

KANSAS PUBLIC EMPLOYEES RETIREMENT SYSTEM REQUEST FOR PROPOSALS

ISSUE DATE: March 7, 2019

TITLE: **Long-Term Disability Appeals Litigation Counsel**

ISSUING AGENCY: KANSAS PUBLIC EMPLOYEES RETIREMENT SYSTEM
ATTN: LAURIE MCKINNON
GENERAL COUNSEL
611 SOUTH KANSAS AVENUE, SUITE 100
TOPEKA, KS 66603

SEALED PROPOSALS for furnishing the services described herein will be received until **APRIL 24, 2019 @ 3:00 P.M. C.D.T. LATE PROPOSALS WILL NOT BE ACCEPTED. SOLE ELECTRONIC OR TELEGRAPHIC TRANSMISSION OF PROPOSALS WILL NOT BE ACCEPTED.**

All inquiries for information should be directed to Laurie McKinnon, General Counsel, Kansas Public Employees Retirement System, lmckinnon@kpers.org, phone: (785) 296-6059, fax: (785) 296-2422.

If proposals are **mailed**, send directly to issuing agency shown above. Packages must be labeled as indicated in Section XI.C., Special Terms and Conditions, Identification of Proposal Envelope. If proposals are **hand-delivered**, deliver to Kansas Public Employees Retirement System, Reception Desk, ATTN: Laurie McKinnon, General Counsel. Packages must be labeled as indicated in Section XI.C., Special Terms and Conditions, Identification of Proposal Envelope. Note: This RFP is posted on the Kansas Public Employees Retirement System website, www.kpers.org, to allow Respondents the ability to view documents and programs referenced in this RFP.

PLEASE RETURN THE ORIGINAL AND **FOUR (4) COMPLETE PAPER COPIES AND ONE ELECTRONIC COPY IN CD FORMAT** OF YOUR PROPOSAL. ALL COPIES OF THE PROPOSAL BEING SUBMITTED MUST BE PACKAGED IN A SEALED BOX OR ENVELOPE. SEE SECTION VIII FOR DETAILS.

In compliance with this Request for Proposals and with all Conditions imposed therein, the undersigned Respondent agrees to furnish the services in accordance with the attached signed proposal or as mutually agreed upon by subsequent negotiation.

I certify that I have read and understand this Request for Proposals and am authorized to sign this proposal for the Respondent.

NAME AND ADDRESS OF FIRM:

DATE: _____
BY: _____
(signature in ink)
NAME: _____
(print)
TITLE: _____

FEI/FIN: _____

TELEPHONE: _____

E-MAIL: _____

FAX: _____

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I. PURPOSE

The Kansas Public Employees Retirement System (“KPERS” or “the Retirement System”) seeks competitive proposals from law firms with an interest in representing the Retirement System in long-term disability administrative appeals. The purpose of this Request for Proposals (“RFP”) is for the Retirement System to solicit proposals from qualified firms to provide such services in accordance with the specifications, terms and conditions contained herein. This RFP provides information on KPERS’ long-term disability plan, the process by which KPERS handles administrative appeals under the Kansas Administrative Procedure Act at K.S.A. 77-501 *et seq.*, and the Kansas Judicial Review Act at K.S.A. 77-601 *et seq.*, establishes the specifications and requirements for submitting proposals, and provides information about the proposal evaluation process.

The Retirement System reserves the right without prejudice to reject any or all proposals submitted. There is no express or implied obligation for KPERS to reimburse Respondents for any expenses incurred in preparing proposals in response to this request. In the event none of the proposals are satisfactory to KPERS, no selection will be made. Proposals submitted in response to this RFP become the property of KPERS and are subject to public inspection. KPERS reserves the right to modify the RFP contents and requirements at any time prior to the submission deadline.

II. BACKGROUND

The Kansas Public Employees Retirement System, located in Topeka, Kansas, administers defined benefit pension and related benefits for public employees in Kansas. With over \$19 billion in assets, KPERS is an umbrella organization for three pension groups:

- the Kansas Public Employees Retirement System,
- the Kansas Police and Firemen’s Retirement System (“KP&F”), and
- the Kansas Retirement System for Judges (“Judges”).

