**Request for Proposals ETJ0060**

**Federal Tax Counsel**

**to the**

**State of Wisconsin Employee Trust Funds Board**

**for the**

**Wisconsin Retirement System**

**and Related Programs**

Issued by the State of Wisconsin

Department of Employee Trust Funds

On behalf of the Employee Trust Funds Board

Release Date: **October 14, 2020**

Questions & Letter of Intent Due: **November 4, 2020**

Proposals Due: **November 20, 2020 by 2:00 p.m. CDT**

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Telephone: 608-261-7247

Email: [ETFSMBProcurement@etf.wi.gov](mailto:ETFSMBProcurement@etf.wi.gov)

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# General Information

## Introduction

The purpose of this Request for Proposals (RFP) is to solicit proposals from interested and qualified vendors that possess the resources and expertise to be federal tax counsel to the State of Wisconsin Employee Trust Funds Board (Board).

The State of Wisconsin Department of Employee Trust Funds (Department) intends to use the results of this RFP solicitation to award a Contract for the federal tax counsel. The Contract will be administered and managed by the Department, with oversight by the Board. This RFP document, its appendices, forms, addendums, attachments, and the awarded Proposal will be incorporated into the Contract.

## Delegation of Authority

On June 22, 2020, The State of Wisconsin Employee Trust Funds Board delegated to the Department of Employee Trust Funds (ETF) the authority to solicit proposals for and contract with Federal Tax Counsel.

## Scope and Background

The Department, located in Madison, Wisconsin, administers the Wisconsin Retirement System (WRS), the group health insurance program for state and university employees and many local governments, and a variety of other public employee benefit programs. The WRS is the 8th largest public pension fund in the nation and ETF’s largest program, providing retirement benefits for more than 640,000 current and former state and local government employees on behalf of 1,499 employers. For greater detail about the WRS and the many benefits programs administered by the Department, please see Table 1 below.

The Department will select qualified counsel to provide legal services on specific issues as well as on an as-needed basis in a variety of civil matters requiring expertise in federal tax law, primarily regarding ongoing qualification of defined benefit public employee retirement plans under the Internal Revenue Code (IRC).

State law requires the Board and the Department to ensure that the WRS complies with and is administered in a manner consistent with the IRC. Wis. Stats. §§ 40.015, 40.03 (1)(am) and (2)(t). The Board is authorized by law to employ or select any legal contractors as are required for the administration of the Trust Fund. Wis. Stats. § 40.03 (1)(c).

All the benefit plans that the Department administers are affected by the IRC. The WRS is a tax-qualified plan. During the past five years of work with outside tax counsel, the Department has worked on numerous, complex, ad-hoc, tax-related projects.

The scope of this contract will include:

1. Advise on drafting of proposed legislation, regulations, rules, policies, and plan documents regarding benefit plans under Chapter 40 of the Wisconsin Statutes to ensure compliance with the qualification provisions for public employee retirement plans under the IRC to maintain the status of the WRS as a governmental plan under 26 USC § 414(d) and 29 USC § 1002(32).
2. Provide legal advice and guidance on federal tax and international tax matters relating to the administration of public employee benefit plans under the IRC and related Treasury Regulations and Chapter 40 of the Wisconsin Statutes.
3. Respond to and represent the WRS in the event of an IRS examination of any retirement or benefit plans administered by ETF.
4. Represent or assist in the representation of the Department before the IRS if the IRS seeks fines, forfeitures, penalties or other recovery for non-compliance by the Department in the administration of the WRS.
5. Provide timely informational updates regarding changes to federal law and regulations that may affect the WRS.
6. Work with Department staff, or, as directed by the Department, with other entities, to resolve issues related to tax-preferred programs administered by third parties.
7. Provide legal advice and guidance on other matters related to the administration of the various benefit programs of the WRS, including legal services related to contracts between the Department and vendors for benefit plan systems and services.
8. Upon request, attend board meetings and other staff meetings in Madison, Wisconsin. Travel costs to be reimbursed consistent with State authorized rates. Vendor must submit qualified receipts to receive reimbursement.

## Additional Background Information

Program background information is provided to assist the Proposer in completing the RFP response document. For additional information on the programs, please review these related websites:

Table 1. Resources

|  |  |
| --- | --- |
| **Title** | **Web Address** |
| Employee Trust Funds Website | [http://etf.wi.gov](http://etf.wi.gov/) |
| RFP ETJ0060 Federal Tax Counsel | <https://etf.wi.gov/node/19681> |
| Wis. Admin. Code Chapter 11 Appeals | <http://docs.legis.wisconsin.gov/code/admin_code/etf/11> |
| Wis. State Statutes Chapter 40 | <http://www.legis.state.wi.us/statutes/Stat0040.pdf> |
| WRS 2020 Program Fact Sheet | <https://etf.wi.gov/publications/et8901/download?inline> |

## Procuring and Contracting Agency

This RFP is issued by the Department on behalf of the Board. The Department is the sole point of contact for the State in the selection process. The terms “State,” “ETF,” and “Department” may be used interchangeably in this RFP and its attachments.

Prospective Proposers are prohibited from contacting any person other than the individual listed below regarding this RFP. Violation of this requirement may result in the Proposer being disqualified from further consideration.

Joanne Klaas

RFP ETJ0060

Telephone: 608-261-7247

E-mail: [ETFSMBProcurement@etf.wi.gov](mailto:ETFProcurement@etf.wi.gov)

**NOTE:** The Department’s offices are closed on Saturdays, Sundays, and State holidays.

See State holidays <https://dpm.wi.gov/Pages/How_Do_I/seeStateHolidays.aspx>.

