



District of Columbia Retirement Board

**900 7th Street, N.W., Suite 200
Washington, D.C. 20001**

Request for Proposal

Legal Services

Solicitation DCRB-2012-008

Issue Date:	July 6, 2012
Expression of Interest Due Date:	July 16, 2012 at 5 p.m. EDT
Question Cut-Off Date:	July 20, 2012 at 5 p.m. EDT
Proposal Due Date:	August 6, 2012 at 5 p.m. EDT

Firms who have received this solicitation from a source other than the issuing office of the District of Columbia Retirement Board should immediately contact the procurement office and provide contact name and mailing address to ensure that any amendments or other communication related to the solicitation may be forwarded in a timely fashion. Any firm who fails to notify the procurement office with this information assumes complete responsibility in the event that it does not receive communication about this solicitation before or after the due date.

District of Columbia Retirement Board

Request for Proposal

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1.0 Introduction

The purpose of this Request for Proposals (“RFP”) is to invite legal entities to submit proposals to the District of Columbia Retirement Board (the “Board”) to provide legal services in one or more of the following areas: (1) Fiduciary Counsel; (2) Counsel for Investments; (3) Tax and Benefits Administration Counsel and (4) Securities Litigation Counsel. The Board intends to enter into contracts with one or more entities for each of the four above-described areas.¹ Each contract will have a period of performance of two (2) years from its effective date plus additional option periods of up to three (3) additional one (1) year periods, subject to the availability of funds.²

2.0 Background

The Board was established by Congress in 1979 as an independent agency of the District of Columbia government. District of Columbia Retirement Reform Act, Pub. L. 96-122, 93 Stat. 866, codified at D.C. Code § 1-701 *et seq.* (2001)³ (“Reform Act”). The Board was charged with managing the retirement funds for police officers, fire fighters, and teachers. D.C. Code § 1-701(b)(1)-(2). The Reform Act was modified in 1997 in Title XI of Pub. L. 105-33, 111 Stat. 715, as amended (the District of Columbia Revitalization Act of 1997, or “Revitalization Act”).

Under the Revitalization Act, the U.S. Department of the Treasury (“Treasury”) became responsible for funding retirement and survivor benefits for police officers, fire fighters, and teachers based upon service accrued on or before June 30, 1997, in accordance with their respective plans in effect on June 30, 1997 (“Federal Benefits Payments”). Pub. L. 105-33, § 11012. The District of Columbia became responsible for funding benefits based on service accrued on or after July 1, 1997, in accordance with a “Replacement Plan” the District was required to adopt (“District Benefits Payments”). Pub. L. 105-33, § 11042 codified at D.C. Code § 1-905.01.⁴

The Replacement Plan was enacted by the District in 1998. It continued the terms of the defined benefit retirement and survivor benefits plans for police, fire fighters, and teachers as those plans existed on June 30, 1997. In addition, the Replacement Plan

¹ The Board is exempt from the District of Columbia’s procurement statutes and regulations. D.C. Code §§ 1-711(i)(1); 2-303.20(h) and D.C. Mun. Regs. tit. 7, ch. 16.

² The District and federal Anti-Deficiency Acts prohibit an officer or employee of the District government from involving the Government in a contract or obligation for the payment of money before an appropriation is made. D.C. Code § 47-355.02(2); 31 U.S.C. § 1341(a)(1)(B).

³ All references to the D.C. Code in this document are to the 2001 edition unless stated otherwise.

⁴ The specific requirements of both plans as they existed on and after June 30, 1997, are set out at D.C. Code Title 5, ch. 7 (Police and Firefighters’ Plan) and D.C. Code Title 38, subtitle V, ch. 20, subch. II (Teachers’ Plan). The D.C. Council subsequently enacted various amendments to the plans, which apply exclusively to District Benefits Payments under the Replacement Plan.

modified some of the Board's responsibilities established in the Reform Act. The Board's duties are now enumerated in D.C. Code Title I, ch. 9, and include the provisions in the Reform Act at D.C. Code Title I, ch. 7, subch. I. that were not superseded by the Replacement Plan. D.C. Code § 1-911.04.

