

**THOMAS P. DiNAPOLI**  
**COMPTROLLER OF THE STATE OF NEW YORK**



**REQUEST FOR PROPOSALS**  
**RFP0005**  
**FOR THE NEW YORK STATE COMMON RETIREMENT FUND**

**LEGAL SERVICES MODULES:**

**SECURITIES LITIGATION COUNSEL**  
**SEC AND CORPORATE LAW COUNSEL**  
**DELAWARE COUNSEL**  
**EVALUATION AND CLASS ACTION COUNSEL**  
**FOREIGN LITIGATION COUNSEL**

**ISSUED: MAY 12, 2025**

**DIRECTOR OF FINANCE**  
**OFFICE OF THE STATE COMPTROLLER**  
**110 STATE STREET, STOP 13-2**  
**ALBANY, NY 12236-0001**

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## 1.0 CALENDAR OF EVENTS

<u>EVENT</u>	<u>DATE</u>
Issuance of Request for Proposals	May 12, 2025
Deadline for Submission of Written Questions	June 3, 2025 4:00 p.m. ET
Responses to Written Questions Posted	June 17, 2025
Deadline for Submission of Proposals	July 2, 2025 4:00 p.m. ET
Anticipated Commencement of Contract	December 30, 2025

## 2.0 GENERAL INFORMATION

Through this Request for Proposals (“RFP”), Thomas P. DiNapoli, Comptroller of the State of New York (the “Comptroller”), as the Trustee of the New York State Common Retirement Fund (the “CRF” or the “Fund”), seeks proposals from qualified law firms (“Proposers”) to perform the services described in Section 6.0 (Required Services) (the “Services”). The CRF intends to select a pool of qualified Proposers for Modules 1-4 (up to four pools) and will select one Proposer for Module 5. The five Modules are:

- Module 1 - Securities Litigation Counsel (Section 6.1);
- Module 2 - US Securities and Exchange Commission (“SEC”) and Corporate Law Counsel (Section 6.2);
- Module 3 - Delaware Counsel (Section 6.3);
- Module 4 - Evaluation and Class Action Counsel (Section 6.4); and
- Module 5 - Foreign Litigation Counsel (Section 6.5).

**A. Work Assigned.** Each Proposer to whom the CRF awards a contract for a Module (“Selected Proposer”) may be appointed to represent the Comptroller on a particular matter or transaction or may be asked to provide advice on an issue, subject to the CRF’s determination of the firm’s applicable experience and absence of any conflicts of interest. **There is no guarantee that selection as a member of the Pool for any Module will result in retention by the CRF in any specific matter.**

**B. Fiduciary Duty.** All Selected Proposers owe the Comptroller and the CRF a fiduciary duty. This means that they must disclose material conflicts of interest. They must disclose, and also receive approval for, any arrangements to assign or share work with other law firms for any matter in which the CRF has an interest.

**C. Proposing.** Proposers may be awarded contracts for more than one Module. Proposals should only include responses for those Modules for which the Proposer wishes to be evaluated. **Proposers may not submit a proposal for both Module 1 and Module 4.**

Two or more firms seeking to collaborate may jointly submit a proposal for one or more Modules, especially when doing so would lead to allow smaller firms, including minority- and women-owned business enterprise (“MWBE”) firms to meet the RFP’s qualifications. A law firm may not submit a proposal on its own behalf *and* submit jointly with another firm for the same Module.

The CRF reserves the right to award multiple contracts, or to make no award for any or all Modules.

## **2.1. The Common Retirement Fund**

**A. Background.** The CRF, as established by Article 9 of the New York Retirement and Social Security Law (“RSSL”), was created in 1967 and holds and invests the assets of the New York State and Local Employees’ Retirement System and the New York State and Local Police and Fire Retirement System (collectively, the “System”)<sup>1</sup>. As of December 31, 2024 the total assets of the CRF were estimated at \$273.4 billion. The CRF’s fiscal year end is March 31. The Comptroller, as Trustee of the Common Retirement Fund, is responsible for the investment of all of the funds of the System, which is accomplished through the Division of Pension Investment and Cash Management (“PICM”) of the Office of the State Comptroller (“OSC”).

PICM manages the assets of the Fund on a day-to-day basis under the direction of PICM’s Chief Investment Officer and Deputy Comptroller, with the support of professional staff, consultants, and external advisory committees. The CRF’s mission is to provide System beneficiaries with a secure pension through prudent asset management.

Additional information on the CRF can be found at [www.osc.state.ny.us/common-retirement-fund](http://www.osc.state.ny.us/common-retirement-fund).

**B. Securities Litigation.** Since 1995, the CRF has served as lead plaintiff in six securities class action matters (WorldCom, McKesson, Raytheon, Bayer, National City, and CrowdStrike) and co-lead plaintiff in four securities class action matters (Cendant, Chubb, Countrywide, and BP). In addition, the CRF has served as lead plaintiff in three shareholder derivative actions (Columbia HCA, Wynn Resorts, and Boeing) and has litigated four U.S. direct actions (Qwest, Merrill Lynch, Bank of America, and BP). The CRF has also been included as a member of a class of defendants in two actions (Tribune and Lyondell). The CRF has litigated three “books and records” matters in the Delaware Court of Chancery under section 220 of Delaware’s General Corporation Law and also relies on Delaware counsel for certain issues.

**C. Corporate Governance.** The Comptroller maintains a corporate governance program that is overseen by the Bureau of Corporate Governance (“BCG”) in PICM. The program includes filing shareholder resolutions (on average between 30 and 40 per proxy season). Occasionally, these filings have resulted in the CRF defending against “no action” requests sought by companies, and BCG staff participating in exempt solicitations several times each season. The Comptroller also provides written comments to regulatory proposals relating to the CRF.

**D. Legal Representation.** The CRF currently has a pool of 20 law firms authorized to handle its securities litigation, corporate governance, Delaware corporate law counsel, and evaluation matters.

The Division of Legal Services is responsible for providing legal services and counsel to the Comptroller and to staff of the Office of the State Comptroller, including PICM. The Division is headed by the Counsel to the Comptroller. Dedicated attorneys focus on and are responsible for coordinating and helping to manage securities litigation arising from CRF investments. These attorneys review investment losses and potential litigation and make recommendations to Counsel to the Comptroller and the General Counsel to the CRF as to what cases, if any, the Comptroller should consider litigating. In those cases in which the Comptroller litigates as a lead plaintiff in investor class actions or as an individual plaintiff on behalf of CRF, these attorneys participate in all aspects of the litigation, from selection of outside counsel and reviewing all briefs and legal documents to direct participation in mediation and other settlement

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<sup>1</sup> The Fund was created to hold the assets of the System pursuant to §422 of the RSSL and is subject to the supervision of the New York State Department of Financial Services (“DFS”).

discussions. These attorneys also provide legal counsel related to proxy voting, shareholder proposals, company engagements, and public policy advocacy.

## **2.2. RFP Requirements**

- A. Format and Instructions.** This RFP outlines the terms and conditions and all applicable information required for submission of a proposal. Proposers should pay strict attention to the Deadline for Submission of Proposals in Section 1.0 (Calendar of Events) to prevent disqualification. To ensure compliance with these requirements and to prevent possible disqualification, Proposers should follow the format and instructions contained in this document.
- B. Procurement Integrity.** Appendix C (OSC Executive Order on Procurement Integrity and the OSC Procurement Integrity Procedures) impacts the procurement and Proposers are encouraged to read and understand these procedures before drafting their proposals.
- C. Draft Contract.** Proposers are encouraged to review the draft contract for each Module on which the Proposer intends to propose, including all appendices, as each Proposer must be willing to enter into a contract substantially in accordance with the terms of the relevant draft contract should the Proposer be selected for contract award:
- Exhibit 1, Draft Contract, Module 1 – Securities Litigation Counsel;
  - Exhibit 2, Draft Contract, Module 2 – SEC and Corporate Law Counsel;
  - Exhibit 3, Draft Contract, Module 3 – Delaware Counsel;
  - Exhibit 4, Draft Contract, Module 4 – Evaluation and Class Action Counsel; and
  - Exhibit 5, Draft Contract, Module 5 – Foreign Litigation Counsel.

