

New Mexico Educational Retirement Board Investment Services Procurement Policy

8/24/06

Scope

Pursuant to Section 13-1-98.Y of NMSA 1978, the New Mexico Educational Retirement Board (NMERB) shall be exempt from the Procurement Code of the State for all “contracts for investment advisory services, investment management services or other investment-related services.”

Such services may include any internal and external professional, technical or consultant services that support, derive or relate to the agency’s investment-related function.

Purpose

The NMERB wishes to establish policies and procedures in order to achieve economy, flexibility and efficiency in both public and private sector operations, and transparency, access and accountability in public administration in carrying out its fiduciary duty to its beneficiaries.

The establishment of sound procurement policies and practices must be an integral part of that process.

Competition is the proven way to accomplish these goals and is the fundamental principle of good procurement practice.

Open and fair procedures for awarding public sector contracts for services help to create dependable and stable markets for efficient private enterprises. They also form the basis for establishing accountability and encourage the cost-effective use of public funds.

The efficiency of the procurement process directly affects the costs and the time required for project execution and the ultimate performance of the operation. Good procurement practices should lead to significant time and money savings for the NMERB and its beneficiaries and help ensure successful project implementation and operation.

The procedures for selecting service providers and contracting for their services should be flexible and transparent to ensure that assignments can be efficiently executed with high standards of performance, while providing the necessary accountability.

This document sets out the procurement policies and rules to be followed by the NMERB in pursuit of the standards and goals listed above.

All decisions made under this procurement policy shall be made by the Procurement Manager as defined below, except those decisions required to be made by the New Mexico Educational Retirement Board or the New Mexico Educational Retirement Board’s Investment Committee as required by The New Mexico Educational Retirement Act or by NMERB rules.

1. Definitions

- a. “Emergency” – means unexpected circumstance(s) that require a rapid decision to prevent a significant financial loss to the NMERB Fund where the normal processes required in this

New Mexico Educational Retirement Board

Investment Services Procurement Policy

Policy would not prevent or avoid such loss. Poor performance by a contractor is not to be considered an “emergency”. By way of example, “emergency” can include, although it is not limited to, the departure of a portfolio manager or other key personnel from a contractor firm without notice, SEC investigation or action against a contractor firm or individuals within the firm, or a contractor firm’s unexpected loss of its operational capabilities.

- b. “Incumbent Provider” means a current contractor providing investment-related services under a professional services agreement with NMERB.
- c. “Offeror” means any person or persons responding to a Request for Proposals, Request for Information, Request for Technical Proposal with Financial Negotiation, Sole Source Procurement or Emergency Procurement.”
- d. “Procurement Manager” means a designee of the Director of the NMERB assigned to manage the procurement and administration of a service under this policy.
- e. “Runner(s)-up” means one or more RFP offeror not initially selected for award but qualified for award by meeting or complying with all mandatory criteria and formally designated as runner(s)-up by the evaluation committee based on points awarded.
- f. “Service” – Service shall include any professional, technical or consultant service or product/service combination under this policy. A service may also include one or more services, activities or products.
- g. “Service provider” –any person(s) or entity(ies) that provides a service under this policy, including but not limited to, managers, vendors, advisors, suppliers, contractors, concessionaires and consultants.
“small purchase” means the procurement of investment-related services for flat-fee compensation that does not exceed fifty-thousand dollars (\$50,000.00). For purposes of this Policy, “small purchase” procurement includes professional services or investment-related services or tangible property but does not include performance-fee compensation contracts for investment management services.

2. Procurement Method

- h. The NMERB may take reasonable and adequate procedures to ensure fairness and transparency to potential service providers commensurate with the circumstances of the procurement. Such considerations may include the emergent needs of the NMERB and its beneficiaries, quality of services, price, mission requirements, and available competition.
 - i. When applicable, the NMERB shall use the evaluation criteria and weightings outlined in the request to determine the best qualified service providers for any given request.