## Definitions and Acronyms

Words and terms shall be given their ordinary and usual meanings. Words and terms not defined below shall have the meanings provided by Wis. Stat. § 40.02 and Wis. Admin. Code § 10.01 unless otherwise clearly and unambiguously defined by the context of their usage in this RFP. Where capitalized in this RFP, the following definitions and acronyms shall have the meanings indicated unless otherwise noted. The meanings shall be applicable to the singular, plural, masculine, feminine, and neutral forms of the words and terms.

**Board** means State of Wisconsin Employee Trust Funds Board.

**Business Day** means each Calendar Day except Saturday, Sunday, and official State of Wisconsin holidays (see also: Calendar Day, Day).

**Calendar Day or Day** refers to a period of twenty-four hours starting at midnight.

**Calendar Year or Year** means the time period from January 1 to December 31.

**Confidential Information** means all tangible and intangible information and materials being disclosed in connection with the Contract, in any form or medium without regard to whether the information is owned by the State of Wisconsin or by a third party, which satisfies at least one of the following criteria: (i) Individual Personal Information; (ii) Personally Identifiable Information under Wis. Stat. § 19.62(5); (iii) Protected Health Information under HIPAA, 45 CFR 160.103; (iv) proprietary information; (v) non-public information related to the State of Wisconsin’s employees, customers, technology (including data bases, data processing and communications networking systems), schematics, specifications, and all information or materials derived therefrom or based thereon; (vi) information expressly designated as confidential in writing by the State of Wisconsin; (vii) all information that is restricted or prohibited from disclosure by State or federal law, including Individual Personal Information and Medical Records as governed by Wis. Stat. § 40.07, Wis. Admin. Code ETF 10.70(1) and 10.01(3m); or (viii) any material submitted by the Proposer in response to this RFP that the Proposer designates confidential and proprietary information and which qualifies as a trade secret, as provided in Wis. Stat. § 19.36 (5) or material which can be kept confidential under the Wisconsin public records law.

**Contract** means the written agreement resulting from the successful Proposal and subsequent negotiations that shall incorporate, among other things, this RFP and all Appendices and Forms, the successful Proposer's Proposal as accepted by the Department, an updated and executed Appendix 1 – Pro Forma Contract, its exhibits, subsequent amendments and other documents as agreed upon by the Department and the Contractor.

**Contractor** means a Proposer who is awarded a Contract.

**Cost Proposal** means the document submitted by a Proposer that includes Proposer’s costs to provide the Services. FORM D – Cost Proposal is one of the required documents all Proposers must submit.

**Department** or **ETF** means the State of Wisconsin Department of Employee Trust Funds.

**Firm** means an entity submitting a proposal in response to this RFP.

**Mandatory** means the least possible threshold, functionality, degree, performance, etc. needed to meet a compulsory requirement.

**Personally Identifiable Information** or **PII** means information that is capable of identifying a particular individual through one or more identifiers or other information or circumstances. See Appendix 2 – Department Terms and Conditions.

**Proposal** means the complete response of a Proposer submitted in the format specified in this RFP, which sets forth the Services offered by a Proposer and Proposer’s pricing for providing the Services described in this RFP.

**Proposer** means any individual, firm, company, corporation, or other entity that submits a Proposal in response to this RFP.

**Protected Health Information** or **PHI** has the meaning ascribed to it under 45 CFR 160.103. See Appendix 2 – Department Terms and Conditions.

**RFP** means this Request for Proposals ETJ0060.

**Services** means all work performed, labor, actions, recommendations, plans, research, and documentation provided by the Contractor necessary to fulfill that which the Contractor is obligated to provide under the Contract.

**State** means the State of Wisconsin.

**State Statutes** or **Wisconsin Statutes** or **Wis. Stats.** means Wisconsin State Statutes referenced in this RFP, viewable at: <http://www.legis.state.wi.us/rsb/stats.html>.

**Subcontractor** means a person or company hired by the Contractor to perform a specific task or provide Services as part of the Contract.

**WRS** means the Wisconsin Retirement System.

## Clarification of the Specifications and Requirements

Proposers must submit all questions concerning this RFP via email (no phone calls) to [ETFSMBProcurement@etf.wi.gov](mailto:ETFSMBProcurement@etf.wi.gov). The subject of the email must state “**ETJ0060**” and the email must be received on or before the date identified in Section 1.10 Calendar of Events, *Proposer Questions and Letter of Intent Due Date*. Proposers are expected to raise any questions they have concerning this RFP at this point in the process. Do not include any information within your questions that would identify your company as all submitted questions will be shared with all vendors who submit questions.

Proposers are encouraged to submit any assumptions or exceptions during the above process. All assumptions and exceptions listed must contain a rationale as to the basis for the assumption/exception. The Department will inform Proposers what assumptions/exceptions are acceptable to the Department.

Questions must be submitted as a Microsoft Word document (not a .pdf or scanned image) using the format specified below:

Table 2. Format for Submission of Clarification Questions

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Q # | RFP Section | RFP Page | Question/Rationale | Department Answer |
| Q1 |  |  |  |  |
| Q2 |  |  |  |  |
| Q3 |  |  |  |  |

Q = Proposer’s question

Proposer’s email must include the name of the Proposer’s company and the person submitting the question(s). A compilation of all questions and answers, along with any RFP updates, will be posted to the Department website at <https://etf.wi.gov/node/19681> on or about the date indicated in Section 1.10 Calendar of Events, *Department Posts Responses to Proposer Questions*.