Bracketed language in a draft contract may, at the sole discretion of the CRF, be revised as mutually agreed between the CRF and Proposer. The CRF may consider limited and reasonable modifications to the non-bracketed language in a draft contract in alignment with industry standards, so long as such proposed modifications do not reduce any of the CRF's rights and protections or increase the CRF's obligations. However, the CRF has no obligation to accept any such proposed modifications and reserves all rights to reject any proposed changes. The CRF prefers that Proposers submit such proposed modifications to the Draft Contract as an attachment to the Administrative Proposal (see Section 8.1.F Proposed Modifications to the Draft Contract, if any).

## **2.3. Interchangeable Designations**

The terms Proposer, Selected Proposer, Counsel, and Contractor may be referenced throughout this RFP. The term "Proposer" as used herein means a law firm submitting a proposal or two or more law firms jointly submitting a single proposal. Upon selection and award, the Proposer becomes the "Selected Proposer". The term "Counsel" or "Contractor" denotes the role assumed, post-contract execution, by the Selected Proposer.

## **2.4. Term**

The term of the agreements resulting from this RFP ("Agreements" or "Contracts") will commence upon the date of execution by the CRF and will continue for a period of four years ("Initial Term"). The CRF, at its sole discretion, shall have the option to extend the Agreement under the same terms and conditions for two additional one-year periods ("Extended Term") ("collectively, the Initial and Extended Terms are the "Term"). If an extension is elected by the CRF, fees for an Extended Term will be paid in accordance with the relevant Cost Proposal (Attachments C1, C2, C3, C4, and/or C5).

## **2.5. Fiduciary Obligation**

The Selected Proposer shall act as a fiduciary to the Comptroller and the CRF. In that regard, the Selected Proposer shall, in the discharge of its duties and the exercise of its powers pursuant to the terms of the Agreement, to:

- A.** act with the care, skill, prudence, and diligence that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and
- B.** be governed by the highest standard imposed by:
  - 1.** the standards in effect under federal and state law that apply to persons and entities serving in a similar capacity with respect to the Comptroller or the CRF (including, without limitation, the standards set forth in 11 NYCRR Subpart 136-2), attached as Appendix D, to the extent any such standard is applicable to the Selected Proposer in the discharge of its duties under the Agreement), as they may be amended from time to time or any successor provisions;
  - 2.** Sections 404 and 406 of Employee Retirement Income Security Act of 1974, as it may be amended ("ERISA") (as if the CRF were an employee benefit plan subject to ERISA, including Title I thereof, and not a governmental plan within the meaning of Section 3(32) of ERISA); and
  - 3.** any other federal or state law affecting the Comptroller or the CRF that may impose a higher or comparable standard to the extent any such law is applicable to the Selected Proposer.
- C.** disclose conflicts that may affect the Selected Proposer's ability to render unbiased and objective advice to the CRF; and
- D.** annually complete a compliance questionnaire, which may change from year to year, upon receiving notification and instructions from the CRF's Director of Compliance.

## **2.6. Staff**

For the purposes of this RFP, Proposer's staff means Proposer's employees, its owners, officers, directors, affiliates, partners, and agents and include other counsel, affiliates, entities, and firms assigned by the Proposer to provide any of the services for which the Proposer is retained.

## **3.0 MINIMUM QUALIFICATIONS TO PROPOSE**

**Proposers must meet the following Minimum Qualifications for each Module for which it submits a proposal. If submitting a joint proposal, the Minimum Qualifications may be met collectively by the participating firms. Failure to meet the Minimum Qualifications for a Module will result in a proposal submitted for that Module being found non-responsive and eliminated from consideration.**

### **3.1. Module 1: Securities Litigation Counsel**

For **Module 1**, the Proposer must have:

- A.** expertise in securities litigation, demonstrated by an existing securities litigation practice;
- B.** three partners whose aggregate experience in securities litigation matters totals at least 20 years; and

- C. three public or private pension plan/funds or other institutional investor clients, other than the CRF, each of which has retained the Proposer to provide legal services in at least one securities litigation matter since January 1, 2020.

### 3.2. Module 2: SEC and Corporate Law Counsel

For **Module 2**, the Proposer must have:

- A. expertise in SEC and corporate law matters, demonstrated by an existing corporate governance, corporate law, or SEC practice;
- B. two partners whose aggregate experience in corporate governance work on behalf of institutional investors totals at least 10 years, and
- C. two public or private pension plans/funds or other institutional investor clients, other than the CRF, to whom the Proposer has provided legal services in a corporate governance matter since January 1, 2020.

### 3.3. Module 3: Delaware Counsel

For **Module 3**, the Proposer must have:

- A. expertise in Delaware law relating to corporate matters, as demonstrated by an existing Delaware law practice with an office in Delaware;
- B. three partners:
  - 1. admitted to practice in Delaware; and
  - 2. whose aggregate experience in Delaware law matters totals at least 20 years; and
- C. three public or private pension plans/funds or other institutional investor clients, other than the CRF, to whom the Proposer has provided legal services in a Delaware law matter since January 1, 2020.

### 3.4. Module 4: Evaluation and Class Action Counsel

For **Module 4**, the Proposer must have:

- A. three key staff whose aggregate experience in securities litigation (which may include evaluation of securities litigation) totals at least 20 years;
- B. the ability to analyze Fund trade data to calculate investment losses and potential damages in public equities and fixed income securities acquired through public and/or private sales; and
- C. three public or private pension plans/funds or other institutional investor clients, other than the CRF, each of which has retained Proposer to provide services related to evaluation of securities litigation, class action claims resolution, or auditing of class action claims filings in at least one matter since January 1, 2020.

### 3.5. Module 5: Foreign Litigation Counsel

For **Module 5**, the Proposer must:

- A. have two partners whose aggregate experience in advising U.S. investors regarding non-U.S. litigation totals at least 15 years;
- B. have the ability to analyze trade data to calculate investment losses and potential damages in public equities and fixed income securities acquired outside the U.S.;
- C. have three public or private pension plans/funds or other institutional investor clients, other than the CRF, each of which has retained the Proposer to provide legal services regarding non-U.S. litigation since January 1, 2020; and
- D. certify that it does not take a financial interest in any of the cases about which it offers advice.

#### **4.0 PREFERRED QUALIFICATIONS**

**The Preferred Qualifications below, while not required, are strongly preferred and will be considered in Technical Evaluation scoring.**

##### **4.1. Module 1: Securities Litigation Counsel**

- A. Proposer's securities litigation practice has existed for at least seven years, and preferably longer.
- B. Proposer demonstrates a significant number of partners and other attorneys who are assigned to its securities litigation practice and have a high degree of relevant experience.
- C. Proposer demonstrates its ability to fund the prosecution of protracted securities litigation in light of a retainer agreement providing for compensation on a contingency fee basis.
- D. Proposer has experience prosecuting trials in complex securities litigation matters, preferably including a trial in the last 10 years.
- E. Proposer has experience participating in mediation of complex securities litigation matters.
- F. Proposer has experience handling complex securities litigation matters, including large class actions on behalf of institutional investors.
- G. Proposer has a process to identify and analyze events giving rise to new or potential securities litigation and the means by which it would advise the CRF of the merits of and possible courses of action with respect to the event of litigation.
- H. Proposer demonstrates its ability to analyze trade data to calculate investment losses and potential damages in public equities and fixed income securities acquired through public and/or private sales.
- I. Proposer has experience incorporating corporate governance reforms into securities litigation dispositions.
- J. Proposer has experience dealing with high-profile securities litigation matters, including fielding inquiries from the media and advising clients with respect to media inquiries in those matters.
- K. Proposer has experience with derivative cases commenced since January 1, 2014, and related books and records actions, in state or federal courts.
- L. Proposer demonstrates that it has back-up procedures in the event the attorneys assigned to the Fund's accounts should leave the firm or are otherwise unable to work on CRF matters.
- M. Proposer has experience working with institutional investor clients who take an active role in supervising prosecution of securities litigation.
- N. Proposer has at least three public or private pension plans/funds or other institutional investor clients, other than the CRF, each of which preferably has assets under management of at least \$2 billion as of December 31, 2023, and each of which has retained the Proposer to provide

legal services regarding non-U.S. litigation since January 1, 2020.

