

BOSTON RETIREMENT SYSTEM

**REQUEST FOR PROPOSALS
FOR LEGAL SERVICES AS TO
PORTFOLIO MONITORING &
SECURITIES LITIGATION SERVICES**

PROPOSALS DUE: AUGUST 26, 2022

ISSUE DATE: JULY 1, 2022



**Timothy J. Smyth, Esquire
Executive Officer**

BACKGROUND

The Boston Retirement System (“BRS” or “Fund”) is the largest municipal retirement system in the Commonwealth of Massachusetts. BRS was created pursuant to Massachusetts General Laws, Chapter 32, is overseen by a five-member Board of Trustees (“Board”), and is subject to the oversight of the Public Employee Retirement Administration Commission (“PERAC”).

BRS has more than \$6.2 billion in assets under management and serves approximately 34,000 active and retired members/beneficiaries from all City of Boston departments, as well as the Boston Planning & Development Agency, Boston Housing Authority, Boston Public Health Commission and Boston Water & Sewer Commission. Through this request for proposals (“RFP”), BRS is seeking qualified law firms to provide portfolio monitoring and any associated evaluation and counseling services that will be offered at no cost to the Board.

The selected firm(s) shall be retained on a contingency basis in the event the Board decides to take legal action in a securities litigation matter. However, the selected firm cannot be assured that any resulting litigation will be awarded to that firm.

INSTRUCTIONS TO PROPOSERS

Responses to this RFP must be submitted on or before **August 26, 2022 by 5:00 p.m. EDT**. Any proposal not meeting this deadline, shall not be accepted or considered. All proposals must be submitted to: **Natacha Thomas, Esquire, General Counsel, Boston Retirement System, One City Hall Square, Room 816, Boston, MA 02201**.

Proposers shall submit one (1) original copy, five (5) paper copies and one (1) electronic pdf copy of their proposal. The pdf copy must be emailed to natacha.thomas@boston.gov with “RFP: Portfolio Monitoring & Securities Litigation Services” in the subject line. Proposers mailing materials should allow adequate time to assure timely arrival. Furthermore, no amendments will be accepted after the closing date and time.

All proposals must be complete in all respects. The Board reserves the right to request additional information or clarifications to any proposal. The Board may, at its sole discretion, determine that a proposal has failed to meet all of the criteria required by this RFP and may disqualify that proposal, provided, however, that

the Board shall notify the respondent in writing prior to the issuance of any award under this RFP.

The Board further reserves the right to waive any “minor informality” as defined in Massachusetts General Law Chapter 32, section 23B in any proposal received.¹ The determination as to whether or not to make an award as a result of this RFP shall be at the sole and absolute discretion of the Board. Proposers will be required to submit their proposals containing the firm’s qualifications and forms as required in this RFP in a sealed envelope.

Proposers must submit all required information, forms, and attachments as specified in this RFP.

An individual or firm may correct, modify, or withdraw a bid by written notice received by the Board prior to the Submission Deadline. After the Submission Deadline, provisions of the bids may not be changed in a manner prejudicial to the interests of BRS or fair competition. The submission must remain firm for 90 days after the Submission Deadline.

The Board reserves the right to cancel this RFP, or to reject any and all proposals, or any portion of any proposal, received in response to this RFP, upon its determination that such cancellation or rejection is in the best interests of BRS. Proposers acknowledge that the Board shall not be liable for any fees incurred in the preparation of their proposal.

The Board expects to award a contract on or about **October 19, 2022**. However, the Board may cancel this RFP, or reject in whole or in part any and all submissions, if the Board determines that cancellation or rejection serves the best interests of BRS. The anticipated timeline for this procurement is listed below, although the Board reserves the right to change any aspect of this schedule at any time.

¹ “Minor informalities” is defined as “minor deviations, insignificant mistakes and matters of form rather than substance of the proposal or contract document which can be waived or corrected without prejudice to other offerors, potential offerors or the retirement board.”