The Board maintains the Police Officers and Fire Fighters' Retirement Fund and the Teachers' Retirement Fund (the "Funds") to pay District Benefits Payments. The Board is charged with providing for full funding for the Funds and managing them on an actuarially sound basis, except to the extent that the authority to manage, acquire, or dispose of assets of the Funds is delegated by the Board to one or more investment counsels pursuant to D.C. Code § 1-711(g)(1). The sources of revenue for the Police Officers and Fire Fighters' Retirement Fund and the Teachers' Retirement Fund are set forth in D.C. Code §§ 1-903.01 and 1-903.02, respectively. Federal Benefits Payments are paid from a separate fund maintained by Treasury for which the Board has no investment responsibilities.

The majority of retirees and survivors currently receive Federal Benefits Payments exclusively. However, an increasing number receive either Federal Benefits Payments *and* District Benefits Payments (known as "Split Benefits Payments") or District Benefits Payments only.⁵ The number of beneficiaries receiving Federal Benefits Payments and Split Benefits Payments will decrease and eventually be reduced to none as the number of beneficiaries who derive benefits from service accrued on or before June 30, 1997 declines.

The total amount of assets in the Funds is approximately \$5 billion. The Board provides benefits administration for District, Split, and Federal benefits pursuant to D.C. Code § 1-903.04 and agreements with Treasury and the District of Columbia government. The Board administers retirement and survivor benefits for approximately 15,000 beneficiaries receiving benefits from the District and/or Treasury. There are approximately 10,500 active employees who may be eligible for future Split or District benefits. All benefit payments are made via a system that is owned and maintained by Treasury.

Further information on the Board and its responsibilities can be found at www.dcrb.dc.gov.

⁵ As a general rule, if an employee's service began and ended on or before June 30, 1997, the employee receives Federal Benefits Payments. If an employee's service commenced on or before June 30, 1997, and ended after June 30, 1997, the employee receives "Split Benefits Payments" (which are divided between Treasury and the District based approximately on the proportionality of an employee's service occurring on or before and after June 30, 1997). If an employee's service began and ended after June 30, 1997, the employee receives District Benefits Payments. The amount of benefits paid usually are identical whether they are Federal, Split, or District Benefits Payments. See 31 C.F.R. part 29. Split beneficiaries receive one monthly payment rather than separate payments from the U.S. and District governments.

3.0 General Requirements

The Board's activities require legal support as necessary and appropriate. Outside counsel is expected to advise the Board on legal matters as requested by the General Counsel, and represent the Board in legal actions or proceedings in which the Board becomes involved. *See* D.C. Mun. Regs. tit. 7, § 1503.3.

The nature and extent of legal support needed by the Board cannot be predetermined with reasonable precision. Consequently the Board will enter into agreements 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 contract to provide services in more than one area. The Board will order work under the contracts as needed.

4.0 Scope of Work

1. The specific areas⁶ in which the Board anticipates needing legal support are:

a. Fiduciary Counsel: Provides legal advice to the Board on matters such as:

- 1) Its fiduciary duties and those of third parties engaged on the Board's behalf such as investment managers, investment consultants, legal counsel (other than Fiduciary Counsel), accountants, auditors, actuaries, custodians, and benefits administrators (see, e.g., D.C. Code §§ 1-901.02(7), 1-903.3, 1-702(20), 1-741));
- 2) Ethics and conflicts of interest matters for fiduciaries (see, e.g., 18 USC (Chap 11) §§ 201-216; 5 USC §§ 7321-26; 5 CFR Part 734; DC Code §§ 1-618, 1-711, 1-1106, 1-1107, 1-1108, and D.C. Mun. Regs. tit. 6, ch. 18, pt. I. Additional information about Ethics Standards that apply to the Board is available online via the DC Office of Attorney General: www.oag.dc.gov/ethicsmanual
- 3) Investment policies and procedures;
- 4) Liability and insurance (see, e.g., D.C. Code §§ 1-742, 1-743);
- 5) The Board's annual report (see D.C. Code §§ 1-909.02, 1-907.4);
- 6) The Board's annual audit (see D.C. Code § 1-903.06);
- 7) Bonding requirements (see D.C. Code § 1-909.09);
- 8) Compliance with D.C. Mun. Regs. tit. 7 §§ 1500 *et seq.*, District of Columbia Retirement Board (See www.dcrb.dc.gov/dcrb/cwp/view,a,3,q,487658.asp).

⁶ Only the appropriate statement(s) of work will be included in the executed contracts.