**4.2. Module 2: SEC and Corporate Law Counsel**

- A.** Proposer's SEC or corporate governance practice has existed for at least seven years, preferably longer.
- B.** Proposer has a significant number of partners and other attorneys who are assigned to its SEC or corporate governance practice and have a high degree of relevant experience (at least 10 years).
- C.** Proposer has expertise in SEC matters, including investor regulatory filings and matters under Securities Exchange Act of 1934 Regulation 14-A, including exempt solicitations, proxy matters, and/or no-action requests for shareholder resolutions.
- D.** Proposer has expertise in corporate law, specifically related to annual meeting matters, proxy voting, and/or shareholder resolutions.
- E.** Proposer has filed letters with the SEC to defend against no-action requests to exclude shareholder proposals from company proxy materials.
- F.** Proposer demonstrates it has back-up procedures in the event the attorneys assigned to the CRF's accounts should leave the firm or are otherwise unable to work on CRF matters.

**4.3. Module 3: Delaware Counsel**

- A.** Proposer's Delaware law practice has existed for at least seven years, preferably longer.
- B.** Proposer has experience engaging in books and records requests, appraisal rights, mergers and acquisitions, and/or related corporate governance matters including trial experience.
- C.** Proposer has experience prosecuting shareholder derivative claims in Delaware, including trial experience.
- D.** Proposer has experience providing advice on Delaware General Corporation Law, Delaware Revised Uniform Limited Partnership Act, and Delaware Limited Liability Company Act, particularly in relation to fiduciary standards.
- E.** Proposer demonstrates its ability to fund the prosecution of protracted Delaware litigation in light of a retainer agreement providing for compensation on a contingency fee basis.
- F.** Proposer demonstrates that it has back-up procedures in the event the attorneys assigned to the CRF's accounts should leave the firm or are otherwise unable to work on CRF matters.
- G.** Proposer has a process to identify and analyze events giving rise to new or potential Delaware law issues and the means by which it would advise the CRF of the merits of and possible courses of action with respect to the event of litigation.

**4.4. Module 4: Evaluation and Class Action Counsel**

- A.** Proposer has provided securities litigation evaluation services or representation related to resolution of class action claims for at least seven years, preferably longer.
- B.** Proposer demonstrates that it has sufficient staff with at least 10 years of experience to provide evaluation of complex securities litigation matters.
- C.** Proposer demonstrates ability to analyze trade data to calculate investment losses and potential damages in public equities and fixed income securities acquired through public and/or private sales.
- D.** Proposer demonstrates its ability to assist the CRF with the filing and resolution of securities class action claims filing or other similar efforts to recover damages (e.g., bankruptcy, antitrust).

- E. Proposer demonstrates its ability to audit the CRF's claims filing process.

#### **4.5. Module 5: Foreign Litigation Counsel**

- A. Proposer's non-U.S. litigation practice has existed for at least seven years, and preferably longer.
- B. Proposer has a high degree of experience among partners or other attorneys assigned to its non-U.S. litigation counsel.
- C. Proposer demonstrates measures to ensure the independence of its legal advice about non-U.S. cases.
- D. Proposer demonstrates a process to identify and analyze non-U.S. litigation.
- E. Proposer demonstrates a process to analyze CRF trade data to calculate investment losses and potential damages in non-U.S. litigation.
- F. Proposer has experience negotiating fees and contracts required for investors to join non-U.S. litigation.
- G. Proposer demonstrates that it has back-up procedures in the event the attorneys assigned to the CRF's accounts should leave the firm or are otherwise unable to work on CRF matters.
- H. Proposer has three public or private pension plans/funds or other institutional investor clients, other than the CRF, each of which preferably has assets under management of at least \$2 billion as of December 31, 2023, and each of which has retained the Proposer to provide legal services regarding non-U.S. litigation since January 1, 2020.

#### **5.0 POST-AWARD SECURITY AND CONFIDENTIALITY VERIFICATION**

The Selected Proposer must ensure the confidentiality of CRF information provided to or collected by the Selected Proposer in providing all services contemplated by this RFP. Systems and applications that input, store, process, output, and/or transmit confidential information must protect the confidentiality, integrity, and availability of such information, and Selected Proposer's facilities and infrastructure must be physically and logically secure in accordance with industry-appropriate security standards and compliant with applicable laws and regulations.

Upon notification of conditional award (see Section 11.0), the conditionally-awarded Proposer must demonstrate to the CRF that its security measures, processes, standards, and policies sufficiently align with the security standards set forth below and as required by applicable law or regulation.

- A. Security Framework.** The conditionally-awarded Proposer must identify the industry- or government-accepted security framework (e.g., ISO 27000 series, NIST) that the Proposer employs to ensure that its systems and applications used in providing the services are secure from vulnerabilities and defects.

1. Upon notice of conditional award, the conditionally-awarded Proposer should provide the CRF with a third-party assessment and/or certification that its systems and applications are in compliance with the above-identified framework. If the conditionally-awarded Proposer cannot or declines to provide such assessment and/or certification, it must identify how it will verify, to the CRF's satisfaction, its compliance with such standards and protections.
2. If the conditionally-awarded Proposer uses affiliates or subcontractors to provide any of the Services, all confidentiality and security obligations set forth herein must contractually flow down to such affiliates and subcontractors. The conditionally-awarded Proposer must describe how it will comply with this requirement and how it will ensure compliance by its affiliates and subcontractors.

- B. Secure Data Transmission.** The conditionally-awarded Proposer must identify its capabilities

and tools for secure data transmission, including whether it is able to provide access to a secure virtual data room for document sharing. The conditionally-awarded Proposer must explain the encryption standards to be applied to CRF confidential information and what limits will be placed on access to and ability to download such information.

**C. Incident Response.** The conditionally-awarded Proposer must describe its incident response procedures for security incidents, including unauthorized access, disclosure, modification, or use of CRF confidential information. The conditionally-awarded Proposer must keep the CRF informed as the incident is investigated such that the CRF can evaluate and respond to any resulting operational and information risks.

1. The conditionally-awarded Proposer(s) must identify the period in which it will provide the CRF with notice of an exploited vulnerability or breach that has impacted or is reasonably expected to impact CRF confidential information (e.g., 48 hours, 72 hours).
2. The conditionally-awarded Proposer must identify what assistance it will provide to the CRF in responding to an exploited vulnerability or breach, including any required notifications.

**D. Data Destruction.** The conditionally-awarded Proposer must describe its practices, policies, and procedures regarding the destruction or return of CRF confidential information, including the sanitization method the conditionally-awarded Proposer will apply to CRF confidential information.

1. The conditionally-awarded Proposer must confirm whether an officer or principal of the conditionally-awarded Proposer will certify to the CRF in writing that such destruction has been completed in accordance with the New York State Office of Information Technology Services Policy for Sanitization/Secure Disposal in NYS-S13-003 (see link below) or other comparable standard:

[nys-s13-003 sanitization secure disposal standard.pdf](#)

If the conditionally-awarded Proposer will not provide such certification, it must specify the scope of any such certification of destruction that it will provide.

2. The conditionally-awarded Proposer must identify whether it is subject to any legal or regulatory requirements or professional standards that might require it to retain any Fund confidential information, for how long such information must be retained, and how the conditionally-awarded Proposer intends to ensure the confidentiality of such information.