These three plans are separate and distinct with different membership groups, actuarial assumptions, contribution rates, and benefit options. In addition to defined benefit pension benefits, the Retirement System administers life insurance and long-term disability benefit programs, as well as the state’s deferred compensation plan.

The Retirement System is a governmental defined benefit plan governed by K.S.A. 74-4901 *et seq.* and Section 401(a) of the Internal Revenue Code. It is a governmental plan as defined in section 414(d) of the Internal Revenue Code and section 3(32) of ERISA, but it is not an ERISA plan.

KPERS is governed by a nine-member Board of Trustees: two elected by members; four appointed by the Governor; one appointed by the Speaker of the House; one appointed by the President of the Senate; and the State Treasurer. An Executive Director appointed by the Board manages the System’s daily administration. KPERS has a small legal team consisting of the General Counsel and Staff Attorney, the latter of which manages all the System’s administrative appeals as well as all appeals to Kansas courts. KPERS also

contracts with other law firms for assistance with tax issues and plan compliance, securities litigation, and investments.

KPERS' Long-Term Disability Plan

K.S.A. 74-4927 authorizes the KPERS Board of Trustees to establish a long-term disability plan to provide disability benefits to active plan participants (members) and other eligible Kansas public employees. The long-term disability plan is one of the employer-provided benefits included in the KPERS Death and Disability Program. The KPERS long-term disability plan is self-insured and administered by KPERS and a third party administrator. The current administrator is Disability Management Services, Inc. ("DMS").

The KPERS disability plan includes long-term disability ("LTD") benefits and group life waiver of premium coverage and administration for non-work-related and work-related claims for qualified full- and part-time employees of KPERS-affiliated employers. The KPERS disability plan does not include disability benefits provided under the Kansas Police & Firemen's Retirement System or the Retirement System for Judges. The KPERS disability plan covers approximately 160,000 employees, including all active KPERS members and unclassified employees of Kansas Board of Regents institutions and the University of Kansas Hospital Authority.

A description of benefits provided by the KPERS long-term disability plan is provided in the current Summary Plan Description, which is attached as Appendix A.

KPERS wishes to contract with experienced outside counsel to provide the services detailed in this RFP for a period of three (3) years with two (2) two-year renewal options. Qualified attorneys and law firms selected through this process will be appointed to serve as outside legal counsel to the Retirement System and will work directly with the System's General Counsel, Staff Attorney, and Chief Benefits Officer.

Any law firm or solo practitioners with significant experience in administrative appeals, and especially those related to disability, who are interested in representing KPERS in such actions, should submit a response to this proposal. No litigation will be assigned to attorneys or firms not completing this process. Law firms who have previously been appointed as outside legal counsel and who have submitted similar information in the past are required to respond to this request and to provide all information requested in this RFP if they want to be considered. Failure to submit all requested information regardless of whether it has been submitted in relation to any other matter may result in disqualification from consideration.

III. TIMELINE

The following timeline is an estimate and may be adjusted at the Retirement System's discretion any time during this procurement process.

<u>Task</u>	<u>Date</u>
Distribution of RFP	March 7, 2019
Deadline for questions submitted in writing	March 28, 2019
Proposals due (no later than 3 p.m. C.D.T.)	April 24, 2019
Finalist presentations (if scheduled)	May 17, 2019
Estimated contract start date	June 1, 2019

All proposals submitted in response to this RFP must be delivered to KPERS no later than 3:00 p.m. C.D.T. on April 24, 2019.

IV. COMMUNICATION WITH KPERS

KPERS is the sole point of contact during the RFP process and any questions should be submitted in writing to Laurie McKinnon, General Counsel, at Kansas Public Employees Retirement System, 611 S. Kansas Ave., Suite 100, Topeka, KS 66603, or by email to lmckinnon@kpers.org, or by fax at (785) 296-2422 by 3 p.m. C.D.T., March 28, 2019. Answers to written questions will be posted on the Retirement System's website at www.kpers.org/procurement.htm. Vendors are responsible for checking the website periodically for updates to the RFP and responses to written questions. Telephone questions will not be accepted. No verbal communication will override written communications, and only written communications are binding.