TIME-LINE

The current schedule for this procurement is as follows:

Issuance of RFP:.....	July 1, 2022
Deadline for Questions by Proposers:.....	July 29, 2022
Deadline for Responses to Questions:.....	August 5, 2022
Deadline for Submission of Proposals:.....	August 26, 2022
Board Vote to Authorize Agreement:.....	October 19, 2022

QUESTIONS OR COMMENTS

Questions and/or comments pertaining to the RFP must be submitted by way of email to Natacha Thomas, Esquire at natacha.thomas@boston.gov and the subject line must read "RFP Question/Comment". No telephone calls will be accepted.

TERM OF CONTRACT

The term of the contract shall not exceed seven (7) years, including any option for renewal, which will be solely at the discretion of the Board, with the Board reserving its right to terminate the contract for any reason.

STATUTORY AND REGULATORY REQUIREMENTS

No agreement may be awarded unless all forms required by this RFP shall be completed. Further, no agreement may be awarded unless all of the requirements are met as set forth in Chapter 32, Section 23B. In addition to the forms required in this RFP, a Proposer must submit PERAC’s Vendor Disclosure Form, *see* Appendix A, as well as the Certification of Compliance with Massachusetts Tax Laws pursuant to M.G.L. Ch. 62C, §49A, *see* Appendix B.

No award will be made without the following certification signed as part of the response:

The undersigned certifies under penalties of perjury that this proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or any other organization, entity; or group of individuals.

SCOPE OF SERVICES

The services requested will include, but not limited to:

- Monitor the Board's invested assets for any losses that may have occurred as a result of a violation or potential violation of Federal and/or state securities laws or a breach of any duty owed to the Board.
- Provide the Board with an ongoing comprehensive securities monitoring and administration service that will provide the Board with expert legal advice, counsel and litigation-related services involving all aspects of securities litigation.
- Use internal and external resources to identify and monitor securities litigation in which the Board may have an interest.
- Advise the Board of the existence of situations where litigation or arbitration may be warranted, including an assessment of likely outcome, whether there is ongoing litigation to which the Board should be a party, whether the Board should apply to be lead plaintiff or seek to join the lead plaintiff group, whether the Board should remain in the plaintiff class or opt out, various deadlines that affect the Board's rights, and other factors, as appropriate, to enable the Board to make an informed decision as to how to proceed.
- Be responsive to and available on an "as needed" basis to confer with and provide recommendations to the Board regarding case status, strategies, and potential settlement or other resolution of cases.
- On, at least, a quarterly basis, the selected firm(s) shall issue a report on the status of any pending or potential litigation relative to the Board's investments.

RULES FOR AWARD

The Board, with assistance from senior management, shall evaluate the proposals. Bids will not be opened publicly but, rather, will be opened by the Executive Officer in the presence of the Board's General Counsel. If the Executive Officer or the Board requires clarification or additional information, the request will be communicated to the designated contact of the Proposer by the Executive Officer.

The Executive Officer and/or the Board reserve the right to interview one or more Proposers to seek clarification during the evaluation process, if deemed necessary.

The Board reserves the right to create a Selection Committee to review and rate the proposals. The Board or the Selection Committee will review the proposals and provide ratings based on the criteria contained in this RFP. Upon the completion of this review, the Board will select the winning proposals based on the rating and evaluation of the Board or Selection Committee.

The selected proposals may not have the highest composite ranking. The selected proposals will be based on the Board's evaluation of the benefits associated with each proposal. The proposals selected will be those that provide the best combination of quality and performance for BRS.

No agreement for services under this RFP shall be executed until such agreement is authorized by a majority Board vote at a duly noticed Board meeting.

EVALUATION CRITERIA

Each proposal will be rated in the following manner and on the following criteria:

1. *Provide a statement setting forth the name of a contact person with accompanying business, email, fax number and cellular number, where available, to allow for follow-up contact during business and non-business hours.*

Highly Advantageous: The Proposer is able to provide all of the information requested.

Advantageous: The Proposer is able to provide some, but not all of the information requested.

Not Advantageous: The Proposer is unwilling to provide some of the information requested.

