**REQUEST FOR RESPONSE**

**Commonwealth of Massachusetts**

**IRC 457 Employees Deferred Compensation Plan**

**&**

**Massachusetts State Employees Retirement System**

**Request for Response for Legal Services**

**RFR#: 15-DC-Legal Services**



**Request for Response**

**Office of the State Treasurer and Receiver General**

**Address:** One Ashburton Place, 12th Floor, Boston, MA 02108

**Internet Address:** <https://www.commbuys.com>;<http://www.mass.gov/treasury/about/procurements>

**RFR File Name/Title:** Commonwealth of Massachusetts IRC 457 Employees Deferred Compensation Plan & Massachusetts State Employees Retirement System – Request for Response for Legal Services

**RFR File Number:** 15-DC-Legal Services

**RFR Contact Person:** Jameel Moore, e-mail address: procurements@tre.state.ma.us

1. SUMMARY AND PURPOSE

The Treasurer and Receiver General of the Commonwealth of Massachusetts (“Treasurer”) requests responses from experienced and well-qualified law firms or individual attorneys interested in providing the specialized legal services, as set forth below, to the Office of the State Treasurer and Receiver General (“Treasury”), principally for, but not limited to, the Commonwealth of Massachusetts IRC 457 Employees Deferred Compensation Plan (“457 SMART Plan”), any Commonwealth-sponsored retirement Plan established for employees of non-profit organizations pursuant to G.L. c. 29, § 64E (“401(k) Program”), (the 457 SMART Plan and the 401(k) Program shall collectively be referred to as the “Plans”), and the State Board of Retirement, which administers the Massachusetts State Employees Retirement System (“MSERS”) (which is solely seeking Tax Counsel).

From the responses received, the Treasurer may select one or more qualified law firms and/or individual attorneys to provide the legal services sought below on an as needed basis:

\* Investment Counsel

\* ERISA Counsel

\* Tax Counsel

Additionally, Bidders responding to this RFR may submit Responses to any or all of the categories of legal services identified above. Any one Bidder may ultimately be selected in more than one category for which it submits a Response.

It is the intent of this RFR to independently select a Bidder(s) qualified to provide services with respect to each category. As each category will be reviewed and selected separately based upon the submissions for each category, there can be no assurance that any Bidding firm chosen to provide services under a particular category will be requested to provide services in another category. The use of legal services by the Treasury will be on an as needed basis.

1. GENERAL INFORMATION

To the maximum extent possible the Treasury follows the rules and regulations set forth in 801 Code of Massachusetts Regulations (“CMR”) 21.00: Procurement of Commodities and Services in this Request for Response (“RFR”). All terms, conditions, requirements and procedures included in this RFR must be met for a response to be qualified as responsive. A response that fails to meet any material term, condition, requirement or procedure of this RFR may be deemed unresponsive and disqualified. The Treasury reserves the right to waive or permit cure of non-material errors or omissions. The Treasury and the subject Procurement Management Team (“PMT”) reserves the right to modify, amend or cancel the terms of the RFR at any time. Unless otherwise specified, all communications, responses and documentation regarding this RFR must be in English, all measurements must be provided in feet, inches and pounds and all cost proposals or figures in U.S. Currency. All responses must be submitted in accordance with the specific terms of this RFR.

Copies of this RFR may be obtained electronically at COMMBUYS at <http://www.commbuys.com> &

on the Treasury website at <http://www.mass.gov/treasury/about/procurements/>.

1. RFR CALENDAR, INSTRUCTIONS AND EVALUATION PROCESS
   1. RFR CALENDAR/TIMELINE

The following is the tentative time schedule for the Treasury’s selection of qualified Bidders under this RFR. All dates are subject to change by the Treasury with notice on COMMBUYS.

* Issuance of RFR September 11, 2015
* Bidder Question Deadline September 24, 2015 at 5:00 PM
* Post Answers to Bidder Questions October 1, 2015

(posted on COMMBUYS at <http://commbuys.com>, http://www.massbondholder.com, & <http://www.mass.gov/treasury>)

* RFR Bidder Submission Deadline October 21, 2015 at 5:00 PM
* Approximate Notification of TBD

Apparent Successful Bidder

NOTE: Questions concerning the RFR must be submitted to the RFR Contact Person in writing:

Jameel Moore, Procurement Analyst/Associate General Counsel

Office of the State Treasurer and Receiver General

ATTN: 15-DC-Legal Services

One Ashburton Place, 12th Floor

Boston, Massachusetts 02108

E-mail Address: procurements@tre.state.ma.us

No other employee may be contacted, and responses from such other person shall have no effect on this solicitation.

* 1. RFR INSTRUCTIONS
     1. Response Submission: The original, and five (5) USB sticks (or equivalent USB storage device) of the Bidder’s responses and attachments must be delivered in the same sealed package no later than October 21, 2015 at 5:00 PM EDT.

THE COST PROPOSAL(S) MAY BE SUBMITTED IN THE SAME PACKAGE AS THE REST OF THE RESPONSE, BUT MUST BE SUBMITTED UNDER SEPARATE COVER IN A SEPARATE SEALED ENVELOPE(S) LABELED “COST PROPOSAL – [INSERT LEGAL CATEORY]”. DO NOT INCLUDE ANY COST PROPOSALS ON THE MEMORY STICKS OR WITHIN THE ORIGINAL PROPOSAL SUBMISSION. FAILURE TO MEET THIS REQUIREMENT MAY RESULT IN DISQUALIFICATION OF THE BID.

Responses and attachments received after this deadline date and time will not be evaluated. A facsimile or email response will not qualify as a “submission” for deadline purposes in advance of or in lieu of a hard copy submission. Facsimile and email responses will not be accepted.