- b. Counsel for Investments:⁷ Provides transactional legal advice to the Board on matters such as:
- 1) Actual and contemplated investments, primarily in the areas of private equity and alternative investment vehicles such as derivatives, mortgage backed securities, venture capital, private hedge funds, private equity funds, private real estate vehicles, and infrastructure funds;
 - 2) Securities, tax (non-benefits related) and bankruptcy laws; and
 - 3) Limitations on investment of retirement funds (see D.C. Code §§ 1-335.01 *et seq.*, D.C. Code §§ 1-336.01 *et seq.*, and D.C. Code §1-907.01.
- c. Tax and Benefits Administration Counsel: Provides legal advice to the Board on plan administration issues such as:⁸
- 1) Tax qualification issues;
 - 2) Taxability of the distributions of the plans
 - 3) Compliance with IRS reporting requirements;
 - 4) Entitlement to and calculation of benefits under the Police and Fire Fighters Plan and Teachers' Plan;
 - 5) Qualified Domestic Relations Orders (QDROs);
 - 6) Summary plan descriptions and plan amendments;
 - 7) District/Treasury benefit split issues; and
 - 8) Funding issues.⁹
- d. Securities Litigation Counsel: Provides legal advice to the Board on securities litigation monitoring and evaluation services such as:
- 1) Services related to issues arising from the Board's interests in matters of security litigation, whether under the PSLRA or otherwise. The firm(s) selected in response to this RFP will constitute Board's list of "approved counsel" in securities litigation actions. While the Board will not be

⁷ "Counsel for Investments" does not mean "Investment Counsel" as defined at D.C. Code § 1-711(g)(2).

⁸ The two plans are "governmental plans" as defined in I.R.C. § 414(d), and all benefits provided therefrom are governmental plan benefits maintained by the District of Columbia. D.C. Code § 1-905.03.

precluded from using counsel not on the approved list, the Board anticipates dealing with the firm(s) selected through this RFP process.

- 2) Identify and evaluate those cases in which the Board has an interest, and notify the Board's General Counsel of those cases which the firms believe meet proposed criteria for action. The firm would also be required, at least quarterly, to prepare reports describing its activities under the agreement.
 - 3) Monitor potential and pending class action securities litigation;
 - 4) Assist the Board's staff in analyzing its interest therein, based upon the Board's holdings and exposure during the relevant periods;
 - 5) Suggest legal action for the Board as appropriate, such as remaining in the plaintiff class or opting out, intervening in litigation for a limited purpose, or seeking lead plaintiff status;
 - 6) With the approval of the Board of Trustees, if appropriate under the circumstances, initiate and manage legal action on behalf of the Board.
 - 7) Interface with the Board's custodian's electronic transaction and securities holdings data to obtain and analyze the Board's domestic and international holdings records as necessary to determine class action eligibility;
 - 8) Identify any conflicts of interest that may arise if the firm is selected to serve as legal counsel for a particular action;
 - 9) Favorable consideration will be given to firms that can and will:
 - i. Provide interactive internet access to data, analysis and reports.
 - ii. Monitor securities litigation and settlement claims filed by the Board's custodian, to insure full recovery.
- e. Fee Arrangements: The Board expects that, in securities litigation pursuant to this RFP, legal fees, costs and expenses will be paid on a contingent fee basis upon application and award by the Court from the proceeds of any recovery, that all legal fees, costs and expenses incurred under this contract will be obtained from the proceeds of any recovery, and that the Board will have no responsibility for fees, costs and expenses in excess of any recovery or if a recovery is not obtained. The Board believes that one of the most important roles institutional investors can play in securities class action litigation is to maximize the recovery for the plaintiff class by utilizing fee arrangements which align the interest of litigation counsel and the class more effectively than traditional contingency fee arrangements. Responders are asked to provide a detailed description of the following:

- 1) The firm's willingness to accept: 1) a multi-tiered, multi-variable fee schedule in which litigation counsel's compensation will vary depending upon the size of the total recovery, as well as such variables as the point in the case where settlement negotiations are completed or a final judgment is obtained, or 2) other non-traditional contingency fee arrangements which achieve the objectives stated above.
- 2) The approximate number of engagements over the last five years in which the firm has agreed to a fee arrangement similar to that noted in the previous paragraph.
- 3) The firm's willingness to not make any application to a court for attorneys' fees, costs or expenses in an amount in excess of that approved in writing by Board.
- 4) The firm's fee (including attorneys' fees and costs) awarded for securities class action cases since the enactment of the PSLRA, indicating the case name and stage of the proceedings at which the case was concluded, the client(s), the date of the award, the dollar amount of the total award (delineating attorneys' fees and costs separately), the total amount of the award as a percentage of the judgment, and the total amount of the award as a percentage of assets recovered for the class.
- 5) For each legal area described above, the successful legal entity may be requested to:
 - i. Provide oral and written legal advice to the Board;
 - ii. Advise the Board on potential risks and liability;
 - iii. Attend Board meetings and make or review presentations to the Board;
 - iv. Represent the Board or assist in representing the Board before third parties, including other governmental entities, in matters not involving litigation;
 - v. Represent the Board or assist in representing the Board in litigation before administrative and judicial tribunals;
 - vi. Draft or review Board materials, including policies and procedures;
 - vii. Draft or review legislative materials;
 - viii. Provide the Board with notice of significant changes in the law;

- ix. Provide opinions on behalf of the Board to auditors and other investigative entities; and
 - x. Conduct training for the Board.
- 6) Legal services shall be provided at the request and direction of the Board's General Counsel.

Please note that the successful Offeror(s) will be requested to provide counsel on areas expressed in the scope of work as well as commonly addressed areas by a legal entity. However, the Board reserves the right at any time during the ensuing contract period, and without penalty to the legal counsel, to procure and retain additional legal counsel when, in the opinion of the Board, it is its best interest.

5.0 Schedule of Events

RFP Release Date	7/6/2012
Letter of Interest Due Date	7/16/2012
Deadline for Offeror Questions	7/20/2012
Pre-proposal Conference (optional)	7/23/2012
DCRB Response to Offerors' Questions	7/27/2012
Proposal Due Date	8/6/2012
Anticipated Contract Award	Sep-12
Anticipated Contract Start Date	Oct-12

6.0 Proposal Specifications

To facilitate the evaluation of proposals, the Board asks that the Offeror responding to this RFP follow the instructions outlined in this section. Failure to respond to instructions will disqualify the proposal and eliminate the responding Offeror from consideration.

A. Letter of Interest

Offerors interested in submitting a proposal in response to this RFP must submit a signed expression of interest. The deadline to submit the letter is July 16, 2012 by 5pm EDT. Any Offeror that does not submit an expression of interest forfeits the right to submit a proposal and will not be further considered for contract award.

Letters of interest shall be delivered to:

Yolanda Smith
Contracts Specialist
District of Columbia Retirement Board
900 7th Street, N.W. Second Floor
Washington, D.C. 20001

Email and facsimile submissions will not be accepted.

B. Inquiries

Questions concerning this RFP must be submitted in writing by 5pm EDT, on Friday, July 20, 2012. Questions should be emailed to Erie.Sampson@dc.gov. Staff will respond to questions by 5pm on Friday, July 27, 2012. Questions and responses will be shared with all entities requesting or sent a copy of this RFP.

Any questions received after that time will be answered at the discretion of the Board.

The Board may convene a pre-proposal meeting to which all offerors requesting or sent an RFP shall be invited.

The Board may amend or cancel this RFP at its discretion at any time prior to award of a contract.

No amendments will be issued by DCRB within 48 hours of the final submission date and time without a corresponding extension of the submission deadline.

C. Proposal Submission

The proposal including all attachments must be received no later than 5pm EDT, Monday, August 6, 2012. Untimely proposals will not be considered.

Proposal shall be delivered to:

Yolanda Smith
Contracts Specialist
District of Columbia Retirement Board
900 7th Street, NW, Second Floor
Washington, DC 20001

Email and facsimile transmission are not accepted.

Offerors will submit separate technical and price proposals for each area of legal support for which it seeks a contract (Fiduciary Counsel; Counsel for Investments; Tax and Benefits Administration Counsel and/or Securities Litigation Counsel).

Offerors must submit an electronic proposal on a USB thumb-drive containing the entire proposal, an original and six (6) copies of each technical and price proposal. For example, an offeror wishing to submit proposals for Fiduciary Counsel, Counsel for Investments, Tax and Benefits Administration Counsel and Securities Litigation Counsel must submit: (A) an original and six copies of its technical and price proposals for Counsel for Investments; and (B) an original and six copies of its technical and price proposals for Tax and Benefits Administration Counsel.