KPERS' policy prohibits direct contact between prospective service providers and KPERS Board members, consultants or staff regarding this RFP during the selection process. From the date of release of this RFP until a Contractor is selected and a contract is executed and approved, all contacts and communications regarding this RFP are restricted except communications with KPERS staff identified in this section and designated participants in attendance **ONLY DURING** negotiations, presentations, and contract award and execution. Violation of these conditions may result in rejection of a bidder's proposal.

V. SCOPE OF WORK

KPERS is soliciting proposals from attorneys to represent KPERS in administrative hearings and subsequent appeals to the Shawnee County District Court, Court of Appeals, or Kansas Supreme Court, specifically related to its long-term disability program. Counsel that is selected will be notified when a member requests an administrative appeal of a KPERS disability determination and provided with all documentation relevant to the appeal and will coordinate counsel's representation primarily through KPERS' Staff Attorney, but will also work with KPERS' General Counsel and Chief Benefits Officer regarding the appeal, and ultimately the KPERS Board of Trustees, which serves as the quasi-judicial entity that makes the final order on appeals before it.

Occasionally, counsel may be expected to provide additional legal services, assist with other technical issues, or contribute to reports as needed. These additional services must be performed on an as-needed basis according to a schedule mutually agreed upon by both KPERS and counsel selected.

The period of appointment will commence at the date of appointment and will continue through May 31, 2022, with two (2) optional two-year renewals thereafter, at the sole discretion of the KPERS Board of Trustees, or until otherwise terminated. The Board of Trustees reserves the right to engage other counsel to provide legal advice under this RFP and to terminate any appointment (including any appointment made pursuant to this RFP) at will at any time.

The Board of Trustees further reserves the right to appoint any firms or individuals it may contract with as a result of this RFP it deems most appropriate to represent KPERS in the engagement.

VI. QUALIFICATIONS

A. MINIMUM QUALIFICATIONS

1. Respondents must have experience in handling appeals at the administrative level and through the Kansas Judicial Review Act and been in business in its current configuration for a minimum of five (5) years.
2. Respondents must have at least one (1) principal attorney assigned to provide legal services to KPERS who has five (5) years of litigation experience.
3. Respondents must agree to serve in a fiduciary capacity to the System when the firm or solo practitioner renders legal services and advice.

B. GENERAL QUALIFICATIONS

Respondents interested in being considered for selection must specify in detail, in a section of their proposal entitled “General Qualifications,” the following:

1. General background information on the firm’s size, history, specialties or areas of concentration, representative clients, and so forth;
2. Experience and expertise of specific firm attorneys in the area of administrative law;
3. At least three references willing to discuss with KPERS the firm’s representation and counsel relative to administrative law, such references to include the name, title, organization, address, and telephone number of each person whom KPERS may contact.

VII. PROPOSAL REQUIREMENTS

A cover letter must accompany the proposal. The cover letter should include or enclose the following:

1. Address of the office or branch of the law firm that will service this relationship;
2. Names and vitae of lawyers who will provide legal services for this relationship;
3. Signature of a person who is authorized to bind the law firm contractually;
4. Firm organizational chart;
5. Brief description of firm background, history and organizational structure along with any information on any changes to the firm's organizational structure in the past five (5) years;
6. Number of firm's attorneys who specialize in or have significant experience in administrative law;
7. Firm's history, especially with respect to attorneys who would be working with KPERS, of professional sanctions, including governmental or regulatory proceedings against the firm;
8. A copy of the firm's code of conduct or ethics policy;
9. Specification of the period for which the proposal will remain in effect, such period being not less than 90 days from the proposal due date;
10. An affirmative statement that the firm is independent of the Kansas Public Employees Retirement System, the State of Kansas, and the other participating employers in the three retirement plans; and
11. Also include the following statement:

“We have read KPERS’ Request for Proposals (RFP) for long-term disability representation and understand its intent. We certify that we have adequate personnel, equipment and facilities to provide KPERS’ requested services. We understand that our ability to meet the criteria and provide the required services shall be judged solely by the KPERS Board of Trustees and its staff. Our proposal is genuine. We understand that the terms of our proposal may be incorporated in the resulting agreement for services if our firm is selected. We have no conflicts of interest in providing legal services to KPERS. We have not directly or indirectly induced or solicited any person to submit a false proposal or to refrain from proposing, nor have we in any manner sought by collusion to secure an advantage over any other proposer. We acknowledge and accept all terms and conditions included in the RFP.”