Responses and attachments should be delivered to:

Jameel Moore

Procurement Analyst/ Associate General Counsel

Office of the Treasurer and Receiver General

ATTN: 15-DC-Legal Services

One Ashburton Place, 12th Floor

Boston, MA 02108

E-mail Address: [procurements@tre.state.ma.us](mailto:procurements@tre.state.ma.us)

* + 1. **Response Format:** Failure to follow these formatting requirements may result in the disqualification of the Bidder’s response. Bidders are required to use the Response Template which can be downloaded from COMMBUYS. The Response Template contains all required elements of a valid proposal response as indicated below:
       - 1. Cover Letter
         2. Executive Summary
         3. Statement of Minimum Qualifications
         4. Represenations and Warranties
         5. Disclosure Statement
         6. Phase Two Questionnaire(s)
         7. Mandatory Attachments
         8. **Cost Response(s) (Separate envelopes)**

NO COST INFORMATION SHALL BE INCLUDED ANYWHERE IN THE RESPONSE EXCEPT IN A SEPARATE SEALED ENVELOPE(S).

* + 1. **Cost Proposal**. THE COST PROPOSAL(S) MAY BE SUBMITTED IN THE SAME PACKAGE AS THE REST OF THE RESPONSE, BUT MUST BE SUBMITTED UNDER SEPARATE COVER IN A SEPARATE SEALED ENVELOPE(S) LABELED “COST PROPOSAL – [INSERT LEGAL CATEORY]”. FAILURE TO MEET THIS REQUIREMENT MAY RESULT IN DISQUALIFICATION OF THE BID. PLEASE ALSO NOTE THAT THE COST PROPOSAL MUST HAVE AN ORIGINAL SIGNATURE BY A PERSON AUTHORIZED TO BIND THE FIRM WITH RESPECT TO THIS RFR. BIDDERS MUST SUBMIT A SEPARATE COST PROPOSAL IN A SEPARATE SEALED EVELOPE FOR EACH CATEGORY OF LEGAL SERVICE ON WHICH THEY CHOOSE TO SUBMIT A BID (*i.e.*, Investment Counsel, ERISA Counsel, and/or Tax Counsel). (*See* Response Template Pages 35-37 for the Cost Proposal Submission Format).
    2. **Response Provisions**: When responding to this RFR, firms should take note of the following provisions:
       1. The Treasury reserves the right to request additional information from Bidders responding to this request. Additionally, upon reviewing the responses the PMT may decide to have certain Bidders make oral presentations.
       2. The Treasury reserves the right to reject any and all responses to this request, to waive any minor informality in a response, and to request clarification of information from any Bidder responding. The Treasury reserves the right to amend or cancel this RFR at any time. All responses and their contents will become the sole property of the Commonwealth upon receipt by it.
       3. All responses and their contents will become the sole property of the Commonwealth/ Treasury upon receipt by it and will not be returned to the Bidder.
       4. The Treasury will not reimburse any Bidder for any costs associated with the preparation or submittal of any response to this request or for any travel and/or per diem incurred in any presentation of such responses.
       5. The narrative response should address all items included in each section of the Technical Proposal.
       6. The written response to Phase II – Questionnaire(s) (Section VI.B.) shall be limited to replies totaling no more than 15 pages, double-sided (a total of 30 single-sided page equivalents) per each Questionnaire. The mandatory attachments and other supporting documentation are excluded from the 15 double-sided page maximum. Any response over 15 double-sided pages excluding the requested attachments and exhibits may not be considered. The 15 double-sided pages must be single spaced; submitted in 12-point font; with at least three-quarter inch margins left and right and one-inch margins top and bottom. Additionally, the response must be printed on three-hole punched paper.
    3. Disqualification of Responses:
       1. Late Proposals: Proposals that are received after the deadline date and time shall be automatically disqualified.
       2. Non-responsive Proposals: A response that fails to meet any material term, condition, requirement or procedure of this RFR may be deemed unresponsive and disqualified. The Treasury reserves the right to waive or permit cure of non-material errors or omissions. Non-responsive proposals shall include, but not be limited to those, which fail to address or meet any mandatory item, and those submitted in insufficient number, or in incorrect format.
       3. Collusion: Collusion by two or more Bidders agreeing to act in a manner intended to avoid or frustrate fair and open competition is prohibited and shall be grounds for rejection or disqualification of a proposal or termination of this contract. Bidders will be required to complete a “Certificate of Non-Collusion” as one of the mandatory attachments to this RFR.
       4. Debarred Bidders or Subcontractors: A Bidder, who is currently subject to any Commonwealth or federal debarment order or determination, shall not be considered for evaluation by the PMT. If a Bidder’s proposal is dependent upon the services of a named subcontractor and the disqualification of this named subcontractor would materially alter the proposal, then that proposal shall be deemed unresponsive if the named subcontractor is found to be debarred. Proposals that indicate that subcontractors will be used but do not rely on any specifically named subcontractor shall not be deemed unresponsive if the disqualification of a proposed subcontractor will not materially alter the proposal.
  1. RFR EVALUATION PROCESS

1. Evaluation Process: The RFR Evaluation Process will be conducted in three phases. A review team will complete the Phase I Review for all proposal submissions. The purpose of the Phase I Review is to eliminate any bids that are non-responsive to the requirements of the RFR. Bids that are deemed to be qualified based on the Phase I Review will be submitted to the PMT for additional review. The PMT will consist of staff from the Treasury. The PMT will make a recommendation to the Treasurer who will then accept or reject the recommendation. The Treasurer will make the final selection decision. (Phase I, Phase II and Phase III of this RFR will be evaluated separately.)
2. Phase I Review: Bidders’ responses will be reviewed based on listed criteria and completeness of response, including mandatory attachments and compliance to submission criteria. Bids that do not comply with these components will be rejected and will not proceed to the Phase II Review. The Treasury reserves the right to waive or permit cure of non-material errors or omissions.
3. Phase II Review: Qualified bids, based on the Phase I Review, will be considered for additional review in Phase II by the PMT. The Phase II Review will also include any oral presentation/interview as may be requested by the PMT; the PMT may adjust a Bidder’s score based on any clarification of the Bidder’s response at any such oral presentation/interview. (*See* Section III.C.2). The Phase II Review will count for 80% of each Bidder’s score.

