



**STATE OF ARKANSAS**  
**OFFICE OF STATE PROCUREMENT**  
 1509 West 7th Street, Room 300  
 Little Rock, Arkansas 72201-4222

**REQUEST FOR QUALIFICATION**  
**BID SOLICITATION DOCUMENT**

| SOLICITATION INFORMATION |                                    |                      |                 |
|--------------------------|------------------------------------|----------------------|-----------------|
| Solicitation Number:     | SP-20-0012                         | Solicitation Issued: | August 30, 2019 |
| Description:             | Legal Services                     |                      |                 |
| Agency:                  | Arkansas Teacher Retirement System |                      |                 |

| SUBMISSION DEADLINE FOR RESPONSE  |                    |                        |                         |
|---|--------------------|------------------------|-------------------------|
| Response Opening Date:  | September 19, 2019 | Response Opening Time: | 2:00 p.m., Central Time |
| <p>Deliver response for this Request for Qualification to the Office of State Procurement on or before the designated response opening date and time. In accordance with Arkansas Procurement Law and Rules, it is the responsibility of Prospective Contractors to submit responses at the designated location on or before the response opening date and time. Responses received after the designated opening date and time may be considered late and may be returned to the Prospective Contractor without further review. It is not necessary to return "no bids" to OSP.</p> |                    |                        |                         |

| DELIVERY OF RESPONSE DOCUMENTS |  |
|--------------------------------|--|
| Delivery Address:              | <p>Office of State Procurement<br/>           1509 West 7<sup>th</sup> Street, Room 300<br/>           Little Rock, AR 72201-4222</p> <p>Delivery providers, USPS, UPS, and FedEx deliver mail to OSP's street address on a schedule determined by each individual provider. These providers will deliver to OSP based solely on the street address. <b>Prospective Contractors assume all risk for timely, properly submitted deliveries.</b></p> |
| Response's Outer Packaging:    | <p>Seal outer packaging and properly mark with the following information. If outer packaging of response submission is not properly marked, the package may be opened for response identification purposes.</p> <ul style="list-style-type: none"> <li>• Solicitation number</li> <li>• Date and time of response opening</li> <li>• Prospective Contractor's name and return address</li> </ul>   |

| OFFICE OF STATE PROCUREMENT CONTACT INFORMATION |   |                              |              |
|---|---|------------------------------|--------------|
| OSP Buyer:                                      | Brandi Schroeder  | Buyer's Direct Phone Number: | 501-682-4169 |
| Email Address:                                  | Brandi.Schroeder@dfa.arkansas.gov   | OSP's Main Number:           | 501-324-9316 |
| OSP Website:                                    | <a href="http://www.dfa.arkansas.gov/offices/procurement/Pages/default.aspx">http://www.dfa.arkansas.gov/offices/procurement/Pages/default.aspx</a> |                              |              |

## **SECTION 1 - GENERAL INSTRUCTIONS AND INFORMATION**

- **Do not provide responses to items in this section unless specifically and expressly required.**

### **1.1 PURPOSE**

The Office of State Procurement (OSP) issues this Request for Qualifications (RFQ) on behalf of the Arkansas Teacher Retirement System (ATRS) to establish a list of Qualified Law Firms experienced in domestic and global securities litigation, securities class action monitoring and advice, securities class action litigation, and asset recovery as specified in this RFQ (hereinafter referred to as "Legal Services").

The resultant Qualified Vendor List (QVL) will be used by ATRS to engage Qualified Law Firms on a contingency fee basis for ongoing representation in multiple matters as requested by ATRS. (See *Service Requirements* for anticipated scope of Legal Services resulting from an engagement.) Use of Qualified Law Firms for Legal Services is subject to authorization by the ATRS Board prior to engagement, consistent with the ATRS Securities Monitoring and Asset Recovery Litigation Policy and ATRS Board Resolutions.

### **1.2 QUALIFIED VENDOR LISTING**

- A. The resultant QVL will be comprised of up to six (6) law firms.
- B. The anticipated starting date for any resulting QVL will be immediately upon qualification, except that the actual QVL start date may be adjusted forward unilaterally by the State for up to three (3) calendar months. By submitting a signed response to the RFQ, the Prospective Contractor represents and warrants that it will honor its response as being held open as irrevocable for this period.
- C. The initial term of a resulting QVL will be for at least one (1) year. Under A.C.A. § 24-2-618(g), the length of this QVL, a resulting contract, and any mutually agreed upon renewal between a Qualified Law Firm and ATRS is exempt from the mandatory expiration provisions under A.C.A. § 19-11-201 et seq.

### **1.3 ISSUING AGENCY**

- A. OSP, as the issuing office, is the sole point of contact throughout this solicitation process.
- B. Prospective Contractor's response may be rejected if a Prospective Contractor attempts to contact ATRS board members, administration, or staff regarding this solicitation during the solicitation process.

### **1.4 RESPONSE OPENING LOCATION**

Responses will be opened at the following location:

Office of State Procurement  
1509 West Seventh Street, Room 300  
Little Rock, AR 72201-4222

### **1.5 ACCEPTANCE OF REQUIREMENTS**

- A. A Prospective Contractor **must** unconditionally accept all Requirements in the Requirements Section(s) of this RFQ to be considered a responsive Prospective Contractor.
- B. Prospective Contractor's response will be rejected if a Prospective Contractor takes exceptions to any Requirements in the Requirements Section(s) of this RFQ.

### **1.6 DEFINITION OF TERMS**

- A. The State Procurement Official has made every effort to use industry-accepted terminology in this *Bid Solicitation* and will attempt to further clarify any point of an item in question as indicated in *Clarification of Bid Solicitation*.
- B. Unless otherwise defined herein, all terms defined in Arkansas Procurement Law and used herein have the same definitions herein as specified therein.
- C. "Contractor" means a person who sells or contracts to sell commodities and/or services.
- D. "Prospective Contractor" means a person who submits a response to this solicitation.
- E. "Qualified Law Firm" means a Prospective Contractor included on the QVL resulting from this RFQ.
- F. The terms "Request for Qualifications," "RFQ," "Bid Solicitation," and "Solicitation" are used synonymously in this document.

- G. "Requirement" means a specification that a Contractor's product and/or service **must** perform during the term of the contract. These specifications will be distinguished by using the term "**shall**" or "**must**" in the requirement.
- H. "Responsive" means a submission in response to this solicitation that conforms in all material respects to this RFQ.
- I. "Response Submission Requirement" means a task a Prospective Contractor **must** complete when submitting a response. These Requirements will be distinguished by using the term "**shall**" or "**must**" in the Requirement.
- J. "State" means the State of Arkansas. When the term "State" is used herein to reference any obligation of the State under a contract that results from this solicitation, that obligation is limited to the State agency using such a contract.

