

NEW HAMPSHIRE RETIREMENT SYSTEM

REQUEST FOR PROPOSALS FOR LEGAL SERVICES

This Request for Proposals (“RFP” or “solicitation”) invites the submission of offers to the New Hampshire Retirement System (“NHRS”) for the provision of legal services in one or both of the following areas: (1) Fiduciary Counsel; and/or (2) Tax and Benefits Administration and Legislative Counsel. NHRS intends to enter into letters of engagement with one or more entities for each of the areas described above.

A. LEGAL SERVICES SOUGHT

I. Background.

The New Hampshire Retirement System (“NHRS”) is a contributory public employee governmental defined benefit plan intended to be qualified under section 401(a) of the Internal Revenue Code (Code) and funded through a trust which is exempt from tax under Code Section 501(a). Assets under management were approximately \$8.87 billion as of June 30, 2018. NHRS provides benefits to its eligible members and their beneficiaries upon retirement, disability, death or other termination of employment. Benefits are based on members’ average final compensation and years of creditable service. Separate benefit structures apply to Group I members (employees and teachers) and Group II members (police officers and firefighters). In addition, NHRS administers a Code Section 401(h) subtrust for four post-retirement medical plans covering qualified retired members. It has approximately 48,000 active members including firefighters, police officers, teachers, and state and local government employees. Approximately 35,000 individuals currently receive a monthly benefit from NHRS.

The plan is administered by the NHRS Board of Trustees (“Board”), consisting of 13 members including the State Treasurer as an ex-officio member, four public non-members, four employer representatives, one employee, one teacher, one police officer, and one firefighter. NHRS is governed by New Hampshire RSA 100-A, the rules and regulations promulgated by the Board and Federal laws. The Board of Trustees formulates administrative policies and procedures, authorizes benefit payments to members and their beneficiaries and manages the trust fund. The Executive Director oversees administrative functions which are carried out by the administrative staff of approximately 60 employees.

II. General Requirements.

The Board’s activities require legal support as necessary and appropriate. It is expected that outside counsel will advise the Board on legal matters and represent the Board before

third parties. The nature and extent of legal services needed by the Board cannot be predetermined with reasonable precision. Consequently the Board will enter into letters of engagement with one or more legal entities for the provision of legal services in each of the areas described in Section A.III., below. Legal entities may provide services in one or both areas. The NHRS will issue work matters under the letters of engagement as needed.

III. Statement of Work.

- a. The specific areas in which the Board anticipates needing legal support are:
 1. Fiduciary Counsel: Provision of legal advice on matters such as:
 - A. Fiduciary duties;
 - B. Ethics and conflicts of interests;
 - C. Investment policies and procedures;
 - D. Liability and insurance;
 - E. Annual report;
 - F. Annual audit; and
 - G. Bonding requirements.
 2. Tax and Benefits Administration and Legislative Counsel: Provision of legal advice on plan administration issues such as:
 - A. Tax qualification issues;
 - B. Taxation of distributions;
 - C. Compliance with IRS reporting requirements;
 - D. Entitlement to and calculation of benefits;
 - E. Qualified Domestic Relations Orders;
 - F. Summary plan descriptions;
 - G. Drafting, reviewing and interpreting legislation; and
 - H. Funding issues.

- b. Under the direction of NHRS Executive Director or designee, the legal areas described above require the successful legal entity to, among other things:
1. Provide oral and written legal advice to the Board;
 2. Advise the Board on potential risks and liability;
 3. Attend Board meetings and make or review presentations to the Board;
 4. Represent the Board or assist in representing the Board before third parties, including other governmental entities, in matters not involving litigation;
 5. Represent the Board or assist in representing the Board in litigation before administrative and judicial tribunals;
 6. Draft or review Board materials, including policies and procedures;
 7. Draft or review legislative and regulatory materials;
 8. Provide the Board with notice of significant changes in the law;
 9. Provide opinions on behalf of the Board to auditors and other oversight or investigative entities; and
 10. Conduct training for the Board and staff, as appropriate.

