

ARKANSAS PUBLIC EMPLOYEES' RETIREMENT SYSTEM

124 West Capitol, Suite 400
Little Rock, Arkansas 72201

REQUEST FOR QUALIFICATIONS ("RFQ") FOR OUTSIDE LEGAL COUNSEL

Tax Matters; Federal Tax Law Regarding Governmental Pension Plans and related law such as, ERISA and Social Security, Tax Litigation, Tax Legislation, Fiduciary Responsibilities, and Other General Legal Issues;

1. **INTRODUCTION.** APERS seeks to identify outside counsel qualified to provide legal services in, but not limited to, the following areas. See "Scope of Services" below for detailed descriptions.

- **TAX MATTERS**
- **ERISA**
- **I.R.C § 401(a) COMPLIANCE**
- **TAX LITIGATION**
- **TAX LEGISLATION**
- **FIDUCIARY RESPONSIBILITIES AND OTHER GENERAL LEGAL ISSUES.**

The following are attached to this RFQ:

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

Specimen State of Arkansas Professional/Consultant Services Contract (subject to change)

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

2. **BACKGROUND ON THE ARKANSAS PUBLIC EMPLOYEES' RETIREMENT SYSTEM ("APERS").**

2.1 **PURPOSE.** APERS is a \$10 billion dollar public pension plan created by the State of Arkansas pursuant to Act 177 of 1957 and governed by the state's retirement laws (A.C.A. § 24-4-101 *et seq.* and public retirement plans generally at A.C.A. § 24-1-101 – 24-2-704). 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 employees of the state of Arkansas and other participating public employers. APERS active, deferred, and retired participants and annuitants number more than 99,000 persons. APERS invests employer and member contributions into the pension trust fund and administers the system for the exclusive benefit of pension plan members, annuitants, and their survivors or beneficiaries. As a governmental pension plan, APERS is not subject to Title I of ERISA.

2.2 **ORGANIZATION.** APERS is governed by a nine-member Board of Trustees, three who are state employees and three who are nonstate employees, appointed by the

Governor. In addition, the Auditor of State, the Treasurer of State, and the Secretary of the Department of Finance and Administration serve as ex-officio trustees. The APERS Executive Director, 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. To fund plan benefits, 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. The APERS portfolio is externally managed and APERS delegates investment discretion to external managers. A custodial bank holds APERS' assets. APERS engages expert consultants and advisors to assist and advise the APERS board and staff regarding investment matters. APERS must ensure that investment functions and implications of those investments are compliant with state and federal tax laws.

3. GENERAL MATTERS REGARDING USE OF OUTSIDE COUNSEL AND SCOPE OF SERVICES

The Office of the Attorney General of Arkansas generally provides legal representation to APERS in matters extending beyond the scope of its in-house counsel. However, APERS may engage outside counsel on an as-needed basis in connection with any of its duties, including but not limited to: investment guidelines, tax qualification, complex litigation, and other matters requiring specialization. The APERS Executive Director has primary responsibility to select, manage, monitor and coordinate the provision of legal services by outside counsel.

The purpose of this RFQ is to identify law firms and attorneys who are qualified to serve as outside counsel. Depending on APERS' needs and the subject matter area, outside counsel may be engaged on a retainer basis for ongoing representation in multiple matters. Engagements are subject to Attorney General approval.

This RFQ does not affect retainer agreements or designations for pending matters already assigned to outside counsel. However, upon completion of the selection process described herein, any pre-existing designations of outside counsel in the practice areas that are the subject of this RFQ will expire. Any outside counsel currently designated as outside counsel who seek to be eligible for future retentions must submit qualifications in accordance with this RFQ.

The selected firm(s) or individual(s) will be expected to negotiate with APERS to further define the services provided and the compensation of such services and the length of the engagement. Cost and past experience will be particularly important. **Attorneys submitting qualifications must be licensed to provide legal services in Arkansas.**

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

The Executive Director must authorize the particular services of outside counsel prior to engaging outside counsel to provide any service.

Familiarity and experience with public pension trust fund concepts, state agency procedures, fiduciary standards and responsibilities, Arkansas freedom of information laws, CPA or accounting background, and the ability to handle complex litigation are positive factors considered in selecting outside counsel.

3.1 Tax Matters, ERISA and § 401(a) compliance

APERS engages outside tax counsel to provide expert legal advice primarily on employee benefit plan design, qualification, and administration under §401(a) of the Internal Revenue Code. Outside tax counsel will have extensive relevant experience applicable to governmental plans, including defined benefit plans and § 457 plans.

Outside tax counsel should be knowledgeable of the special legal concerns of public pension systems and plan designs as embodied in statutory law and regulations. Additionally, outside tax counsel should have experience and familiarity with ERISA plan design, fiduciary standards, and pension plan administration. Outside tax counsel should be conversant with federal withholding issues and unrelated business income tax statutes, rulings, cases, and regulations. Outside tax counsel should be able to demonstrate political sophistication and sensitivity to conflicts of interest questions and related ethical issues.