## 1.7 **RESPONSE DOCUMENTS**

### A. Original Response Packet

- 1. The following items are Response Submission Requirements and **must** be submitted in the original *Response Packet*.
  - a. Original signed *Response Signature Page*.
  - b. One (1) original copy of the response to the *Disclosure Information, Firm's Salary Structure, and Information for Evaluation* sections included in the *Response Packet*. Response **must** be in the English language.
- 2. The following items should be submitted in the original *Response Packet*.
  - a. EO 98-04 *Contract and Grant Disclosure Form*. (See *Standard Terms and Conditions, #25. Disclosure*.)
  - b. Copy of Prospective Contractor's *Equal Opportunity Policy*. (See *Equal Opportunity Policy*.)
- 3. **DO NOT** include any other documents or ancillary information, such promotional/marketing information.

B. Pricing is not requested for this solicitation. (See *Pricing*.)

### C. Additional Copies and Redacted Copy of the Response Packet

In addition to the original *Response Packet*, the following items should be submitted:

- 1. Additional Copies of the *Response Packet*
  - a. Three (3) complete hard copies (marked "COPY") of the *Response Packet*.
  - b. Four (4) electronic copies of the *Response Packet*, preferably on flash drives and in PDF format. Do not send electronic copies via email or fax.
  - c. All additional hard copies and electronic copies **must** be identical to the original copy. In case of a discrepancy, the original copy governs.
  - d. If OSP requests additional copies of the response, the copies **must** be delivered within the timeframe specified in the request.
- 2. One (1) redacted (marked "REDACTED") copy the original *Response Packet*, preferably on a flash drive and in PDF format. Do not send electronic copies via email or fax. (See *Proprietary Information*.)

## 1.8 **ORGANIZATION OF RESPONSE DOCUMENTS**

- A. It is strongly recommended that Prospective Contractors adhere to the following format and suggestions when preparing their response.
- B. The original *Response Packet* and all copies should be printed on standard white or buff 8-1/2" x 11" paper in at least ten (10) point type and should be arranged in the following order.
  - 1. *Response Signature Page*.
  - 2. Signed Addenda, if applicable.

3. E.O. 98-04 – *Contract and Grant Disclosure Form*.
  4. *Equal Opportunity Policy*.
  5. A cover page with the Prospective Contractor's contact data.
  6. A cover letter on the Prospective Contractor's letterhead.
  7. Responses to the *Disclosure Information*, *Firm's Salary Structure*, and *Information for Evaluation* sections of the *Response Packet*.
- C. The original *Response Packet* and all copies should be sequentially numbered (after the cover letter) with the Prospective Contractor's name printed on each page and three-hole punched for a standard three-hole binder.

#### 1.9 **CLARIFICATION OF BID SOLICITATION**

- A. Submit any questions requesting clarification of information contained in this *Bid Solicitation* in writing via email by 4:00 p.m., Central Time on or before September 6, 2019 to the OSP buyer as shown on page one (1) of this *Bid Solicitation*.
- For each question submitted, the Prospective Contractor should reference the specific solicitation item number to which the question refers.
  - Prospective Contractors' written questions will be consolidated and responded to by the State. The State's consolidated written response is anticipated to be posted to the OSP website by the close of business on September 12, 2019. If Prospective Contractor questions are unclear or non-substantive in nature, the State may request clarification of a question(s) or reserves the right not to respond to that question(s).
- B. The Prospective Contractor should notify the OSP buyer of any term, condition, etc., that precludes the Prospective Contractor from providing a compliant, responsive submission. Prospective Contractors should note that it is the responsibility of the Prospective Contractor to seek resolution of all such issues, including those relating to the terms and conditions of the contract, prior to the submission of a response.
- C. Prospective Contractors may contact the OSP buyer with non-substantive questions at any time prior to the response opening.
- D. An oral statement by OSP will not be part of any contract resulting from this solicitation and may not reasonably be relied on by any Prospective Contractor as an aid to interpretation unless it is reduced to writing and expressly adopted by OSP.
- E. Prospective Contractors entering into a contract with the State **shall** comply with all the terms and conditions contained herein.

#### 1.10 **RESPONSE SIGNATURE PAGE**

- A. An official authorized to bind the Prospective Contractors to a resultant contract **must** sign the *Response Signature Page* included in the *Response Packet*.
- B. Prospective Contractor's signature on this page signifies Prospective Contractor's agreement to and compliance with all Requirements of this RFQ, and that any exception that conflicts with a Requirement or Response Submission Requirement of this *Bid Solicitation* will cause the Prospective Contractor's response to be rejected.

#### 1.11 **PRICING**

Qualified Law Firms **shall** engage with ATRS on a contingency fee basis, so resulting contract(s) will be at no cost to the State.

#### 1.12 **PRIME CONTRACTOR RESPONSIBILITY**

- A. A single Prospective Contractor **must** be identified as the prime contractor.
- B. The prime contractor **shall** be responsible for the contract and jointly and severally liable with any of its subcontractors, affiliates, or agents to the State for the performance thereof.

#### 1.13 **PROPRIETARY INFORMATION**

- A. Submission documents pertaining to this *Bid Solicitation* become the property of the State and are subject to the Arkansas Freedom of Information Act (FOIA).

- B. In accordance with FOIA and to promote maximum competition in the State competitive bidding process, the State may maintain the confidentiality of certain types of information described in FOIA. Such information may include trade secrets defined by FOIA and other information exempted from the Public Records Act pursuant to FOIA.
- C. Prospective Contractor may designate appropriate portions of its response as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by submitting a redacted copy of the response.
- D. By so redacting any information contained in the response, the Prospective Contractor warrants that it has formed a good faith opinion having received such necessary or proper review by counsel and other knowledgeable advisors that the portions redacted meet the requirements of the Rules and Statutes set forth above.
- E. One (1) complete copy of the submission documents from which any proprietary information has been redacted should be submitted on a flash drive in the *Response Packet*. Do not submit documents via email or fax.
- F. Except for the redacted information, the redacted copy **must** be identical to the original copy, reflecting the same pagination as the original and showing the space from which information was redacted.
- G. The Prospective Contractor is responsible for identifying all proprietary information and for ensuring the electronic copy is protected against restoration of redacted data.
- H. The redacted copy will be open to public inspection under FOIA without further notice to the Prospective Contractor.
- I. If a redacted copy of the submission documents is not provided with Prospective Contractor's *Response Packet*, a copy of the non-redacted documents, with the exception of financial data (other than pricing), will be released in response to any request made under FOIA.
- J. If the State deems redacted information to be subject to FOIA, the Prospective Contractor will be contacted prior to release of the documents.
- K. The State has no liability to a Prospective Contractor with respect to the disclosure of Prospective Contractor's confidential information ordered by a court of competent jurisdiction pursuant to FOIA or other applicable law.