**The CRF expressly reserves its right to decline to make a final award to any conditionally-awarded Proposer that the CRF concludes is unable to demonstrate that its security measures, processes, standards, and policies sufficiently align with security standards set forth above and as required by applicable law or regulation. Upon such determination, the CRF may elect to grant the award to the next-highest scoring Proposer. The CRF may simultaneously engage in discussions with multiple Proposers regarding their security practices.**

## **6.0 REQUIRED SERVICES**

### **6.1. Module 1: Securities Litigation Counsel**

Selected Proposer(s) agrees to perform the following services upon request:

- A.** Provide general advice and render opinions in all matters regarding securities litigation generally;
- B.** Identify and screen potential securities litigation claims and advise concerning the merits of potential, new, and previously-filed securities class action litigation, direct litigation, or

shareholder derivative actions. This analysis and advice should be comprehensive and informative and must not be solely requests for trade data;

- C.** Represent the Comptroller and the CRF in class actions, direct actions, and derivative actions and corporate governance matters related to such litigation; or in investment-related litigation;
- D.** Evaluate individual securities litigation matters and advise as to the potential advantages and disadvantages to the CRF with respect to becoming involved in such litigation;
- E.** Provide full updates of all activity and any significant developments in ongoing litigation;
- F.** Provide copies of all pleadings, motion papers, briefs, and correspondence for review and approval. Such copies must be provided at least five days before they are finalized or filed with the court, or, if that is not feasible, as soon as possible prior to release or filing with the court. In addition, copies of opposing parties' pleadings, motions and correspondence will be provided as soon as possible after receipt by the Selected Proposer;
- G.** Deliver such other legal advice, opinions, and representation related to securities matters as may be requested;
- H.** Promptly advise of opportunities for or the possibility of mediation or settlement discussions;
- I.** Schedule periodic meetings and conference calls to discuss case developments and strategies for the prosecution of any ongoing litigation; and
- J.** Provide other legal services related to securities litigation as requested.

## **6.2. Module 2: SEC and Corporate Law Counsel**

Selected Proposer(s) agrees to perform the following services upon request:

- A.** Provide legal research, analysis, advice, and counsel with respect to corporate and securities laws;
- B.** Review and analyze corporate bylaws, charters, and certificates of incorporation;
- C.** Analyze legal and regulatory requirements and prevailing corporate governance best practices;
- D.** Consult with and advise with respect to drafting and submitting shareholder proposals;
- E.** Review, analyze, and respond to no action requests made to the SEC by which companies seek to omit Comptroller-sponsored or co-sponsored shareholder proposals from corporate proxy materials;
- F.** Draft, review, and render advice on press releases and shareholder communications;
- G.** Provide advice regarding exempt solicitations, proxy voting, other proxy matters, and general annual meeting matters;
- H.** Assist the in drafting comments responding to regulatory releases;
- I.** Provide opinions and advice with respect to state and federal laws, rules promulgated by the SEC, and other regulatory agencies and stock exchanges;
- J.** Represent the Comptroller and the CRF in administrative or judicial proceedings in corporate governance matters as directed;
- K.** Provide full updates of all activity in all administrative or judicial proceedings, including all strategic decisions in any matter in which the Proposer represents the Comptroller and the CRF. Provide copies of all written documents and correspondence in the matter for review and approval in advance of release or filing. In addition, Proposers provide copies of opposing parties' written documents and correspondence as soon as possible after receipt by the Proposer;

- L. Schedule periodic meetings and conference calls to discuss developments and strategies with respect to any matter in which the Proposer represents the Comptroller or the CRF; and
- M. Provide other legal services related to the CRF's Corporate Governance work and its SEC filings, as requested.

### **6.3. Module 3: Delaware Counsel**

Selected Proposer(s) agrees to perform the following services upon request:

- A. Provide legal advice on matters of Delaware law;
- B. Represent the Comptroller and the CRF in Delaware law matters including Delaware-based derivative actions, books and records requests, appraisal rights, mergers and acquisitions, related corporate governance matters, and other issues, and provide legal research, analysis, advice and counsel with respect to such matters;
- C. Identify and screen potential Delaware law claims and advise concerning the merits of potential, new, and previously-filed Delaware-based litigation;
- D. Provide full updates of all activity and any significant developments in ongoing litigation in which the Proposer represents the Comptroller and the CRF;
- E. In matters in which the Proposer represents the Comptroller and the CRF, provide copies of all pleadings, motion papers, briefs and correspondence for review and approval in advance of filing. Such copies must be provided at least five days before they are finalized or filed with the court, or if that is not feasible, as soon as possible prior to release or filing with the court. In addition, copies of opposing parties' written documents, including pleadings, motions and correspondence, will be provided as soon as possible after receipt by the Proposer;
- F. Promptly advise of opportunities for or the possibility of mediation or settlement discussions with respect to matters in which the Proposer represents the Comptroller and the CRF;
- G. Schedule periodic meetings and conference calls to discuss developments and strategies with respect to any matter in which the Proposer represents the Comptroller and the CRF; and
- H. Provide other legal services related to Delaware law as requested.

### **6.4. Module 4: Evaluation and Class Action Counsel**

Selected Proposer(s) agrees to perform the following services upon request:

- A. Evaluate individual securities litigation matters and advise as to the potential advantages and disadvantages to the CRF with respect to becoming involved in such litigation;
- B. Evaluate the CRF's trades with respect to a securities litigation or potential litigation and advise regarding the CRF's losses and potentially recoverable damages;
- C. Assist with reviewing and/or auditing the CRF's securities class action claims filings;
- D. Represent the Comptroller and the CRF in matters related to recovering damages in settled class actions or other related efforts to recover damages; and
- E. Provide other services related to evaluation of litigation, class action claims filings, or related efforts to recover damages in actions, as requested.

### **6.5. Module 5: Foreign Litigation Counsel**

Selected Proposer agrees to perform the following services upon request:

- A. Identify relevant non-U.S. investor actions around the world;

- B.** Request trade data on a case-by-case basis to determine if the CRF is eligible to participate in a non-U.S. investor action;
- C.** Determine the CRF's eligibility to register/opt in to each new non-U.S. action, and calculate the losses it suffered;
- D.** Analyze the merits, risks, and attributes of each relevant non-U.S. action;
- E.** Provide clear, actionable recommendations for each relevant non-U.S. action;
- F.** Prepare a detailed written legal and risk analysis where some action on the CRF's part is recommended;
- G.** Review and annotate the contract(s) the CRF must execute to join each relevant non-U.S. action;
- H.** Undertake the registration/opt-in formalities for those non-U.S. actions the CRF elects to join;
- I.** Identify all relevant settlements/resolutions of non-U.S. actions and file the necessary documentation on the CRF's behalf; and
- J.** Provide a quarterly monitoring report of relevant cases and updates on the progress of those non-U.S. cases joined.

## **7.0 ADMINISTRATIVE INFORMATION**

The following administrative information applies to this RFP. Failure to comply fully with this information may result in disqualification of a proposal.

**NOTE:** Procurement documents may, from time to time, be amended or addenda issued by the CRF. All amendments and/or addenda to procurement documents will be posted to the OSC website at <http://www.osc.state.ny.us/procurement/index.htm>. Proposers should review the OSC website prior to submission of a proposal to ensure that they have all information required to submit a complete and responsive proposal.

### **7.1. Restrictions on Communication**

All inquiries concerning this procurement must be addressed to the Director of Finance as the Contracting Officer, or designee(s) at OSC, via email (preferred) to [RFP@osc.ny.gov](mailto:RFP@osc.ny.gov) or via hard copy mail to:

Director of Finance  
Questions for RFP0005 Legal Services Modules  
Office of the State Comptroller  
110 State Street, Stop 13-2  
Albany, NY 12236-0001

During the "restricted period," as defined below, no Proposer-initiated contact with any OSC or CRF official will be permitted regarding this procurement, except as provided herein. This prohibition applies to any oral, written, or electronic communication under circumstances where a reasonable person would infer that the communication was intended to influence this procurement. Violation of any of the requirements described in this section may be grounds for a determination that the Proposer is non-responsible and therefore ineligible for this contract award. "Restricted period" means the period of time commencing with the earliest written notice, advertisement, or solicitation of an RFP, Invitation for Bid, or proposals, or any other method for soliciting a response from Proposers intending to result in a procurement contract with the CRF and ending with the final contract award by the CRF or termination of the procurement.