New Mexico Educational Retirement Board Investment Services Procurement Policy

- ii. The NMERB will maintain appropriate written records documenting each procurement.
- i. The NMERB may follow one of the following procedures to be selected at its discretion taking into account the needs of the NMERB, its beneficiaries and the most effective procedure to accomplish the goal of hiring the best qualified service provider(s).

- i. Request for information with negotiation**

- 1. The NMERB issues a general request for information in relation to a service or objective to be accomplished.
 - 2. Respondents reply to the request by giving information about what services they can supply that will accomplish the objective or request.
 - 3. Based upon the responses, the NMERB determines what suite of services or price/service combination is best suited to accomplish the objective and begins negotiating with one or more of the respondents for that service or suite of services that it believes will provide the highest quality of services at the most reasonable price.

- ii. Request for technical proposal with financial negotiation**

- 1. The NMERB issues a request by listing specific technical criteria or objectives. Such criteria may include minimum requirements to qualify and additional requirements necessary to fulfill the objective(s).
 - 2. Respondents reply to the request by giving their proposal and any other technical information or required criteria to qualify them to bid on the proposal.
 - 3. The NMERB may evaluate and invite one or more of the respondents based upon the criteria set out in the request to enter into financial negotiations for the purpose of securing a contract with the NMERB.
 - 4. Based upon that financial negotiation, the NMERB may choose one or more service providers.

- iii. Set Price Proposal**

- 1. The NMERB issues a request for services based upon a set price or formula.
 - 2. Respondents reply by listing what services they would be willing to perform to satisfy the request at the price or formula given.
 - 3. The NMERB may evaluate and choose one or more of the respondents taking into account the responses and the criteria set out in the request.

- iv. Independent Research and selection process with negotiated price**

New Mexico Educational Retirement Board Investment Services Procurement Policy

1. When the NMERB staff, a consultant or an independent firm has experience, knowledge and or wisdom with regard to a specific service or list of service providers, the NMERB may ask for a list of those service providers that are best suited to accomplish the objective.
2. Once those service providers are identified by staff, a consultant or an independent firm, the NMERB may negotiate with one or more of the potential service providers to obtain the highest quality of services at the most reasonable price.

v. Selective Procurement

1. Pre-selection of qualified service provider(s) who will be invited to submit offers.

vi. Sole Source Procurement

1. Invitation of a single firm to present an offer without prior public notice.

vii. Emergency Procurement – *see definition above*

1. Choice of procurement will depend upon the attendant conditions and situation causing and/or resulting from the emergency and the actions needed to resolve it.

viii. The NMERB, in addition to using any one method listed above, may use any combination of the above methods if it believes it to be in the best interest of the clients and beneficiaries.

ix. When determining the appropriate procurement method, the NMERB may consider among other things:

1. How readily available comparison info is on services that are being procured.
2. How many potential service providers there are for the service(s) being procured.
3. How technical or complex the service(s) are to be performed.
4. How confident the NMERB or staff are of the parameters, objectives or specifications of the service(s).
5. How quantifiable or objective the comparison information is on the potential service provider(s).

3. Public Notice

New Mexico Educational Retirement Board Investment Services Procurement Policy

Notice of an RFP shall be published at least twenty-one (21) calendar days prior to the date set for opening of responses. All notices referred to in this policy may be published or furnished electronically, in print, or both at the Procurement Manager's discretion. Notice shall be published in a commercially reasonable way and shall be posted on NMERB's website. Notice may be published in newspapers and/or trade journals in this or any other state, and may be made in any way likely to notify prospective offerors. NMERB may also provide notice to persons or businesses identified through independent investment services data bases.