The Phase II Review for each category of legal service (Investment Counsel, ERISA Counsel, and Tax Counsel, respectively) will be separately evaluated and scored on the basis of the criteria listed below:

* 15% – Firm Background & General Description; (NOTE: *Each Bidder submitting a response* ***must*** *complete the Questionnaire “Firm Background and General Description*”.)
* 30% – Lead Attorney and Key Personnel
* 30% – Experience
* 15% – Writing Sample
* 5% – Invest in Massachusetts. All responsive Bidders/Proposers **must** submit with their bids an *Invest in Massachusetts Data Form* (“IMD Form”). *See* Response Template page 33 “Invest in Massachusetts – Instructions” Attachment for further information.
* 5% – Treasury Supplier Diversity Program (TSDP). The Office of the State Treasurer and Receiver General requires all responsive Bidders to submit a *Treasury Supplier Diversity Program Plan Form* (“TSDP Plan Form”) with its response. (*See* Response Template page 33 “Treasury Supplier Diversity Program Instructions” Attachment for further information on the TSDP Plan Form, and how this section will be scored).

1. **Phase III Review:** With respect to each category of legal service sought by the Treasury under this RFR, cost will be evaluated in relationship to the Phase II Review and scoring of Bidders' responses. The Phase II score will represent 80% and Cost will represent 20% of the Bidder’s score in order to determine “best value.” The successful bid will be determined based on the one that represents the "best value" overall and achieves the procurement goals.

* 20% – Cost Proposal: Cost will be evaluated based on the fee for services provided.
* 80% – Phase II Criteria: The total Phase II score will represent 80% of the Phase III score.

1. **Recommendation:** Based on the Phase I, II, and III Reviews, the PMT will make a recommendation to the Treasurer. The Treasurer will then accept or reject the recommendation.
2. ORAL PRESENTATIONS / INTERVIEWS

After completion of Phase I and Phase II but prior to Phase III, the PMT shall have the option to invite all or some Bidders to make oral presentations/come in for interviews. Oral presentations/interviews provide the PMT with an opportunity to evaluate the Bidder through the presentation of their proposal. The PMT will make the decision on whether or not to have Bidders in for oral presentations/interviews. The decision to engage in oral interviews will solely be in the purview of the PMT. Based upon scores determined during the initial Phase II evaluations of Bidders responses to the Phase II technical questions; it will be within the full discretion of the PMT to determine the cutoff for top scoring Bidders to move onto the oral presentations /interviews. Only Bidders that receive an invitation to participate in oral presentations/interviews will proceed to cost evaluation and Phase III. Bidders that do not receive an invitation to oral interviews will be eliminated from further consideration under this RFR. Bidders will not be informed of their rank at the time of the oral presentation/interview. Additionally, the PMT reserves the right to adjust any Phase II score following any Oral Presentation/Interview, and before proceeding on to Phase III.

The time allotments and the format shall be the same for all oral presentations/interviews. The PMT will give the Bidder at least three (3) business days prior notice regarding the date of an oral presentation/interview. The PMT may waive the location and medium requirements of an oral presentation/interview upon the written request of a Bidder due to special hardships, such as a Bidder with disabilities or limited resources. In these circumstances the PMT may conduct oral presentations through an alternative written or electronic medium (e.g., telephone, videoconference, TTY or Internet). The PMT may require the Bidders assign key personnel to conduct the oral presentation/interview.

A Bidder is limited to the presentation of material contained in its proposal, with the limited exception that a Bidder may address specific questions posed by the PMT or provide clarification of information contained in its proposal. Any other correction or modification of the proposal or the presentation of supplemental information shall be considered prejudicial to the interests of other Bidders and fair competition and shall not be permitted. A Bidder’s attempt to submit such corrections, modifications or supplemental information during an oral presentation/interview may subject the Bidder’s proposal to disqualification. A Bidder’s failure to agree to an oral presentation/interview may result in disqualification from further consideration. Oral presentations may be recorded by the Treasury as a matter of public record.

On-Site Visits (Optional). The PMT reserves the right to conduct on-site inspections of any or all Bidder locations at any time prior to the awarding of this contract to verify the Bidder’s ability to perform the services required. The PMT shall schedule the time of these site visits and shall provide notice of at least three (3) business days before a visit. Failure to agree to a site visit may result in disqualification of a Bidder’s proposal. Only those firms that were evaluated in Phase II and were invited for an oral presentation / interview will be the subject of an on-site inspection, in the event the PMT elects to conduct such an on-site inspection.

**IV. SPECIFICATIONS, REQUIREMENTS & COMPONENTS**

**By submitting a Response to the RFR, the Bidder agrees to and agrees to comply with all of the RFR required specifications, components and requirements listed below in Sections A & B:**

**A. RFR REQUIRED SPECIFICATIONS**

**Alternatives.** A response which fails to meet any material term or condition of the RFR, including the submission of required attachments, may lose points or be deemed unresponsive and disqualified. Unless otherwise specified, Bidders should submit responses proposing alternatives that provide equivalent, better or more cost-effective performance than achievable under the stated RFR specifications. These alternatives may include related services that may be available to enhance performance during the period of the contract. The response should describe how any alternative achieves substantially equivalent or better performance to that of the RFR specifications. The Treasury will determine if a proposed alternative method of performance achieves substantially equivalent or better performance. The goal of this RFR is to provide the best value of commodities and services to achieve the procurement goals of the Treasury. Bidders that propose discounts, uncharged commodities and services or other benefits in addition to the RFR specifications may receive a preference or additional points under this RFR as specified.