### **7.2. Questions and Clarifications**

There will be an opportunity for submission of written questions and requests for clarification regarding this RFP. All questions and requests for clarification should cite the particular RFP section and paragraph

number where applicable and must be submitted via email (preferred) or by hard copy mail to the Contracting Officer as indicated in Section 7.1 (Restrictions on Communication), no later than the Deadline for Submission of Written Questions as specified in Section 1.0 (Calendar of Events). Questions received after the deadline may not be answered.

**NOTE:** It is the Proposer's responsibility to ensure that hard copy mail or email containing written questions and/or requests for clarification is received at the above address no later than the Deadline for Submission of Written Questions specified in Section 1.0.

The comprehensive list of questions and responses will be posted to the OSC website and notice of such posting will be distributed by email to all vendors known to the Fund who have received electronic access to this RFP on the date specified in Section 1.0. This list will not include the identities of the vendors submitting the questions; those vendors will remain anonymous to the extent allowed by law.

**Proposers are encouraged to review the requirements in the RFP and Draft Contracts and notify the CRF of requirements that would prohibit the Proposer from submitting a proposal.**

### **7.3. Pre-deadline Fund Right to Modify RFP**

- A. Modifications.** The CRF reserves the right to modify any part of this RFP, including but not limited to, the date and time by which proposals must be submitted and received. Modifications to this RFP will be made by issuance of amendments or addenda. Any amendments or addenda will be posted to the OSC website and subsequent email notification will be provided to all potential Proposers known to the CRF to have received access to this RFP.
- B. Proposer's Obligation.** If a Proposer discovers any ambiguity, conflict, discrepancy, omission, or other error in this RFP, the Proposer must immediately notify the Contracting Officer (see Section 7.1) of such error in writing and request clarification or modification of the document. If, prior to the Deadline for Submission of Proposals, a Proposer fails to notify the Contracting Officer of a known error or an error that reasonably should have been known, the Proposer shall assume the risk of proposing. If awarded a contract, the Proposer will not be entitled to additional compensation by reason of the error or its correction.

### **7.4. Equal Employment Opportunity ("EEO"), Minority- and Women-Owned Business Enterprise ("M/WBE"), and Other Requirements**

- A. EEO.** The Comptroller, as Trustee of the CRF, recognizes the value to the CRF of affording minority group members and women the opportunity to participate in the performance of contracts of the CRF. Toward this end, the Comptroller encourages Proposers to undertake or continue existing programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Upon request of the Comptroller, Proposers must report the result of such programs to the CRF.
- B. M/WBE Asset Management and Financial Institution Strategy.** The Comptroller, as Trustee of the CRF, pursuant to Section 423-c of the New York State Retirement and Social Security Law (the "MWBE Legislation") has established an M/WBE Asset Management and Financial Institution Strategy ("Strategy") aimed at reporting on and increasing the use of M/WBE Asset Managers, M/WBE Financial Institutions, and M/WBE Financial and Professional Service Firms. The MWBE Legislation requires the Comptroller to submit a report annually to the governor, legislature and chief diversity officer of the State of New York on the overall participation of MWBE asset managers, financial institutions and professional service providers to the CRF. To this end, the CRF sends out an annual MWBE survey to all service providers providing investment and investment-related services to the Fund.

The Selected Proposer, upon such request of the CRF, shall provide information needed to determine the minority and women composition of owners and managers of the Selected

Proposer. Any individual who submits false information on behalf of a business enterprise, and/or any business enterprise that submits false information, may be barred from doing business with the CRF for a period of time to be determined by the Fund based on the nature and extent of the false information.

- C. Other Reporting Requirements.** The Selected Proposer may be requested to provide information on participation by other groups that the Fund may determine to certify or report on, such as firms that are owned (or substantially owned and/or operated) by service-disabled veterans (Service-Disabled Veteran-Owned Businesses or SDVOBs).

## **7.5. State Ethics Law Provision**

Officers and employees of the State (which includes staff of OSC, the System, and the CRF) are subject to the ethics requirements and restrictions of the Public Officers Law and other laws that apply to State employees, including the requirements of Public Officers Law §§ 73<sup>2</sup> and 74<sup>3</sup>, and other State codes, rules, and regulations establishing ethical standards for the conduct of State officers and employees.

- A. Proposer Certifications.** By submitting a proposal, the Proposer certifies that:

1. The Proposer, its officers, directors, employees, subsidiaries, affiliates, partners, subcontractors, and agents have read and understand the above Public Officers Law provisions, including without limitation: (i) restrictions on acceptance or solicitation of gifts and hospitality by a State employee, (ii) the two-year bar on a State employee from appearing before the State employee's former agency after leaving State service, and (iii) the life-time bar on a State employee from rendering services on any matters with respect to which the State employee was directly concerned during State service and in which the State employee personally participated, or which was under the State employee's active consideration during State service.
2. If the proposal is selected for award, the Selected Proposer, its officers, directors, employees, subsidiaries, affiliates, partners, subcontractors, and agents who will be assigned to perform services must not: (i) offer or make any gift or hospitality to a State employee, (ii) hire any former State employee to appear before OSC, the System, or the Fund to perform services on this engagement in violation of the two-year bar or the lifetime bar, or (iii) assign any current Proposer employee, officer, director, subsidiary, affiliate, partner, or agent to appear before OSC, the System, or the Fund to perform services on this engagement in violation of the two-year bar or the lifetime bar.

- B. Reporting Non-compliance.** This certification is material to the proposal and the CRF intends to rely on it. The Proposer must promptly report to the CRF any non-compliance with the above requirements to:

Office of the State Comptroller  
110 State Street – 14th Floor  
Albany, New York 12236  
Attn: Special Counsel for Ethics

and

Office of the State Comptroller  
110 State Street – 14th Floor

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<sup>2</sup> <https://www.nysenate.gov/legislation/laws/PBO/73>

<sup>3</sup> <https://www.nysenate.gov/legislation/laws/PBO/74>

Albany, New York 12236  
Attn: CRF Compliance Officer

Proposers may address any questions concerning these provisions to:

Special Counsel for Ethics  
New York State Office of the State Comptroller  
110 State Street – 14th Floor  
Albany, New York 12236  
(518) 408-3855

#### **7.6. Compliance with Laws and Regulations Applicable to the CRF**

The Selected Proposer must comply with legal restrictions, and statutory and regulatory requirements, including but not limited to 11 NYCRR § 136-2 and RSSL §177, attached as Appendix D; and policy guidelines of the CRF; and render advice within these laws, regulations, and guidelines ensuring that no Services are provided in conflict with applicable laws or Fund policies.

#### **7.7. Prohibited Benefits Relating to the Procurement**

The Proposer represents and warrants that neither the Proposer nor its Staff has received or paid, or entered into an agreement to receive or pay, any compensation, fees, or any other benefit from or to any third party, including any subcontractor, to influence the outcome of this procurement.

#### **7.8. Debrief**

Any Proposer not selected for award may, within 15 calendar days of release of OSC's written or electronic notice that the Proposer has not been selected for award, request a debriefing to discuss the reasons(s) the proposal submitted was not selected for an award. A debriefing request must be in writing and be submitted to the Contracting Officer (see Section 7.1) or the Contracting Officer's designee(s), via email (preferred) to RFP@osc.ny.gov or via hard copy mail to:

Director of Finance  
Debriefing Request: RFP0005 Legal Services Modules  
Office of the State Comptroller  
110 State Street, Stop 13-2  
Albany, NY 12236-0001

A Proposer will be accorded fair and equal treatment with respect to its opportunity for debriefing. The debriefing will be scheduled within a reasonable time after receipt of the Proposer's written request by the Bureau of Finance.

#### **7.9. The CRF's Reserved Rights**

The CRF reserves all rights including, but not limited to, the right to:

- A.** Cancel the procurement, reject any or all proposals received in response to this RFP, award more than one contract, or award no contract.
- B.** Prior to the deadline of submission of proposals, amend the RFP to correct errors or oversights, or to change any of the scheduled dates, or to supply additional information, as it becomes available. Modifications to the RFP will be made by issuance of amendments and/or addenda.
- C.** Prior to the deadline of submission of proposals, direct Proposers to submit proposal modifications addressing RFP amendments or addenda.

