

STATE OF NEW MEXICO
NEW MEXICO EDUCATIONAL RETIREMENT BOARD

REQUEST FOR PROPOSALS
PROFESSIONAL LEGAL SERVICES FOR INVESTMENT
COUNSEL SERVICES

RFP # ERB 14-06

Issued: March 24, 2014

Deadline of Submission: April 18, 2014

Submit to:

Amanda S. Olsen
Procurement Manager
701 Camino de los Marquez
Santa Fe, New Mexico 87505

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I. INTRODUCTION

A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The New Mexico Educational Retirement Board (ERB or the “Agency”) is requesting proposals for providers of Investment Counsel Services.

The purpose of this Request For Proposals (RFP) is to provide qualified and appropriate legal services regarding the Educational Retirement Board’s (the “Board”) alternative investment contracts. ERB anticipates issuing one (1) or more contracts as a result of this RFP.

B. SUMMARY SCOPE OF WORK

The Offeror shall perform the following services as requested by ERB’s Chief Investment Officer, ERB’s Executive Director, ERB’s General Counsel or designated staff:

1. Review, negotiate and assist in the drafting and/or restructuring of alternative investment contracts and agreements, including private equity, hedge funds, real estate investments and other investments as contemplated by ERB. The Offeror will work with ERB staff and consultants to:
 - a. ensure compliance with state statutes and ERB investment policies;
 - b. identify potential problems and unintended consequences, and;
 - c. review legal soundness of agreements
2. Drafting and negotiating contracts and agreements for direct investments
3. Drafting and negotiating side letters
 - a. to provide for special rights and protections that may be needed by a public investor
 - b. and when appropriate, negotiate for an individualized agreement with investment managers
4. Review amendments to investment agreements when a legal opinion is required
5. Provide legal advice on which terms in the investment contracts are standard, typical, atypical and/or which terms should be accepted or negotiated.
6. Provide legal counsel as requested for other investment related matters.

Services will be performed outside of New Mexico, unless otherwise directed by the Agency.

C. SCOPE OF PROCUREMENT

The Offeror shall provide the Agency investment legal services related to investing the Educational Retirement Fund (“the Fund”) in compliance with the Agency’s investment policy and other directives as adopted by the Agency and in compliance with state and federal law, including without limitation: reviewing and advising the Agency regarding

proposed and existing private equity, hedge funds investment contracts, real estate investment contracts and any other investment contracts contemplated by the Agency.

D. PROCUREMENT MANAGER

ERB has designated a Procurement Manager who is responsible for the conduct of this procurement whose name, address and telephone numbers are listed below.

Amanda S. Olsen, Procurement Manager
New Mexico Educational Retirement Board
Street: 701 Camino de los Marquez, Santa Fe, New Mexico 87505
Mail: Post Office Box 26129, Santa Fe, New Mexico 87502
Phone: (505) 827-8030
Fax: (505) 827-1855
Amandas.olsen@state.nm.us

All deliveries via mail should be addressed to the Post Office Box set forth above. Deliveries by courier or express carrier (including proposal delivery) should be addressed as follows:

Amanda S. Olsen, Procurement Manager
New Mexico Educational Retirement Board
701 Camino de los Marquez
Santa Fe, New Mexico 87505

Any inquiries or requests regarding this procurement should be submitted to the Procurement Manager in writing. Offerors may contact ONLY the Procurement Manager regarding the procurement. Other state employees do not have the authority to respond on behalf of ERB. Potential Offerors and Offerors may not contact or communicate with ERB board members or members of the Evaluation Committee regarding RFP # 2014-06 during the procurement process. Communications with ERB board members or members of the Evaluation Committee regarding other matters is not prohibited.

E. DEFINITION OF TERMINOLOGY

This section contains definitions and abbreviations that are used throughout this procurement document. Definitions contained in the Procurement Code also apply to this procurement.

“Act” means the Educational Retirement Act, §22-11-1 *et seq.* NMSA 1978, as amended.

“Board” or “ERB” means the Educational Retirement Board.

“Close of Business” means 5:00 PM Mountain Standard or Mountain Daylight Time, whichever is in effect on the date given.

“Contract” means a written agreement for the procurement of items of tangible personal property or services.

“Contractor” means a successful Offeror who enters into a binding contract.

“Determination” means the written documentation of a decision by the Procurement Manager including findings of fact supporting a decision. A determination becomes part of the procurement file.