**Best Value Selection and Negotiation.** The PMT and/or the State Treasurer and Receiver-General may select the response(s) that demonstrates the “Best Value” overall.

**Bidder Communication.** Bidders are prohibited from communicating directly with any employees of the Treasury, including any Treasury departments and divisions and affiliated commissions, boards, and trusts,[[1]](#footnote-2) or any member of the PMT regarding this RFR and may be disqualified for doing so at the determination of the PMT, except as specified in this RFR, and no other individual Commonwealth employee or representative is authorized to provide any information or respond to any question or inquiry concerning this RFR. Bidders may communicate with the contact person for this RFR in the event this RFR is incomplete or the Bidder is having trouble obtaining any required attachments electronically through COMMBUYS (https://www.commbuys.com).

In addition, Bidders that intend to submit a bid/proposal should not discuss this RFR with members of the State Board of Retirement, members of the Deferred Compensation Plan Committee**,** or any employee of the 457 SMART Plan’s third-party administrator (Empower Retirement, formerly Great-West Retirement Services), investment managers, consultants (Aon Hewitt Investment Consulting, Inc.), and/or other contractors.

**Brand Name or Equal.** Unless otherwise specified in this RFR, any reference to a particular trademark, trade name, patent, design, type, specification, producer or supplier is not intended to restrict this RFR to any manufacturer or proprietor or to constitute an endorsement of any service. The Treasury will consider clearly identified offers of substantially equivalent services submitted in response to such reference.

**COMMBUYS Market Center.** COMMBUYS is the official source of information for this RFR and is publicly accessible at no charge at [www.commbuys.com](http://www.commbuys.com). Information contained in this document and in COMMBUYS, including file attachments, and information contained in the related Bid Questions and Answers (Q&A), are all components of the RFR, as referenced in COMMBUYS, and are incorporated into the RFR and any resulting contract.

Bidders are solely responsible for obtaining all information distributed for this RFR via COMMBUYS. RFR Q&A supports Bidder submission of written questions associated with a RFR and publication of official answers.

It is each Bidder's responsibility to check COMMBUYS for:

* Any amendments, addenda or modifications to this RFR, and
* Any RFR Q&A records related to this RFR.

The Commonwealth accepts no responsibility and will provide no accommodation to Bidders who submit a response based on an out-of-date RFR or on information received from a source other than COMMBUYS.

Bidders may not alter (manually or electronically) the RFR language or any RFR component files. Modifications to the body of the RFR, its specifications, or terms and conditions, which change the intent of this RFR are prohibited and may disqualify a response.

**COMMBUYS Subscription.** Bidders may elect to obtain a free COMMBUYS Seller subscription which provides value-added features, including automated email notification associated with postings and modifications to COMMBUYS records.

All Bidders submitting a response to this RFR agree that, if awarded a contract: (1) they will maintain an active seller account in COMMBUYS; (2) they will, when directed to do so by the procuring entity, activate and maintain a COMMBUYS-enabled catalog using Commonwealth Commodity Codes; (3) they will comply with all requests by the procuring entity to utilize COMMBUYS for the purposes of conducting all aspects of purchasing and invoicing with the Commonwealth, as added functionality for the COMMBUYS system is activated; and (4) in the event the Commonwealth adopts an alternate market center system, successful Bidders will be required to utilize such system, as directed by the procuring entity. Commonwealth Commodity Codes are based on the United Nations Standard Products and Services Code (UNSPSC).

The COMMBUYS system introduces new terminology, which bidders must be familiar with in order to conduct business with the Commonwealth. To view this terminology and to learn more about the COMMBUYS system, please visit the COMMBUYS Resource Center.

**Conflict of Interest.** Prior to award of any contract, the Bidder shall certify in writing to the procuring agency that no relationship exists between the Bidder and the procuring or contracting agency that interferes with fair competition or is a conflict of interest, and no relationship exists between the Bidder and another person or organization that constitutes a conflict of interest with respect to a state contract. No official or employee of the Commonwealth who exercises any function or responsibility in the review or approval of the undertaking or carrying out of this project shall, prior to the completion of the project, voluntarily acquire any personal interest, either directly or indirectly, in this contract or proposed contract.

The Bidder shall provide assurance that it presently has no interest and shall not acquire any interest, either directly or indirectly, which will conflict in any manner or degree with the performance of its services hereunder. The Bidder shall also provide assurances that no person having any such known interests shall be employed during the performance of this contract.

**Costs.** Costs that are not specifically identified and defined in the Bidder's response, and accepted by the Treasury, will not be compensated under any engagement pursuant to this RFR. The Commonwealth will not be responsible for any costs or expenses incurred by Bidders in responding to this RFR.

**Electronic Communication/Update of Bidder’s/Contractor’s Contact Information.** It is the responsibility of the prospective Bidder and qualified Firm to keep current the E-mail address of the Bidder’s contact person and prospective contract manager, if awarded a contract, and to monitor that E-mail inbox for communications from the PMT, including requests for clarification. The PMT and the Commonwealth assume no responsibility if a prospective Bidder’s/awarded Contractor’s designated E-mail address is not current, or if technical problems, including those with the prospective Bidder’s/awarded Contractor’s computer, network or Internet service provider (ISP) cause E-mail communications sent to/from theprospective Bidder/awarded Contractor and the PMT to be lost or rejected by any means including E-mail or spam filtering.