Under no circumstances shall the Board be responsible for the expense of preparing a proposal for this RFP.

Proposals shall be self-containing and not refer to a website or other external resources as a source of further information.

All proposals become the property of DCRB and may be subject to disclosure under the Freedom of Information Act. Pages of a proposal containing confidential or proprietary information shall contain a header and footer with an appropriate restrictive legend.

D. Proposal Preparation

The cover page of the technical proposal shall contain the full legal name of the offeror, street address, name, title, telephone and fax numbers, email address, and signature of the individual signing the proposal on the offeror's behalf attesting that:

1. He/She has actual authority to accept the terms of a resulting contract on behalf of the offeror;
2. The offer may be accepted by the Board without discussions; and
3. Offerors are cautioned that taking exception to any of the terms of the contract may result in their proposals being disqualified from further consideration for award.
4. Technical proposals shall contain the résumés for all personnel identified as available to work on the contract.

Proposals may be withdrawn at any time up to award. Unless withdrawn, all offers shall remain in effect for ninety (90) days after receipt by the Board.

The text of all proposals shall be in 12 point or larger Times New Roman type. Graphics in a technical or price proposal shall be included in their respective page limits.

E. Technical Proposals

Technical proposals shall be no more than fifteen (15) pages in length, excluding a cover page, an introductory page, an index page, résumés for all personnel identified as available to work on the contract, and the offeror's certifications. Pages exceeding this limit shall not be considered or evaluated.

Offerors shall provide in their technical proposals:

1. A description of their experience and knowledge for the past ten (10) years (or for the entire time they have been in business, if shorter) in the area(s) for which they are submitting a proposal (*i.e.*, fiduciary counsel; counsel for investments; tax and benefits administration counsel and securities litigation counsel);
2. The extent of experience with defined benefit government retirement plans and private sector plans (including ERISA experience)¹⁰ in particular, describe the range of responsibilities and services provided.
3. The extent of experience and knowledge in the area(s) for which they are submitting a proposal, including:
 - a) The nature of advice and representation provided on such matters;
 - b) The length of engagement and the number of hours expended on such matters; and
 - c) The outcomes of such matters;
4. The names, titles, and résumés of the attorneys and paraprofessionals who are expected to provide advice, counsel, and assistance to the Board;
5. A brief description of how attorney assignments are made, how work load is managed by the firm, and how back up assistance is provided;
6. The name(s) of the senior attorney(s) who will serve as the point of contact for strategic, tactical, administrative, and performance matters relating to the contract;
7. The percentage of annual attorney turnover;

¹⁰ The Funds are treated as benefits provided under a governmental plan maintained by the District of Columbia for ERISA purposes.

8. A certification that attorneys of the firm who will provide services to the Plans must be members in good standing of the District of Columbia Bar; in section C to this Request for Proposals (which shall not be included in the technical proposal's page count);
9. A description of the offeror's conflicts avoidance procedures; In this regard: (a) disclose any information that may materially impair the firm's ability to provide the level of service required; (b) describe all engagements in which your firm is currently representing any entity in the District of Columbia Government; (c) describe all engagements in which your firm is currently representing Plan members with respect to employment contracts, benefits and compensation for employee positions or employers covered by the Fund; (d) describe all engagements in which your firm is currently representing unions or employee groups whose membership contains members of the Fund; and (e) describe all engagements in which your firm is currently representing a client in a matter adverse to the District of Columbia, DCRB or a Board trustee.
10. A description of the offeror's professional liability insurance applicable to the work described in this contract, including limits of coverage and indicate whether any malpractice claims have been filed against the firm and the disposition of those claims (including amounts paid, if any);
11. List any disciplinary actions brought against members of the firm or criminal indictments brought against the firm or members of the firm and the disposition of such actions or indictments.
12. The offeror's process and resources for keeping abreast of proposed and actual changes in the laws affecting their area(s) of engagement;
13. A description of any other relevant experience and knowledge; and
14. Names and telephone numbers of three clients for purposes of reference checks.
15. Provide a representative listing of clients for whom you currently provide services or for whom you have served as counsel within the last 5 years, including any public sector retirement plans. Please include the name and telephone number of the principal client contact.
16. Please discuss any additional information that you would like us to know about your firm that may impact our consideration of your firm as a potential counsel for the Plans.