“Desirable” The terms “may”, “can”, “should”, “preferably”, or “prefers” identify a desirable or discretionary item or factor (as opposed to “mandatory”).

“DFA” means the Department of Finance and Administration for the State of New Mexico.

“Evaluation Committee” means a body appointed by ERB management to perform the evaluation of Offeror proposals.

“Executive Director” means the Executive Director of ERB.

“Finalist” is defined as an Offeror who meets all the mandatory specifications of this Request for Proposals and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee.

“Fund” is the Educational Retirement Fund.

“Mandatory” The terms “must”, “shall”, “will”, “is required”, or “are required”, identify a mandatory item or factor (as opposed to “desirable”).

“Offeror” is any person, corporation, or partnership who chooses to submit a proposal.

“Procurement Code” means the New Mexico Procurement Code, §13-1-28 through 13-1-199 NMSA 1978.

“Procurement Manager” means the person or designee authorized by ERB to manage or administer a procurement requiring the evaluation of competitive sealed proposals.

“Request for Proposals” or “RFP” means all documents, including those attached or incorporated by reference, used for soliciting proposals.

“Responsible Offeror” means an Offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services or items of tangible personal property described in the proposal.

“Responsive Offer” or “Responsive Proposal” means an offer or proposal which conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to, price, quality, quantity or delivery requirements.

“State” means the State of New Mexico.

F. BACKGROUND INFORMATION

This section provides background on the Educational Retirement Board which may be helpful to potential Offerors in preparing their proposals. The information is provided as an overview and is not intended to be a complete or exhaustive description.

ERB Mission

ERB is a statutory entity that provides secure retirement benefits for its active and retired members from school districts, higher education and educational agencies.

ERB strives to make its members' retirement experience optimal by:

- Prudently managing the financial assets of the Fund;
- Providing prompt, courteous and accurate responses to members' inquiries;
- Counseling members on an individual basis related to retirement issues;
- Soliciting member input for improving services.

ERB is consistently building the skills, capacities and competencies of its employees in order to provide its members caring and quality service.

ERB has approximately 61,000 active members, 35,000 inactive members, 39,000 retirees and an over \$10.7 billion portfolio to manage. ERB manages one of the highest-ranking public pension plans in the country in terms of return on investment. Active members range from bus contractors and drivers to university professors. About 2,450 educators retire every year and the benefit payroll to retirees averages \$67.8 million a month.

Organization of ERB

The management of ERB is vested in a board of seven members. The Board stands in a fiduciary relationship to the members covered under the Act. Administrative management of the fund is vested in an Executive Director, who is appointed by the Board. Board meetings are open to the public.

II. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP contains the schedule for the procurement, describes the major procurement events and the conditions governing the procurement.

A. SEQUENCE OF EVENTS

The Procurement Manager will make every effort to adhere the following schedule; however, there is no guarantee that this schedule will be followed.

	<u>Action</u>	<u>Responsibility</u>	<u>Date</u>
1.	Issue RFP	ERB	March 24, 2014

2.	Distribution List Response	Potential Offeror	March 31, 2014
3.	Deadline to Submit Questions	Potential Offeror	April 4, 2014
4.	Response to Written Questions/RFP Amendments	ERB	April 11, 2014
5.	Submission of Proposal	Offeror	April 18, 2014
6.	Proposal Evaluation	Evaluation Committee	April 21-25, 2014
7.	Selection of Finalists	Evaluation Committee	May 2, 2014
8.	Best and Final Offers from Finalists	Offeror	May 9, 2014
9.	Oral Presentation by Finalists	Offeror	May 12-16, 2014
10.	Finalize Contract	ERB, Offeror	May 19-30, 2014
11.	Contract Award	ERB	June 12, 2014
12.	Protest Deadline	Offeror	10 calendar days after award

B. EXPLANATION OF EVENTS

The following paragraphs describe the activities listed in the sequence of events shown in Section II, Paragraph A.

1. Issue of RFP

This RFP is being issued by ERB. The RFP will be released on March 24, 2014.

2. Distribution List Response Due

Potential Offerors should hand deliver or return by facsimile or by registered or certified mail the “Acknowledgement of Receipt of Request for Proposals Form” that accompanies this document (See Appendix A) in order to be placed on the procurement distribution list. The form should be signed by an authorized representative of the Offeror, dated and returned by close of business on March 31, 2014.