4. Requests for Proposals

- a. All RFPs issued by NMERB shall contain at a minimum:
 - i. Specifications of the services to be procured including clearly identified "mandatory" and "preferred" (discretionary) criteria and/or minimum mandatory qualifications for prospective offerors;
 - ii. The proposed term of the anticipated contract, not to exceed eight (8) years;
 - iii. Description of any mandatory contract terms including but not limited to a term stating that the contractor accepts fiduciary status with respect to assets managed on behalf of NMERB;
 - iv. Any anticipated compensation formula for the services to be procured;
 - v. The location and method where responses shall be delivered and a secure method for receipt and safeguarding of the proposals. Each RFP shall state that NMERB shall have no responsibility or obligation to accept incorrectly delivered proposals or to provide for redelivery of incorrectly sent proposals;
 - vi. The deadline for receipt of proposals including the calendar date and the time. Deadlines may only be extended by the Procurement Manager for good cause shown. Any extension must be requested and approved, with notice given to prospective offerors, prior to the original deadline;
 - vii. A proposal cover sheet, to be completed and signed by the offeror and submitted in original form;
 - viii. Description of a formal question and answer process;
 - ix. The relative weight to be given to the selection criteria and/or qualifications in the evaluation of the responses;
 - x. The date and time when responses will be reviewed;
 - xi. Notice of applicable statutes, rules and policies; and

New Mexico Educational Retirement Board Investment Services Procurement Policy

- xii. Any other information the Procurement Manager believes will be useful in procuring the services sought to be procured.
- b. RFPs may be modified or amended prior to the recommendation for contract award for the limited purposes of:
 - i. clarifying or correcting errors or defects; or
 - ii. modifying the schedule for the submission of responses and the deadline for receipt of responses.
- c. The requirement for notice of amendment of an RFP shall:
 - i. be the same as for the initial RFP if it occurs before the deadline for receipt of responses; and
 - ii. be achieved by written notice to all offerors if it occurs after the deadline for receipt of responses.

5. **Sufficiency of Responses; Receipt, Acceptance and Rejection**

- a. Proposals received after the deadline will be rejected.
- b. Timely responses meeting all mandatory requirements shall be accepted for consideration without the opportunity for correction or modification.
- c. Responses must include an original proposal cover sheet, which has been fully completed, and signed. Responses provided electronically shall simultaneously provide a fully completed, signed original proposal cover sheet on or before the deadline for responses to the RFP. Failure to provide this original document will be cause for rejection of the proposal.
- d. Telephone and other types of inquiries concerning the proposal, outside the formal question and answer process, shall be discouraged.
- e. Successful offerors and runners up will meet or comply with all “mandatory” criteria and/or qualifications. Failure to meet or comply with the mandatory criteria, requirements and/or qualifications shall be cause for rejection of the proposal.

6. **Selection Criteria**

The selection criteria to be used in selecting successful offerors will be fully and specifically described in each RFP. NMERB may utilize internet-based or analytic software applications to research, evaluate, compare and select investment products across asset classes and vehicle types.

New Mexico Educational Retirement Board Investment Services Procurement Policy

7. Evaluation Process

- a. The NMERB Investment Committee shall be the evaluation committee for each RFP.
- b. The evaluation committee in whole or in part may, in its sole discretion, conduct interviews, discussions or negotiations with some or all offerors whose proposals have been accepted for the purpose of clarifying the terms of the proposals.
- c. The evaluation committee may, but need not, provide the opportunity for offerors who have participated in interviews, discussions or negotiations to submit best and final offers.
- d. There is no right to interviews, discussions, negotiations or the opportunity for best and final offers and the evaluation committee may recommend contract awards without conducting interviews, discussions or negotiations and without providing the opportunity for best and final offers.
- e. The evaluation committee shall create a record, including but not limited to uniform scoring sheets, showing the basis for its recommendation to the Board and shall prepare a written report culminating with its designation of a runner-up and its recommendation to the Board of the successful offeror(s). The Procurement Manager shall retain the scoring sheets and evaluation committee report for at least the stated term of the resulting contract.
- f. Scoring may include the opportunity for an offeror to receive a point score for a variety of factors including but not limited to the offeror's business approach and methodology, consistency of key personnel, philosophy and process, references, experience with the asset class under consideration, verified or verifiable performance and portfolio data of a sufficient duration to include a variety of economic and market environments, and a history of consistently strong and successful performance versus peers and relevant benchmarks.
- g. The evaluation committee shall make a selection recommendation to the Board. The Board shall select the successful offeror(s).