#### **1.14 CAUTION TO PROSPECTIVE CONTRACTORS**

- A. Prior to any contract award, address all communication concerning this *Bid Solicitation* through the OSP buyer.
- B. Do not alter any language in any solicitation document provided by the State.
- C. All official documents and correspondence related to this solicitation become part of the resultant contract.
- D. The State has the right to award or not award a contract, if it is in the best interest of the State to do so.
- E. As requested, provide clarification regarding Prospective Contractor's response to OSP.
- F. Qualifications and proposed services **must** meet or exceed the required specifications as set forth in this *Bid Solicitation*.
- G. Prospective Contractors may submit multiple responses.

#### **1.15 REQUIREMENT OF ADDENDUM**

- A. Only an addendum written and authorized by OSP will modify this *Bid Solicitation*.
- B. An addendum posted within three (3) calendar days prior to the response opening may extend the response opening and may or may not include changes to the Bid Solicitation.
- C. The Prospective Contractor is expected to check the OSP website, <http://www.arkansas.gov/dfa/procurement/bids/index.php>, for any and all addenda up to response opening.

#### **1.16 QUALIFICATION PROCESS**

##### **A. Qualified Vendor Selection**

1. Prospective Contractors meeting the minimum score Requirement and receiving the six (6) highest Total Final Scores will be included on the QVL subject to ATRS Board resolution. (See *Criteria for Selection*.)

**B. Issuance of a Contract**

1. Any resultant contract of this *Bid Solicitation* **shall** be subject to State approval processes which may include Legislative review.
- C. A State Procurement Official will be responsible for award and administration of any resulting QVL.
- D. ATRS will be responsible for engaging a Prospective Contractor in a resultant contract.

**1.17 DEMONSTRATIONS**

- A. Prospective Contractors with a minimum Total Weighted Score of 450 after the completion of the response evaluation may be contacted by OSP to schedule a demonstration and, if requested, **shall** deliver a demonstration in person at the Office of State Procurement in Little Rock. The option for requiring demonstrations is at the discretion of ATRS.
  1. Prospective Contractors will receive official notification from OSP regarding specific scheduling and demonstration requirement details approximately two (2) weeks prior to the proposed demonstration date.
  2. Key attorneys to be assigned to the ATRS contract **shall** be present for the demonstration.
  3. All other key personnel to be assigned to the ATRS contract should also be present for the demonstration.
- B. Prospective Contractors **shall** be responsible for providing any and all audio/visual or other equipment necessary for the demonstration.
- C. Prospective Contractors **shall** be responsible for all expenses associated with the demonstration, including travel and preparation expenses.

**1.18 MINORITY AND WOMEN-OWNED BUSINESS POLICY**

- A. A minority-owned business is defined by Arkansas Code Annotated § 15-4-303 as a business owned by a lawful permanent resident of this State who is:
  - African American
  - American Indian
  - Asian American
  - Hispanic American
  - Pacific Islander American
  - A Service-Disabled Veteran as designated by the United States Department of Veteran Affairs
- B. A women-owned business is defined by Act 1080 of the 91<sup>st</sup> General Assembly Regular Session 2017 as a business that is at least fifty-one percent (51%) owned by one (1) or more women who are lawful permanent residents of this State.
- C. The Arkansas Economic Development Commission conducts a certification process for minority-owned and women-owned businesses. If certified, the Prospective Contractor's Certification Number should be included on the *Response Signature Page*.

**1.19 EQUAL OPPORTUNITY POLICY**

- A. In compliance with Arkansas Code Annotated § 19-11-104, OSP must have a copy of the anticipated Contractor's *Equal Opportunity (EO) Policy* prior to issuing a contract award.
- B. *EO Policies* should be included in the solicitation response.
- C. Contractors are responsible for providing updates or changes to their respective policies, and for supplying *EO Policies* upon request to other State agencies that must also comply with this statute.
- D. Prospective Contractors who are not required by law to have an *EO Policy* **must** submit a written statement to that effect.

**1.20 PROHIBITION OF EMPLOYMENT OF ILLEGAL IMMIGRANTS**

- A. Pursuant to Arkansas Code Annotated § 19-11-105, Contractors providing services **shall** certify with OSP that they do not employ or contract with illegal immigrants.

- B. By signing and submitting a response to this *Bid Solicitation*, a Prospective Contractor agrees and certifies that they do not employ or contract with illegal immigrants. If selected, the Prospective Contractor certifies that they will not employ or contract with illegal immigrants during the aggregate term of a contract.

**1.21 RESTRICTION OF BOYCOTT OF ISRAEL**

- A. Pursuant to Arkansas Code Annotated § 25-1-503, a public entity **shall not** enter into a contract with a company unless the contract includes a written certification that the person or company is not currently engaged in and agrees for the duration of the contract not to engage in a boycott of Israel.
- B. This prohibition does not apply to a company which offers to provide the goods or services for at least twenty percent (20%) less than the lowest certifying business.
- C. By checking the designated box on the *Response Signature Page* of the *Response Packet*, a Prospective Contractor agrees and certifies that they do not, and will not for the duration of the contract, boycott Israel.

**1.22 PAST PERFORMANCE**

In accordance with provisions of State Procurement Law, specifically OSP Rule R5:19-11-230(b)(1), a Prospective Contractor's past performance with the State may be used to determine if the Prospective Contractor is "responsible." Responses submitted by Prospective Contractors determined to be non-responsible will be rejected.

**1.23 PUBLICITY**

- A. Do not discuss the solicitation nor your response, nor issue statements or comments, nor provide interviews to any public media during the solicitation and award process.
- B. Failure to comply with this Requirement may be cause for a Prospective Contractor's response to be rejected.

**1.24 RESERVATION**

The State will not pay costs incurred in the preparation of a response.

## **SECTION 2 – REQUIREMENTS**

- **Do not provide responses to items in this section unless specifically and expressly required.**

### **2.1 INTRODUCTION**

The Office of State Procurement (OSP) issues this Request for Qualifications (RFQ) on behalf of the Arkansas Teacher Retirement System (ATRS) to establish a list of Qualified Law Firms experienced for Legal Services.