The proposal must contain a section entitled “Description of Services,” to include:

1. A description of your approach to the services required;
2. Other services or approaches that you believe KPERS may have overlooked in preparing this RFP; and

3. Other information and suggestions as you deem appropriate.

The proposal must contain a section entitled “Fee Proposal,” to include, as applicable to the Respondent’s proposal, the following:

1. Hourly billing rates for all employees of the Firm who will be working on KPERS’ appeals;
2. A statement as to whether billing rates quoted are discounted from the attorneys’ or firm’s usual rates;
3. Other information or suggestions related to billing that you believe will be useful or important to KPERS in assessing your proposal.

KPERS may reject any or all proposals and may or may not waive any immaterial deviation or defect in a proposal. KPERS’ waiver of any immaterial deviation or defect will in no way modify the RFP or excuse the proposer from full compliance with the RFP requirements.

Proposals may be withdrawn at any time prior to the deadline, by written notification to KPERS’ General Counsel. The proposal may be resubmitted thereafter, but not after the final date and time. Modification offered in any other manner will not be considered.

VIII. PROPOSAL PREPARATION AND SUBMISSION REQUIREMENTS

Proposals submitted in response to this RFP should be prepared simply and economically, avoiding the use of elaborate promotional materials beyond those sufficient to provide a complete, accurate and reliable presentation. The Retirement System assumes no financial responsibility for any costs incurred in responding to this RFP. All materials submitted in response to this RFP become the property of KPERS and are subject to public inspection.

To be considered for selection, Respondents must submit a complete response to this RFP. One (1) original and four (4) paper copies and one (1) electronic copy in CD format must be submitted to the Kansas Public Employees Retirement System in a sealed box(s) or envelope(s). No other distribution of the proposal shall be made by the Respondent.

One (1) original and four (4) paper copies and one (1) electronic copy in CD format shall be delivered to the Kansas Public Employees Retirement System at the following street address:

Laurie McKinnon
General Counsel
Kansas Public Employees Retirement System
611 South Kansas Avenue, Suite 100
Topeka, Kansas 66603

**NOTE THAT PROPOSALS DELIVERED TO KPERS AFTER 3:00 P.M. C.D.T. ON
APRIL 24, 2019, WILL NOT BE ACCEPTED.**

A. PROPOSAL PREPARATION

1. Proposals should be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be placed on completeness and clarity of content.
2. Proposals should be organized in the order in which the requirements are presented in Section VII. All pages of the proposal should be numbered.
3. Each paper copy of the proposal should be bound or contained in a single volume where practical. All documentation submitted with the proposal should be contained in that single volume.
4. Ownership of all data, materials and documentation originated and prepared for KPERS pursuant to the RFP shall belong exclusively to KPERS and be subject to public inspection in accordance with the Kansas Open Records Act, which is at K.S.A. 45-215 *et seq.* (exceptions at K.S.A. 45-221).

IX. EVALUATION CRITERIA AND AWARD

A. PROPOSAL EVALUATION

The Retirement System will evaluate proposals based on the following criteria:

- Qualifications and experience of the firm and key personnel assigned to KPERS, with emphasis on documented experience in successfully completing work on contracts of similar size and scope to those required by this RFP.
- The Respondent's planned approach for performing services required by the Scope of Work, Section V, of this RFP.
- The overall ability of Respondent to successfully provide the services outlined in this RFP.
- The Respondent's cost proposal.
- Other relevant criteria, as determined by the Retirement System.

At any time during the evaluation process, Respondents may be requested to be interviewed or to provide explicit written clarification of any part of their proposal. At its sole discretion, the Retirement System reserves the right to reject any or all proposals and/or to waive any deviation or defect (deemed by KPERS to be immaterial) within proposals. KPERS' waiver of any immaterial deviation or defect shall in no way modify the proposal or the RFP documents or excuse the applicant from full compliance with the RFP requirements.

B. SELECTION CRITERIA

On the basis of the evaluation factors included in this RFP, Respondents deemed to be fully qualified and best suited among those submitting proposals may be interviewed by the

KPERS Procurement Negotiating Committee (“PNC”) in a process that may include discussion and negotiation of key terms. Contract fees and rates will be considered but need not be the sole determining factor.

