

ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT

Equipment and Procurement Division

Request for Qualifications (RFQ) No. 12-005P

**OUTSIDE LEGAL COUNSEL
Securities Litigation and Advice; Asset Recovery**

Proposals must be submitted
No later than **4:30 p.m. CST**
December 9, 2011

**No submissions or modifications
will be accepted after this deadline.**

To constitute a valid submission, proposal must:

- (1) Be submitted by the prescribed date and time (Paragraph 2.1);
- (2) Address all of the requirements set forth herein;
- (3) Contain Page 8, completed with the following information:
 - a) company name, address, and phone number.
 - b) original signature in ink, not photocopied or stamped.
- (4) Contain Contact Data Sheet (to be completed)

For further information regarding this RFQ contact
Danny Keene, Division Head
AHTD Equipment and Procurement Division
at 501-569-2672 or by e-mail at Danny.Keene@arkansashighways.com

Arkansas State Highway and Transportation Department
RFQ No. 12-005P Outside Legal Counsel

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ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT

Request for Qualifications No. 12-005P

Outside Legal Counsel

Section 1.0 INTRODUCTION

The Arkansas State Highway Employees Retirement System ("ASHERS") seeks to identify outside counsel qualified to provide legal services in the areas of securities litigation, and asset recovery. See "Scope of Services" below for detailed descriptions.

The following are attached to this RFQ:

- Contact Data Sheet (to be completed and returned with response)
- **Specimen Contract and Grant Disclosure and Certification Form (subject to change)**

BACKGROUND ON THE ARKANSAS STATE HIGHWAY EMPLOYEES RETIREMENT SYSTEM ("ASHERS").

- 1.1 **PURPOSE.** ASHERS is a 1.2 billion public pension plan created by the State of Arkansas pursuant to Act 454 of 1949 and governed by the State's retirement laws (A.C.A. §24-5-101 et seq.) ASHERS is a contributory single-employer defined benefit pension plan qualified under IRC § 401(a). ASHERS administers a program of benefits (retirement, disability and survivor's) for eligible employees of the Arkansas State Highway and Transportation Department and their beneficiaries. ASHERS plan participants and annuitants number more than 6,760 persons. ASHERS 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, ASHERS is not subject to Title I of ERISA.
- 1.2 **ORGANIZATION.** ASHERS is governed by a six-member Board of Trustees. The ASHERS Executive Secretary, appointed by the Board of Trustees, is responsible for the overall administration of ASHERS and the programs of benefits it administers. ASHERS employs a professional staff to administer the pension plan and to manage its investment program.
- 1.3 **INVESTMENTS.** ASHERS may invest in any kind of property or type of investment consistent with the standards of A.C.A. §24-2-601 et seq., the prudent investor rule, and the ASHERS investment policies. To fund plan benefits, ASHERS invests in public equities, fixed income securities, and publicly traded master limited partnerships. The ASHERS portfolio is externally managed. ASHERS delegates investment discretion to external managers. ASHERS engages a custodian bank to hold its assets and clear and settle public securities trades through broker-dealers. The custodian appoints sub-custodians in foreign jurisdictions where ASHERS managers invest in locally-traded securities of public issuers.

ASHERS OUTSIDE COUNSEL ENGAGEMENTS AND SCOPE OF SERVICES

- 1.4 GENERAL MATTERS REGARDING USE OF OUTSIDE COUNSEL. The Office of the Attorney General of Arkansas and the firm of Friday Eldridge and Clark provides legal representation to ASHERS.
- 1.5 The purpose of this RFQ is to identify and select one firm who is qualified to serve as outside counsel in the area of public securities litigation. Engagements are subject to approval by the Arkansas Attorney General. Counsel may be required to work in close cooperation with the Office of the Attorney General in any litigated matter.
- 1.6 Attorneys submitting qualifications must be licensed and admitted to practice in both federal and state courts.
- 1.7 The selected firm will be expected to enter into negotiations with ASHERS to further define the services provided.
- 1.8 The work performed under the engagement will have no cost to ASHERS.
- 1.9 Any staff time of employees of ASHERS, AHTD, or the systems fund managers will be reimbursed by the selected firm.
- 1.10 If requested by the Executive Secretary or Board of Trustees, counsel will attend ASHERS board meetings to present information and advice or to respond to questions.
- 1.11 SCOPE OF SERVICES. Services will include, the following:
Securities Litigation, Advice and Asset Recovery. ASHERS will engage outside counsel to provide legal services in the areas of securities litigation, where ASHERS agrees to and is appointed lead plaintiff in class action cases.
Securities law and litigation counsel must be experienced and qualified in matters relating primarily to class action shareholder litigation (fraud and related theories of recovery), including representation in either class or individual actions in federal or state courts. Counsel must be qualified to represent ASHERS either as sole plaintiff or as lead plaintiff in a class action. Counsel may be asked to intervene and appear in class action litigation on behalf of ASHERS to object to fee requests or settlement proposals. (ASHERS files proofs of claim in class actions when not in lead plaintiff status).