F. Price Proposals

Price proposals shall be no more than five (5) pages in length, excluding an introductory page and an index page. Pages exceeding this limit shall not be considered or evaluated.

Offerors shall provide in their price proposals:

1. The names, titles, and hourly rates of the attorneys and para-professionals proposed to perform services and their fully-loaded hourly rates for the contract. This information should be presented in table format. If hourly rates will change during the option periods, this must be clearly indicated in the price proposal.
2. Fee structures for other public agency clients and any reduced fees offered to other municipalities, governmental entities or nonprofit organizations.
3. Information on how you propose to keep track of, and charge for, any expenses. (Incidental office expenses will not be reimbursed for this work. No fees or expenses will be paid for travel time or mileage, except in cases when the attorney's round-trip travel exceeds 50 miles. Offerors should take this into account in their proposal.) Include in your proposal any assumptions on which your hourly fee is based and any factors that you believe would justify an increase in the fee.
4. A certification that the proposed hourly rates do not exceed the lowest hourly rates charged to any entity of the District of Columbia or any Federal, State, or local government entity for similar classes of attorneys performing similar types of work.
5. A certification that if, subsequent to award of a contract, hourly rates charged to any District of Columbia, Federal, State, or local government entity for similar classes of attorneys performing similar types of work become lower than the hourly rates specified in the contract, the offeror shall promptly notify the Board and substitute the lower hourly rates for all future work.

The Board is subject to the annual appropriations process of the District of Columbia government that culminates in an appropriation act passed by the U.S. Congress and signed the President of the United States. The board has a current appropriation for the fiscal year ending September 30, 2012, which is estimated to be sufficient to fund the base year. Funding for option periods is subject to appropriations.

7.0 Evaluation Criteria

DCRB will select a group of qualified personnel to act as an evaluation team. The procedure for evaluating the responses against the evaluation criteria will be as follows:

1. Each response will be evaluated on the basis of the categories listed herein. Proposals will be evaluated based upon the proven ability of the proposer to satisfy the requirements in an efficient, cost-effective manner, taking into account quality of service with minimal tolerance for error. Proposals will generally be scored using the following criteria: 80% on the merits of the proposal and qualifications of the vendor and 20% on cost
2. Based on the results of the evaluation, the offerors determined by DCRB to be qualified to perform the legal services described herein may be selected by the Board for future engagements.
3. In addition, the evaluation team will consider other factors they believe to be material for this selection.

Responses will be evaluated based upon the proven ability of the Respondent to satisfy the requirements in an efficient, cost-effective manner, taking into account quality of service with minimal tolerance for error. Specific criteria include:

1. Fulfilling the requirements set forth in the RFP;
2. Experience in the field of legal services for public and private pension funds;
3. Competitiveness of the fee structure relative to other Offerors; and
4. Quality and thoroughness of Offeror's submission to this RFP.

The Board shall make awards to those offerors whose proposals are most advantageous, and offer the best value, to the participants in and beneficiaries of the Police and Fire Fighters' Retirement Fund and the Teachers' Retirement Fun. Awards shall not necessarily be made to the proposals offering the lowest rates.

All factors being approximately equal, the Board may give preference to an offeror that is a "certified business enterprise" as defined in D.C. Code § 2-218.02(1B).

Evaluators or other Board employees may attend and participate in the pre-proposal meeting and post-proposal discussions, should either or both occur.

Offerors may be required to make presentations to the Members of the Board of Trustees or a Board committee prior to award of a contract.

8.0 Rights Reserved

This RFP does not obligate the Board to complete the RFP process. The Board reserves the right without prejudice to reject any or all proposals submitted.

The Board reserves the right to award all, part, or none of this contract if deemed appropriate and desirable by the Board. The Board also reserves the right to remove one or more of the services from consideration for this contract should the evaluation show that it is in the Board's best interest to do so. The Board also may, at its discretion, issue a separate contract for any service or groups of services included in this RFP. The Board may negotiate additional provisions to the contract awarded under this RFP.