Outside tax counsel may be required to represent APERS before the U.S. Internal Revenue Service. Outside tax counsel shall represent APERS on an “as-needed” basis as requested by APERS to:

Review existing and proposed constitutional provisions, statutes, rules and plan documents or procedures relating to qualification and administration of the APERS pension plan and benefits.

Prepare plan qualification determination requests, represent the retirement plan in applying for a determination letter, and represent APERS before the IRS to obtain a plan qualification determination letter.

Assist APERS in obtaining other tax-related rulings, letters and determinations from the U.S. Internal Revenue Service.

Respond with formal legal opinions or memoranda of law to questions submitted by the Executive Director, if requested, regarding federal tax issues, including, but not limited to, compliance with plan qualification requirements, federal income tax withholding, employee benefits and pension plan design, plan qualification determinations, unrelated business taxable income, and plan distribution rollovers.

Assist in drafting proposed rules and legislation and other documents relating to pension plan operations that will comply with federal law requirements for public pension plans.

Assist in the communication of concerns involving plan design, qualification, and/or administration to trustees, staff, consultants, advisors and other parties, including testifying before or responding to elected or appointed officials in the legislative and executive branches of government.

Assist and advise in drafting board rules affecting plan qualification or administration.

Advise APERS of any action needed, including specific changes in plan provisions to maintain plan qualification.

Advise APERS concerning unrelated business taxable income issues.

Advise APERS concerning rollovers of distributions from other plans or from TRS and concerning direct trustee-to-trustee transfers.

Attend meetings and hearings as requested, including legislative hearings, to testify, present information, or respond to questions concerning plan design, qualification issues, and other federal tax issues.

Attend APERS Board meetings as requested to answer questions regarding pension and employee benefits plan design and qualification or other federal tax issues.

3.2 Tax Litigation

APERS may engage outside counsel in various types of litigation where a high degree of tax matters specialization is required, as approved by the Attorney General. If litigation services are required, the selected firm or attorney will be available to:

Provide legal research and/or advisory opinions.

Assist in discovery and settlement negotiations.

Represent APERS in complex civil litigation in federal and state courts and administrative forums.

Attend APERS Board meetings to present information and advice and to respond to questions.

3.3 Tax Legislation

The Arkansas General Assembly meets every other year to consider and pass laws, some of which may affect the administration of APERS and the performance of its duties. To ensure that APERS may assist the legislature in evaluating and proposing legislation that comports with APERS' plan design and fiduciary responsibilities, outside counsel shall be prepared to, as requested by APERS:

Advise APERS regarding the effect of proposed legislation on the plan's tax-qualified status.

Assist in drafting proposed rules and other documents relating to pension plan operations that will comply with federal law requirements for public pension plans.

Assist in the communication of concerns involving plan design, qualification, and/or administration to trustees, staff, consultants, advisors and other parties, including testifying before or responding to elected or appointed officials in the legislative and executive branches of government.

3.4 Fiduciary Responsibilities and Other General Legal Issues

APERS engages outside counsel to supplement legal advice its Board and key personnel receive from its in-house counsel and from the Arkansas Attorney General regarding fiduciary responsibilities and other general legal issues. Outside counsel will

provide specialized legal advice on matters involving the exercise of the fiduciary responsibilities of the Board and key staff members regarding tax implications of its decisions and on matters involving potential trustee liability. These services of outside counsel must be authorized by the Executive Director and will generally be coordinated through the office of the APERS General Counsel.

Outside 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 case law. Outside counsel should be acquainted with the special legal concerns of public pension systems and institutional investors. Outside counsel must be conversant with the tax implications of investment matters generally. Outside counsel shall have 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. Outside counsel will be expected to have a working knowledge of the state laws creating or governing the retirement system. Finally, outside counsel should be able to demonstrate political sophistication and sensitivity to conflicts of interest questions and related ethical issues, especially as they apply to the tax implications of legislation, rules, investments, and financial transactions involving APERS. Outside counsel will perform the following duties in this area as requested by the Executive Director:

Respond with formal legal opinions to questions regarding fiduciary duties submitted by the Board, the Executive Director, or the Executive Director's designee.

Provide support for education and training programs on fiduciary responsibility to the Board and to key staff.

Provide requested opinions on ethics and conflict of interest questions regarding system fiduciaries.

Assist as requested in the communication of fiduciary concerns involving APERS to trustees, staff, consultants, advisors and other parties.

Attend APERS board meetings and respond to questions regarding fiduciary duties.

Provide advice on potential liabilities of trustees and other APERS fiduciaries.

4. TERMS OF AGREEMENT

All engagements must be evidenced by a standard APERS form of Outside Counsel Agreement. A typical term for an engagement would be a fiscal year (July 1 – June 30), with optional renewals by APERS for one additional fiscal year as needed. At APERS' option, APERS may seek approval by the Arkansas Attorney General and the Department of Finance and Administration and review by the Arkansas Legislative Council for additional renewals or an extended initial term. Services under this RFQ will not commence before Wednesday, January 6, 2021. Each agreement is subject to inclusion of all applicable statutory requirements and any required internal and external approvals, including the approval of the Arkansas Attorney General, as applicable.