The procurement distribution list will be used for the distribution of written responses to questions and any RFP amendments. An e-mail address is mandatory for the receipt of written responses to questions and RFP amendments. Failure to return this form, or to provide complete contact information, including an e-mail address, shall mean that the potential Offeror's name will not appear on the distribution list.

3. Deadline to Submit Written Questions

Potential Offerors may submit additional written questions as to the intent or clarity of this RFP until close of business on April 4, 2014. All written questions must be submitted via e-mail to the Procurement Manager (See Section I, Paragraph D).

4. Response to Written Questions/RFP Amendments

Written responses to written questions and any RFP amendments will be distributed no later than April 11, 2014 via e-mail to all potential Offerors whose names appear on the procurement distribution list.

5. Submission of Proposal

ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE **NO LATER THAN 4:00 PM MOUNTAIN STANDARD TIME ON APRIL 18, 2014. Proposals received after this deadline will not be accepted.** The date and time of receipt will be recorded on each proposal. Proposals must be addressed and delivered to the Procurement Manager at the address listed in Section I, Paragraph D, which is as follows:

Amanda S. Olsen, Procurement Manager
New Mexico Educational Retirement Board
Street: 701 Camino de los Marquez, Santa Fe, New Mexico 87505
Mail: Post Office Box 26129, Santa Fe, New Mexico 87505

All deliveries via mail should be addressed to the Post Office Box set forth above. Deliveries by courier or express carrier (including proposal delivery) should be addressed as follows:

Amanda S. Olsen, Procurement Manager
New Mexico Educational Retirement Board
701 Camino de los Marquez
Santa Fe, New Mexico 87505

All proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the INVESTMENT COUNSEL SERVICES - GENERAL REQUEST FOR PROPOSALS, ERB RFP # 2014-06. Proposals submitted by facsimile or other electronic means will not be accepted.

A public log will be kept of the names of all Offeror organizations that submit proposals. Pursuant to § 13-1-116 NMSA 1978, the contents of any proposal shall not be disclosed to competing Offerors prior to contract award.

6. Proposal Evaluation

The evaluation of proposals will be performed by an evaluation committee appointed by ERB management. This process will take place between April 21 and 25, 2014. During this time, the Procurement Manager may initiate discussions with Offerors who submit

responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals, but proposals may be accepted and evaluated without such discussion. Discussions SHALL NOT be initiated by the Offerors.

7. Selection of Finalists

The Agency, in its sole discretion, may enter into contract negotiations with an Offeror without selecting Finalists to present best and final offers and conduct oral presentations, or it may select Finalists. If it selects Finalists, only those Finalists will be invited to participate in the subsequent steps of the procurement. The schedule for the oral presentations, if any, will be determined during the evaluation process.

8. Best and Final Offers from Finalists

Finalists may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers by May 9, 2014. Best and final offers may be clarified and amended at the Finalist's oral presentation.

9. Oral Presentation by Finalists

At the discretion of the Evaluation Committee, finalists may be required to present their proposals to the Evaluation Committee. The Procurement Manager will schedule the time for each finalist Offeror presentation. Each presentation will be limited to one (1) hour in duration.

10. Finalize Contract

Contracts will be finalized with the most advantageous Offeror by May 19-30 2014. In the event that mutually agreeable terms cannot be reached within the time specified, ERB reserves the right to finalize a contract or contracts with the next most advantageous Offeror(s) without undertaking a new procurement process.

11. Contract Award

After contract negotiations, the Evaluation Committee shall select the Offeror whose proposal is most advantageous to ERB, taking into consideration the evaluation factors set forth in the RFP. The most advantageous proposal may or may not have received the most points.

The Evaluation Committee shall make a recommendation to the Investment Committee and the Investment Committee shall award the contract. Pursuant to §13-1-98 (CC), the award is not subject to DFA approval.

12. Protest Deadline

An offeror who is not awarded an investment related services contract may file a written Notice of Protest with the General Counsel of the NMERB. A Notice of Protest shall state in writing the full factual basis for the protest and be accompanied by all documentary evidence that the protester wishes to be considered in the evaluation of the protest. A

Notice of Protest may be delivered in person, by U.S. Postal Service or by courier service. A Notice of Protest must be received by the NMERB General Counsel, or postmarked or accompanied by a written receipt evidencing that it was given to a courier service for delivery, not later than ten (10) days after the award of the contract that gives rise to the protest. A Notice of Protest shall not be delivered by fax, e-mail or verbally; protests delivered by such means will not be accepted or considered. Failure to deliver or to transmit delivery a Notice of Protest by the date and in the manner provided for shall bar an offeror from later submitting a protest of the contract awarded.