**Environmental Response Submission Compliance.** In an effort to promote greater use of recycled and environmentally preferable products and minimize waste, all responses submitted should comply with the following guidelines:

* All copies should be printed double sided.
* All submittals and copies should be printed on recycled paper with a minimum post-consumer content of 30% or on tree-free paper (i.e., paper made from raw materials other than trees, such as kenaf). To document the use of such paper, a photocopy of the ream cover/wrapper should be included with the response.
* Unless absolutely necessary, all responses and copies should minimize or eliminate use of non-recyclable or non-reusable materials such as plastic report covers, plastic dividers, vinyl sleeves, and GBC binding. Three ringed binders, glued materials, paper clips, and staples are acceptable.
* Bidders should submit materials in a format which allows for easy removal and recycling of paper materials.
* Bidders are encouraged to use other products that contain recycled content in their response documents. Such products may include, but are not limited to, folders, binders, paper clips, diskettes, envelopes, boxes, etc. Where appropriate, bidders should note which products in their responses are made with recycled materials.
* Unnecessary samples, attachments, or documents not specifically asked for should not be submitted.

**Estimated Provisions.** The Treasury makes no guarantee that any commodities or services will be purchased from any qualification resulting from this RFR. Any estimates and/or past or current procurement volumes referenced in this RFR are included only for the convenience of Bidders, and are not to be relied upon as any indication of future purchase levels.

**Minimum Bid Duration.** Bidder responses made in response to this RFR must remain in effect for 150 days from the date of bid submission and thereafter until either the Bidder withdraws the response in writing, a contract is executed or the procurement is canceled, whichever occurs first.

**Public Records.** All responses and information submitted in response to this RFR are subject to the Massachusetts Public Records Law, Massachusetts General Laws (“M.G.L.”), Chapter 66, Section 10, and Chapter 4, Section 7, Subsection 26. Any statements in submitted responses that are inconsistent with these statutes will be disregarded. Bidders are advised that all proposals are deemed sealed, and therefore their contents will be treated as confidential and will not be disclosed to competing Bidders until the evaluation process has been completed, the contract has been awarded and negotiations are finalized.

**Reasonable Accommodation.** Bidders with disabilities or hardships that seek reasonable accommodation, which may include the receipt of RFR information in an alternative format, must communicate such requests in writing to the RFR contact person. Requests for accommodation will be addressed on a case-by-case basis. A Bidder requesting accommodation must submit a written statement which describes the Bidder’s disability and the requested accommodation to the contact person for the RFR. The PMT reserves the right to reject unreasonable requests.

**Restriction on the Use of the Commonwealth Seal.** Bidders and contractors are not allowed to display the Commonwealth of Massachusetts Seal in their response package or in any subsequent marketing materials if they are awarded a contract. Use of the Coat of Arms and the Great Seal of the Commonwealth for advertising or commercial purposes is prohibited by law.

**Prohibition Against Selling or Distributing Information.** Any Bidder awarded a contract under this RFR is prohibited from selling or distributing any information collected or derived from the contract and/or procurement process, including lists of participating or eligible Commonwealth of Massachusetts employee names, telephone numbers, email addresses or mailing addresses.

**B. COMPONENTS OF PROCUREMENT**

1. **Duration and Renewal Options.** The Treasury intends to enter into a five (5) year contract with the selected Bidder(s) for the services solicited in this RFR. The Treasury may, at its option, extend the contract for additional period(s) for a maximum contract term not exceeding ten (10) years, under the same or better terms and conditions as negotiated if deemed in the best interest of the Treasury. Bidders who offer price guarantees for the life of the contract will be held to that offer or such better terms as negotiated.
2. **Acquisition Method.**

* Outright Purchase
* License
* Fee for Service
* Tax-exempt Lease Purchase
* Term Lease
* Lease Purchase
* Rental (not to exceed 6 months)
* Other (specify)

1. **Single or Multiple Contracts.** The Treasury reserves the right to award any contract to a single Attorney/Firm or multiple Attorneys/Firms, in the best interest of the Treasury. The Bidder must agree to cooperate with such other Bidders, and must not commit or permit any act that may interfere with the performance of work by any other Bidder.
2. **Contract Guidelines.** (Those that apply are checked)

* Only the Office of the State Treasurer and Receiver General may contract under RFR
* Option to allow other Departments/political subdivisions to contract under RFR
* Statewide Contract
* Multi-Treasury User Contract
* Pre-Qualification List

1. **Contract Performance and Additional Business Specifications.**

**Evaluation and Selection of Contractor.** The Treasury shall have sole authority to evaluate and make the final selection of Bidder(s) for contract negotiation(s) pursuant to this RFR. The selection will be made after evaluation of both technical (Phase I & II) and cost proposals (Phase III) by the PMT and final approval by the State Treasurer.

**Change in Terms.** The Treasury reserves the right to modify the specifications identified in the RFR at any time prior to the closing date. The Treasury reserves the right to negotiate with the selected Bidder(s) as to any element of cost or performance, including without limitation, elements identified in the RFR and/or the selected Bidder’s response in order to achieve the best value for the Commonwealth. The Treasury reserves the right to request from any Bidder a “best and final offer” as to the Bidder’s proposal or cost proposal. The Treasury reserves the right to procure some, all, or none of the services specified in this RFR.

**Termination or Suspension.** Once retained, a Firm’s service may be terminated or suspended from the Treasury’s contract for poor performance, failure to perform, fraud or other cause at any time without prior notice. Firms may be terminated from the contract without cause with sixty (60) day prior written notice. The Firm may not terminate the contract or performance except upon a minimum of 120 days written notice to the Treasury.

**Permits and Compliance.** The Firm shall procure and pay for all permits, licenses and approvals necessary to perform the services solicited in this RFR. The Firm shall comply with all applicable laws, ordinances, rules, orders and regulations related to the performance of the services solicited. The Treasury may, at its option, request documentation evidencing the Firm’s compliance.

**Rejection of Proposals.** The Treasury reserves the right to reject any and all proposals submitted under this solicitation.