If a Proposer discovers any significant ambiguity, error, conflict, discrepancy, omission, or other deficiency in this RFP, the Proposer should immediately notify the individual identified in Section 1.5 Procuring and Contracting Agency, of such error and request modification or clarification of this RFP document.

If it becomes necessary to update any part of this RFP, updates will be published on the Department’s website listed above and will not be mailed. Electronic versions of this RFP and its attachments are available on the Department website.

## Proposer Conference

No Proposer conference is scheduled for this RFP. If the Department decides to hold a Proposer conference, a notice will be posted on the Department’s website at <https://etf.wi.gov/node/19681>.

## Reasonable Accommodations

The Department will provide reasonable accommodations, including the provision of informational material in an alternative format, for qualified individuals with disabilities, upon request.

## Calendar of Events

Listed below are the important dates by which actions related to this RFP must be completed. If the Department finds it necessary to change any of the specific dates and times in the Calendar of Events listed below, it will do so by posting an addendum to this RFP on the Department’s website. No other formal notification will be issued for changes in the estimated dates.

Table 3. Calendar of Events

|  |  |
| --- | --- |
| Date | Event |
| October 14, 2020 | Department Issues RFP |
| November 4, 2020 | Proposer Questions, Letter of Intent Due |
| November 10, 2020 | Department Posts Responses to Proposer Questions |
| November 20, 2020 by 2:00 PM Central Standard Time (CST) | **Proposal Due Date** |
| January 2021 | Department Notifies Proposers of Intent to Award Contract |
| February 2021 | Begin contract negotiations |
| July 1, 2021 | Contract Start Date |

***\*All dates are estimated except for Proposer due dates for: Proposer Questions, Letter of Intent and Proposals.***

## Contract Term

The Contract shall be effective July 1, 2021 through June 30, 2022, after Contract negotiations have been successfully completed. An option to renew the Contract for five (5) additional one (1)-year periods may be exercised subject to the satisfactory negotiation of terms, including prices.

## Letter of Intent

A letter of intent indicating that a Proposer intends to submit a response to this RFP is *highly encouraged* (See Section 1.10 Calendar of Events). In the letter, identify the Proposer’s organization/company name, list the name, location, telephone number, and email address of one or more persons authorized to act on the Proposer’s behalf. Submit the letter of intent via email to [ETFSMBProcurement@etf.wi.gov](mailto:ETFSMBProcurement@etf.wi.gov). The RFP number and title must be referenced in the subject line of Proposer’s email. The letter of intent does not obligate the Proposer to submit a Proposal.

## No Obligation to Contract

The Board reserves the right to cancel this RFP for any reason prior to the issuance of a notice of intent to award a Contract. The Board does not guarantee to purchase any specific dollar amount. Proposals that stipulate that the Board shall guarantee a specific quantity or dollar amount will be disqualified.

## WI Department of Administration eSupplier Registration

The Wisconsin Department of Administration’s eSupplier Portal is available to all businesses and organizations that want to do business with the State. The eSupplier Portal allows vendors to see details about pending invoices and payments, allows vendors to receive automatic, future official notices of bid opportunities, and, in some cases, allows vendors to respond to State solicitations. Note: the eSupplier Portal is not being used for this solicitation for Proposer responses.

For more information on the eSupplier Portal, go to: <https://esupplier.wi.gov/psp/esupplier/SUPPLIER/ERP/h/?tab=WI_BIDDER>

## Retention of Rights

All Proposals become the property of the Department upon receipt. All rights, title and interest in all materials and ideas prepared by the Proposer for the Proposal, and provided to the Department, shall be the exclusive property of the Department and may be used by the State at its discretion.

# Preparing and Submitting a Proposal

## General Instructions

The evaluation and selection of a Contractor will be based on the information received in the submitted Proposal plus the following optional review methods, at the Department’s discretion: reference checks, presentations, interviews, demonstrations, responses to requests for additional information or clarification, any on-site visits, and/or best and final offers (BAFOs), where requested. Such methods may be used to clarify and substantiate information in the Proposals.

Failure to respond to each of the requirements in this RFP may be the basis for rejecting a Proposal.

Elaborate Proposals (e.g., expensive artwork), beyond that sufficient to present a complete and effective Proposal, are neither necessary nor desired. Marketing or promotional materials should only be provided where specifically requested. If providing such materials, please indicate which question the materials apply to.

All Proposals must be in English.

## Incurring Costs

The State of Wisconsin and the Department are not liable for any costs incurred by Proposers in replying to this RFP, making requested oral presentations, or demonstrations.

## Submitting the Proposal

### ****Proposals must be submitted to the following URL****

### [https://etf.app.box.com/f/ff11a8a3ca87417682ad06cb5cb4dfd*5*](https://etf.app.box.com/f/ff11a8a3ca87417682ad06cb5cb4dfd5)

Please do not upload ZIP files to Box. Acceptable file types include PDF, Docx, **or xlsx.**