ASHERS endeavors to take every opportunity to recover lost pension fund assets when it is appropriate to be in lead plaintiff status. In pursuance of this effort, ASHERS prefers to engage outside counsel that is able to conduct ongoing client portfolio monitoring (tracking portfolio trading and cross-referencing the trading against potential securities claims). In this regard, outside counsel will be expected to investigate potential claims where ASHERS will be considered lead plaintiff and

prepare detailed reports of findings; and present the findings to ASHERS so that informed decisions can be made. Preference will be given to firms that have the ability to monitor the ASHERS portfolio in these matters through access to the ASHERS custodial account, rather than requesting ASHERS staff for information regarding securities holdings.

The firm must be conversant with investment matters. Preferably, he or she should be acquainted with the special legal concerns of public pension systems and institutional investors. Additionally, it will be helpful if counsel has experience (and must be able to develop expertise) with ERISA (ASHERS is not subject to ERISA), the Internal Revenue Code as it relates to qualified governmental plans, and actuarial funding of pension plans, particularly defined benefit plans.

Familiarity and experience with state-law open government requirements is a positive factor that may be considered in selecting outside counsel. Finally, counsel should be able to demonstrate political sophistication and sensitivity to conflicts of interest questions and related ethical issues.

1.12 **Terms of Agreement:**

A typical term for an engagement would be a one year period, with optional renewals by ASHERS for one additional year as needed, as it complies with Arkansas Purchasing Procedures. Services under this RFQ will not commence before January 1, 2012.

ASHERS retains the right to terminate the agreement for any reason and at any time

Counsel must agree to comply with Governor's Executive Order 98-04, the disclosure and certification requirements there under, and the conflict of interest provisions of the agreement.

Counsel must execute the required State of Arkansas disclosure forms as well as any other required forms as the occasion may warrant. A copy of the disclosure forms are attached to this RFQ.

1.13 **Information Restrictions:** All information received by ASHERS regarding this RFQ is restrictive and will not be available before award is made to the successful Contractor.

1.14 **Choice of Law and Choice of Forum:** This RFQ and any resulting contract shall be governed by and construed in accordance with the laws of the State of Arkansas. Any proceeding relating to any cause of action of any nature arising from or related to the RFQ or contract may be brought only before the appropriate forum in Pulaski County, Arkansas.

1.15 **Ethics:** *"It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a State 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."* Ark. Code Ann. §19-11-708(a).