As a fiduciary to its members, ATRS seeks every opportunity to recover lost pension fund assets. Thus, ATRS seeks securities class action outside counsel to maximize recovery of pension fund assets that are minimized or lost due to the negligence or fraud of a third party. ATRS, subject to the approval of the Arkansas Attorney General, engages outside counsel in connection with its investment programs and other matters requiring specialization. The ATRS Executive Director and his/her designee(s) have primary responsibility to manage, monitor, and coordinate the provision of Legal Services by securities class action outside counsel.

### **2.2 BACKGROUND AND CURRENT ENVIRONMENT**

ATRS is governed by a fifteen-member Board of Trustees, eleven (11) of whom are elected (seven active member trustees, three retirant trustees, and one trustee who is a member of a racial ethnic group and is either an active or retired member). In addition, the State Bank Commissioner, the State Treasurer, the State Auditor, and the Director of the Department of Education serve as ex-officio trustees. The ATRS Executive Director, appointed by the Board of Trustees, is responsible for the overall administration of ATRS and the programs of benefits it administers. ATRS employs a professional staff to administer the pension plan and to manage its investment program.

ATRS is a \$17 billion-dollar public pension plan created by the State of Arkansas pursuant to Act 266 of 1937 and governed by the State's retirement laws (ACA § 24-7-204 et seq.). ATRS is a combination contributory/non-contributory multiple-employer defined benefit pension plan qualified under IRC § 401(a). ATRS administers a program of benefits (retirement, disability and survivor's) for employees of Arkansas public schools and educationally related agencies and their beneficiaries. ATRS plan participants and annuitants number more than 130,000 persons. ATRS invests employer and member contributions to the pension trust fund and administers the system for the exclusive benefit of pension plan members, annuitants, and their survivors or beneficiaries. As a public pension plan, ATRS is not subject to Title I of ERISA.

ATRS may invest in any kind of property or type of investment consistent with the standards of ACA § 24-2-601 et seq., the prudent investor rule, and the ATRS investment policies. To fund plan benefits, ATRS invests in public equities, fixed income securities, and alternative assets securities such as real estate, private equity limited partnership interests, and securities issued by private investment funds engaged in strategic trading. The ATRS portfolio is externally managed. ATRS delegates investment discretion to external managers. ATRS engages a custodian bank to hold its assets and clear and settle public securities trades through broker-dealers. The custodian is authorized to lend ATRS securities held by the custodian. The custodian appoints subcustodians in foreign jurisdictions where ATRS managers invest in locally-traded securities of public issuers. ATRS engages expert consultants and advisors to assist and advise the ATRS board and staff regarding investment matters.

Contractors' primary contact at ATRS will be the Executive Director or his/her designee(s), and Contractors' engagement is coordinated through the ATRS Executive Director.

### **2.3 ENGAGEMENT PROCESS**

A. Once the QVL has been established, ATRS will follow the process outlined below to engage one of the six (6) Qualified Law Firms for Legal Services as claims arise:

1. When a securities violation has been identified, ATRS will determine, based on background and other criteria, which Qualified Law Firm is most suitable to handle the claim.
2. ATRS will contact that Qualified Law Firm, and the Qualified Law Firm **shall** enter into negotiations with ATRS to further define Legal Services to be provided, compensation, invoicing, and length of the engagement, with ATRS having final approval of all negotiated items.
3. Once a contract has been negotiated and executed, the Qualified Law Firm **shall** comply with all negotiated items as approved by ATRS within the timelines specified by ATRS and **shall** comply with all Requirements and terms and conditions of this RFQ.

B. Inclusion on the QVL does not guarantee issuance of a contract.

## 2.4 QUALIFYING REQUIREMENTS

- A. Prior to RFQ response submission, Prospective Contractors **shall** be licensed to practice, in good standing, and admitted to practice in both Federal and State courts.
1. At all times throughout the term(s) of a resulting QVL and/or contract, Qualified Law Firms/Contractors **shall** be licensed to practice, in good standing, and admitted to practice in both Federal and State courts.
- B. Prospective Contractors **shall** be multi-state law firms experienced and qualified in matters relating primarily to class action shareholder litigation security monitoring and asset recovery (fraud and related theories of recovery), including representation in either class or individual actions in Federal, State, or international courts.
- C. Prospective Contractors **shall** employ at least ten (10) in-house licensed, admitted attorneys with focused securities litigation practice and experience.
1. At least two (2) in-house of the licensed, admitted attorneys **shall** have at least ten (10) years each of securities litigation practice and experience.
- D. Prospective Contractors **shall** have experience with fiduciary obligations of governmental pension plans and institutional investors.
- E. Prospective Contractors **shall** have at least ten (10) years of experience (not combined years of individual attorney experience) successfully prosecuting securities litigation claims for public pensions funds as lead plaintiff.
1. Prospective Contractors **shall** have served as lead counsel for at least one (1) lead plaintiff public pension plan with net assets over \$10 billion within the past five (5) years.
- F. Prospective Contractors **shall** have prosecuted at least five (5) securities litigation cases in the last five (5) years.
- G. Prospective Contractors **shall** have served as lead counsel in at least one (1) securities litigation case through the culmination of a bench trial or jury trial.
1. Prospective Contractors **shall** have represented a public pension plan either as sole plaintiff or as lead plaintiff in a class action.
  2. Prospective Contractors **shall** have served as lead counsel in at least one (1) securities litigation case that resulted in a settlement or award of at least \$100,000,000.
- H. In their responses, Prospective Contractors **shall** demonstrate political sophistication and sensitivity to conflicts of interest questions and related ethical issues that may affect its representation of ATRS.
- I. In their responses, Prospective Contractors **shall** demonstrate substantial practical knowledge, skill, and experience with respect to the legal duties of trustees, including without limitation the common law of trusts as set forth in the Restatements of the law of trusts, the Arkansas statutory law of trusts as found in the Arkansas Code, and relevant cases.
- J. Prospective Contractors **shall** be conversant with investment matters generally, including portfolio theory.
- K. At the time of response submission, Prospective Contractors **shall** have professional liability insurance with a minimum limit of \$1,000,000 per occurrence in full force and effect and **shall** maintain the professional liability insurance throughout the aggregate term of a resulting QVL and contract.
1. Contractors **shall** submit evidence of the professional liability insurance coverage on an ACORD Certificate of Liability Insurance form to ATRS as requested throughout the QVL and contract term(s).
- L. Within five (5) years prior to response submission, Prospective Contractors **shall not** have had an actual conflict of interest, irregular billing practices, or successful malpractice claim against principals or lead attorneys in the law firm or professional discipline actions against the law firm or individual attorneys in the law firm to such a degree that representation detrimentally interferes with ATRS' operations and fiduciary duties.
- M. Prospective Contractors **shall not** have had contracts or other working relationships terminated by public sector clients, including ATRS, in the past three (3) years for reasons relevant to Requirements of this RFQ.