C. GENERAL REQUIREMENTS

1. Acceptance of Conditions Governing the Procurement

Offerors must indicate their acceptance of the Conditions Governing the Procurement section in the letter of transmittal. Submission of a proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP.

2. Incurring Cost

Any cost incurred by the Offeror in preparation, transmittal, or presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror.

3. Prime Contractor Responsibility

Any contract that may result from this RFP shall specify that the prime Contractor is solely responsible for fulfillment of the contract with ERB. ERB will make contract payments only to the prime Contractor.

4. Subcontractors

Use of subcontractors must be clearly explained in the proposal, and major subcontractors must be identified by name. The prime Contractor shall be wholly responsible for the entire performance whether or not subcontractors are used.

5. Amended Proposals

An Offeror may submit an amended proposal before the deadline for receipt of proposals. Such amended proposals must be complete replacements for a previously submitted proposal and must be clearly identified as such in the transmittal letter. ERB personnel will not merge, collate, or assemble proposal materials.

6. Offerors' Rights to Withdraw Proposal

Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The Offeror must submit a written withdrawal request signed by the Offeror's duly authorized representative addressed to the Procurement Manager.

The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is governed by the applicable procurement regulations.

7. Proposal Offer Firm

Responses to this RFP, including proposal prices, will be considered firm for ninety (90) days after the due date for receipt of proposals or sixty (60) days after due date for the receipt of a best and final offer if one is solicited.

8. Disclosure of Proposal Contents

The proposals will be kept confidential until a contract is awarded. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for material that is exempted from disclosure pursuant to the Inspection of Public Records Act, §14-2-1, *et seq.* NMSA 1978 (“IPRA”). The Procurement Manager will not disclose or make public any pages of a proposal on which the Offeror has stamped or imprinted “proprietary” or “confidential” subject to the following requirements:

- a) Material that the Offeror believes is exempted from disclosure pursuant to IPRA should be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. The price of products offered or the cost of services proposed shall not be designated as proprietary or confidential information.
- b) If a request is received for disclosure of material which an Offeror has marked proprietary or confidential, ERB shall examine the material and make a written determination that specifies which portions of the material, if any, are exempt from disclosure pursuant to IPRA. Unless the Offeror takes legal action to prevent the disclosure, all material determined by ERB as required to be released under IPRA will be so disclosed.

9. No Obligation

This procurement in no manner obligates the State of New Mexico or any of its agencies to the use of any proposed professional services unless or until a valid written contract is awarded and approved by the appropriate authorities.

10. Termination

This RFP may be canceled at any time and any and all proposals may be rejected in whole or in part when ERB determines such action to be in the best interest of ERB.

11. Sufficient Appropriation

Any contract awarded as a result of this RFP process may be terminated if sufficient appropriations or authorizations do not exist. Such termination will be effected by sending written notice to the Contractor. ERB's decision as to whether sufficient appropriations and authorizations are available will be accepted by the Contractor as final.

12. Legal Review

ERB requires that all Offerors agree to be bound by the General Requirements contained in this RFP. **For this reason, ERB recommends that Offerors have the terms and conditions contained herein reviewed by counsel.** Any Offeror concerns must be promptly brought to the attention of the Procurement Manager.

13. Governing Law

This procurement and any agreement with Offerors that may result shall be governed by the laws of the State of New Mexico.

14. Basis for Proposal

Only information supplied by ERB in writing through the Procurement Manager or in this RFP should be used as the basis for the preparation of Offeror proposals.

15. Contract Terms and Conditions

The contract between ERB and a successful Offeror will follow the format specified by ERB and contain the terms and conditions set forth in Appendix B, "Contract Terms and Conditions". However, ERB reserves the right to negotiate with a successful Offeror provisions in addition to those contained in this RFP. The contents of this RFP, as revised and/or supplemented, and the successful Offeror's proposal will be incorporated into and become part of the contract.

Should an Offeror object to any of ERB's terms and conditions, as contained in this Section or in Appendix B, said Offeror must so note in its proposal and propose specific alternative language. ERB may or may not accept the alternative language. General references to the Offeror's terms and conditions or attempts at complete substitutions are not acceptable to ERB and will result in disqualification of the Offeror's proposal.

