which you or a member of your firm has with any APERS Board member, investment consultant, investment manager, or key employee. If aware of none, please state "None." A list of APERS Board members, investment consultants, investment managers, and key employees can be provided upon request. A formal conflicts check will be required prior to contracting.

5.13 Please identify any relationship, either business or personal, which you or a member of your firm has with a person known to you to have substantial business dealings with APERS.

5.14 Please state whether you or any firm attorney proposed to provide services for this engagement has ever had a formal grievance or complaint lodged against him or her pursuant to the applicable disciplinary rules, or has ever been sued for malpractice, or has ever had any civil or criminal regulatory enforcement action taken in connection with any type of legal representation, and whether any such attorneys have been sued individually with respect to any type of personal investment or other personal or business involvement concerning an underwriter or issuer of securities, investment adviser, investment company, securities broker-dealer, insurer, real estate transaction, or a lending institution.

5.15 For your response to this RFQ, please indicate the firm's or attorney's professional liability insurance limits within the following ranges, and the name of the carrier or carriers.

- None
- Under \$1 million
- \$1 million to \$5 million
- Over \$5 million, up to \$10 million
- Over \$10 million

Please indicate below the range or the deductible or any self-insured retention with respect to the foregoing insurance.

- None
- Between 0 and \$100,000
- Between \$100,001 and \$500,000
- Between \$500,001 and \$1 million
- Over \$1 million

6. REVIEW

6.1 APERS will make its final selection of counsel based upon a number of criteria, including the respondent's demonstrated competence, experience, knowledge, qualifications, written and verbal communication skills, ability to comply with APERS contracting and invoicing requirements, absence of disqualifying relationships or conflicts of interest, and reasonableness of proposed fees, among others. Respondents may be asked to come to Little Rock for an interview and to discuss the firm's experience and qualifications for APERS engagements.

6.2 The contract for engagement of outside counsel will be submitted to the Arkansas Attorney General for approval. The base form of the contract is the "State of Arkansas Professional/Consultant Services Contract form that is not subject to negotiation. See the attachments to this RFQ for related forms and attachments. By publishing this Request for

Qualifications, APERS has not committed itself to engage counsel at all or for any particular scope of services or term of agreement. APERS reserves the right to reject any and all responses and to solicit new responses.

ARKANSAS PUBLIC EMPLOYEES RETIREMENT SYSTEM

CONTACT DATA SHEET FOR

REQUEST FOR QUALIFICATIONS ("RFQ") FOR OUTSIDE COUNSEL

TO BE COMPLETED AND SUBMITTED WITH YOUR RESPONSE

Full legal firm name: _____

Name of lead attorney contact: _____

Lead attorney's telephone no: _____

Lead attorney's facsimile no: _____

Lead attorney's email address: _____

Firm Internet address: _____

Firm main switchboard no: _____

Firm main mailing address: _____

Lead attorney's mailing address if different from above: _____

State where lead attorney licensed: _____

States where attorneys are licensed: _____

Range of hourly rates proposed: _____

CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM

Failure to complete all of the following information may result in a delay in obtaining a contract, lease, purchase agreement, or grant award with any Arkansas State Agency.

SOCIAL SECURITY NUMBER _____ OR _____ FEDERAL ID NUMBER _____

SUBCONTRACTOR: Yes No

SUBCONTRACTOR NAME: _____

TAXPAYER ID # _____

IS THIS FOR: Goods?

Services? Both?

YOUR LAST NAME: _____

FIRST NAME: _____

M.I.: _____

ADDRESS: _____

CITY: _____

STATE: _____

ZIP CODE: _____

COUNTRY: _____

AS A CONDITION OF OBTAINING, EXTENDING, AMENDING, OR RENEWING A CONTRACT, LEASE, PURCHASE AGREEMENT, OR GRANT AWARD WITH ANY ARKANSAS STATE AGENCY, THE FOLLOWING INFORMATION MUST BE DISCLOSED:

FOR INDIVIDUALS *

Indicate below if: you, your spouse or the brother, sister, parent, or child of you or your spouse is a current or former: member of the General Assembly, Constitutional Officer, State Board or Commission Member, or State Employee:

Position Held	Mark (V)		Name of Position of Job Held [senator, representative, name of board/ commission, date entry, etc.]	For How Long?		What is the person(s) name and how are they related to you? [i.e., Jane Q. Public, spouse, John Q. Public, Jr., child, etc.]	Relation
	Current	Former		From MM/YY	To MM/YY		
General Assembly							
Constitutional Officer							
State Board or Commission Member							
State Employee							

None of the above applies

FOR AN ENTITY (BUSINESS) *

Indicate below if any of the following persons, current or former, hold any position of control or hold any ownership interest of 10% or greater in the entity: member of the General Assembly, Constitutional Officer, State Board or Commission Member, State Employee, or the spouse, brother, sister, parent, or child of a member of the General Assembly, Constitutional Officer, State Board or Commission Member, or State Employee. Position of control means the power to direct the purchasing policies or influence the management of the entity.

Position Held	Mark (V)		Name of Position of Job Held [senator, representative, name of board/ commission, data entry, etc.]	For How Long?		What is the person(s) name and what is his/her % of ownership interest and/or what is his/her position of control?	Ownership Interest (%)	Position of Control
	Current	Former		From MM/YY	To MM/YY			
General Assembly								
Constitutional Officer								
State Board or Commission Member								
State Employee								

None of the above applies

Contract and Grant Disclosure and Certification Form

Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that Order, shall be a material breach of the terms of this contract. Any contractor, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the agency.

As an additional condition of obtaining, extending, amending, or renewing a contract with a state agency I agree as follows:

1. Prior to entering into any agreement with any subcontractor, prior or subsequent to the contract date, I will require the subcontractor to complete a CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM. Subcontractor shall mean any person or entity with whom I enter an agreement whereby I assign or otherwise delegate to the person or entity, for consideration, all, or any part, of the performance required of me under the terms of my contract with the state agency.
2. I will include the following language as a part of any agreement with a subcontractor:

Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that Order, shall be a material breach of the terms of this subcontract. The party who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the contractor.
3. No later than ten (10) days after entering into any agreement with a subcontractor, whether prior or subsequent to the contract date, I will mail a copy of the CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM completed by the subcontractor and a statement containing the dollar amount of the subcontract to the state agency.

I certify under penalty of perjury, to the best of my knowledge and belief, all of the above information is true and correct and that I agree to the subcontractor disclosure conditions stated herein.

Signature _____ Title _____ Date _____

Vendor Contact Person _____ Title _____ Phone No. _____

<i>Agency use only</i>		
Agency Number _____	Agency Name _____	Agency Contact Person _____
		Agency Contact Person _____
		Agency Phone No. _____
		Agency Contact Person _____
		Agency Phone No. _____
		Agency Contact Person _____
		Agency Phone No. _____