**Fees Subject to Office of the State Treasurer and Receiver General Signatory Authorization.** All fees must be approved by the Treasurer or her designee and are subject to verification of performance.

**Confidentiality Policy Regarding Bidder’s Support Staff and/or Vendors.** The Treasury may require Bidders’ support staff or outside vendors to sign a confidentiality agreement for the confidential information they will have or have access to.

**Subcontracting Policies.** The legal services to be procured under this RFR shall not be sub-contracted or performed under any joint-venture agreement or similar arrangement without the specific written approval of the Treasurer.

**Concurrent Contracts Running (Renewals and Transitions).** The Treasury shall cancel the contract if funds are not appropriated or otherwise made available to support continuation of performance in any fiscal year succeeding the first year or if satisfactory performance by the contractor does not ensue. The Treasury will also have the right to sole discretion in exercising an option to renew, which will not be subject to contractor acceptance or agreement. Any assistance required for this transition must be provided in a smooth and timely manner. If at any time the contract is canceled, terminated or expires, and a contract is subsequently executed with a firm other than the contractor, the contractor has the affirmative obligation to assist in the smooth transition of contract services to the subsequent contractor.

**Pricing: Price Limitation:** The Bidder must agree that no other state or public entity customer within the United States of similar size and with similar terms and conditions shall receive a lower price for the same commodity and service during the contract period, unless this same lower price is immediately effective for the Commonwealth. If the Commonwealth believes that it is not receiving this lower price as required by this language, the Bidder must agree to provide current or historical pricing offered or negotiated with other state or public entities at any time during the contract period in the absence of proprietary information being part of such contracts.

**Submission of Proposal Materials and Oral Presentation.** All materials, representations and submissions made within the proposal and at the oral presentation are subject to becoming part of the contract binding the selected Bidder to uphold the materials, representations and submissions made by the selected Bidder within the proposal and at the oral presentations.

**Fiduciary Status of the Bidder/Firm; Chapter 268A.** With respect to the performance of its duties and responsibilities hereunder, if awarded the contract, the Bidder/ Firm acknowledges that it is a fiduciary, and that the Bidder/ Firm will discharge its duties and responsibilities under this Agreement in accordance with the fiduciary standards of conduct and other requirements as they apply to the Bidder/ Firm. The Bidder/ Firm is advised of the existence of Massachusetts General Laws, Chapter 268A (the Massachusetts "Conflict of Interest" statute), and is required to act and perform its duties in accordance with such provisions.

**Security Breach Law, M.G.L. c. 93H.** The Bidder hereby acknowledges and agrees to comply with the requirements and responsibilities, including those of providing notice and response, as set forth in G.L. c. 93H concerning Security Breaches and any regulations implemented to effectuate security of “personal information” as defined in § 1 of G.L. c. 93H.

**V. PHASE ONE REQUIREMENTS**

Compliance with all criteria listed below is **required** for a bid to be accepted for further review. Lack of compliance with the Phase I criteria may disqualify the Bidder. Phase I of Bidder’s response should demonstrate compliance with each of the conditions qualifying an institution to propose as outlined below.

1. **MINIMUM QUALIFICATIONS**

Bidders submitting Proposals must meet the minimum qualifications identified in the Response Template Pages 7-8 to be given further consideration in the Treasury’s search for legal counsel. Failure of a Bidder to meet the minimum qualifications applicable to this RFR may result in immediate rejection. Using the Response Template associated with this RFR check each minimum qualification that your firm meets. If your firm meets the qualification (by checking the box), state your basis for an affirmative assertion as indicated in the template. **Please be advised that Bidders are requested to specifically describe how the Bidder meets each of these minimum qualifications.**

1. **LEGAL AND OTHER REQUIREMENTS**

As required in the Response Template pages 9-10.

**C. MANDATORY ATTACHMENTS AND ENCLOSURES**

Phase One of the Bidder’s response shall include the completed mandatory attachments listed in the Response Template pages 27-34. The Response Template and the subject forms can also be found on COMMBUYS with this RFR. All mandatory attachments must be signed by an individual with the authority to bind the Bidder Firm, and the “originals” should have an original signature in blue ink and the signatory must be listed on the *Contractor Authorized Signatory Listing* form, provided in the RFR Response Template.

**VI. SCOPE OF SERVICES & PHASE TWO QUESTIONNAIRE(S)**

1. **Services to be Procured**

Set forth below are the descriptions of the legal services to be provided by Bidders under this RFR. These descriptions are not intended to be comprehensive but are intended to provide general guidance as to the Scope of Services that Bidders will be expected to provide. Bidders are advised that the Scope of Services will be considered to include, in addition to the legal services described below, all those services understood by knowledgeable counsel to be reasonably necessary to satisfy the duties of such counsel.

1. Investment Counsel

* Review, negotiate and assist in drafting and/or restructuring any agreements;
* Provide advice to the Treasury on the tax matters related to fund ownership, operation and financing of investments as well as the possible over-arching implications to the Plans as a whole and as a result of a particular investment;
* Review and counsel on any investment strategies and documents and assist on negotiations;
* Review amendments to investment agreements when a legal opinion is required;
* Provide advice and counsel regarding any terms in any documents or agreements relevant to any transactions;
* Advise staff regarding MFN elections when contracting with managers;
* Provide education and legal assistance relative to various changes in the legal/regulatory climate relative to pension fund investments, and public funds, including but not limited to, indemnification issues;
* Assist staff to conduct legal due diligence with respect to investment advisory firms and other institutions managing investments on behalf of the Plans in separately managed accounts or in co-mingled vehicles, and alternative investment vehicles. Such due diligence would include investigation of compliance issues, fiduciary and other regulatory responsibilities resulting from various areas of law, including securities laws, banking laws, commodities laws, tax laws, ERISA and others;
* Counsel on issues regarding proper insurance terms in agreements and proper coverage for those entities doing business with the Treasury and any Treasury departments;
* Review and give advice concerning potential claims relating to Plans’ investment activities;
* Prepare or review other documents, instruments and agreements relating to the Plans’ investment activities; and
* Provide legal counsel as requested for other investment and investment-related contract matters.