**Proposermustsubmit the following, including all required materials as specified herein:**

* **All Proposer files, submitted no later than the Proposal Due Date and Time, as defined in RFP Section 1.10 Calendar of Events.**
* **Proposer’s proposal submission shall include three (3) file folders labeled “Proposal”, “Redacted Proposal”, and “Cost Proposal”:**
  + **Folder 1 containing all electronic Proposal files in Microsoft Word/Microsoft Excel, and/or Adobe Acrobat 9.0 (or above) format. The Department requires that all files have optical character recognition (OCR) capability (not a scanned image). OCR is the conversion of all images typed, handwritten or printed text into machine-encoded text. The file folder must be labeled “[Proposer Name] PROPOSAL.” Do not include the Cost Proposal in this file folder.**
  + **Folder 2 (only required if Proposer includes confidential or proprietary information within its Proposal) containing all electronic Proposal files in Microsoft Word/Microsoft Excel, and/or Adobe Acrobat 9.0 (or above) format** **EXCLUDING or REDACTING all confidential and proprietary information/documents. This folder must be labeled “[Proposer Name] REDACTED PROPOSAL.” This is the file that will be submitted to requestors for open records requests. Note that no matter what the method the Proposer uses to redact documents, the Department is not responsible for checking that the redactions match the Proposer’s FORM C – Proposer Required Form, Section 4 – Designation of Confidential and Proprietary Information. Proposers should be aware that the Department may need to electronically send the redacted materials to members of the public and other Proposers when responding appropriately to open records requests. The Department is not responsible for checking that redactions, when viewed on-screen via electronic file, cannot be thwarted. The Department is not responsible for responding to open records requests via printed hard copy, even if redactions are only effective on printed hard copy. The Department may post redacted Proposals on the Department’s public website in exactly the same file format the Proposer provides, and the Department is not responsible if the redacted file is copied and pasted, uploaded, emailed, or transferred via any electronic means, and somehow loses its redactions in that process. Do not include the Cost Proposal in this folder.**
* **Redact only material the Proposer authored. For example, do not redact the requirement or question the Proposer is responding to, only the answer.**
* **Do not redact page numbers. Page numbers should remain visible at all times, even if the whole page is being redacted.** 
  + **Folder 3 containing FORM D** – **Cost Proposal labeled “[Proposer Name] COST PROPOSAL.” Note: costs provided in Proposer’s Cost Proposal shall NOT be redacted for confidentiality.**

**IMPORTANT:**

* **Do not lock or password protect any Proposal folders or files.**
* **Include the Proposer’s name and the RFP number in each folder name and each file name.**
* **Files must be free** of all malware, ransomware, viruses, spyware, worms, Trojans, or anything that is designed to perform malicious operations on a computer.

#### 2.3.2 ****Proposal Due Date and Time****

**Proposals received by the Department after the date and time specified in Section 1.10 Calendar of Events will not be accepted and will be disqualified. All required parts of the Proposal must be submitted by the specified due date and time; if any portion of the Proposal is submitted late, the entire Proposal will be disqualified. Proposers may request, via an email to the address listed in Section 1.5, the time and date their Proposal was received via email.**

## Proposal Organization and Format

Proposers responding to this RFP must comply with the following format requirements. The Department reserves the right to exclude any Proposals from consideration that do not follow the required format as instructed below.

#### 2.4.1 Format Requirements

**Only provide promotional materials if they are relevant to a specific requirement of this RFP. If provided, all materials must be included with the response to the relevant requirement and clearly identified as “promotional materials.” Electronic access to such materials is preferred, which includes web links.**

|  |  |
| --- | --- |
| **FRONT COVER** | **Front Cover Requirements**  Include at a minimum the following information:   * **Proposer's company name;** * **Title of the following: *Proposal Response for the Wisconsin Department of Employee Trust Funds;*** * **RFP ETJ0060*;* and,** * **Proposal submission** date. |
| **TABLE OF CONTENTS** | **Table of Contents Requirements**  Include at a minimum the following information:   * Listing of each Proposal TAB number; * Listing of each Proposal TAB description; and, * Listing of each Proposal TAB page number. |
| **TAB 1** | **General Information and Forms**  Provide the following information and documents in the following order:   * TRANSMITTAL LETTER: A signed transmittal letter must accompany the Proposal. The transmittal letter must be written on the Proposer’s official business stationery and signed by an official that is authorized to legally bind the Proposer. Include in the letter:  1. Name and address of company; 2. Name, title and signature of Proposer’s authorized representative; 3. Name, title, telephone number and email address of representatives who may be contacted by the Department if questions arise regarding the Proposal; 4. **RFP ETJ0060*;*** and, 5. Executive Summary  * FORM A – Proposal Checklist * FORM B – Subcontractor Information * FORM C – Proposer Required Form * Current Form W-9 Request for Taxpayer Identification Number and Certification (from the Department of the Treasury, Internal Revenue Service: <https://www.irs.gov/pub/irs-pdf/fw9.pdf>)   **NOTE: FORM D – Cost Proposal must be submitted as stated in Section 2.3 above.** |
| **TAB 2** | **Response to Section 5 - Technical Questionnaire**  Per Section 5, Proposer must provide a point-by-point response to each and every statement in Section 5. The response must follow the same numbering system, use the same headings, and address each point or sub-point listed in the RFP.  Include the documents requested in Section 5 (e.g. attorney resumes, etc.) at the end of the section in your Proposal that corresponds to the Section in the RFP in which the document is requested. Label the document provided with the section number it applies to. |
| **TAB 3** | **Assumptions and Exceptions**  If the Proposer has no assumptions or exceptions to any RFP term, condition, appendix, or form, provide a statement in Tab 3 of the Proposal to that effect.  **If the Proposer has assumptions and/or exceptions to any RFP term, condition, appendix, or form, follow the instructions below.** |