## 2.5 PREFERENTIAL EXPERIENCE

- A. ATRS strongly prefers Prospective Contractors with the following experience:

1. Experience with the Employment Retirement Income Security Act of 1974 (ERISA), the Internal Revenue Code, as it relates to qualified governmental plans, the Bankruptcy Code, international bankruptcy law, and actuarial funding of pension plans, particularly defined benefit plans (ATRS is not subject to ERISA).
2. Familiarity and experience with State law standards of ethics and transparency, such as Freedom of Information (FOI) laws.
3. Experience conducting ongoing client portfolio monitoring (tracking portfolio trading and cross-referencing the trading against potential securities claims).
4. Knowledge of Arkansas law pertaining to contract requirements, public pension plans, securities law, prudent invest rule, other areas of law that may affect the representation of ATRS.
5. Experience with public pension funds in Arkansas.
6. In-house licensed, admitted attorneys who regularly publish relevant articles in legal journals regarding litigation and other relevant areas of law and who regularly conduct legal education for attorneys.

## 2.6 **SERVICE REQUIREMENTS**

- A. All Requirements provided in this section (Section 2.6) are subject to negotiation and final approval by ATRS upon engagement.
- B. Contractors **shall** provide expert legal advice and representation concerning securities litigation, including but not limited to:
  1. Class action shareholders litigation.
  2. Security monitoring.
  3. Asset recovery.
  4. Class action monitoring.
  5. Lead plaintiff representation.
  6. Calculation of losses, damages and claims.
  7. Proofs of claim.
  8. Objections to lead plaintiffs or fee applications.
  9. Investment policies.
  10. Calculation and justification of attorneys' fees.
- C. As requested and directed by ATRS, Contractors **shall** provide the following Legal Services:
  1. Advise ATRS on the best method for asserting securities fraud claims in litigation (e.g., lead plaintiff vs. class member vs. separate Federal or State action).
  2. Represent ATRS as sole plaintiff or as lead plaintiff in a class action.
  3. Analyze ATRS trading data for purpose of calculating losses and class-period damages for claims, to analyze lead plaintiff status, to represent and coordinate with ATRS regarding class action settlement proposals, and to advise ATRS regarding fee requests by Contractors. For instance, Contractors may be required to intervene and appear in class action litigation on behalf of ATRS to object to fee requests or settlement proposals.
  4. Provide a strategy for representing ATRS in jurisdictions where Contractor is not licensed to practice, including representation in international courts of law and tribunals.
  5. File proof of claims for all domestic and international securities litigation on behalf of clients and at no charge to clients as a part of their monitoring services.
  6. Provide a variety of online monitoring services, webinars, and a client extranet that can be viewed and/or tested by potential clients.

7. Defend and indemnify ATRS, its Board, and its employees in connection with any claims assessed against ATRS or that may be imparted to ATRS in connection with ATRS' association with counsel.
- D. Contractors **shall** provide specialized legal advice on the exercise of the fiduciary responsibilities of the ATRS Board of Trustees and key staff members, and on matters involving potential trustee liability.
- E. Contractors **shall** conduct ongoing, in-house client portfolio monitoring (tracking portfolio trading and cross-referencing the trading against potential securities claims) by reviewing the ATRS's portfolio losses regularly (as approved by ATRS), investigating potential claims, preparing detailed reports of findings, and presenting the findings to ATRS.
  1. Contractors **shall** monitor the ATRS portfolio through access to the ATRS custodial account rather than requesting ATRS staff to provide information regarding securities holdings.
  2. Contractors **shall** report claim status and recovery efforts for awards and settlements due ATRS, as specified by ATRS.
- F. Contractors **shall not** rely on ATRS staff for significant administrative support.
  1. Should Contractors rely on ATRS for basic administrative support, Contractors **shall** reimburse all costs associated with ATRS' support services as determined by ATRS and within the timeframe specified by ATRS.
- G. Contractors **shall not** rely on other securities law firm(s) to provide lead support.
- H. Contractors **shall** abide by Arkansas Rules of Professional Conduct, Rule 1.5. regarding the payment of attorney fees.
- I. Contractors **shall not** pay referral fees to an attorney or individual who is not a party to the State Contract and who provides no service to ATRS under the Contract, such finder's fees, bare referral fees, etc.
- J. Contractors **shall** attend ATRS committee and/or board meetings or other meetings in person to present information and advice or to respond to questions in connection to ATRS as requested by the Executive Director.

## 2.7 **PERFORMANCE STANDARDS**

- A. State law requires that all resultant professional and consultant service contracts include Performance Standards for measuring the overall quality of services provided that a Contractor **must** meet in order to avoid assessment of damages.
- B. These Performance Standards will be negotiated upon ATRS engagement with a Qualified Law Firm prior to the commencement of services, or at times throughout the duration of a resultant contract.
- C. The State has the right to modify, add, or delete Performance Standards throughout the term of a resultant contract, should the State determine it is in its best interest to do so. Any changes or additions to Performance Standards will be made in good faith following acceptable industry standards and may include the input of the Contractor so as to establish standards that are reasonably achievable.
- D. All changes made to the Performance Standards will become an official part of a resultant contract.
- E. Performance Standards will continue throughout the aggregate term of a resultant contract.
- F. Failure to meet the minimum Performance Standards as specified will result in the assessment of damages.
- G. In the event a Performance Standard is not met, the Contractor will have the opportunity to defend or respond to the insufficiency. The State has the right to waive damages if it determines there were extenuating factors beyond the control of the Contractor that hindered the performance of services. In these instances, the State has final determination of the performance acceptability.
- H. Should any compensation be owed to ATRS due to the assessment of damages, Contractor **shall** follow the direction of ATRS regarding the required compensation process.