1. ERISA Counsel

* Provide legal advice to the Treasury in conjunction with the 401(k) Program established pursuant to G.L. c. 29, § 64E;
* Provide legal counsel and advice on all ERISA matters related plan sponsorship of a volume-submitter plan;
* Advise on amendments necessitated by changes in federal legislation;
* Prepare, amending and review of Summary Plan Descriptions;
* Prepare and review of 401(k) Program policies, procedures and forms;
* Provide proactive communication and guidance on proposed and final changes in laws or regulations and describe implications and options for the 401(k) Program, as applicable;
* Represent the Treasury, on behalf of the 401(k) Program, before the U.S. Department of Labor, or any other regulatory or governmental body;
* Assist and advise on any ERISA-related litigation;
* Provide continuing legal counsel and advice, concerning daily operational and compliance issues that may arise concerning benefit distributions and overall 401(k) Program administration;
* Respond to questions of 401(k) Program interpretation, fiduciary responsibility, compliance issues, and best practices;
* Provide advice and counsel on matters of fiduciary duties and governance policies, including but not limited to duties of loyalty and prudence; ethics issues and conflicts of interest; prohibited transactions, fiduciary training procedures; and
* Provide legal counsel as requested for other matters concerning the 401(k) Program.

1. Tax Counsel

* Provide updates, advice and counsel regarding all matters of changes and amendments to the Internal Revenue Code (“Code”) and new and proposed regulations applicable to the Commonwealth’s governmental plan (the “457 SMART Plan”) and the 401(k) Program, (collectively, the “Plans”);
* Advise on the tax matters related to fund ownership, operation and financing of investments as well as the possible over-arching implications to the Plans as a whole and as a result of a particular investment;
* Advise on all qualification issues pursuant to the Code, which may affect the Plans;
* Advise on Code compliance issues and regulations affecting the qualified status of any Treasury administered plan;
* Prepare Determination Letter Applications for IRS qualification determinations; and advise, assist and/or represent the Treasury on such determination letter and with any continued required filings for necessary continued qualification of an Treasury-administered plan;
* Provide assistance in reviewing and analyzing non-standard and foreign tax issues;
* Advise the Plans regarding investment-related tax exposure;
* Provide legal opinions concerning taxation of qualified benefits and investment transactions including obtaining necessary opinions, private letter rulings, and other documents from the Internal Revenue Service, or other state or federal regulatory agencies];
* Provide recommendations and strategies to achieve and maintain the qualified status of the Plans, including but not limited to, recommendations on amendments to status, policies, and procedures, to ensure that the Plans are in full compliance with the Code qualification and constitutional law;
* Draft and/or review policies, procedures and/or regulations;
* Provide counsel and advice, concerning daily operational and compliance issues that may arise concerning benefit and plan administration of the Plans.
* Advise on the impact, if any, of Massachusetts law on any tax-related matter concerning the 457 SMART Plan and/or 401(k) Program, respectively; and
* Provide legal counsel to the Treasury on behalf of the Plans as requested.

1. MSERS – Tax Counsel

* Provide updates, advice and counsel regarding all matters of changes and amendments to the Internal Revenue Code (“Code”) and new and proposed regulations applicable to plans such as the MSERS, which is operated under Code § 401(a), as a governmental plan under Code § 414(d);
* Advise on all qualification issues pursuant to the Code, which may affect the MSERS;
* Advise the State Board of Retirement, which administers the MSERS, on Code compliance issues and regulations affecting the qualified status of the MSERS;
* Prepare Determination Letter Applications for IRS qualification determinations; and advise, assist and/or represent the MSERS/State Board of Retirement on such determination letter and with any continued required filings for necessary qualification;
* Provide legal opinions concerning and assistance with taxation of qualified benefits and other matters including obtaining necessary opinions, private letter rulings, and other documents from the Internal Revenue Service, or other state or federal regulatory or other governing bodies;
* Advise on tax related and compliance issues including exclusive benefit rule, IRC § 414(h) “pick up” of contributions on behalf of plan participants, taxation of plan distributions, required distributions, rollovers / refunds, qualified domestic relations orders, contribution (§ 415) and compensation (§ 401(a)(17)) limitations, and Form1099-R requirements;
* Provide recommendations and strategies to achieve and maintain the qualified status of the MSERS, including but not limited to, recommendations on amendments to status, policies, and procedures, to ensure that the MSERS is in full compliance with the Code qualification;
* Draft and/or review policies, procedures and/or regulations;
* Provide legal counsel and advice concerning daily operational and compliance issues that may arise concerning benefit and MSERS administration;
* Knowledge and/or ability to advise on/or concerning M.G.L. Chapter 32; and
* Provide legal counsel to the State Board of Retirement on behalf of the MSERS as requested.

In addition, while the aforementioned legal services have been sought by the Treasury principally for the 457 SMART Plan, the 401(k) Program, and the State Board of Retirement (which administers the MSERS), certain other divisions and departments of the Treasury[[2]](#footnote-3) may contract or utilize the legal services of the Firms awarded a contract as a result of this RFR. However, such divisions and departments may, alternatively, separately procure one or more categories of such legal services.

The Treasury reserves the right to reject a Firm’s use of any particular individual to perform the legal services sought under this RFR, within the Treasury’s sole discretion. Any changes to personnel performing services under this contract require approval by the Treasury and the Treasury reserves the right to terminate a contract if changes are not approved.