- D. Waive any non-material deviation or defect in a proposal. A waiver of a non-material deviation or defect will in no way modify the RFP documents or excuse the Proposer from full compliance with the RFP requirements.
- E. Waive any requirements that are not material, or eliminate any mandatory, non-material requirements that cannot be complied with by all prospective Proposers.
- F. Reject any proposal that contains false or misleading statements, or that provides references that do not support an attribute, condition, or qualification claimed by the Proposer.
- G. Correct any arithmetical errors in any proposal and, in the event that the fees or costs in two or more proposals are not comparable, to make appropriate adjustments to render the fees and costs comparable.
- H. Require a Proposer to clarify its proposal to assure a full understanding of the proposal or to request revisions to all proposals from Proposers susceptible of award of the contract. Any request for clarification or revision is solely at the discretion of the CRF. No Proposer will be allowed to alter its proposal or add information after the Deadline for Submission of Proposals.
- I. Rescind a preliminary contract award and proceed to the next highest-scoring Proposer if a signed contract does not result from good faith negotiations within a reasonable period of time as determined by the CRF.
- J. Proceed to the next highest-scoring Proposer in the event that the Proposer who had achieved best value prior to contract award cannot satisfy the requirements as stated in this RFP.

#### **7.10. Freedom of Information Law**

Proposals, or portions thereof, may be subject to disclosure in accordance with the requirements of the Freedom of Information Law, Public Officers Law § 84 et. seq ("FOIL"). Accordingly, upon submission of its proposal, Proposer is encouraged to clearly and specifically indicate any portion of its proposal it believes is exempt from disclosure, including any portion that constitutes, among other things, a trade secret, or the disclosure of which would cause substantial injury to the Proposer's competitive position. Explain the rationale therefor. Blanket assertions are insufficient. Prior to releasing any documents so marked, the CRF will notify Proposer to afford Proposer an opportunity to seek a protective order or other remedy to protect such documents from disclosure.

#### **8.0 PROPOSAL CONTENT**

- A. **Follow the Format and Provide Required Information.** Proposals that fail to follow the prescribed format or that are incomplete in any material respect may be rejected. All responses will be subject to verification for accuracy.
- B. **Separate the Administrative, Technical, and Cost Proposal Sections.** To expedite review, Proposers are requested to submit proposals in separate Administrative, Technical, and Cost packages and submit attachments in the order as shown in Attachment B (Proposal Documents Submitted). Evaluations of the Administrative, Technical, and Cost proposals for each Module received in response to this RFP will be conducted separately. **Proposers are therefore cautioned not to include any Cost information in the Administrative or Technical proposal documents.**
- C. **Limit Extraneous Submissions.** No information beyond that specifically requested is required, and Proposers are requested to keep their submissions to the shortest length consistent with making a complete presentation of qualifications. Additional information, if submitted, should be in a separate package.

## 8.1. Administrative Proposal

**Do not include cost information in the Administrative proposal.**

- A. CRF Vendor Responsibility and Conflict of Interest Disclosure Form.** Submit a completed and signed Appendix F (CRF Vendor Responsibility and Conflict of Interest Disclosure Form).
- B. Contractor's Certifications/Acknowledgements.** Submit a completed and signed Appendix E (Contractor's Certifications/Acknowledgements).  
  
Policies referenced in Appendix E can be found in Appendix B - OSC Policy Statement on Discrimination and Harassment, Including Sexual Harassment and Appendix D - OSC Executive Order on Procurement Integrity and Procurement Integrity Procedures
- C. Proposer's Disclosure of Prior Non-Responsibility Determinations.** Submit a completed and signed Appendix G (Proposer's Disclosure of Prior Non-Responsibility Determinations).
- D. Material Conflicts of Interest Statement.** Submit a completed, signed, and notarized Appendix H (Material Conflicts of Interest Statement).
- E. Freedom of Information Law – Proposal Redactions.** Where applicable, Proposers are encouraged to clearly and specifically identify any portion of their proposal that a Proposer believes is entitled to an exception from disclosure pursuant to FOIL. See Section 7.10 (Freedom of Information Law).
- F. Proposed Revisions to the Draft Contract (if any)** - The Proposer should submit its proposed revisions to the Draft Contract, if any, in MS Word format with redlined (tracked) changes. Identify the section of the Draft Contract that Proposer proposes to revise, and explain why the change is in the best interest of the Fund. As noted above, the Fund has no obligation to accept any such proposed revisions and reserves all rights to reject any proposed changes.

## 8.2. Technical Proposal

The purpose of the Technical proposal is to demonstrate the qualifications, competence, and capacity of the Proposer to undertake the relevant responsibilities set forth herein while complying with applicable laws, regulations, fiduciary standards, and the requirements of the RFP.

**Do not include cost information in the Technical proposal.**

- A. Title Page.** Submit a title page with the RFP subject and number, the Module number, the Proposer's name, and the date of the proposal.
- B. Table of Contents.** Submit a Table of Contents that identifies proposal material by section and page number.
- C. Index.** Each proposal should contain an index that cites each tab number in the proposal where the requested information can be found (see Attachment B -Proposal Documents Submitted).
- D. Attachment A - Proposer's Certified Statements.** Submit Attachment A (Proposer's Certified Statements). Attachment A should be signed by an individual authorized to bind the Proposer contractually and should indicate the title or position that the signer holds with the Proposer. The CRF reserves the right to reject a proposal that contains an incomplete or unsigned Attachment A or no Attachment A.
- E. Attachment D1 Technical Response Requirements, Attachment D2 –Minimum Qualifications, and Resumes, by Module.** Complete and submit for each Module for which

a proposal is submitted:

1. Module 1: Attachment D1, Technical Response Requirements; Attachment D2, Minimum Qualifications, and resumes;
  2. Module 2: Attachment D2, Technical Response Requirements; Attachment D2-A Minimum Qualifications, and resumes;
  3. Module 3: Attachment D3, Technical Response Requirements; Attachment D3-A Minimum Qualifications, and resumes;
  4. Module 4: Attachment D4, Technical Response Requirements; Attachment D4-A Minimum Qualifications, and resumes; and/or
  5. Module 5: Attachment D5, Technical Response Requirements; Attachment D5-A Minimum Qualifications, and resumes.
- F. Attachment E - References.** Submit a minimum of three references for each Module for which the Proposer is responding. If Proposer has performed services for a public pension entity, at least one reference must be from a public pension entity.

### **8.3. Cost Proposal**

- D.** Cost proposals must be submitted in a separate sealed envelope or USB flash **drive**, not included with the Administrative or Technical Proposals. Cost proposals must be submitted using Attachments C1, C2, C3, C4, and or C5 **without change**.

Proposals submitted on any other forms may be considered non-responsive and may result in disqualification.

The CRF will not be responsible for expenses incurred in preparing and submitting the Administrative, Technical, and Cost Proposals. Such costs should not be included in the Proposal.

Note: Proposers may not submit additional or revised cost documents. As necessary, complete Attachments C1, C2, C3, C4, and or C5 as shown **without change**.

#### **A. Module 1: Securities Litigation Counsel Cost Proposal – Fee Grid (Attachment C) and Discounted Hourly Rates (Attachment C1)**

Firms retained to represent the Fund in a securities class action, a direct action, or a derivative action are paid on a contingency fee basis upon application and award by the court from the proceeds of any recovery (subject to audit and approval by the Fund). The Fund will have no responsibility therefor if a recovery is not obtained. In derivative actions, the recovery shall be based upon the value of monetary damages plus the monetary value of corporate governance reforms, as determined by the Fund.

Firms must have sufficient assets and/or credit to be able to advance all fees, costs, and expenses of the litigation. Firms will not be reimbursed for fees, costs, or expenses unless and until a final recovery is obtained. If requested by the Fund, Firms agree that they will provide proof of financial resources if retained.