Unacceptable: The Proposer is unwilling to provide any of the information requested.

2. *Provide a brief history of your firm, including the year the firm began providing securities litigation services. Give specific details with regard to the nature of*

services provided, with special attention to public sector experience and specific experience with securities litigation services for government funds.

Highly Advantageous: The Proposer has five (5) or more years of experience in providing securities monitoring/litigation services to Massachusetts public pension funds.

Advantageous: The Proposer has less than five (5), but more than (three) 3 years of experience in providing securities monitoring/litigation services to public pension funds outside the Commonwealth of Massachusetts.

Not Advantageous: The Proposer has three (3) or less years of experience in providing securities monitoring/litigation services to public pension funds.

Unacceptable: The Proposer does not have experience in providing securities monitoring/litigation services to public pension funds.

3. *Describe how your firm would monitor and evaluate the Fund's investment portfolio for losses that may have been incurred as a result of a violation or potential violation of the Federal or state securities laws. Indicate whether your firm's securities monitoring services are to be provided directly by the firm or if all, or any part, of the process is to be provided through a third party. Indicate whether your firm's monitoring services consider securities traded both inside and outside of the United States. Please detail the nature of the department providing monitoring services, case evaluation services, and investigation of potential matters.*

Highly Advantageous: The Proposer does not utilize any third parties in the monitoring and/or evaluation of the investment portfolio's exposure to U.S. and non-U.S. traded securities and directly employs all professionals who conduct the investigation and/or evaluations.

Advantageous: The Proposer utilizes some third parties who are not attorneys in monitoring and/or evaluating the investment portfolio's exposure to U.S.-traded securities.

Not Advantageous: The Proposer outsources all non-legal monitoring and/or evaluation responsibilities to third parties.

Unacceptable: The Proposer outsources and/or contracts with third parties to provide both legal and non-legal monitoring and/or evaluation of the investment portfolio.

4. *Describe the reporting process that you would use regarding the monitoring and evaluation of the Fund's portfolio and/or advice and recommendations concerning potential class action litigation in the United States and potential group or individual actions in non-U.S. jurisdictions, and provide examples of reports.*

Highly Advantageous: The Proposer tracks portfolio trading and cross references trading against potential securities claims utilizing trained lawyers, forensic accountants, damage analysts and software programmers employed by the Proposer. The Proposer tracks potential actions in U.S. and non-U.S. jurisdictions.

Advantageous: The Proposer tracks portfolio trading and cross references trading against potential securities claims utilizing trained lawyers, forensic accountants, damage analysts and software programmers who may be contract employees and/or third parties. The Proposer tracks potential actions in the U.S., but not in non-U.S. jurisdictions.

Not Advantageous: The Proposer tracks portfolio trading and cross references trading against potential securities claims utilizing trained lawyers, forensic accountants, damage analysts and software programmers who are independent contractors and/or third parties.

Unacceptable: The Proposer does not track portfolio trading and cross references trading against potential securities claims utilizing trained lawyers, forensic accountants, damage analysts and software programmers.

5. *Describe the reporting process your firm would use when the Fund participates in litigation as lead plaintiff in a class action or as a passive member of the plaintiff class in a U.S. action or as a participant in a non-U.S. action, and provide examples of reports.*

Highly Advantageous: The Proposer's reporting process would provide a quarterly report that would include a case summary, allegations of the claim, the alleged market loss, the quantification of such loss, the identity of the defendants, the court in which the action is filed, class period and key

dates, such as for the filing of motions or lead plaintiff status. The information provided would cover both U.S. and non-U.S. securities actions.

Advantageous: The Proposer would provide a quarterly report that contained some, but not all of the information outlined above.

Not Advantageous: The Proposer would provide periodic reporting, but only alerts clients when a claim arises.

Unacceptable: The Proposer does not provide periodic reporting, but only alerts clients when a claim arises.

6. *Describe any online services that your firm provides. Please detail these services including online monitoring, webinars, and any client extranet. Where such systems can be reviewed or tested online, please provide information on how such systems can be viewed or tested.*

Highly Advantageous: The Proposer provides online monitoring service, webinars, and a client extranet that can be viewed and/or tested by potential clients.