8. Award

- a. Following a vote by the Board, successful offeror(s) shall be promptly notified in writing of the award, subject to due diligence and successful contract negotiations conducted by the Procurement Manager.
- b. Contracts may be awarded to more than one successful offeror as a result of a single RFP process.
- c. Contracts may be awarded to one or more offeror(s) designated as runner(s)-up by the evaluation committee within two (2) years of the initial deadline set for receipt of RFP responses subject to due diligence and successful contract negotiations conducted by the Procurement Manager.

New Mexico Educational Retirement Board Investment Services Procurement Policy

9. Public Access

After award, any written determination of award, any evaluation committee report and all proposals may be subject to public inspection in accordance with applicable public records laws including the New Mexico Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 et seq. Any material claimed to be privileged, confidential, proprietary or trade secret material must be clearly designated as such in advance and provided on separate pages. Any requests for photocopying will be charged a fee per page.

10. Protest Procedure

NMERB's procurement of investment-related services is exempt from the New Mexico Procurement Code (NMSA 1978, Sections 13-1-1 et seq.) and offerors have no access to the protest procedures set out in the New Mexico Procurement Code (NMSA 1978, Sections 13-1-172 through 176) or related portions of the New Mexico Administrative Code involving investment-related services procurement. As a trust fund, NMERB has no authority to award money damages, costs or attorney's fees. In the interest of providing a fair, open and competitive procurement process for investment-related services, the following protest procedure is provided.

- a. An offeror who is not awarded an investment-related services contract may file a Notice of Protest with NMERB.
- b. A Notice of Protest must be in writing and received or post-marked within ten (10) calendar days of the award by the Board that gives rise to the protest.
- c. A Notice of Protest shall state the full factual basis for the protest.
- d. A Notice of Protest shall be sent or delivered to: NMERB Office of General Counsel (Attention: Award of Contract Protest), P.O. Box 26129/701 Camino de los Marquez, Santa Fe, New Mexico 87502-0129.
- e. The filing and receipt of a Notice of Protest shall not stop or delay the execution of an investment-related services contract between NMERB and the successful offeror.
- f. The NMERB General Counsel or his or her designee shall conduct an interview with the protestor, either in person or telephonically and may, in his or her sole discretion, conduct interviews with others who have or may have information relating to the award and/or the protest.
- h. The NMERB General Counsel shall promptly issue a written recommendation to the Board. The written recommendation shall state whether or not the General Counsel recommends that the contract whose award gave rise to the protest process should be terminated, and whether or not the General Counsel recommends an alternative contract award to the protestor or whether

New Mexico Educational Retirement Board Investment Services Procurement Policy

the RFP should be cancelled and competitively rebid. The written recommendation shall state the full factual basis for the recommendation.

i. The NMERB Office of General Counsel shall mail the written recommendation to the protestor and shall provide written notice of the scheduled Board vote on the recommendation.

j. The Board shall vote on the recommendation at its first normally scheduled meeting following the issuance of the written recommendation.

j. The Office of General Counsel shall notify the protestor, in writing, of the Board vote.

11. Exceptions

All procurement for services will be conducted as outlined in paragraphs 2 and 4 above, in accordance with this Policy, except under the following circumstances:

a. If a simple majority (4 of the 7 members) of the NMERB Board votes that an incumbent provider, currently providing satisfactory service under a contract for a given mandate that is the result of NMERB's Procurement Policy, should be given the opportunity to negotiate a new contract in connection with the expiring term of the current contract for the same or substantially similar mandate on the equivalent or better terms to NMERB. In no event, however, shall the term of the contract awarded under this subsection, including any and all extensions, exceed eight (8) years without being competitively bid. This exemption shall be exercised by NMERB at least thirty (30) days prior to the expiring term of the current contract;