IV. Engagement Provisions.

The following clauses shall be included in all letters of engagement with the Board:

- a. Compensation.
1. Legal fees will be provided in accordance with section B.III. of this RFP under Fee Proposals.
 2. The Executive Director may specify the labor mix for a specific project. The selected firm shall adhere to the specified labor mix unless amended in writing by the Executive Director.
 3. Award of an engagement does not guarantee the selected firm will receive a minimum amount of work.

4. Only reasonable, allowable, and allocable direct costs and expenses are reimbursable. Expenses are reimbursable at cost and shall not contain a mark-up of any kind. Such expenses include:

- a. Postage;
- b. Messenger and overnight delivery services if requested by the Executive Director.

Expenses that are non-reimbursable include:

- a. Telephone calls, emails, and instant and text messages;
- b. Photocopying;
- c. Secretarial services;
- d. Local transportation (including after-hours transportation);
- e. Paraprofessional overtime expenses;
- f. First class mail; and
- g. Non-local travel expenses without the prior written authorization of the Executive Director.

5. The Executive Director reserves the right to object to any legal fees and expenses it reasonably considers to be excessive.

b. The initial period of performance shall be for three years from the effective date of the Engagement. The Engagement will automatically extend for three additional one-year periods unless NHRS provides written notice to the firm of its intent to terminate not less than thirty (30) days prior to the expiration date of the initial period of performance or any subsequent anniversary date.

c. Administration Data.

1. The Chief Legal Counsel is responsible for this Engagement:

Name: Timothy J. Crutchfield, Chief Legal Counsel
Address: New Hampshire Retirement System
54 Regional Drive
Concord, NH 03301
Telephone: (603) 410-3526
Fax: (603) 410-3527
Email: tim.crutchfield@nhrs.org

2. All instructions, notices, demands, other correspondence to be given by either party to the other party shall be in writing and shall be given by first

class mail with verification of delivery or by a recognized delivery or courier service that maintains written verification of actual delivery. Such communications shall be sufficient and effective upon delivery to the Executive Director, his designee or the designated point of contact in section B.II.c. or designee.

3. Invoices for worked performed and expenses incurred shall be submitted to the Executive Officer monthly no later than fifteen (15) days after the end of the preceding month. Monthly invoices shall be in two parts consisting of:
 - A. A summary table showing:
 - i. The names of each attorney and paraprofessional who performed work during the preceding month;
 - ii. The time spent by each attorney and paraprofessional during the preceding month broken down by quarter hour;
 - iii. The hourly rate for each attorney and paraprofessional;
 - iv. The total charge (hours x hourly rate) for each attorney and paraprofessional; and
 - v. Total expenses incurred for the preceding month broken down by type of expense.
 - B. A detailed table showing:
 - i. All dates work was performed by each attorney and paraprofessional;
 - ii. A brief description of the work performed by date broken down by matter worked on; and
 - iii. The time spent by each attorney and paraprofessional by date broken down by matter worked on.
 - C. Or another mutually agreeable format.

- d. Special Engagement Terms.
 1. Bar Membership.
 - A. All attorneys working on matters pursuant to this Agreement shall at all times be active members in good standing of the Bar of the State of New Hampshire, another state, the District of Columbia, or the Commonwealth of Puerto Rico.
 - B. Notwithstanding the above, all attorneys representing the NHRS before any entity of the State of New Hampshire in litigation or any other matter must be active members in good standing of the Bar of the State of New Hampshire or admitted pro hac vice.
 2. This Engagement shall be effective upon approval by the Board or its designee.
 3. This Engagement may be terminated by the Board or its designee at its discretion at any time with ten (10) days prior written notice to the firm.
 4. If the continued provision of legal services to the Board would create a professional conflict of interest that is not subject to mitigation under the New Hampshire Rules of Professional Conduct or other applicable authority (mitigation shall not include a waiver of a conflict by the Board), the firm shall immediately cease performance and notify the Executive Director in writing.
 5. Dispute resolution.
 - A. The parties waive the right to trial by jury in any judicial action, proceeding or counterclaim arising from this Engagement.
 - B. Any legal proceedings involving this Engagement shall be filed with a state court located in the State of New Hampshire with subject matter jurisdiction, and New Hampshire law shall apply, excluding its choice of law provisions.
 6. Neither party will, directly or indirectly, assign or transfer any claim arising out of this Engagement.
 7. The failure of either party to enforce any of the terms of this Engagement shall not be a waiver or relinquishment of any future requirements of this Engagement.
 8. This Engagement, which includes the Letter of Engagement, the RFP and the firm's proposal, constitutes the entire engagement between the parties

regarding the subject matter of this Engagement. It replaces and supersedes any previous understandings or representations between the parties, whether written or oral, regarding the subject matter of this Engagement. Except as explicitly stated otherwise, this Engagement may not be modified, amended, changed, or altered except by written engagement executed by the parties.