#### 2.4.2 Instructions for Submitting Assumptions and Exceptions

* Regardless of any proposed assumption or exception, the Proposal as presented must include all Services requested.
* If the Proposer cannot agree to a Department Term or Condition in Appendix 2 as written, which is not listed below in Table 4 “No Assumptions or Exceptions Allowed to the following Department Terms and Conditions”, the Proposer must make its specific required revision to the language of the provision by striking out words or inserting required language to the text of the provision. Any new text and deletions of original text must be clearly color coded or highlighted, which requires the Proposer’s response be printed in color. Proposers shall avoid complete deletion and substitution of entire provisions, unless the deleted provision is rejected in its entirety and substituted with substantively changed provisions. Wholesale substitutions of provisions shall not be made in lieu of strategic edits required to reflect Proposer-required modifications.
* Immediately after a proposed revision, the Proposer shall add a concise explanation concerning the reason or rationale for the required revision. Such explanations shall be separate and distinct from the marked-up text and shall be bracketed, formatted in italics and preceded with the term “[*Explanation:*].”
* All provisions on which no changes are noted shall be assumed to be accepted by the Proposer as written and shall not be subject to further negotiation or change of any kind unless otherwise proposed by the Department.
* Submission of any standard Proposer contracts as a substitute for language in the terms and conditions is not a sufficient response to this requirement and may result in rejection of the Proposal. An objection to terms or conditions without including proposed alternative language will be deemed to be an acceptance of the language as applicable.
* The Department reserves the right to negotiate contractual terms and conditions when it is in the best interest of the State of Wisconsin to do so.
* Exceptions to any RFP terms and conditions may be considered by the Department during Contract negotiations if it is beneficial to the Department.
* The Department may or may not consider any of the Proposer’s suggested revisions. The Department reserves the right to reject any proposed assumptions or exceptions.
* Clearly label each assumption and exception with one of the following labels, as applicable:
* Department Terms and Conditions Assumptions and Exceptions
* RFP/Appendices Assumptions and Exception
* Cost Proposal Assumptions and Exceptions

#### 2.4.3 Supplemental Information – IMPORTANT – Department Terms and Conditions

The Department will not allow any assumptions or exceptions by the Proposer to any of the items listed in Table 4 below. Any Proposal with an assumption or exception to any of the items listed in Table 4 will be rejected unless the Proposer recants each such assumption or exception in writing.

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | Table 4 - No Assumptions or Exceptions Allowed  Department Terms and Conditions   |  |  |  | | --- | --- | --- | | Ref. No. | Document | Item/Section | | 1 | Appendix 2 | 3.0 Legal Relations | | 2 | Appendix 2 | 13.0 Contract Dispute Resolution | | 3 | Appendix 2 | 14.0 Controlling Law | | 4 | Appendix 2 | 16.0 Termination of the Contract | | 5 | Appendix 2 | 17.0 Termination for Cause | | 6 | Appendix 2 | 18.0 Remedies of the Department | | 7 | Appendix 2 | 22.0 Confidential Information and HIPAA Business Associate Agreement\* | | 8 | Appendix 2 | 23.0 Indemnification | | 9 | Appendix 2 | 39.0 Assignment | |

\*Section 22.0 of the Department Terms and Conditions (Appendix 2) acts as the Department’s Business Associate Agreement (BAA). The BAA ensures compliance with the federal regulations implementing the Health Insurance Portability and Accountability Act of 1996 (HIPAA) concerning the privacy, security and transaction standards on the confidentiality of personal information.

## Multiple Proposals

Multiple Proposals from a Proposer will not be accepted.

## Withdrawal of Proposals

Proposals shall be irrevocable until the Contract is awarded unless the Proposal is withdrawn. Proposers may withdraw a Proposal in writing at any time up to the date and time listed in Section 1.10 Calendar of Events, for the Proposal Due Date or upon expiration of three (3) Calendar Days after the Proposal Due Date and time, if received by the Department. To accomplish this, the written request must be signed by an authorized representative of the Proposer’s company and submitted to the contact listed in Section 1.5 Procuring and Contracting Agency. If a previously submitted Proposal is withdrawn before the Proposal Due Date, the Proposer may submit another Proposal at any time up to the Proposal Due Date and time.

# Proposal Selection and Award Process

## Preliminary Evaluation

Proposals will initially be reviewed to determine if Mandatory Proposer Qualifications are met, to the extent the Department can make that determination, and if all required Proposal components are received. Failure to:

* submit a complete Proposal following the instructions for completing the Proposal specified in this RFP, or
* meet the Mandatory Requirements in Section 4, or
* provide a complete response to Form D – Cost Proposal

may result in rejection of the Proposal regardless of when the Department makes such discovery. In the event that all Proposers do not meet one or more of the mandatory requirements, the Department reserves the right to continue the evaluation of the Proposals and to select the Proposal which most closely meets the requirements specified in this RFP. Also see RFP Section 2.4.3 regarding assumptions/exceptions to certain section of the Department Terms and Conditions.

## Clarification Process

The Department may request Proposers to clarify ambiguities or answer questions related to information presented in their Proposal. Clarifications may occur throughout the Proposal evaluation process. Clarification requests will include appropriate references to this RFP or the Proposal. Responses shall be submitted to the Department in writing within the time required. Failure to provide responses as instructed may result in rejection of a Proposal.

## Proposal Scoring

Proposals that pass the preliminary evaluation may be reviewed by an evaluation committee. The evaluation committee may review written Proposals, references, additional clarifications, oral presentations or demonstrations (top scoring Proposers only), site visits, and other information to score Proposals. The Department may request reports on a Proposer’s financial stability (this includes the Department’s request for Proposers to furnish audited financial statements), and if financial stability is not substantiated, may reject a Proposer’s Proposal. The Department may request presentations or demonstrations of the Proposer’s proposed products(s) and/or service(s) (top scoring Proposers only), and review results of past awards to the Proposer by the State.