b. After termination of an investment manager contract for any reason, a simple majority (4 of the 7 members) of the NMERB Board votes that it is necessary to transition the assets subject to the terminated contract to another incumbent provider who 1) is currently providing any investment management services under a contract that is the result of an RFP process; and 2) is qualified to serve as a replacement for the asset class under consideration. A new or amended contract should be negotiated in connection with the transitioning of assets on the equivalent or better terms to NMERB. In no event, however, shall the term of the contract awarded under this subsection, including any and all extensions, exceed eight (8) years without being competitively bid;

c. If a simple majority (4 of the 7 members) of the NMERB Board votes that an incumbent provider currently providing satisfactory service under a contract that is the result of NMERB's Procurement Policy, should be given the opportunity to negotiate a new or amended contract in connection with the provision of new services or a new mandate not provided by that incumbent under the existing contract. In no event, however, shall the term of the contract awarded under this subsection exceed eight (8) years without being competitively bid; or

d. The procurement is a small purchase procurement as defined in this policy

New Mexico Educational Retirement Board

Investment Services Procurement Policy

12. Fraud and Corruption

a. It is the NMERB's policy to require that service providers observe the highest standard of ethics during the procurement and execution of its contracts with the State of New Mexico and its business practices in general.

b. In pursuance of this policy, the NMERB defines, for the purposes of this provision, the terms set forth below as follows:

i. **“corrupt practice”** means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official, or the threatening of injury to person, property or reputation, in connection with the procurement process or in contract execution in order to obtain or retain business or other improper advantage in the conduct of business.

ii. **“fraudulent practice”** means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the State of New Mexico, the NMERB, its beneficiaries, and includes collusive practices among tenderers (prior to or after tender submission) designed to establish tender prices at artificial, non-competitive levels and to deprive the State of New Mexico, the NMERB, and its beneficiaries of the benefits of free and open competition.

c. The NMERB, in respect of the procurement of services governed under this policy:

i. will reject a proposal for award if it determines that the service provider recommended for award has engaged in corrupt, questionable or fraudulent practices in competing for the contract in question;

ii. will cancel its contract for services if it at any time determines that corrupt, questionable or fraudulent practices were engaged in by a service provider during the procurement or the execution of a contract, without the service provider having taken timely and appropriate action satisfactory to the NMERB to remedy the situation;

iii. will declare a firm ineligible, either indefinitely or for a stated period of time, if it at any time determines that the firm has engaged in corrupt, questionable or fraudulent practices in competing for, or in executing, a NMERB contract or contract with any other state agency;

iv. reserves the right, where a firm has been found by a judicial process or other official enquiry to have engaged in corrupt, questionable or fraudulent practices,

1. to cancel all or part of the financing for such firm; and

2. to declare that such a firm is ineligible, either indefinitely or for a stated period of time; and

v. will have the right to require that, in contracts financed by the NMERB, a provision be included requiring service provider(s) to permit the NMERB or its designee to inspect their accounts and records

New Mexico Educational Retirement Board Investment Services Procurement Policy

relating to the performance of the contract and to have them audited by auditors appointed by the NMERB.

13. Equal Opportunity Employer

a. For NMERB

i. The NMERB agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the NMERB agrees to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, sexual orientation or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this procurement policy. If the NMERB is found not to be in compliance with these requirements, the NMERB agrees to take appropriate steps to correct these deficiencies.

b. For service provider

i. Service provider agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, service provider agrees to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, sexual orientation or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If service provider is found not to be in compliance with these requirements during the life of any agreement or contract is has with the NMERB, service provider agrees to take appropriate steps to correct these deficiencies.