## **SECTION 3 – CRITERIA FOR SELECTION**

- **Do not provide responses to items in this section.**

### **3.1 RESPONSE SCORE**

- A. OSP will review each *Response Packet* to verify submission Requirements have been met.
  - 1. *Response Packets* that do not meet submission Requirements will be rejected and will not be evaluated.
- B. Prior to evaluation, OSP will provide responses to the *Disclosure Information* to an agency-appointed Evaluation Committee for review.
  - 1. The Evaluation Committee will review each response to the *Disclosure Information* to determine whether a Prospective Contractor’s disclosed conflicts are cause for rejection of the Prospective Contractor’s response.
  - 2. The Evaluation Committee will have final determination based on the information provided whether or not a Prospective Contractor’s response will be rejected.
- C. The Evaluation Committee will evaluate and score remaining responses.
  - 1. Evaluation will be based on Prospective Contractor’s response to the *Information for Evaluation* section included in the *Response Packet*.
  - 2. Members of the Evaluation Committee (hereinafter referred to as “Evaluators”) will individually review and evaluate responses and complete an Individual Score Worksheet for each response.
    - a. Individual scoring for each Evaluation Criteria will be based on the following Scoring Description:

| Quality Rating | Quality of Response | Description   | Confidence in Proposed Approach |
|----------------|---------------------|---|---------------------------------|
| 5              | Excellent           | When considered in relation to the RFQ evaluation factor, the response squarely meets the requirement and exhibits outstanding knowledge, creativity, ability or other exceptional characteristics. Extremely good. | Very High                       |
| 4              | Good                | When considered in the relation to the RFQ evaluation factor, the response squarely meets the requirement and is better than merely acceptable.   | High                            |
| 3              | Acceptable          | When considered in relation to the RFQ evaluation factor, the response is of acceptable quality.  | Moderate                        |
| 2              | Marginal            | When considered in relation to the RFQ evaluation factor, the response’s acceptability is doubtful.   | Low                             |
| 1              | Poor                | When considered in relation to the RFQ evaluation factor, the response is inferior.   | Very Low                        |
| 0              | Unacceptable        | When considered in relation to the RFQ evaluation factor, the response clearly does not meet the requirement, either because it was left blank or because the response is unresponsive.                             | No Confidence                   |

- 3. After initial individual evaluations are complete, Evaluators will meet for a consensus scoring meeting to discuss their individual ratings.

- a. At the consensus scoring meeting, each Evaluator will be afforded an opportunity to discuss his or her rating for each evaluation criteria.
- 4. After Evaluators have had an opportunity to discuss their individual scores with the Committee, the individual Evaluators will be given the opportunity to change their initial individual scores, if they feel that is appropriate.
- 5. The final individual scores of the Evaluators will be recorded on the Consensus Score Sheets and averaged to determine the group or consensus score for each response.
- 6. Other agencies, consultants, and experts may also examine documents at the discretion of ATRS.
- D. The *Information for Evaluation* section has been divided into sub-sections.
  - 1. In each sub-section, items/questions have each been assigned a maximum point value of five (5) points.
    - a. The total point value for each sub-section is reflected in the table below as the Maximum Raw Score Possible.
  - 2. ATRS has assigned Weighted Percentages to each sub-section according to its significance.

| Information for Evaluation Sub-Sections    | Maximum Raw Points Possible | Subsection's Weighted Percentage | * Maximum Weighted Score Possible |
|--|-----------------------------|----------------------------------|-----------------------------------|
| E.1 Qualifications and Experience          | 40                          | 60%                              | 600                               |
| E.2 Resources and Relevant Practice        | 30                          | 15%                              | 150                               |
| E.3 Monitoring and Reporting               | 20                          | 5%                               | 50                                |
| E.4 Ethics, Fiduciary, and Professionalism | 30                          | 20%                              | 200                               |
| <b>Total Score</b>                         | <b>120</b>                  | <b>100%</b>                      | <b>1000</b>                       |

\*Sub-Section's Percentage Weight x Total Weighted Score = Maximum Weighted Score Possible for the sub-section.

- E. The response's weighted score for each sub-section will be determined using the following formula:
  - (A/B)\*C =D
  - A = Actual Raw Points received for sub-section in evaluation
  - B = Maximum Raw Points possible for sub-section
  - C = Maximum Weighted Score possible for sub-section
  - D = Weighted Score received for sub-section
- F. The response's weighted scores for sub-sections will be added to determine the Total Weighted Score for the response.
- G. Responses that do not receive a minimum Total Weighted Score of 450 will not move forward in the solicitation process.

**3.2 DEMONSTRATION SCORE**

- A. Should ATRS determine Demonstrations are necessary, Prospective Contractors with a minimum Total Weighted Score of 450 after the completion of the response evaluation will be contacted to schedule a demonstration.
- B. The buyer will create a second set of score sheets by copying the Excel workbook (including the scores entered) and titling each of the score sheets in that workbook as the "Post-Demonstration" score sheets.
- C. After each demonstration is complete, Evaluators will have the opportunity to discuss the demonstration and revise their individual scores on the Post-Demonstration Consensus Score Sheet based on the information in the demonstration.
- D. The final individual scores of the Evaluators on the Post-Demonstration Consensus Score Sheets will be averaged to determine the Total Final Score for each response.

**3.3 PROSPECTIVE CONTRACTOR ACCEPTANCE OF EVALUATION TECHNIQUE**

- A. Prospective Contractor **must** agree to all evaluation processes and procedures as defined in this solicitation.
- B. The submission of a *Response Packet* signifies the Prospective Contractor's understanding and agreement that subjective judgments will be made during the evaluation and scoring of the responses.

## **SECTION 4 – GENERAL CONTRACTUAL REQUIREMENTS**

- **Do not provide responses to items in this section.**

### **4.1 PAYMENT AND INVOICE PROVISIONS**

Contractors **shall** submit contingency fee payments to the ATRS Trust Fund in accordance with ATRS instructions.

### **4.2 GENERAL INFORMATION**

A. The State will not:

1. Lease any equipment or software for a period of time which continues past the end of a fiscal year unless the contract allows for cancellation by the State Procurement Official upon a thirty (30) day written notice to the Contractor/lessor in the event funds are not appropriated.
2. Contract with another party to indemnify and defend that party for any liability and damages.
3. Pay damages, legal expenses, or other costs and expenses of any other party.
4. Continue a contract once any equipment has been repossessed.
5. Agree to any provision of a contract which violates the laws or constitution of the State of Arkansas.
6. Enter a contract which grants to another party any remedies other than the following:
  - a. The right to possession.
  - b. The right to accrued payments.
  - c. The right to expenses of deinstallation.
  - d. The right to expenses of repair to return the equipment to normal working order, normal wear and tear excluded.
  - e. The right to recover only amounts due at the time of repossession and any unamortized nonrecurring cost as allowed by Arkansas Law.

B. Any litigation involving the State **must** take place in Pulaski County, Arkansas.

C. The laws of the State of Arkansas govern this contract.

D. A contract is not effective prior to award being made by a State Procurement Official.

### **4.3 CONDITIONS OF CONTRACT**

A. Observe and comply with federal and State of Arkansas laws, local laws, ordinances, orders, and regulations existing at the time of, or enacted subsequent to the execution of a resulting contract which in any manner affect the completion of the work.