A Proposer may not contact any member of the RFP evaluation committee about the Proposal or any issue related to the RFP.

The evaluation committee's scoring will be tabulated, and Proposals will be ranked based on the numerical scores received.

The evaluation committee reserves the right to stop reviewing a Proposal at any point during the evaluation process when they are not reasonably apt to receive an award and remove the Proposal from further consideration.

## Evaluation Criteria

Proposals will be evaluated based upon the proven ability of the Proposer to satisfy the requirements specified herein in an efficient, cost-effective manner, taking into account quality of services proposed. Proposals will be scored using the following criteria:

Table 5. Evaluation Criteria

|  |  |  |  |
| --- | --- | --- | --- |
| **Evaluation Criteria** | | | |
| **RFP Section** | **Description** | **Total Points** | **%** |
| 5 | Technical Section | 800 | 80% |
| 6 | Cost Proposal | 200 | 20% |
|  | Total | 1,000 | 100% |

## Method to Score Cost Proposals

## The lowest Cost Proposal will receive the maximum number of points available for the cost category. Other Cost Proposals will receive prorated scores based on the proportion that the costs of the Proposals vary from the lowest Cost Proposal.

## Best and Final Offer (BAFO)

The Department reserves the right to solicit one or more BAFO(s) and conduct Proposer discussions, request more competitive pricing, clarify Proposals, and contact references with the finalists, should it be in the State’s best interest to do so. The Department is the sole determinant of its best interests.

If a BAFO is solicited, it will contain the specific information on what is being requested, as well as submission requirements, and a timeline with due date for submission. Any BAFO responses received by the Department after the stated due date may not be accepted. Proposers that are asked to submit a BAFO may refuse to do so by submitting a written response, indicating their Cost Proposal remains as originally submitted. Refusing to submit a BAFO will not disqualify the Proposer from further consideration.

## Contract Award

The evaluation committee may conduct Proposer discussions, clarify Proposals, contact the references of Proposers, and request BAFOs from Proposers. Information regarding the Proposals will be presented to the Board. One or more Proposals may be presented to the Board for award based on the results of the technical and initial cost evaluations. If the evaluation committee conducted oral presentations or demonstrations, the award will be based on the results of the presentations or demonstrations as well. The Proposal(s) determined to best meet the goals of the State’s benefits program may be selected by the Board for further action, including oral presentations or demonstrations to the Board.

The Board reserves the right not to award a Contract. If contract negotiations cannot be concluded successfully with the selected Proposer(s), the Board may negotiate a Contract with another Proposer.

## Right to Reject Proposals and Negotiate Contract Terms

This RFP does not commit the Board to awarding a Contract, or paying any cost incurred in the preparation of a Proposal in response to the RFP. The Board retains the right to accept or reject any or all Proposals or accept or reject any part of a Proposal deemed to be in the best interest of the Board. The Board shall be the sole judge as to compliance with the instructions contained in this RFP.

The Board may negotiate the terms of the Contract, including the award amount and the Contract length, with the selected Proposer prior to entering into a Contract. The Board reserves the right to add contract terms and conditions to the Contract during contract negotiations and subsequent renewals.

## Notification of Intent to Award

All Proposers who respond to this RFP will be notified in writing of the Board’s intent to award a Contract as a result of this RFP. All decisions and actions under this RFP are solely under the authority of the Board.

## Appeals Process

Appeals of the Board’s intent to award a contract must be made in writing and according to the Board’s Policy for Vendor Procurement Appeals located at <http://etf.wi.gov/boards/gov_manual_retirement/vendor-procurement-appeals.pdf>. A vendor who wants to appeal the award must first send a written notice indicating that the vendor wants to appeal the award decision and submit it by email to [ETFSMBProcurement@etf.wi.gov](mailto:ETFSMBProcurement@etf.wi.gov) no later than five (5) Business Days after the notice of intent to award is issued.

A written notice of intent to appeal, and a formal written appeal, must be emailed to;

[ETFSMBProcurement@etf.wi.gov](mailto:ETFSMBProcurement@etf.wi.gov)

Subject line: [Notice of Appeal] or [Appeal] ETJ0060 Federal Tax Counsel RFP

Both the notice of appeal and the formal written appeal should be addressed to:

ETF Board

c/o Robert J. Conlin, Secretary

Following the notice of intent to appeal, the formal written appeal must be submitted as above, to the Employee Trust Funds Board, c/o Robert J. Conlin, Secretary to [ETFSMBProcurement@etf.wi.gov](mailto:ETFSMBProcurement@etf.wi.gov) within ten (10) Business Days after the notice of intent to award the contract is issued. Appeal rights are lost if no formal appeal is timely received. The formal appeal must state the RFP number, detailed factual grounds for the objection to the Contract award and must identify any sections of the Wisconsin Statutes and Wisconsin Administrative Code that are alleged to have been violated. The vendor can appeal only once per award.

The subjective judgment of evaluation committee members is not appealable. Following Board action, a written decision will be sent to the vendor. The decision of the Employee Trust Funds Board regarding any appeals is final.

# Mandatory requirements

**This section is pass/fail. (0 points)**

The requirements in this section are mandatory for any Proposer who submits a Proposal. Failure to comply with one or more of the Mandatory Requirements may disqualify the Proposer. A response to each item in this section is mandatory.