Advantageous: The Proposer provides some, but not all of these services, which can be viewed and/or tested by potential clients.

Not Advantageous: The Proposer provides some, but not all of these services, which can only be viewed and/or tested by actual clients.

Unacceptable: The Proposer does not provide any online monitoring service, webinars, or client extranet.

7. *Provide a detailed explanation of the securities litigation services your firm would provide to the Board. Describe the anticipated role of the Board's staff in your firm's provision of the requested legal services.*

Highly Advantageous: The Proposer will handle all aspects of the litigation, which would minimally involve Board staff and Board counsel, and any costs associated with Board counsel participation would be reimbursed to the Board by the Proposer.

Advantageous: The Proposer will handle all aspects of the litigation, which would involve Board staff and Board counsel, and any costs associated with Board counsel participation would be reimbursed to the Board by the Proposer.

Not Advantageous: The Proposer will handle all aspects of the litigation, which would involve Board staff and Board counsel, and any costs associated with Board counsel participation would be borne by the Board.

Unacceptable: The Proposer will handle most of the litigation, which would rely on Board staff and Board counsel for support, and any costs associated with Board counsel participation would be borne by the Board.

8. *Identify and describe the qualifications and experience of attorneys and professional personnel who would be assigned to staff Board work, as well as the current and planned role each individual would play, relative to such assignment. Also provide a short biography of such attorneys including their title, function, number of years with your firm, years of experience, and educational background. Also identify the individual that would be the lead attorney for Board matters.*

Highly Advantageous: The Proposer employs at least 5 attorneys, two of whom are partners or principals with the firm, each with at least 10 years of experience in prosecuting securities litigation claims.

Advantageous: The Proposer employs at least 2 attorneys, one of whom is a partner or principal with the firm, each with at least 10 years of experience in prosecuting securities litigation claims.

Not Advantageous: The Proposer only employs one attorney with at least 10 years of experience in prosecuting securities litigation claims.

Unacceptable: The Proposer does not employ at least one attorney with at least 10 years of experience in prosecuting securities litigation claims.

9. *Provide a summary of your firm's general qualifications to provide the services contemplated herein, including additional firm personnel and resources beyond the attorneys who would be assigned to Board work.*
- a. Indicate whether your firm has dedicated in-house staff to handle portfolio monitoring?

- b. Indicate whether your firm has dedicated in-house staff to investigate securities litigation cases?

Highly Advantageous: The Proposer employs in-house all legal and non-legal staff to handle portfolio monitoring, investigate securities litigation, and to file and represent the Board in all aspects of the claim.

Advantageous: The Proposer employs some in-house, but not all legal and non-legal staff to handle portfolio monitoring, investigate securities litigation, and to file and represent the Board in all aspects of the claim.

Not Advantageous: The Proposer does not employ in-house any non-legal staff to handle portfolio monitoring and investigate securities litigation claims.

Unacceptable: The Proposer does not conduct both portfolio monitoring and investigate securities litigation claims.

10. *Summarize other relevant experience and training that demonstrate your firm's ability to advise or represent the Board in all or any number of the areas or issues listed herein. This may include non-litigation legal experience, significant litigation experience, particularly involving trial practice, writs and law and motion, appellate practice, or representation of government agencies, academic experience, professional activities, etc.*

- a. Indicate whether your firm has participated as lead counsel in at least one securities litigation case with an ultimate settlement or judgment that was equal to or in excess of \$50,000,000 USD.
- b. Indicate whether your firm has brought a securities class action case to trial. If so, describe the outcome, including whether your firm has taken such a case through to a jury verdict.
- c. Provide a list of recent legal articles, publications, and media appearances by attorneys at your firm.

Highly Advantageous: The Proposer has participated as lead counsel in at least one securities litigation case that settled for equal to, or in excess of,

\$50,000,000 USD, and your firm has brought a securities class action to trial through a jury verdict.