The fee grid set forth in Attachment C to the RFP will be included in the Contract entered into by a Selected Proposer(s) and, in the absence of extraordinary or unanticipated circumstances, will serve as a cap on fees (see Exhibit 1).

The CRF expects that the Selected Proposer will make reasonable efforts to assign work to the least costly staff member with appropriate skill and experience.

In instances not covered by the fee grid, compensation will be based on the discounted hourly rates for the Proposer's professionals as proposed in Attachment C1. In providing discounted hourly rates, provide a specific rate for each title, not a range of rates. **Identify titles that are considered to be the equivalent of the titles listed and that are billed as the equivalent.** Identify on Attachment C1 the discounted hourly rates for:

1. Partners;
2. Associates;
3. Staff Attorneys;
4. Of Counsels; and
5. Paralegals.

#### **B. Module 2: SEC and Corporate Law Counsel Cost Proposal – Attachment C2**

Compensation will be based on the discounted hourly rates for the Proposer's professionals as proposed in Attachment C2. In providing discounted hourly rates, provide a specific rate for each title, not a range of rates. **Identify titles that are considered to be the equivalent of the titles listed and that are billed as the equivalent.** The CRF expects that the Selected Proposer will make reasonable efforts to assign work to the least costly staff member with appropriate skill and experience. Identify on Attachment C2 the discounted hourly rates for:

1. Partners;
2. Associates;
3. Staff Attorneys;
4. Of Counsels; and
5. Paralegals.

#### **C. Module 3: Delaware Counsel Cost Proposal – Fee Grid (Attachment C) and Discounted Hourly Rates (Attachment C3)**

Depending on the nature of the matter for which a firm is retained, the Fund may provide for attorney fees either on an hourly rate basis or on a contingency fee basis. Under a contingency fee basis, attorney fees will be payable upon application to and award by the court from the proceeds of any recovery (subject to audit and approval by the Fund) and the Fund will have no responsibility therefor if a recovery is not obtained. In derivative actions, the recovery shall be based upon the value of monetary damages plus the monetary value of corporate governance reforms.

Firms must have sufficient assets and/or credit to be able to advance all fees, costs, and expenses of the litigation. Firms will not be reimbursed for fees, costs, or expenses unless and until a final recovery is obtained. If requested by the Fund, Firms agree that they will provide proof of financial resources if retained.

The fee grid set forth in Attachment C to the RFP will be included in the Contract and, in the absence of extraordinary or unanticipated circumstances, will serve as a cap on fees (see Exhibit 3).

The CRF expects that the Selected Proposer will make reasonable efforts to assign work to the least costly staff member with appropriate skill and experience.

In instances not covered by the fee grid, compensation will be based on the discounted hourly rates for the Proposer's professionals as proposed in Attachment C3. In providing discounted hourly rates, provide a specific rate for each title, not a range of rates. **Identify titles that are**

**considered to be the equivalent of the titles listed and that are billed as the equivalent.** Identify on Attachment C3 the discounted hourly rates for:

1. Partners;
2. Associates;
3. Staff Attorneys;
4. Of Counsels; and
5. Paralegals.

**D. Module 4: Evaluation and Class Action Services Counsel Cost Proposal – Attachment C4**

Compensation may be based on the discounted hourly rates for the Proposer's professionals as proposed in Attachment C4 Part 1 (Discounted Hourly Rates) **OR** on an all-inclusive annual flat fee as proposed in Attachment C4 Part 2 (All-Inclusive Annual Fees). Such method of compensation will be in the CRF's sole discretion. The CRF will identify the selected method of compensation at the time of award.

**Proposers MUST propose discounted hourly rates AND an all-inclusive annual flat fee. Failure to propose both discounted hourly rates and an all-inclusive annual flat fee may result in disqualification of the proposal.**

In providing discounted hourly rates, provide a specific rate for each title, not a range of rates. **Identify titles that are considered to be the equivalent of the titles listed and that are billed as the equivalent.** The CRF expects that the Selected Proposer will make reasonable efforts to assign work to the least costly staff member with appropriate skill and experience. Identify on Attachment C4 the discounted hourly rates for:

1. Partners;
2. Associates;
3. Data Specialists;
4. Of Counsels;
5. Paralegals; and
6. Other Staff.

Note: If the Fund elects to compensate the selected Proposer based on discounted hourly rates, case evaluations will be capped at \$15,000 per case.

**E. Module 5: Foreign Litigation (flat fee)**

Compensation will be an all-inclusive annual flat fee for providing all Services for Module 5 as proposed in Attachment C5. The proposed flat fee must exceed \$0 annually.

**8.4. Limitations on Reimbursement of Expenses**

In all cases, the Fund will limit reimbursement for expenses, whether reimbursement is pursuant to a contingency fee arrangement or otherwise, to actual and necessary expenses as described below. "Actual" expenses are at actual cost to the Selected Proposer and are in all cases net of any discounts by the provider to the Selected Proposer. The Fund will not reimburse or allow for the billing of any submissions deemed to be a part of the Selected Proposer's overhead. Discounted hourly rates are inclusive of any clerical or support personnel and online database research charges such as LexisNexis and Westlaw. These items shall not be billed as reimbursable expenses. The Fund will audit all expenses.

To be eligible for reimbursement, the expenses must be listed on a submitted invoice with a copy of the receipt attached. Expenses shall be separately itemized and accompanied by receipts. When appropriate,

court approval must be obtained before expenses are reimbursed. Reimbursable expenses are limited to the following unless written authorization to exceed the specified limits or to bill for other items of expense is obtained in advance:

- A. Travel Expenses:** Travel expense reimbursement will be paid in accordance with guidelines established by the Office of the State Comptroller. (See Office of the State Comptroller Travel Manual, available at <http://www.gsa.gov/travel/plan-book/per-diem-rates>.) For current per diem reimbursement rates only, visit the GSA Domestic Per Diem Page (currently available at <http://www.gsa.gov/travel/plan-book/per-diem-rates>), as such rates may be amended from time to time. Air travel will be reimbursed at coach rates. Travel expenses mean those incurred while traveling out of town on business and relating to Services provided in accordance with the RFP.
- B. Other Expenses.** Express delivery charges; photocopying/reproduction charges performed by a third party; court costs; deposition transcripts costs; pre-approved costs associated with electronic discovery platforms; and, fees for pre-approved experts, claims administrators, consultants and other professionals.
- C. Travel Time.** Travel time will be compensated at 50% of Selected Proposer's discounted hourly rates. Additionally, Selected Proposer shall not bill any other client while in travel status.

All expenses (including travel and electronic discovery platforms) that are anticipated to exceed \$500.00 must be pre-approved by the Comptroller or his designated representative.

## **9.0 PROPOSAL SUBMISSION**

### **9.1. Deadlines and Tracking**

#### **A. Deadline**

Proposals must be received by the date and time indicated for the Deadline for Submission of Proposals as specified in Section 1.0 (Calendar of Events). Proposals received after the Deadline for Submission of Proposals may be rejected.

**IMPORTANT:** OSC strongly encourages the use of package tracking so as to provide evidence of timely bid submittal in the event of mail delivery issues.

#### **B. Submission Method**

Administrative, technical, and cost proposals must be clearly labeled and submitted by U.S. Mail, by courier or, or delivery service (e.g., FedEx, UPS) in **separately** sealed packages, all of which may be submitted within one complete proposal package:

Attn: Director of Finance  
Office of the State Comptroller (RFP0005)  
110 State Street, Mail Stop 13-2  
Albany, NY 12236-0001

Submission of proposals in a manner other than as described in these instructions (e.g., fax, electronic transmission) will not be accepted. OSC will not accept hand delivery of proposals at 110 State Street.