Offerors must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording.

16. Offeror's Terms and Conditions

Offerors must submit with the proposal a complete set of any additional terms and conditions which they expect to have included in a contract negotiated with ERB.

17. Offeror Qualifications

The Evaluation Committee may make such investigations as necessary to determine the ability of the Offeror to adhere to the requirements specified within this RFP. The Evaluation Committee will reject the proposal of any Offeror who is not a responsible Offeror or fails to submit a responsive offer as defined in § 13-1-83 and 13-1-85 NMSA 1978.

18. Right to Waive Minor Irregularities

The Evaluation Committee reserves the right to waive minor irregularities. The Evaluation

Committee also reserves the right to waive mandatory requirements provided that all of the otherwise responsive proposals failed to meet the mandatory requirements and/or doing so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.

19. Change in Contractor Representatives

ERB reserves the right to require a change in Contractor Representatives if the assigned representatives are not, in the opinion of ERB, meeting its needs adequately.

20. Notice

It is the NMERB's policy to require service providers to observe the highest ethical standards during the procurement and execution of contracts with the NMERB and the State of New Mexico and in their general business practices. Consistent with this policy, the NMERB: (A) will not enter into a contract with an investment service provider if it determines that such service provider engaged in corrupt, questionable or fraudulent practices in competing for the contract in question; (b) will cancel an agreement or contract with an investment service provider if it determines at any time that corrupt, questionable or fraudulent practices were engaged in by such service provider during the procurement or the execution of a contract; provided however, if that service provider has taken timely and appropriate action to notify the NMERB of the situation and to remedy it, the NMERB in sole exercise of its discretion, may continue to permit the agreement or contract to remain in effect with appropriate amendments to address the matter and its impact on the NMERB; and, (c) will declare a firm ineligible, whether indefinitely or for a stated period of time, if it determines at any time that the firm has engaged in corrupt, questionable or fraudulent practices in competing for, or in executing, a contract with the NMERB or contract with any other agency of the State of New Mexico or if during the term of this Agreement, the investment services provider is suspended or debarred by the State Purchasing Agent. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

21. Agency Rights

ERB reserves the right to accept all or a portion of an Offeror's proposal.

22. Right to Publish

Throughout the duration of this procurement process and contract term, potential Offerors, Offerors and Contractors must secure from ERB written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement or the subsequent contract. Failure to adhere to this requirement may result in disqualification of the Offeror's proposal or termination of the contract.

23. Ownership of Proposals

All documents submitted in response to this RFP shall become the property of ERB and the State of New Mexico.

24. Electronic Mail Address Required

A large part of the communication regarding this procurement will be conducted by electronic mail (e-mail). Offeror must have a valid e-mail address to receive this correspondence.

25. Use of Electronic Versions of this RFP

This RFP is being made available by electronic means. If accepted by such means, the Offeror acknowledges and accepts full responsibility to ensure that no changes are made to the RFP. In the event of conflict between a version of the RFP in the Offeror's possession and the version maintained by the ERB, the version maintained by ERB shall govern.

III. RESPONSE FORMAT AND ORGANIZATION

This section describes the format and organization of the Offeror's response. Failure to conform to these specifications may result in the disqualification of the proposal.

A. NUMBER OF RESPONSES

Offerors shall submit one (1) original and six (6) copies of its proposal to the location specified in Section II, Paragraph B(5) on or before the closing date and time for receipt of proposals.

B. PROPOSAL FORMAT

All proposals must be typewritten on standard 8 1/2 x 11 paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within a binder with tabs delineating each section.

1. Proposal Organization

The proposal must be organized and indexed in the following format and must contain, at a minimum, all listed items in the sequence indicated.

- a) Letter of Transmittal
- b) Table of Contents
- c) Proposal Summary (optional)
- d) Response to Mandatory Specifications
- e) Campaign Contribution Form
- f) Response to Agency Terms and Conditions (if any)
- g) Offeror's Additional Terms and Conditions (if any)
- h) Other Supporting Material

Within each section of their proposals, Offerors should address the items in the order in which they appear in this RFP. All forms provided in the RFP must be thoroughly completed and included in the appropriate section of the proposal. Any proposal that does not adhere to these requirements may be deemed non-responsive and rejected on that basis.

The proposal summary may be included by Offerors to provide the Evaluation Committee with an overview of the technical and business features of the proposal; however, this material will not be used in the evaluation process unless specifically referenced from other portions of the Offeror's proposal.