After interviews have been conducted with each Respondent so selected, the PNC will select the Respondent which, in its opinion, made the best proposal, and will recommend to the Board of Trustees that it award the contract to such Respondent. KPERS may cancel this Request for Proposals or reject proposals at any time prior to an award. The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the contractor’s proposal as negotiated, as well as other terms and conditions as appropriate.

X. GENERAL TERMS AND CONDITIONS

A. KPSSA

This solicitation is subject to the provisions of the Kansas Professional Services Sunshine Act, K.S.A. 75-37,131 *et seq.* See K.S.A. 75-37,132(h).

B. APPLICABLE LAWS AND COURTS

This solicitation and any resulting contract shall be governed in all respects by the laws of the State of Kansas, and any litigation with respect thereto shall be brought in the District Court of Shawnee County, Kansas. See K.S.A. 74-4904(1). The Contractor shall comply with all applicable federal, state and local laws, rules and regulations.

C. KANSAS CONTRACTUAL PROVISIONS

By submitting their proposals, Respondents certify their willingness to comply with the provisions of Kansas Department of Administration Form DA-146a, Contractual Provisions Attachment, which states among other things that “[t]his form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement.” Form DA-146a is Attachment B to this RFP.

D. ETHICS IN PUBLIC CONTRACTING

By submitting their bids or proposals, Respondents certify that their bids/proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Bidder/Respondent, supplier, manufacturer or subcontractor in connection with their bid/proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

E. CLARIFICATION OF TERMS

If any prospective Respondent has questions about this RFP or the appendices hereto, the prospective Respondent should contact KPERS' representative, in writing, whose name appears on the face of this RFP prior to the stated deadline. Any revisions to the solicitation will be made only by addendum issued by KPERS.

F. PRECEDENCE OF TERMS

All of the above General Terms and Conditions shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

G. QUALIFICATIONS OF CONTRACTORS

KPERS may make such reasonable investigations as deemed proper and necessary to determine the ability of the Respondent to perform the services/furnish the goods and the Respondent shall furnish to KPERS all such information and data for this purpose as may be requested. KPERS reserves the right to inspect the Respondent's physical facilities prior to award to satisfy questions regarding the Respondent's capabilities. KPERS further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such Respondent is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.

H. BUSINESS CONTINUITY

The Contractor must indicate any recent or anticipated changes in their corporate structure such as mergers, acquisitions, new venture capital, stock issue, etc. The Contractor agrees to present to KPERS an overview of its business continuation plan for this program in the event of natural or other disaster.

I. TESTING AND INSPECTION

KPERS reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

J. ASSIGNMENT OF CONTRACT

A contract shall not be assignable by the Contractor in whole or in part without the written consent of KPERS.

XI. SPECIAL TERMS AND CONDITIONS

A. CONFIDENTIALITY

The Contractor is expected to comply with provisions of Kansas statutes regarding confidentiality of membership data and agrees not to disclose confidential membership

information to other parties without KPERS' prior authorization and approval. See K.S.A. 74-4909(10).

B. PROPOSAL ACCEPTANCE PERIOD

Any offer in response to this solicitation shall be valid for 90 days. At the end of the 90 days the proposal may be withdrawn at the written request of the Respondent. If the proposal is not withdrawn at that time it remains in effect until an award is made or the solicitation is canceled.

C. IDENTIFICATION OF PROPOSAL ENVELOPE

The signed proposal should be returned in a separate envelope or package addressed as directed on page. The envelope should be sealed and identified as follows:

From:

_____ Name of Respondent

_____ Street Address or P.O. Box

_____ City, State, Zip Code

RFP Title: _____

Respondent's Contact Name: _____

Contact Phone Number: _____

Contact E-Mail Address:

If a proposal not contained in an envelope marked as described above is mailed or delivered to KPERS, the Respondent assumes the risk that the envelope may be inadvertently opened and the information compromised, which may cause the proposal to be disqualified. Proposals may be hand-delivered to the designated location specified on page 1. No other correspondence or other bids/proposals should be placed in the envelope.

XII. ATTACHMENT

Attachment A: Summary Plan Description

Attachment B: Contractual Provisions Attachment (KS Dept. of Administration Form DA-146a, Rev. 06/12)