9. The section headers in this Engagement are for information only and shall not be used to construe the meaning of any particular clause.
10. The firm shall discharge its duties and responsibilities under this Engagement with the standard of care, skill, and diligence normally provided by legal counsel in the performance of similar services under similar circumstances.
11. The firm shall at all times maintain sufficient insurance to reimburse the Board and the participants and beneficiaries of the NHRS in full for any professional liability on its part.
12. This Engagement is severable. If any provision or term hereof is determined, for any reason, to be illegal or otherwise unenforceable, such determination shall not affect the validity of the remaining provisions and terms hereof. The provision or term determined to be illegal or unenforceable shall be amended to conform to applicable law and the intent of the parties.
13. The rights and remedies described in this Engagement are cumulative and are in addition to any other remedies available to the Board in law or in equity, and the exercise of any one or more of such remedies shall not be construed as a waiver of any other right or remedy.
14. The Firm shall promptly notify the Executive Director of any change in the availability of the personnel proposed to perform legal services under this Engagement, and shall propose a replacement of similar experience and knowledge who will be subject to acceptance by the Executive Director.
15. The Firm shall assist the Board in asserting a claim of privilege when so requested.
16. The Firm shall not subcontract any of the services of to be performed under this Engagement without the prior written consent of the Executive Director.

17. In the event of a conflict between a Letter of Engagement, the Board's Request for Proposals (RFP), and the Firm's Proposal, the order of precedence shall be:
 - A. the Letter of Engagement;
 - B. the RFP; and
 - C. the Firm's Proposal.
18. The Firm shall perform such work as is necessary to correct errors, defects, and omissions in the services provided under this Engagement without undue delay and without cost to the NHRS.
19. The Executive Director may order the Firm to suspend, delay, or interrupt all or any part of work it is performing without cost for such period of time as he or she may deem appropriate.
20. During the term of this Engagement, the Firm shall not represent any person or entity in a matter, proceeding, or lawsuit against the NHRS. Following expiration or termination of this Engagement, the Firm shall not represent any person or entity in a matter, proceeding, or lawsuit substantially related to this Engagement for a period of no less than five years after such termination.
21. This Engagement is non-exclusive, and work within the purview of this Engagement may be awarded to other contractors or performed in-house.

B. INSTRUCTIONS TO OFFERORS

I. In General.

- a. Offerors must submit separate technical and price proposals for each area of legal support for which they seek a contract (Fiduciary Counsel; and/or Tax and Benefits Administration and Legislative Counsel). For example, an Offeror seeking engagement for both areas must submit two separate technical proposals and fee proposals. Offerors must submit an original and four (4) copies of each technical and fee proposal.
- b. Proposals shall be delivered to:

Timothy J. Crutchfield, Chief Legal Counsel
New Hampshire Retirement System
54 Regional Drive
Concord, NH 03301

Email and facsimile proposals will not be accepted.

- c. Proposals must be received no later than Friday, January 18, 2019, at 4:00 pm EST. Untimely proposals shall not be considered.
- d. Questions about the solicitation shall be in writing and directed to:

Timothy J. Crutchfield, Chief Legal Counsel
New Hampshire Retirement System
54 Regional Drive
Concord, NH 03301

Fax: (603) 410-3527
Email: tim.crutchfield@nhrs.org

Questions must be received no later than Friday, January 4, 2019, at 4:00 pm EST in order to be assured of a response. Questions and responses shall be shared with all entities at their request.