Offerors may attach other materials that they feel may improve the quality of their responses. However, these materials should be included as items in a separate appendix.

2. Letter of Transmittal

Each proposal must be accompanied by a letter of transmittal. The letter of transmittal MUST:

- a) identify the RFP number;
- b) identify the submitting Offeror;
- c) identify the name and title of the person authorized to contractually obligate the Offeror;
- d) identify the name, title and telephone number of the person authorized to negotiate the contract on behalf of the Offeror;
- e) identify the names, titles and telephone numbers of persons to be contacted for clarification;
- f) explicitly indicate acceptance of the Conditions Governing the Procurement stated in Section II, Paragraph C(1);
- g) be signed by the person authorized to contractually obligate the Offeror; and
- h) acknowledge receipt of any and all amendments to this RFP.

IV. SPECIFICATIONS

Offerors should respond in the form of a thorough narrative to each mandatory specification. The narratives along with required supporting materials will be evaluated and awarded points accordingly.

Failure to respond to Mandatory Specifications may result in the disqualification of the proposal as non-responsive.

MANDATORY SPECIFICATIONS

1. Experience

Offeror must submit a statement of relevant experience. The documentation must thoroughly describe how the Offeror has provided similar services for other investment funds and include information regarding the Offeror's knowledge of New Mexico public pension funds and ERB in particular.

2. References

Proposals must include three (3) references from those for whom the Offeror performed

similar services. The minimum information that must be provided about each reference is:

- a) Name of entity services were provided for
- b) Address of entity
- c) Name of contact person
- d) Telephone number of contact person
- e) Type of services provided and dates services were provided
- f) E-mail address (if available)

3. Proposed Staff Experience

If Offeror is not an individual, it must submit resumes of all proposed professional staff members who will be performing services under the contract. Experience narratives shall be attached that describe the specific relevant experience of the staff members in relation to the role that member will perform for this contract. The narrative(s) must include the name of the individual(s) proposed and should include a thorough description of the education, knowledge, and relevant experience as well as any certifications or other professional credentials that clearly shows proposed staff member's expertise.

4. Cost

Offerors must submit a cost proposal that includes the type of billing (e.g. monthly vs. hourly format), rates and expenses for which the Offeror would seek reimbursement.

5. Oral Presentation

If selected as a Finalist, Offeror agrees to provide the Evaluation Committee the opportunity to interview proposed staff members identified by the Evaluation Committee in the finalist notification letter at the oral presentation.

6. New Mexico Employees Health Insurance

Employee health insurance coverage is mandatory to be awarded a contract based on this RFP. To be responsive to this RFP, and to eligible for contract award, the Offeror must agree to the following:

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <http://insurenwemexico.state.nm.us/>.

7. Campaign Contribution Disclosure Form

Offeror must complete and sign the Appendix C, Campaign Contribution Form – whether any applicable contribution has been made or not. This form must be submitted with your proposal whether an applicable contribution has been made or not.

V. EVALUATION

A. EVALUATION FACTORS

All responsive proposals will be evaluated according to the following criteria.

<u>FACTOR</u>	<u>POINTS AVAILABLE</u>
1. Previous experience providing investment counsel services to funds of similar size/sophistication as the Fund	25
2. Experience with/knowledge of alternative investment contracts and documents	50
3. Cost	<u>25</u>
TOTAL	100

B. EVALUATION PROCESS

The evaluation process will follow the steps listed below:

1. All Offeror proposals will be reviewed for compliance with the mandatory requirements stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
2. The Procurement Manager may contact the Offeror for clarification of the response as specified in Section II, Paragraph B(6).
3. The Evaluation Committee may use other sources of information to perform the evaluation as specified in Section II, Paragraph C(17).
4. Responsive proposals will be evaluated on the factors in Section V, Paragraph A that have been assigned a point value. The responsible Offerors with the highest scores may be selected as finalist Offerors based

upon the proposals submitted. Finalist Offerors who are asked or choose to submit revised proposals for the purpose of obtaining best and final offers will have their points recalculated accordingly. Points awarded from oral presentations, if made, will be added to the previously assigned points to attain final scores. The responsible Offeror whose proposal is most advantageous to ERB, taking into consideration the evaluation factors in Section V, Paragraph A, will be recommended for contract award as specified in Section II, Paragraph B(11). Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

APPENDIX A
REQUESTS FOR PROPOSALS
for
INVESTMENT COUNSEL SERVICES
ERB RFP # 2014-06

ACKNOWLEDGEMENT OF RECEIPT FORM

In acknowledgement of receipt of this Request for Proposals, the undersigned agrees that he/she has received a complete copy, beginning with the title page and table of contents, and ending with Appendix C.