**B. PHASE TWO QUESTIONNAIRES**

See the Response Template pages 15-26.

* Questionnaire – Firm Background and General Description
  + *(Note: Each Bidder submitting a response* ***must*** *complete this Questionnaire).*
* Questionnaire – Investment Counsel
* Questionnaire – ERISA Counsel
* Questionnaire – Tax Counsel

**Appendix A**

**457 SMART Plan Overview:**

The Commonwealth of Massachusetts Employees Deferred Compensation Plan (the “457 SMART Plan”) is a retirement savings program authorized under section 457 of the Internal Revenue Code and Chapter 29, section 64 of the Massachusetts General Laws. The 457 SMART Plan allows eligible employees to save and invest before-tax dollars through salary deferrals. As a governmental plan, the 457 SMART Plan is not subject to the requirements of the Employee Retirement Income Security Act of 1974 (“ERISA”).

The 457 SMART Plan is offered to state employees and employees of any political subdivision, body politic, city, and town or group thereof, including any government body that chooses to adopt the Plan. Over 600 non-state entities currently participate. As of June 30, 2015, the 457 SMART Plan had approximately 98,000 full time participants and 185,000 part-time participants with $7.5 billion in assets.

Bidders may access more information concerning the 457 SMART Plan on [www.mass-smart.com](http://www.mass-smart.com)

**401(k) Program Overview:**

The Commonwealth of Massachusetts 401(k) Program for non-profit employers (the “401(k) Program”) is a qualified defined contribution plan authorized under § 401 of the Internal Revenue Code and Chapter 29, § 64E of the Massachusetts General Laws. Once up and running, the 401(k) Program, which is designed as a volume submitted program, will allow eligible employees of eligible non-profit organizations in the Commonwealth to save and invest before-tax and after-tax dollars through salary deferrals.

The 401(k) Program will be offered to organizations incorporated under § 501(c) of the Internal Revenue Code that are established, organized or chartered under the laws of the Commonwealth and doing business in the Commonwealth and employing not more than 20 persons.

**Massachusetts State Employees Retirement System (“MSERS”):**

The MSERS is a public contributory defined benefit retirement plan governed by Massachusetts General Laws (as amended) Chapter 32. The MSERS is operated under Internal Revenue Code (the “Code”) Section 401(a), as governmental plans under Code § 414(d). Accordingly the MSERS is not subject to the requirements of ERISA.

# Appendix B:

# Investment Options of the 457 SMART Plan

|  |  |
| --- | --- |
| **Authorized**  **Investment Option Name** | **Authorized**  **Investment Option Name** |
| Diversified Bond Fund  *PIMCO Total Return Fund*  *Reams Asset Management* | Treasury Inflation Protection “TIPS” Index Fund  *SSgA US Infl Prt Bd Idx Non Lnd Ser A* |
| Large Company Growth Stock Fund  *Fidelity Growth Company Fund* | Large Company Stock Index Fund  *SSgA S&P 500 Index Securities Lending Series Fund Class I* |
| Large Company Blend Stock Fund  *Manulife*  *PIMCO*  *Vanguard* | Small Company Stock Index Fund  *SSgA Russell Small Cap Index Securities Lending Series Fund Class I* |
| Large Company Value Stock Fund  *Dimensional Fund Advisors*  *Robeco Boston Partners* | Bond Index Fund  *SSgA U.s. Bond Index Securities Lending Series Fund Class I* |
| Large Co. Blend Stock Enhanced Index Fund  *T. Rowe Price Structured Research Common Trust Fund* | SMART Capital Preservation Fund  *Dwight*  *Chicago Equities Partners*  *IR & M*  *JP Morgan* |
| High Yield Bond Fund  *Eaton Vance High Yield Fund*  *Nomura Asset Management* | International Equity Fund  *Harding Loevner Inst’l International Equity Portfolio*  *MFS Inst’l International Equity Fund* |
| Real Estate “REIT” Fund  *Brookfield Investment Management* | SMARTPath Target Date Funds  *Various options currently included in the Plan* |
| Small Company Stock Fund  *Dimensional Fund Advisors*  *PENN Capital Management*  *NWQ Investment Management* | SMART Real Return Fund  *PIMCO All Asset Fund* |
| Target Date Fund Diversifiers: (not available as stand- alone options)  PIMCO – Emerging local bond  The Boston Company – emerging markets equity  Oppenheimer – Emerging markets equity  PIMCO – Emerging markets equity  Reams Asset Management – unconstrained fixed income | International Stock Index Fund  *SSgA Int’l Index Sec Lending Series CI I* |

Investment Consultant: Aon Hewitt Investment Consulting, Inc.

Custodians: The Northern Trust Company

Mellon Trust of New England, N.A.

Trustee: Wells Fargo Bank, N.A.

Third-Party Recordkeeper: Great-West Life & Annuity Insurance Company (dba Empower Retirement)

1. For purposes of this RFR Section IV.A.3, “Treasury” includes the following departments, divisions, boards, trusts, and commissions: 457 SMART Plan, Unclaimed Property Division, the Cash Management Department, Debt Management Department, Veteran’s Bonus Division, MA State Board of Retirement (which administers the Massachusetts State Employees Retirement System (“MSERS”)), MA State Lottery Commission (“MSLC”), MA Clean Water Trust (formerly known as the Water Pollution Abatement Trust), Alcoholic Beverage Control Commission (“ABCC”), and Office of Economic Empowerment. [↑](#footnote-ref-2)
2. Under this Scope of Services, Section VI.A., in addition to the 457 SMART Plan, the soon-to-be established 401(k) Program and the Massachusetts State Board of Retirement, “Treasury” includes the following departments, divisions, boards, and trusts: Unclaimed Property Division, the Cash Management Department, Veteran’s Bonus Division, and Office of Economic Empowerment. [↑](#footnote-ref-3)