### **9.2. Document Format**

Proposals may be submitted either on a USB flash drive or on paper. **Documents requiring signature should be signed with an ink pen (i.e., wet signature). Proposals submitted with e-signatures or**

scanned signatures may be accepted by OSC, at OSC's discretion, subject to the requirements set forth herein.<sup>4</sup>

#### **A. Option #1: USB Flash Drive (Preferred)**

USB drive copies of the Administrative, Technical, and Cost proposals for each Module must be submitted as separate files on a single USB flash drive. **SUBMISSION OF OTHER TYPES OF DATA STORAGE DEVICES WILL NOT BE ACCEPTED.** The files must be representative copies of the original documents, **including signatures.**

1. An acceptable format for the files is unlocked searchable Adobe PDF.
2. Label the USB flash drive as "RFP0005 [Proposer's name]."
3. It is the Proposer's responsibility to ensure that the USB drive is free from malicious software and that the files are accessible and uncorrupted.

OSC will perform a security scan on the USB flash drive before accessing the stored files. If the security scan identifies malicious software, or the files are inaccessible or corrupted, OSC will reject the submission and disqualify the Proposer from further consideration.

**Proposers may mitigate the risk associated with submitting via USB flash drive by providing one paper copy of each of the Administrative, Technical, and Cost proposals along with its USB flash drive submission.**

- If a Proposer submits a paper copy with its USB submission and OSC is unable to access the proposal files on the USB flash drive, OSC will request a replacement USB drive from the Proposer and use the paper copies to verify the Proposer did not make any revisions to its proposal past the proposal due date.
- In the absence of a paper copy, if OSC is unable to access the proposal files on the USB flash drive, OSC will reject the submission and disqualify the Proposer as stated above.

The Proposer must retain the original Proposal documents in its records. If the Proposer is selected for award, the Proposer must submit wet ink signed documents to OSC prior to contract execution (if so requested).

#### **B. Option #2: Paper**

Paper copies of the Administrative, Technical, and Cost proposals for each Module must be submitted as follows:

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<sup>4</sup> If wet ink signatures cannot be provided, OSC may [will] accept proposals submitted with e-signatures or scanned signatures, but OSC retains the right to require submission of documentation verifying the identity of the signer and the signer's intent to sign on behalf of the Proposer, and [may] will require submission of wet ink signatures upon notice of award. Failure to provide appropriately signed original documents [upon request by OSC/after notice of award] may result in disqualification.

<b>Administrative Proposal</b>	Submit TWO paper copies. <b>Additional Administrative Proposals do not need to be submitted, regardless of the number of Modules for which a proposal is submitted.</b>
<b>Technical Proposal</b>	Submit FOUR paper copies <b>for each Module.</b>
<b>Cost Proposal</b>	Submit TWO paper copies <b>for each Module</b>

1. Label the outside envelope of the sealed proposals, the original, each copy, and the USB flash drive (if applicable) as "RFP0005 [Proposer's name]."
2. If the Proposer elects to submit paper proposals, OSC requests that the Proposer also submit a USB flash drive with electronic copies of the proposals.

### **9.3. Withdrawal of a Proposal**

A Proposer may withdraw a Proposal by written notification to OSC (see Section 6.1) at any time before the Deadline for Submission of Proposals. An authorized agent of the Proposer must sign the notice of withdrawal. The Proposal may thereafter be resubmitted, but not after the Deadline for Submission of Proposals specified in Section 1.0. Modification offered in any other manner, oral or written, will not be considered.

## **10.0 EVALUATION PROCESS/CRITERIA**

### **10.1. Submission Review**

- A. Preliminary Review.** The Fund will examine all Proposals that are received in a proper and timely manner to determine if they meet the submission requirements, as described in Section 6.0 (Proposal Content) and Section 7.0 (Proposal Submission), and include the proper documentation as required in this RFP. Proposals that are materially deficient in meeting the submission requirements or have omitted material documents, in the sole opinion of the Fund, may be rejected.
- B. Minimum Qualification Review.** All responsive proposals will be reviewed to ensure the Minimum Qualifications (Section 3.0 Minimum Qualifications) have been met. Proposals failing to meet the Minimum Qualifications will not be evaluated any further.

### **10.2. Scoring Weights, by Module**

The scoring of the Technical and Cost Proposals will be weighted as shown in the chart below:

Module # – Title	Scoring (Technical)	Points (Technical)	Scoring (Cost)	Points (Cost)
<b>1 – Securities Litigation Counsel</b>	<b>80%</b>	<b>80</b>	<b>20%</b>	<b>20</b>
<b>2 – SEC and Corporate Law Counsel</b>	<b>70%</b>	<b>70</b>	<b>30%</b>	<b>30</b>
<b>3 – Delaware Counsel</b>	<b>70%</b>	<b>70</b>	<b>30%</b>	<b>30</b>

<b>4 – Evaluation and Class Action Counsel</b>	<b>80%</b>	<b>80</b>	<b>20%</b>	<b>20</b>
<b>5 – Foreign Litigation Counsel</b>	<b>80%</b>	<b>80</b>	<b>20%</b>	<b>20</b>

### **10.3. Technical Evaluation for Each Module**

An Evaluation Committee of qualified OSC staff will evaluate and score all responsive Proposals for Technical qualifications, subject to the terms of this RFP. To ensure that a pool of qualified Proposers is selected for award, the Fund will eliminate from consideration of award all Proposals whose technical proposal score is less than 60% of the top scoring Technical Proposal received in response to this RFP. For example, if the top technical Proposal score received in response to this RFP is 60, all Proposals with a technical score of 47 points or less will be removed from consideration of award. (The Cost proposals of Proposers eliminated from consideration of award for this reason will not be scored and scores will not be used to determine the proportionate scores of other Proposals, as described in Section 10.4 below.)

This technical evaluation is conducted separately from the cost evaluation. The results of each evaluation will remain confidential until both evaluations have been completed and a selection of the winning proposals is made.

### **10.4. Cost Evaluation**

Cost proposals are evaluated by qualified OSC staff, separate from the Technical Evaluation Committee. The maximum cost score will be allocated to the responsive proposal with the lowest all-inclusive not-to-exceed cost for each Module. All other responsive Proposals for each Module will receive a proportionate score based on the relation of their Cost proposal to the Proposal offered at the lowest cost for that Module, using this formula:

Cost points awarded *equals* number of potential points *times* (the lowest Cost proposal *divided by* cost of proposal being evaluated).

### **10.5. Finalists**

The cost score will be added to the technical score to arrive at a preliminary composite score for each proposal, for each Module. The number of finalists for each Module will be in the CRF's sole discretion.

### **10.6. Interviews**

The CRF may, in its discretion, interview finalists for each Module. If elected, interviews will be conducted at 110 State Street, Albany, NY or in New York City, or, at the discretion of the Technical Evaluation Committee, by telephone or videoconference. The purpose of the interview is to allow evaluators to obtain clarification, if needed, and to substantiate the responses contained in the Technical proposal. No new material will be permitted to be introduced during the interview. The technical scores of interviewees for each Module may be rescored and adjusted up or down based on the interview.

Each interviewee will be notified of the date, place, and time of their interview to be held not earlier than the Interview date designated in Section 1.0. The Proposer's interviewees should not exceed six people.

### **10.7. Reference Checks**

The Proposer should submit references using Attachment E (References). References may be checked at any point during the process.

#### **10.8. Final Composite Score**

Following the interviews and reference checks (if conducted), and review of any requested clarifications to a Proposal, the Technical Evaluation Committee may re-score each finalist. Any re-scoring will reflect the results of the interview process, based upon the likelihood of success of the Proposer in performing the services required. A final score for each responsive Proposal will be calculated by adding the final Technical proposal points and the Cost proposal points.

#### **11.0 AWARD AND CONTRACT**

Following the evaluation process, the Evaluation Committee may make a recommendation to the CRF that contract(s) be awarded for each Module. If the CRF accepts the recommendation(s) of the Evaluation Committee, the Director of Finance will notify the Selected Proposer(s) and Proposers not selected. Award is conditioned upon successful completion of a responsibility review conducted by OSC and a conflict of interest review.

Pool Counsels may be engaged for specific matters accordance with the Comptroller's fiduciary responsibilities and in a fair and equitable matter, in which case Counsel will be required to enter into a retainer agreement with the CRF.

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