14 Americans with Disabilities Act

a. For NMERB

i. The Americans with Disabilities Act (ADA) of 1990 requires that persons with a disability be provided access to programs of State government. This law applies to procurement activities. The NMERB will provide access to the procurement process to potential service providers with a disability, to ensure that they can participate with other service providers on an even and fair basis.

ii. No qualified service provider with a disability shall, because of disability, be excluded from participating in the procurement process. Service providers with a disability will not be given special treatment that would give them an unfair competitive advantage.

iii. The Procurement Manager will be responsible for responding to requests for special accommodations.

iv. Language for Requests:

New Mexico Educational Retirement Board Investment Services Procurement Policy

1. The New Mexico NMERB complies with Title II of the Americans with Disabilities Act of 1990. Individuals with disabilities who may need auxiliary aids, services, and/or special modifications to submit a quote/proposal/bid should contact the Procurement Manager listed herein no later than 20 days prior to make any necessary arrangements.

b. For service provider

i. Service provider will certify that they comply with the Americans with Disabilities Act of 1990 and the regulations issued thereunder by the federal government, and certifies that programs, services and activities provided to the general public on behalf of the NMERB under a contract resulting from this solicitation comply with the Americans with Disabilities Act of 1990, 28 CFR, Part 35, Subpart B 35.130.

15. NMERB Joint Procurement Policy

- a. The NMERB may participate in, sponsor, conduct or administer a cooperative request for services with the PERA, State Investment Council or both.
 - i. Such collaboration may include any or all pieces of the procurement process but need not result in a joint decision on service providers or joint agreement among service providers.
- b. The NMERB may coordinate and develop policies and procedures with the other permanent funds for its collaborative efforts that are in line with these policies and procedures.

16. Miscellaneous

- a. Nothing contained in this policy shall expand or restrict the New Mexico Inspection of Public Records Act, NMSA 1978, Chapter 14, Article 2.

**New Mexico Educational Retirement Board
Investment Services Procurement Policy**

ATTACHMENT 1

SAMPLE ERB INVESTMENT CONTRACT

STATE OF NEW MEXICO

**EDUCATIONAL RETIREMENT BOARD OF NEW MEXICO
PROFESSIONAL SERVICES CONTRACT #**

THIS AGREEMENT is made and entered into by and between the State of New Mexico, **THE EDUCATIONAL RETIREMENT BOARD OF NEW MEXICO**, hereinafter referred to as the "Agency" or "ERB" and **CONTRACTOR**, hereinafter referred to as the "Contractor".

Contractor was approved by the ERB at its board meeting held on _____.

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. Scope of Work.

The Contractor shall perform the work outlined in the Scope of Work as follows:

2. Compensation.

- A. The Agency shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work a fee as described in Attachment B..
- B. The Agency shall pay the Contractor upon receipt of a detailed statement of accounting for services performed and expenses incurred hereunder.
- C. Within fifteen days after the date the Agency receives written notice from the Contractor that payment is requested for services or items of tangible personal property delivered on site and received, the Agency shall issue a written certification of complete or partial acceptance or rejection of the services or items of tangible personal property. If the Agency finds that the services or items of tangible personal property are not acceptable, it shall, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, provide to the Contractor a letter of exception explaining the defect or objection to the services or delivered tangible personal property along with details of how the Contractor may proceed to provide remedial action. Upon certification by the Agency that the services or items of tangible personal property have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of certification. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. After the thirtieth day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the contract to the Contractor at the rate of 1.5% per month.

3. Term.

This Agreement shall terminate on _____, unless terminated pursuant to paragraph 4, *infra*, or paragraph 5. In accordance with Section 13-1-150 NMSA 1978, no contract term, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

New Mexico Educational Retirement Board

Investment Services Procurement Policy

4. Termination.

A. Termination

This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least ten (10) days prior to the intended date of termination. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. This Agreement may be terminated immediately upon written notice to the Contractor, if the Contractor becomes unable to perform the services contracted for, as determined by the Agency or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of state funds or due to the Appropriations paragraph herein. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE STATE'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.*

B. Termination Management

Immediately upon receipt by either the Agency or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the Agency; 2) comply with all directives issued by the Agency in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the Agency shall direct for the protection, preservation, retention or transfer of all property titled to the Agency and [client records generated under this Agreement] and any non-expendable personal property or equipment purchased by the Contractor with contract funds shall become property of the Agency upon termination. On the date the notice of termination is received, the Contractor shall furnish to the Agency a complete, detailed inventory of non-expendable personal property purchased with funds provided under the existing and previous Agency agreements with the Contractor; the property listed in the inventory report including client records and a final closing of the financial records and books of accounts which were required to be kept by the Contractor under the paragraph of this Agreement regarding financial records.