- e. The Board or NHRS staff may convene a pre-proposal meeting to which all or some of the offerors requesting or sent an RFP shall be invited.
- f. The Board may amend or terminate this RFP at its discretion at any time prior to awarding a letter of engagement.
- g. Technical proposals shall be no more than ten (10) pages in length, excluding a cover page described in section B.I.m., below, an introductory page, an index page, and résumés for all personnel identified as available to work on the contract. Pages exceeding this limit will not be read or evaluated.
- h. Fee proposals shall be no more than three (3) pages in length, excluding an introductory page and an index page. Pages exceeding this limit shall not be considered or evaluated.
- i. The text of all proposals shall be in 12 point Times New Roman type.
- j. Pages of a proposal containing confidential or proprietary information shall contain a header and footer with an appropriate restrictive legend.
- k. Under no circumstances shall the NHRS be responsible for the expense of preparing a proposal for this RFP.
- l. Proposals shall be self-containing and shall not refer to a web site or other external sources for additional information.

- m. The cover page of the technical proposal shall contain the name, title, street address, telephone and fax numbers, email address and signature of an individual attesting that:
 - 1. He or she has actual authority to accept the terms of engagement on behalf of the Offeror;
 - 2. The offer may be accepted by the Board without discussions and
 - 3. The entity accepts all of the terms of the engagement as set forth herein.
- n. Proposals may be withdrawn at any time up to award. Unless withdrawn, all offers shall remain in effect for ninety (90) days after the proposal due date, including any extensions thereto.
- o. Graphics in a technical or price proposal shall be included in their respective page limits.

II. Technical Proposals.

Offerors shall provide in their technical proposals:

- a. The names, titles, and résumés of the attorneys who are expected to provide legal services under the Engagement;
- b. A description of the experience and knowledge of those attorneys for the past ten (10) years (or for the entire time they have been practicing, if shorter) in the area(s) for which they are being proposed (*i.e.*, fiduciary counsel; or tax and benefits administration and legislative counsel), including:
 - 1. The nature of advice and representation provided on such matters;
 - 2. The length of engagement;
 - 3. The outcomes of such matters;
- c. The name of the attorney who will serve as the point of contact for strategic, tactical, administrative, and performance matters relating to the engagement;
- d. A brief description of how attorney assignments are made, how work load is managed by the Offeror, and how back up assistance is provided;
- e. The percentage of annual attorney turnover;
- f. A certification that the Offeror is not and has not been for the past thirteen (13) years disbarred or suspended by the State of New Hampshire, the U.S.

Government, or any other jurisdiction from doing business, and that no attorney proposed to work on the Agreement has been disbarred or suspended by any jurisdiction for the past thirteen (13) years;

- g. A certification that the Offeror has no known conflicts that would restrict its ability to provide advice to the Board; if any conflict is known, the nature of the conflict and its effect on performance of the contract must be described in detail;
- h. A description of the Offeror's conflicts avoidance procedures;
- i. A description of the Offeror's professional liability insurance applicable to the work described in this contract, including limits of coverage;
- j. The Offeror's process and resources for keeping abreast of proposed and actual changes in the laws affecting its area(s) of engagement;
- k. A description of any other relevant experience and knowledge; and
- l. Names and telephone numbers of three clients for purposes of reference checking.

Technical proposals shall not contain or describe proposed hourly rates or other price factors. Proposals violating this requirement shall not be considered.

III. Fee Proposals.

- a. Offerors shall provide in their fee proposals the hourly rates of the attorneys and paraprofessionals proposed to perform services and their fully-loaded hourly rates, including discount rates for governmental plans. In the alternative, Offerors have an option to provide blended rates.
- b. Offerors shall provide justifications for proposed hourly rates significantly below or in excess of prevailing market rates.

IV. Evaluation of Proposals.

- a. Proposals shall be reviewed for soundness of technical capability and reasonableness of fees. Technical factors shall constitute 2/3 of a proposal's overall rating and fees shall constitute 1/3 of its overall rating.
- b. Awards shall be made to those Offerors whose proposals are most advantageous to the NHRS, fees and other factors considered.
- c. Appropriate NHRS staff will evaluate the proposals and provide recommendations to the Board for selection.

- d. Offerors may be required to make presentations to the Board or a Board committee prior to award of an engagement. Offerors shall be solely responsible for any costs associated with such presentations, including travel expenses.