The Board reserves the right to waive or permit cure of nonmaterial variances in a proposal provided, however, such waiver will be based on the Board's best interest. Nonmaterial variances include, but are not limited to, the following: minor informalities that do not affect responsiveness, variances that are merely a matter of form or format, variances that do not change the relative standing of other bidders, variances that do not prejudice other bidders, variances that do not change the meaning or scope of the RFP, or variances that do not reflect a material change in the services. Failure to meet the minimum requirements or provide the required information shall not be considered a nonmaterial variation that the Board can waive or permit cure. In the event the Board waives or permits cure of nonmaterial variances, such a waiver or cure will not modify the RFP requirements or excuse the bidder from full compliance with RFP specifications or other RFP requirements if the responder is awarded a contract. The determination of whether a particular matter constitutes a material or nonmaterial variation from the RFP is within the sole discretion of the Board.

The Board reserves the right to amend any segment of the RFP prior to the announcement of selected firms. In case of such amendment, all qualified responders will be afforded the opportunity to revise their proposals to accommodate the RFP amendment.

There is no express or implied obligation for the Board to reimburse for any expenses incurred in preparing proposals or other actions taken in response to this request. All costs associated with responding to this request are to be borne by the Offeror.

A. Public Nature of Proposal Material

All correspondence with DCRB or the Board including responses to this RFP will become the exclusive property of the Board and will become public records under the District of Columbia Freedom of Information Act (FOIA). D.C. Official Code §2-531 *et seq.*) All documents that you send to DCRB will be subject to disclosure if requested by a member of the public. There are a very limited number of narrow exceptions to this disclosure requirement.

Therefore, any proposal which contains language purporting to render all or significant portions of their proposal "Confidential", "Trade Secret" or "Proprietary", or fails to

provide the exemption information required as described below will automatically be considered a public record in its entirety and shall be disclosed to the requesting party subject to the procedures specified below.

Do not mark your entire RFP response as “confidential”.

Although the District of Columbia Freedom of Information Act recognizes that certain confidential trade secret information may be protected from disclosure, DCRB may not be in a position to establish that the information that a proposer submits is a trade secret. If a request is made for information marked “Confidential”, “Trade Secret” or “Proprietary”, DCRB will provide proposers who submitted the information with reasonable notice to seek protection from disclosure by a court of competent jurisdiction. All material submitted in response to the RFP will become property of the Board. Materials received will be considered public information and will be open to public inspection in accordance with the District of Columbia’s Freedom of Information Act (FOIA).

9.0 Lock-Out Rule Policy

The Board of Trustees has established guidelines by which Board Members and staff will communicate with prospective service providers during a search process. The Policy is referred to as the Lock-Out Rule.

The Offeror shall not intentionally engage in unauthorized contract with Members or employees of the District of Columbia Retirement Board until such time as the offeror is notified an award has been made or the solicitation has been canceled, whichever occurs first.

“Unauthorized contact” means communication between the offeror and a Member or employee of the Board other than:

- 1) In the ordinary course of performing an existing contract;
- 2) In connection with an expired or terminated contract;
- 3) In the ordinary course of participating in the source selection process (e.g., responding to an invitation from the Board to submit written questions at a pre-bidders conference or participating in contract discussions;
- 4) Regarding a matter unrelated to procurement; or
- 5) As a matter of public record.

A violation of this provision may disqualify the Offeror from participating in the source selection process.

A. Adverse Representation

By responding to this RFP, the offeror expressly agrees that, if appointed under this RFP, the offeror will not represent other parties in any action against the Board, DCRB, or any interest or employee thereof. This prohibition extends to any member of the offeror's firm.

B. Notification of Intent to Award

All vendors who respond to this RFP will be notified of the Board's decision to award the contract as a result of this RFP.

After considering the proposals and prior to awarding a contract, the Board reserves the right to negotiate with any or all vendors a discounted final cost based on the vendor(s) being awarded more than one contract.

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AFFIRMATION

Affirmation and Certification:

I affirm that the information within this proposal is true and accurate to the best of my knowledge. I acknowledge that I have read and understood the specifications and requirements of the Request for Proposal (RFP), and that my agency/firm is prepared to deliver the proposed activities as described herein. Further, I certify that I am duly authorized to submit this proposal on behalf of my agency/firm. I also understand that by signing any contract initiated as a result this proposal, my agency/firm is responsible for meeting each deliverable objective set forth in this RFP and/or established federal, state and local Workforce Investment Act directives. I fully affirm and understand that failure to deliver on the objectives set forth in this RFP and my agency/firm's proposal may result in my agency/firm's contract being terminated.

Name: (Print) _____

Title: _____

Authorized Signature: _____ Date: _____