Section 2.0 PREPARING AND SUBMITTING A PROPOSAL

- 2.1 To be considered, responses must be received in the office of the ASHERS Executive Secretary no later than 4:30 p.m. (Central Standard Time) on November 29 2011. Responses must be submitted to the attention of Larry Dickerson, Executive Secretary , Arkansas State Highway Employees Retirement System, 10324 Interstate 30. Room 405, Little Rock, AR 72209. A response must set forth each question or request for information required by Section 4 below, followed by the narrative answer. Supplemental information (such as general firm information or attorney resumes), if any, must be restricted to appendices following the responses.
- 2.2 The attached Contact Data Sheet should be completed and included as the first page of the applicable response (it is not included in the page count). The pages of each response submitted must be numbered sequentially (beginning after the Contact Data Sheet), with the name of the firm printed on each page. A response, inclusive of appendices and any title page, must be on standard white or buff 8-1/2" x 11" paper, and may not exceed ten pages for each subject matter area. Seven stapled copies of each submission, punched for standard three-hole binder, must be submitted under a cover letter on firm letterhead.
RESPONSES SHOULD BE NARROWLY FOCUSED ON FIRM AND ATTORNEY COMPETENCY, QUALIFICATIONS, AND EXPERIENCE IN SUBSTANTIALLY SIMILAR CLIENT MATTERS FOR SIMILAR CLIENTS.
ASHERS reserves the right to accept or reject any or all of the responses submitted. The information contained in this RFQ is intended to serve only as a general description of the services that may be needed by ASHERS. ASHERS intends to use responses as a basis for further negotiation of specific details with the responding counsel, including additions, deletions or modifications to the terms of the responses submitted. This request does not commit ASHERS to pay any costs incurred prior to the execution of an agreement with Counsel. Issuance of this request for qualifications does not obligate ASHERS to enter into a contract or to pay any costs incurred in the preparation of a response.
For additional information concerning the requirements of this RFQ, please contact Larry Dickerson, Executive Secretary, at 501-569-2411. This should be the only point of contact with ASHERS regarding this RFQ. Contact with ASHERS Board members or other decision makers regarding this matter prior to selection of counsel will be grounds for disqualification.
- 2.3 **Late Proposals:** Proposals received after the date and hour established will be considered late proposals and will be automatically disqualified. Late proposals will be returned unopened.
- 2.4 **Unsigned Proposals:** Page 8 of the RFQ must be signed, completed and included with proposal to constitute a valid submission. The signature must be legible, original (not stamped or photocopied) and in ink. Unsigned and improperly signed proposals will be automatically disqualified.

- 2.5 **Withdrawing or Modifying Proposals:** A proposal may be withdrawn, modified, or corrected by a Proposer after it has been submitted only if a written request to do so is filed with the Fiscal Services Division prior to the date and time set for opening. Telegrams or letters received before the date set for opening of proposals will be accepted and attached to the unopened proposal, and the proposal will be considered withdrawn, modified, or otherwise changed accordingly. No proposal may be withdrawn, modified, corrected, or otherwise changed after the date and time set for opening.
- 2.6 **Assignment:** No contract resulting from this RFQ may be assigned, sold, or transferred without the prior written consent of the System, and no obligation incurred pursuant to this RFQ and any resulting contract may be delegated without written consent of the System.
- 2.7 **Advertisement:** The successful contractor is prohibited from using any contract award information in any advertisement, including press releases, without the prior written consent of the System.
- 2.8 **Cancellation of Contract:** The System reserves the right to cancel any award or contract without recourse upon written notice to the Contractor.
- 2.9 **Default and Remedies:** Non-performance of any requirement or condition of any contract resulting from this RFP shall constitute default. Upon default, the System shall issue a written notice of default providing a period in which the Contractor shall have thirty (30) days, or if the default is repeated during the term of the contract or any extension thereof, the System may, in its sole discretion, terminate the contract(s) or remaining portions thereof and exercise any remedy provided by law.

Section 3.0 - REQUESTED INFORMATION

- 3.1 If with a firm, provide a description of your law firm, including historical background, number and location of firm offices, number of attorneys, and major areas of practice.
- 3.2 State whether your response excludes any services contemplated by the RFQ set forth in the scope of services.
- 3.3 State whether your firm is able to conduct ongoing client portfolio monitoring (tracking portfolio trading and cross-referencing the trading against potential securities claims) investigate potential claims, preparing detailed reports of findings; and presenting the findings to ASHERS when requested.
- 3.4 State whether your firm has the ability to monitor the ASHERS portfolio in this regard through access to the ASHERS custodial account, rather than requesting ASHERS staff for information regarding securities holdings. ASHERS custodian is State Street.