B. Indemnify and save harmless ATRS and all its officers, representatives, agents, and employees against any claim or liability arising from or based upon the violation of any such law, ordinance, regulation, order or decree by an employee, representative, or subcontractor of the Contractor.

### **4.4 STATEMENT OF LIABILITY**

A. The State will demonstrate reasonable care but will not be liable in the event of loss, destruction or theft of Contractor-owned equipment or software and technical and business or operations literature to be delivered or to be used in the installation of deliverables and services. The Contractor will retain total liability for equipment, software and technical and business or operations literature. The State will not at any time be responsible for or accept liability for any Contractor-owned items.

B. The Contractor's liability for damages to the State will be limited to the value up to the limits of the firm's malpractice insurance as determined by the State per engagement. The foregoing limitation of liability will not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of the Contract calling for damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on the Contract. The Contractor and the State will not be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability will not apply to claims for infringement of United States patent,

copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of the Contract calling for damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on the Contract.

- C. Language in these terms and conditions **must not** be construed or deemed as the State's waiver of its right of sovereign immunity. The Contractor agrees that any claims against the State, whether sounding in tort or in contract, will be brought before the Arkansas Claims Commission as provided by Arkansas law and governed accordingly.

#### **4.5 RECORD RETENTION**

- A. Maintain all pertinent financial and accounting records and evidence pertaining to the contract in accordance with generally accepted principles of accounting and as specified by the State of Arkansas Law. Upon request, grant access to State or Federal Government entities or any of their duly authorized representatives.
- B. Make financial and accounting records available, upon request, to the State of Arkansas's designee(s) at any time during the contract period and any extension thereof, and for five (5) years from expiration date and final payment on the contract or extension thereof.
- C. Other sections of this *Bid Solicitation* may contain additional Requirements regarding record retention.

#### **4.6 CONFIDENTIALITY**

- A. The Contractor, Contractor's subsidiaries, and Contractor's employees will be bound to all laws and to all Requirements set forth in this *Bid Solicitation* concerning the confidentiality and secure handling of information of which they may become aware of during the course of providing services under a resulting contract.
- B. Consistent and/or uncorrected breaches of confidentiality may constitute grounds for cancellation of a resulting contract, and the State has the right to cancel the contract on these grounds.
- C. Previous sections of this *Bid Solicitation* may contain additional confidentiality Requirements.

#### **4.7 CONTRACT INTERPRETATION**

Should the State and Contractor interpret specifications differently, either party may request clarification. However, if an agreement cannot be reached, the determination of the State is final and controlling.

#### **4.8 CANCELLATION**

- A. For Cause. The State may cancel any contract resulting from this solicitation for cause when the Contractor fails to perform its obligations under it by giving the Contractor written notice of such cancellation at least thirty (30) days prior to the date of proposed cancellation. In any written notice of cancellation for cause, the State will advise the Contractor in writing of the reasons why the State is considering cancelling the contract and provide the Contractor with an opportunity to avoid cancellation for cause by curing any deficiencies identified in the notice of cancellation for cause prior to the date of proposed cancellation. To the extent permitted by law and at the discretion of the parties, the parties may agree to minor amendments to the contract and avoid the cancellation for cause upon mutual agreement.
- B. For Convenience. The State may cancel any contract resulting from the solicitation by giving the Contractor written notice of such cancellation sixty (60) days prior to the date of cancellation.
- C. If upon cancellation the Contractor has provided commodities or services which the State of Arkansas has accepted, and there are no funds legally available to pay for the commodities or services, the Contractor may file a claim with the Arkansas Claims Commission under the laws and regulations governing the filing of such claims.

#### **4.9 SEVERABILITY**

If any provision of the contract, including items incorporated by reference, is declared or found to be illegal, unenforceable, or void, then both ATRS and the Contractor will be relieved of all obligations arising under such provision. If the remainder of the contract is capable of performance, it will not be affected by such declaration or finding and **must** be fully performed.

## **SECTION 5 – STANDARD TERMS AND CONDITIONS**

- **Do not provide responses to items in this section.**
- 1. **GENERAL:** Any special terms and conditions included in this solicitation **shall** override these Standard Terms and Conditions. The Standard Terms and Conditions and any special terms and conditions **shall** become part of any contract entered into if any or all parts of the bid are accepted by the State of Arkansas.
- 2. **ACCEPTANCE AND REJECTION:** The State **shall** have the right to accept or reject all or any part of a bid or any and all bids, to waive minor technicalities, and to award the bid to best serve the interest of the State.
- 3. **BID SUBMISSION:** Original Response Packets **must** be submitted to the Office of State Procurement on or before the date and time specified for bid opening. The Response Packet **must** contain all documents, information, and attachments as specifically and expressly required in the *Bid Solicitation*. The bid **must** be typed or printed in ink. The signature **must** be in ink. Unsigned bids **shall** be rejected. The person signing the bid should show title or authority to bind his firm in a contract. Multiple responses **must** be placed in separate packages and should be completely and properly identified. Late bids **shall not** be considered under any circumstances.
- 4. **PRICES:** Bid unit price F.O.B. destination. In case of errors in extension, unit prices **shall** govern. Prices **shall** be firm and **shall not** be subject to escalation unless otherwise specified in the *Bid Solicitation*. Unless otherwise specified, the bid **must** be firm for acceptance for thirty days from the bid opening date. "Discount from list" bids are not acceptable unless requested in the *Bid Solicitation*.
- 5. **QUANTITIES:** Quantities stated in a *Bid Solicitation* for term contracts are estimates only and are not guaranteed. Contractor **must** bid unit price on the estimated quantity and unit of measure specified. The State may order more or less than the estimated quantity on term contracts. Quantities stated on firm contracts are actual Requirements of the ordering agency.
- 6. **BRAND NAME REFERENCES:** Unless otherwise specified in the *Bid Solicitation*, any catalog brand name or manufacturer reference used in the *Bid Solicitation* is descriptive only, not restrictive, and used to indicate the type and quality desired. Bids on brands of like nature and quality will be considered. If bidding on other than referenced specifications, the bid **must** show the manufacturer, brand or trade name, and other descriptions, and should include the manufacturer's illustrations and complete descriptions of the product offered. The State **shall** have the right to determine whether a substitute offered is equivalent to and meets the standards of the item specified, and the State may require the Contractor to supply additional descriptive material. The Contractor **shall** guarantee that the product offered will meet or exceed specifications identified in this *Bid Solicitation*. Contractors not bidding an alternate to the referenced brand name or manufacturer **shall** be required to furnish the product according to brand names, numbers, etc., as specified in the solicitation.
- 7. **GUARANTY:** All items bid **shall** be newly manufactured, in first-class condition, latest model and design, including, where applicable, containers suitable for shipment and storage, unless otherwise indicated in the *Bid Solicitation*. The Contractor hereby guarantees that everything furnished hereunder **shall** be free from defects in design, workmanship and material, that if sold by drawing, sample or specification, it **shall** conform thereto and **shall** serve the function for which it was furnished. The Contractor **shall** further guarantee that if the items furnished hereunder are to be installed by the Contractor, such items **shall** function properly when installed. The Contractor **shall** guarantee that all applicable laws have been complied with relating to construction, packaging, labeling and registration. The Contractor's obligations under this paragraph **shall** survive for a period of one year from the date of delivery, unless otherwise specified herein.
- 8. **SAMPLES:** Samples or demonstrators, when requested, **must** be furnished free of expense to the State. Each sample should be marked with the Contractor's name and address, bid or contract number and item number. If requested, samples that are not destroyed during reasonable examination will be returned at Contractor's expense. After reasonable examination, all demonstrators will be returned at Contractor's expense.
- 9. **TESTING PROCEDURES FOR SPECIFICATIONS COMPLIANCE:** Tests may be performed on samples or demonstrators submitted with the bid or on samples taken from the regular shipment. In the event products tested fail to meet or exceed all conditions and Requirements of the specifications, the cost of the sample used, and the reasonable cost of the testing **shall** be borne by the Contractor.
- 10. **AMENDMENTS:** Prospective Contractor's responses cannot be altered or amended after the bid opening except as permitted by regulation.
- 11. **TAXES AND TRADE DISCOUNTS:** Do not include State or local sales taxes in the bid price. Trade discounts should be deducted from the unit price and the net price should be shown in the bid.
- 12. **AWARD:** Term Contract: A contract award will be issued to the successful Contractor. It results in a binding obligation without further action by either party. This award does not authorize shipment. Shipment is authorized by the receipt of a purchase order from the ordering agency. Firm Contract: A written State purchase order authorizing shipment will be furnished to the successful Contractor.
- 13. **DELIVERY ON FIRM CONTRACTS:** This solicitation shows the number of days to place a commodity in the ordering agency's designated location under normal conditions. If the Contractor cannot meet the stated delivery, alternate delivery schedules may