APERS prefers hourly fees for services on a retainer basis. Each engagement will be subject to a fee cap specified in the agreement. APERS retains the right to terminate the agreement for any reason and at any time upon the payment of fees and expenses earned to date.

Outside 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.

Outside counsel must execute the required State of Arkansas Professional/Consultant Services Contract form and attachments thereto and must comply with the representations, warranties and certifications set forth therein. A copy of the form and attachments are attached to this RFQ.

5. RESPONSE INSTRUCTIONS.

Response Form and Format. **To be considered, responses must be received in the office of the APERS Director no later than 5:00 p.m. (Little Rock, AR. time) on Wednesday, January 6, 2021.** 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 Duncan Baird, Executive Director, Arkansas Public Employees' Retirement System, 124 West Capitol, Suite 400, Little Rock, AR 72201. A response must set forth each question or request for information required by Section 6 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.

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 outside 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 outside 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 Laura Gilson, Chief Legal Counsel at 501-682-7853 or laura.gilson@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 will be grounds for disqualification.**

6. REQUESTED INFORMATION

- a. If an individual, provide a resume and biographical sketch describing your education, experience, speaking engagements or other activities, and publications.
- b. If with a firm, provide a description of your law firm, including historical background, number and location of firm offices, number of attorneys, and major areas of practice.

- c. State whether your response excludes any services contemplated by the RFQ set forth in the scope of services in sections 3.1 through 3.4.
- d. Subject to the consent of clients as required by applicable ethics rules, 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, either private or public, to which you render or have rendered significant legal services concerning the relevant subject area(s) during the past five (5) years. If no clients consent, or if you elect not to request such consent, please so state and described the representative clients in general terms to support your firm's qualification and experience to represent APERS.
- e. Provide a 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).
- f. Provide a 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 which are relevant to your practice in those areas.
- g. State the range of hourly billing rates, by timekeeper status (as applicable, ex.: 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. State what discount, if any, to these rates the firm proposes to provide to APERS.
- h. State any inability to comply with terms of the engagement and Scope of Services described in Section 3 of this RFQ. If any inability exists, be specific.
- i. Identify any known relationship, either business or personal, which you or a member of your firm has with any APERS Board member or key employee. If aware of none, state "None." (A list of APERS Board members and key employees can be provided upon request. A formal conflicts check will be required prior to contracting.)
- j. 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.
- k. 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 regarding the practice of law under the Scope of Services described in Section 3 of this RFQ pursuant to the applicable disciplinary rules or has ever been sued for malpractice or any civil or criminal regulatory enforcement action in connection with any type of legal representation which may affect you or your firm's representation of APERS where such matter not disclosed to APERS beforehand would create an appearance of impropriety, and whether any such attorneys have been sued individually with respect to such claims, including such matters as a failure to pay income tax individually or through the firm.
- l. Please indicate the firm's or attorney's professional liability insurance limits, including the deductible or any self-insured retention with respect to such insurance.

7. REVIEW

APERS will make its final selection of outside 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 actions, relationships, or conflicts of interest, and reasonableness of proposed fees. Respondents may be asked to come to Little Rock for an interview to discuss the firm's experience and qualifications for APERS engagements.

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 outside 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.

| | |
|-----------------|------------|
| Applicant Name: | Evaluator: |
|-----------------|------------|

RFQ APERS Tax Attorney – Individual Review Form

| TOTAL POINTS SCORED | | | MAXIMUM: 100 | TOTAL: |
|---------------------|--|--|-----------------|----------------|
| | RFQ Section | | Maximum points | Total received |
| Criteria A: | 3.1 and 3.3 Relevant tax experience of the firm and the attorney/s | Ex: Federal, state, 401(a) compliance; knowledge of state pension plans; drafting tax legislation; CPA | 20 | |
| Comments | | | | |
| Criteria B: | 3.1 Proposed work plan and understanding of the needs of APERS | Ex: State agency billing practices; Work billing (hourly or flat); methods used to respond (written or oral; formal or informal); FOIA | 20 | |
| Comments | | | | |

| | |
|-----------------|------------|
| Applicant Name: | Evaluator: |
|-----------------|------------|

| | | | | |
|-------------------|--|---|----|--|
| Criteria C | 3.2 Demonstrated ability to perform the services referred to in the RFQ | Ex: Work experience and client experience; publications, speaking appearances, other demonstrated competence in tax; tax litigation | 20 | |
| Comments | | | | |
| Criteria D | 3.4, 6.i., 6.k., 6.l. Fiduciary standards and responsibility-Ethics and Disclosure | Ex: Malpractice claim history; Malpractice Insurance | 15 | |
| Comments | | | | |
| Criteria E | 6.g. Fees and the value for the services | Ex: Learning curve; bill drafting or other useful accounting software | 15 | |
| Comments | | | | |

| | |
|-----------------|------------|
| Applicant Name: | Evaluator: |
|-----------------|------------|

| | | | | |
|-------------------|--|--|----|--|
| Criteria F | 6.d. References and recommendations of other clients | Ex: Strength of reference, number of clients, etc. | 10 | |
| Comments | | | | |

Signature of Evaluator: _____ Date: _____