**If the Proposer cannot agree to each item listed in this section, the Proposer must so specify and provide the reason for the disagreement in Tab 3 – Assumptions and Exceptions, of the Proposer’s response (see Section 2.4.2 above).**

Conditions of the RFP that have the word “must” or “shall” describe a Mandatory Requirement.

## Attorney Turnover Plan

Provide a description of how any turnover on key personnel assigned to this account would be handled. The mandatory requirement is met if you provide a description.

## Firm Transition Plan

In the event the Board terminates the Contract, the Contractor must send an updated transition plan to ETF within thirty (30) days of the written notice of termination to the contractor. Confirm you accept and will comply with this requirement.

## Conflict of Interest

The Firm has no conflict of interest with regard to any other work performed by the Firm for the State of Wisconsin.

## Malpractice Insurance

The Firm has proof of malpractice insurance.

## Response Complies with RFP Instructions

The Firm adhered to the instructions in this RFP on preparing and submitting the proposal.

## Suspension and Debarment

The Firm has not been suspended or debarred from performing government work.

## Discipline & Licensing

Neither the Firm nor any of the attorneys or others listed in the proposal have been the subject of any disciplinary action or inquiry during the past five (5) years, and the attorneys working on the contract have current licenses to practice law in at least one state or the District of Columbia and in at least one federal district in good standing.

## Public Employee Retirement Plan Representation

The Firm has represented a public employee retirement plan.

## References

The Firm provided at least three (3) non-ETF references via Form C. Each reference must identify the state and/or other public plan for which the Firm provided tax counsel services.

## Disaster Recovery

The Firm must certify that it has a written business recovery plan as it relates to providing the services described in this RFP.

# technical questionnaire

**This section is scored. (800 points)**

The purpose of this section is to provide the Department and the Board with a basis for determining the Proposer’s capability to undertake the Contract.

All Proposers must respond to the questions/requirements in this section by restating each question or statement and providing a detailed written response. Instructions for formatting the written response to this section are found in Section 2.4 Proposal Organization and Format.

The Proposer must be able to perform Services according to the requirements contained in this RFP.

Information described in the Proposal response regarding programming and capabilities must be available to all eligible members unless otherwise noted in the Proposal.

The Proposer must provide sufficient detail for the evaluation committee and the Department to understand how the Proposer will comply with each requirement. If the Proposer believes that the Proposer’s qualifications go beyond the minimum requirements or add value, the Proposer should indicate those capabilities in the appropriate section of the Proposal.

**Fees related to any Services in the Proposal must be noted in FORM D - Cost Proposal only. Do not include cost/pricing information in any other section of the Proposal.**

## Firm Profile

Describe the law firm or legal practice, including years of existence, size, number of attorneys (broken down by partner, associate, of counsel, etc.), number of non-attorney professionals and other employees, areas of practice, number of attorneys whose practice is primarily in the area of governmental retirement and benefits plans, number of offices and locations, and other descriptive material about the Firm.

## Firm Ownership & Personnel Changes

Highlight any acquisitions, or mergers or other material developments (changes in ownership, personnel, business, etc.) pending or that occurred in the past five years at your Firm. Describe any known changes in personnel that would materially affect the Firm’s ability to work with a large public retirement plan like the WRS.

## Attorney Profiles

Identify the attorneys and staff (i.e., actuaries and paralegals) who will perform work under the contract and provide the professional and experience qualifications of each attorney. This must include the number of years each attorney has represented or worked for public employee retirement plans.

## Team Profile

### Provide a curricula vitae (CV) or resume for each attorney (must include jurisdictions where currently licensed to practice law). In addition, provide a list of each attorney’s specific experience working for and representing defined benefit or cash-balance public employee retirement plans. This list must include a brief description of the plans previously represented by each attorney, the size of each plan (number of employees and employers) and the types of programs offered by each plan represented by the attorney. The list must indicate what experience each attorney has working with:

1. Defined benefit public employee retirement plans (e.g., Wis. Stats. § 40.20 et seq.).
2. Cash balance public employee retirement plans.
3. Deferred compensation programs for public employees (e.g., Wis. Stats. § 40.80 et seq.).
4. Duty disability benefits for public employees (e.g., Wis. Stats. § 40.65).
5. Employee-funded reimbursement accounts (e.g., Wis. Stats. § 40.85, et seq.).
6. Sick leave conversion credits (e.g., Wis. Stats. § 40.05(4)(b), et seq., § 40.95).
7. Group health insurance plans (e.g., Wis. Stats. §§ 40.51 to 40.53).
8. Group life insurance plans (e.g., Wis. Stats. §§ 40.70 and 40.72).
9. Group income continuation insurance plans (e.g., Wis. Stat. §§ 40.61 and 40.62).
10. Group health long-term disability insurance plan (e.g., Wis. Admin. Code § ETF 50.44, et seq.).
11. 26 USC § 415(b) compliance for formula and cash balance plans, including the related Technical and Miscellaneous Revenue Act of 1988 (TAMRA) provisions.
12. A list of each attorney’s publications regarding public employee retirement plans.
13. A list of each attorney’s experience on the board of, teaching or making presentations to national organizations that represent or educate public employee retirement plans and their employees.
14. A list of each attorney’s experience practicing before the Internal Revenue Service (IRS), including experience with the determination letter process, experience representing a public or private employee retirement plan during an IRS audit or examination; using the Employee Plans Compliance Resolution System (including the voluntary and self-correction programs); and resolving any fine or penalty issues with the IRS, including the outcome of such representation.
15. A list of disciplinary action, if any, taken by any professional organization, governmental licensing agency or other regulatory body, against each attorney. ETF reserves the right to disqualify the Firm based on the nature of the disciplinary action.