- 3.5 Subject to the consent of clients as required by applicable ethics rules, provide a listing of representative clients. Responses may, with the consent of the clients, include names and phone numbers of specific references. Subject to the clients' consent, identify specifically any pension plans or other major institutional investors, either private or public, to which you render or have rendered significant legal services concerning the relevant subject area(s) during the past year. If no clients consent, or if you elect not to request such consent, please so state and describe the representative clients in general terms to support your firm's qualification and experience to represent ASHERS.
- 3.6 Provide a very brief summary resume describing the education, legal or investment experience, recent speaking engagements, and a list of significant, relevant publications of the attorney or attorneys proposed to work as lead attorney(s).
- 3.7 Provide a very brief summary general description of your firm's practice in the subject matter areas covered by this RFQ, including the size and scope of the practice and any other resources of your firm that are relevant to your practice in those areas.
- 3.8 Provide a very brief summary description of not more than five (5) significant transactions or cases in which your firm has provided extensive legal services as lead plaintiff involving pension funds or other institutional clients relating to the subject matter areas covered by this RFQ.
- 3.9 Please confirm your intentions to comply with subsections 1.8 and 1.9 in section 1.
- 3.10 Identify any known relationship, either business or personal, which you or a member of your firm has with any ASHERS Board member, investment manager, or key employee. If aware of none, state "None." (A list of ASHERS Board members, investment managers, and key employees can be provided upon request. A formal conflicts check will be required prior to contracting.)
- 3.11 Identify any relationship, either business or personal, which you or a member of your firm has with a person known to you to have substantial business dealings with ASHERS.

3.12 State whether you or any firm attorney proposed to provide services for this engagement has ever had a formal grievance or complaint lodged against him or her pursuant to the applicable disciplinary rules or has ever been sued for malpractice or any civil or criminal regulatory enforcement action in connection with any type of legal representation, and whether any such attorneys have been sued individually with respect to any type of personal investment or other personal or business involvement concerning an underwriter or issuer of securities, investment adviser, investment company, securities broker-dealer, insurer, real estate transaction, or a lending institution.

3.13 For your response to this RFQ, please indicate the firm's or attorney's professional liability insurance limits within the following ranges, and the name of the carrier or carriers.

- None
- Under \$1 million
- \$1 million to \$5 million
- Over \$5 million, up to \$10 million
- Over \$10 million

Indicate below the range or the deductible or any self-insured retention with respect to the foregoing insurance.

- None
- Between 0 and \$100,000
- Between \$100,001 and \$500,000
- Between \$500,001 and \$1 million
- Over \$1 million

Section 4.0 - **REVIEW**

4.1 ASHERS will make its final selection of counsel based upon a number of criteria, including the respondent's demonstrated competence, experience, knowledge, qualifications, written and verbal communication skills, ability to comply with ASHERS contracting, absence of disqualifying relationships or conflicts of interest, among others. Respondents may be asked to come to Little Rock for an interview and to discuss the firm's experience and qualifications for ASHERS engagements.

Arkansas State Highway and Transportation Department
Request for Qualifications No. 12-005P
Outside Legal Counsel

*******This page must be completed, properly signed and submitted for*****
proposal to be considered.**

6.1 Signature Page

I, the undersigned, affirm that this proposal is made on behalf of the below-named company/individual, for whom I have legal authority to commit to the terms and conditions set forth in the RFQ and this response, to which we agree to be bound if this proposal is found acceptable by the System; and that this proposal is made without any collusion or coercion on the part of any person, firm, corporation or other entity.

Company: _____ Address: _____

Representative: _____ City: _____

Title: _____ Phone: _____ Fax: _____

Federal Tax ID or Social Security No.: _____

Signature: _____ Date: _____

(Must be legible, original, no photocopies, and in ink)

For ASHERS Use Only

Accepted: _____

By: _____ Date: _____

ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT

NOTICE OF NONDISCRIMINATION

The Arkansas State Highway and Transportation (Department) complies with the Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, Title VI of the Civil Rights Act of 1964 and other federal equal opportunity laws and therefore does not discriminate on the basis of race, sex, color, age, national origin, religion or disability, in admission or access to and treatment in Department programs and activities, as well as the Department's hiring or employment practices. Complaints of alleged discrimination and inquiries regarding the Department's nondiscrimination policies may be directed to James B. Moore, Jr., Section Head - EEO/DBE (ADA/504/Title VI Coordinator), P. O. Box 2261, Little Rock, AR 72203, (501) 569-2298, (Voice/TTY 711), or the following email address: james.moore@arkansashighways.com.

This notice is available from the ADA/504/Title VI Coordinator in large print, on audiotape and in Braille.