Advantageous: The Proposer has participated as lead counsel in at least one securities litigation case that settled for less than \$50 million, and your firm has brought a securities class action case to trial through a jury verdict.

Not Advantageous: The Proposer has participated as lead counsel in at least one securities litigation case but has not participated in a securities class action case that went to trial through a jury verdict or through successful appeal.

Unacceptable: The Proposer has not participated as lead counsel in at least one securities litigation case and has not participated in a securities class action case that went to trial through a jury verdict or through successful appeal.

11. *Provide a representative listing of securities litigation matters in which your firm within the past five years has achieved favorable outcomes. Include a brief description of the type of work your firm performed on behalf of your client. Identify key issues of the case or cases and degree of success achieved. Indicate any of such cases handled by persons who may be designated as lead attorney for Fund litigation cases.*

Highly Advantageous: The Proposer has handled more than one securities litigation matter in the past five years and at least one of the attorneys who handled one of the cases would be designated as lead attorney for Board litigation cases.

Advantageous: The Proposer has handled one securities litigation case in the last five years and one of the attorneys who handled the case would be designated as lead attorney for Board litigation cases.

Not Advantageous: The Proposer has handled one securities litigation case in the last five years but none of the attorneys who handled the case would be designated as lead attorney for Board litigation cases.

Unacceptable: The Proposer has not handled at least one securities litigation case in the last five years.

ADDITIONAL INFORMATION REQUIRED

Each proposal must also provide the following information:

- Provide a list of representative clients.
- Provide a list of three clients who may be contacted for references.
- Provide a certificate of insurance coverage reflecting professional liability insurance equal to or greater than \$1,000,000 USD.
- Identify any actual, potential, or appearance of conflict of interest that may arise as a result of your firm's selection to represent the Fund.
- Provide a statement explaining whether your firm or its members have had successful malpractice or professional discipline actions against it within the five (5) years immediately preceding the submittal of this proposal.
- Describe the factors your firm would consider in formulating a case-specific proposal for fees awarded when the Fund is the lead plaintiff; these factors may include the complexity of the action, the likely duration of the action, and the difficulties involved in securing a recovery.

END.



Vendor Disclosures (as required by G.L. c. 32 §23 & 23B)

Please submit completed form and any attachments to PERAC and the retirement board on or before March 1st. Failure to do so may subject the Fund/Entity to sanctions pursuant to Chapter 32, Section 21A. Please attach additional sheets if necessary.

Please print or type all entries in blue or black ink.

1. Vendor/Board Information

Name of Company/Entity:	
Name of Fund:	
Retirement Board:	

2. Compensation PAID: No Yes

Recipient of Compensation	Form of Compensation	Value of Compensation

Additional Pages Attached: No Yes

3. Compensation RECEIVED: No Yes

Source of Compensation	Form of Compensation	Value of Compensation

Additional Pages Attached: No Yes

4. Conflict of Interest? No Yes

If yes, please advise:

Additional Pages Attached: No Yes

5. Declaration and Signature

I make this disclosure pursuant to G.L. c.32, §23 and/or 23B in order to comply with the requirement that an entity providing investment services to a retirement board disclose to the Commission and the retirement board compensation, in whatever form, paid, or expected to be paid, and received, or expected to be received, directly or indirectly by the entity or a related person to others in connection with the entities services to the retirement board or any other client to whom the same service is provided. In addition, I make this disclosure of any conflict of interest that may have or could reasonably be expected to impair the ability to render unbiased and objective advice to the retirement board.

Name, First:		Last:		Suffix:	
Title:					
Signature:			Date:		

APPENDIX B

**Certification of Compliance with Massachusetts Tax Laws
pursuant to M.G.L. Ch. 62C, §49A**

Under the pains and penalties of perjury, I hereby certify, as required by General Laws, Chapter 62C, Section 49A, that:

Name of Corporation, Partnership
or Sole Proprietorship

has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support. The successful Proposer also agrees to provide the Boston Retirement System at closing a certificate of good standing from the Massachusetts Department of Revenue.

Signature

Title

Date