## Litigation

Provide details of any judgment, criminal conviction, investigation or litigation pending against the Firm. During the past five years, has the Firm been subject to any litigation alleging breach of contract, fraud, breach of fiduciary duty or other willful or negligent misconduct? ETF reserves the right to reject a response based on this information. Provide certification that the Firm has not been in bankruptcy and/or receivership within the last five calendar years.

## Firm Strengths

Describe the Firm’s strengths and overall ability to perform the federal tax counsel services under the RFP, highlighting the distinct qualities and experiences of the Firm individual attorneys. Reference the scope of this contract and how the firm’s strengths fulfill that scope. Scope:

1. Advise on drafting of proposed legislation, regulations, rules, policies and plan documents regarding benefit plans under Chapter 40 of the Wisconsin Statutes to ensure compliance with the qualification provisions for public employee retirement plans under the IRC to maintain the status of the WRS as a governmental plan under 26 USC § 414(d) and 29 USC § 1002(32).
2. Provide legal advice and guidance on federal tax and international tax matters relating to the administration of public employee benefit plans under the IRC and related Treasury Regulations and Chapter 40 of the Wisconsin Statutes.
3. Respond to and represent the WRS in the event of an IRS examination of any retirement or benefit plans administered by ETF.
4. Represent or assist in the representation of ETF before the IRS if the IRS seeks fines, forfeitures, penalties or other recovery for non-compliance by ETF in the administration of the WRS.
5. Provide timely informational updates regarding changes to federal law and regulations that may affect the WRS.
6. Work with ETF staff, or, as directed by ETF, with other entities, to resolve issues related to tax-preferred programs administered by third parties.
7. Provide legal advice and guidance on other matters related to the administration of the various benefit programs of the WRS, including legal services related to contracts between the Department and vendors for benefit plan services.
8. Upon request, attend board meetings and other staff meetings in Madison, Wisconsin. Travel costs to be reimbursed consistent with State authorized rates. Vendor must submit qualified receipts to receive reimbursement.

# Cost PROPOSAL

**This section is scored. (200 total points)**

This section describes additional Proposal submission requirements.

**Submission of FORM D – Cost Proposal**

The file included with this RFP as FORM D – Cost Proposal is the required Cost Proposal document all Proposers must submit. Instructions on how to complete the Cost Proposal are provided in FORM D – Cost Proposal. Instructions on how to submit FORM D – Cost Proposal are provided in Section 2.3.1 above. The Cost Proposal must be returned to the Department in its original format.

The Department reserves the right to clarify any pricing discrepancies related to assumptions on the part of the Proposers. Such clarifications will be solely to provide consistent assumptions from which an accurate cost comparison can be achieved for scoring.

Costs provided in the Contractor’s final Cost Proposal or Best and Final Offer shall remain firm for the initial Contract period.

Only dollar and number values will be accepted on the Cost Proposal. Any description other than a dollar or number value such as, but not limited to: “no cost,” “included,” “see below,” “-“, “n/a,” etc. will not be accepted. A cost value of $0.00 shall indicate the deliverable is no cost to the Department.

# Contract Terms and Conditions

**This section is NOT scored. (0 points)**

The Department will execute a Contract with the awarded Contractor(s). Appendix 1 Pro Forma Contract by Authorized Board is attached as an example. The Contract and any subsequent renewal(s) will incorporate all terms and conditions in this RFP, including all attachments, exhibits, forms, appendices, etc., made a part of this RFP, and Contractor’s Proposal. The Department shall draft the Contract.

The Contractor shall be responsible for the performance of any obligations that may result from the Contract and shall not be relieved by the non-performance of any Subcontractor. Proposals must identify all proposed Subcontractors and describe the contractual relationship between the Proposer and each Subcontractor.

## Board and Department Authority

This solicitation is authorized under Chapter 40 of the Wisconsin State Statutes. Procurement statutes and rules that govern other State agencies may not be applicable. All decisions and actions under this RFP are solely under the authority of the State of Wisconsin Employee Trust Funds Board. The Department is acting as an agent of the Board in carrying out any directives or decisions relating to this RFP, the Contract and subsequent awards. The Department is the sole point of contact for Board contracting.

## Payment Terms

* Contractor must complete the State’s banking and payment forms to facilitate the Department’s Automated Clearing House (ACH) payments, including claims and administrative fee payments, to the Contractor.
* The Department will process ACH payments to the Contractor within thirty (30) Calendar Days of the Department’s receipt of a proper, Department-approved invoice.
* Contractor shall invoice the Department monthly with an itemized listing of costs including: name of consultant providing the services, number of hours, hourly rate, and description of services provided. Invoices shall include the invoice date, invoice number, invoice total, billing period, and contractually obligated invoice due date.

## Piggyback Clause

Other institutions, such as state, local and public agencies, occasionally express interest in participating in Department contracts. The Department would like the Contractor to extend the terms, conditions and prices of the Contract that results from this RFP to any such entity. Any institution that would contract with the Contractor for the goods/services provided under the Contract will issue their own purchasing documents. Should such a contract result, the Contractor agrees that the Department shall bear no responsibility or liability for any agreement between the Contractor and the other institution who desires to exercise this option. If a Proposers does not agree to this clause, they should include an exception to this clause in their Proposal. (See Form C – Proposer Required Form)