ARKANSAS STATE HIGHWAY EMPLOYEES RETIREMENT SYSTEM

CONTACT DATA SHEET FOR

REQUEST FOR QUALIFICATIONS (“RFQ”) FOR OUTSIDE COUNSEL

REQUEST FOR QUALIFICATIONS (“RFQ”) FOR OUTSIDE COUNSEL

Full legal firm name: _____

Name of lead attorney contact: _____

Lead attorney’s telephone no.: _____

Lead attorney’s facsimile no.: _____

Lead attorney’s email address: _____

Firm Internet address: _____

Firm main switchboard no.: _____

Firm main mailing address: _____

Lead attorney’s mailing address if different from above: _____

State where lead attorney licensed: _____

States where attorneys are licensed: _____

CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM

Failure to complete all of the following information may result in a delay in obtaining a contract, lease, purchase agreement, or grant award with any Arkansas State Agency.

SUBCONTRACTOR: _____ SUBCONTRACTOR NAME: _____

Yes No

TAXPAYER ID NAME: _____ IS THIS FOR: Goods? Services? Both?

YOUR LAST NAME: _____ FIRST NAME: _____ M.I.: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____ COUNTRY: _____

AS A CONDITION OF OBTAINING, EXTENDING, AMENDING, OR RENEWING A CONTRACT, LEASE, PURCHASE AGREEMENT, OR GRANT AWARD WITH ANY ARKANSAS STATE AGENCY, THE FOLLOWING INFORMATION MUST BE DISCLOSED:

FOR INDIVIDUALS *

Indicate below if: you, your spouse or the brother, sister, parent, or child of you or your spouse is a current or former: member of the General Assembly, Constitutional Officer, State Board or Commission Member, or State Employee:

Position Held	Mark (√)		Name of Position of Job Held <small>[senator, representative, name of board/ commission, data entry, etc.]</small>	For How Long?		What is the person(s) name and how are they related to you? <small>[i.e., Jane Q. Public, spouse, John Q. Public, Jr., child, etc.]</small>	
	Current	Former		From MM/YY	To MM/YY	Person's Name(s)	Relation
General Assembly							
Constitutional Officer							
State Board or Commission Member							
State Employee							

None of the above applies

FOR AN ENTITY (BUSINESS) *

Indicate below if any of the following persons, current or former, hold any position of control or hold any ownership interest of 10% or greater in the entity: member of the General Assembly, Constitutional Officer, State Board or Commission Member, State Employee, or the spouse, brother, sister, parent, or child of a member of the General Assembly, Constitutional Officer, State Board or Commission Member, or State Employee. Position of control means the power to direct the purchasing policies or influence the management of the entity.

Position Held	Mark (√)		Name of Position of Job Held <small>[senator, representative, name of board/commission, data entry, etc.]</small>	For How Long?		What is the person(s) name and what is his/her % of ownership interest and/or what is his/her position of control?		
	Current	Former		From MM/YY	To MM/YY	Person's Name(s)	Ownership Interest (%)	Position of Control
General Assembly								
Constitutional Officer								
State Board or Commission Member								
State Employee								

None of the above applies

Contract and Grant Disclosure and Certification Form

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 the agency.

As an additional condition of obtaining, extending, amending, or renewing a contract with a state agency I agree as follows:

1. Prior to entering into any agreement with any subcontractor, prior or subsequent to the contract date, I will require the subcontractor to complete a **CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM**. Subcontractor shall mean any person or entity with whom I enter an agreement whereby I assign or otherwise delegate to the person or entity, for consideration, all, or any part, of the performance required of me under the terms of my contract with the state agency.

2. I will include the following language as a part of any agreement with a subcontractor:

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 subcontract. The party who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the contractor.

3. No later than ten (10) days after entering into any agreement with a subcontractor, whether prior or subsequent to the contract date, I will mail a copy of the **CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM** completed by the subcontractor and a statement containing the dollar amount of the subcontract to the state agency.

I certify under penalty of perjury, to the best of my knowledge and belief, all of the above information is true and correct and that I agree to the subcontractor disclosure conditions stated herein.

Signature _____ Title _____ Date _____

Vendor Contact Person _____ Title _____ Phone No. _____

Agency use only

Agency Number _____ Agency Name _____ Agency Contact Person _____ Contact Phone No. _____ Contract or Grant No. _____