5. Appropriations.

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate immediately upon written notice being given by the Agency to the Contractor. The Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

6. Status of Contractor.

The Contractor and its agents and employees are independent contractors performing professional services for the Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are personally reportable by it for income tax purposes as self-employment or business income and are reportable for self-employment tax.

7. Assignment.

New Mexico Educational Retirement Board Investment Services Procurement Policy

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the Agency.

8. Subcontracting.

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Agency.

9. Release.

The Contractor's acceptance of final payment of the amount due under this Agreement shall operate as a release of the Agency, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

10. Confidentiality.

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Agency.

11. Product of Service -- Copyright.

All materials developed or acquired by the Contractor under this Agreement shall become the property of the State of New Mexico and shall be delivered to the Agency no later than the termination date of this Agreement. Nothing produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

12. Conflict of Interest.

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. The Contractor certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer or state employee have been followed.

13. Amendment.

This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto.

14. Merger.

This Agreement incorporates all the agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written Agreement. No prior agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

15. Equal Opportunity Compliance.

The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor agrees to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If

New Mexico Educational Retirement Board Investment Services Procurement Policy

Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

16. Applicable Law.
The laws of the State of New Mexico shall govern this Agreement.
17. Workers Compensation.
The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Agency.
18. Records and Financial Audit.
The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Agency, the Department of Finance and Administration and the State Auditor. The Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments.
19. Indemnification.
The Contractor shall defend, indemnify and hold harmless the Agency and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the Agency and the Risk Management Division of the New Mexico General Services Department by certified mail.
20. Notices.
Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:
To the Agency: [insert name, address and email].
To the Contractor: [insert name, address and email].

Notwithstanding the notice provision in this section, if Contractor has any question or concern regarding any issue, including but not limited to ethics, integrity or compliance with any statute, rule or law, Contractor shall immediately contact ERB's Audit Committee by sending a letter by certified mail to the attention of the Chairman of the ERB audit Committee at an address designated by the Chairman of the Audit Committee.
21. Certain Campaign Contributions Prohibited
Contractor and its officers and employees are prohibited from soliciting or receiving campaign contributions, for or on behalf of any ERB Board member, candidate for ERB Board member, or any political candidate in the State of New Mexico, or any political candidate or elected official in the state of

New Mexico Educational Retirement Board Investment Services Procurement Policy

New Mexico for statewide office, from any investment company or brokerage firm, including its officers and employees, which has engaged in any financial transaction with ERB within the preceding twelve (12) months prior to the solicitation or receipt of the contribution or which reasonably expects within the next twelve (12) months to engage in financial transactions with the ERB. This restriction is not intended to prohibit a formal campaign committee from engaging in lawful political solicitations, provided that full disclosure is made, as required by law, to the appropriate authorities. Contractor may not make campaign contributions to ERB Board members, except to formal campaign committees. Violation of this Paragraph constitutes a breach by Contractor of its Agreement with ERB.

IN WITNESS WHEREOF, parties have executed this Agreement.

By: _____ Date: _____
Evalynne Hunemuller, Director,
Educational Retirement Board of New Mexico

By: _____ Date: _____
Robert J. Shulman, General Counsel
Educational Retirement Board of New Mexico
Certifying legal sufficiency

By: _____ Date: _____
Contractor

The New Mexico Taxation and Revenue Department has determined that this vendor is exempt from gross receipts taxes as the work under contract is performed outside of the State of New Mexico.

By: _____ Date: _____
Taxation and Revenue Department