become a factor in an award. The Office of State Procurement **shall** have the right to extend delivery if reasons appear valid. If the date is not acceptable, ATRS may buy elsewhere, and any additional cost **shall** be borne by the Contractor.

14. **DELIVERY REQUIREMENTS:** No substitutions or cancellations are permitted without written approval of the Office of State Procurement. Delivery **shall** be made during agency work hours only 8:00 a.m. to 4:30 p.m. Central Time, unless prior approval for other delivery has been obtained from ATRS. Packing memoranda **shall** be enclosed with each shipment.
15. **STORAGE:** The ordering agency is responsible for storage if the Contractor delivers within the time required and ATRS cannot accept delivery.
16. **DEFAULT:** All commodities furnished **shall** be subject to inspection and acceptance of the ordering agency after delivery. Back orders, default in promised delivery, or failure to meet specifications **shall** authorize the Office of State Procurement to cancel this contract or any portion of it and reasonably purchase commodities elsewhere and charge full increase, if any, in cost and handling to the defaulting Contractor. The Contractor **must** give written notice to the Office of State Procurement and ordering agency of the reason and the expected delivery date. Consistent failure to meet delivery without a valid reason may cause removal from the Contractors list or suspension of eligibility for award.
17. **VARIATION IN QUANTITY:** The State assumes no liability for commodities produced, processed or shipped in excess of the amount specified on ATRS' purchase order.
18. **INVOICING:** The Contractor **shall** be paid upon the completion of all of the following: (1) submission of an original and the specified number of copies of a properly itemized invoice showing the bid and purchase order numbers, where itemized in the *Bid Solicitation*, (2) delivery and acceptance of the commodities and (3) proper and legal processing of the invoice by all necessary State agencies. Invoices **must** be sent to the "Invoice To" point shown on the purchase order.
19. **STATE PROPERTY:** Any specifications, drawings, technical information, dies, cuts, negatives, positives, data or any other commodity furnished to the Contractor hereunder or in contemplation hereof or developed by the Contractor for use hereunder **shall** remain property of the State, **shall** be kept confidential, **shall** be used only as expressly authorized, and **shall** be returned at the Contractor's expense to the F.O.B. point provided by ATRS or by OSP. Contractor **shall** properly identify items being returned.
20. **PATENTS OR COPYRIGHTS:** The Contractor **must** agree to indemnify and hold the State harmless from all claims, damages and costs including attorneys' fees, arising from infringement of patents or copyrights.
21. **ASSIGNMENT:** Any contract entered into pursuant to this solicitation **shall not** be assignable nor the duties thereunder delegable by either party without the written consent of the other party of the contract.
22. **DISCRIMINATION:** In order to comply with the provision of Act 954 of 1977, relating to unfair employment practices, the Contractor agrees that: (a) the Contractor **shall not** discriminate against any employee or applicant for employment because of race, sex, color, age, religion, handicap, or national origin; (b) in all solicitations or advertisements for employees, the Contractor **shall** state that all qualified applicants **shall** receive consideration without regard to race, color, sex, age, religion, handicap, or national origin; (c) the Contractor will furnish such relevant information and reports as requested by the Human Resources Commission for the purpose of determining compliance with the statute; (d) failure of the Contractor to comply with the statute, the rules and regulations promulgated thereunder and this nondiscrimination clause **shall** be deemed a breach of contract and it may be cancelled, terminated or suspended in whole or in part; (e) the Contractor **shall** include the provisions of above items (a) through (d) in every subcontract so that such provisions **shall** be binding upon such subcontractor or Contractor.
23. **CONTINGENT FEE:** The Contractor guarantees that he has not retained a person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the Contractor for the purpose of securing business.
24. **ANTITRUST ASSIGNMENT:** As part of the consideration for entering into any contract pursuant to this solicitation, the Contractor named on the *Response Signature Page* for this solicitation, acting herein by the authorized individual or its duly authorized agent, hereby assigns, sells and transfers to the State of Arkansas all rights, title and interest in and to all causes of action it may have under the antitrust laws of the United States or this State for price fixing, which causes of action have accrued prior to the date of this assignment and which relate solely to the particular goods or services purchased or produced by this State pursuant to this contract.
25. **DISCLOSURE:** Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that order, **shall** be a material breach of the terms of this contract. Any Contractor, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy **shall** be subject to all legal remedies available to ATRS.