The acknowledgement of receipt should be signed and returned to the Procurement Manager no later than close of business on March 31, 2014. Only potential Offerors who elect to return this form completed with the indicated intention of submitting a proposal will receive copies of all Offeror written questions and ERB's written responses to those questions as well as RFP amendments, if any are issued.

POTENTIAL OFFEROR: _____

REPRESENTED BY: _____

TITLE: _____ PHONE NO.: _____

E-MAIL: _____ FAX NO.: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

SIGNATURE: _____ DATE: _____

This name and address will be used for all correspondence related to the Request for Proposal.

Potential Offeror does/does not (circle one) intend to respond to this Request for Proposals.

Amanda S. Olsen, Procurement Manager
New Mexico Educational Retirement Board
Street: 701 Camino de los Marquez, Santa Fe, New Mexico 87505
Mail: Post Office Box 26129, Santa Fe, New Mexico 87502
Phone: (505) 827-8030
Fax: (505) 827-1855

APPENDIX B
CONTRACT TERMS AND CONDITIONS

SAMPLE – FINAL CONTRACT MAY VARY

**STATE OF NEW MEXICO
PROFESSIONAL SERVICES CONTRACT #14-352-0000-14****

THIS AGREEMENT is made and entered into by and between the State of New Mexico, **EDUCATIONAL RETIREMENT BOARD OF NEW MEXICO** (the “ERB” or the Agency”, hereinafter referred to as the "Agency," and **NAME OF CONTRACTOR**, hereinafter referred to as the “Contractor,” and is effective as of the date set forth below upon which it is executed by the Department of Finance and Administration (DFA).

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work.

The Contractor shall perform the following work:

A. Work to be Performed by contractor, as requested by ERB’s Chief Investment Officer, ERB’s Executive Director, ERB’s General Counsel or designated staff:

(1) Review, negotiate and assist in the drafting and/or restructuring of alternative investment contracts and agreements, including private equity, hedge funds, real estate investments and other investments as contemplated by ERB. The Offeror will work with ERB staff and consultants to:

- (a) ensure compliance with state statutes and ERB investment policies
- (b) identify potential problems and unintended consequences and
- (c) review legal soundness of agreements

(2) Drafting and negotiating contracts and agreements for direct investments

(3) Drafting and negotiating side letters

(a) to provide for special rights and protections that may be needed by a public investor

(b) and when appropriate, negotiate for an individualized agreement with investment managers

(4) Review amendments to investment agreements when a legal opinion is required

(5) Provide legal advice on which terms in the investment contracts are standard, typical, atypical and/or which terms should be accepted or negotiated.

B. Services will be performed outside of New Mexico, unless otherwise directed by the Agency.

C. Contractor shall provide legal counsel as requested by the ERB, its Executive Director, General Counsel or designated staff for pension, tax, and fiduciary law matters, including without limitation:

(1) Provide advice on matters relating to the application of the federal statutes, including the Internal Revenue Code, to ERB and the Educational Retirement Fund.

(2) Review and provide advice regarding existing and proposed state and federal statutes, rules, polices, and procedures to insure compliance with Internal Revenue Code and other federal requirements as applicable.

(3) Assist the ERB in obtaining and maintaining Internal Revenue Service approval of educational pension plans created by the Educational Retirement Act.

(4) Provide advice regarding general pension law issues.

(5) Provide advice on fiduciary law issues.

(6) Assist ERB management and staff in drafting and revising proposed statutes, rules, policies, and procedures.

(7) Provide legal counsel as requested on other pension, tax, and fiduciary law matters.

D. Services will be performed outside of New Mexico, unless otherwise directed by the Agency.

2. Compensation.

A. The Agency shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work at the rate of _____ dollars (\$_____) in FYXX (USE FISCAL YEAR NUMBER TO DESCRIBE YEAR; DO NOT USE FY1, FY2, ETC.). The New Mexico gross receipts tax levied on the amounts payable under this Agreement in FYXX totaling (AMOUNT) shall be paid by the Agency to the Contractor. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed (AMOUNT) in FYXX.**

(REPEAT LANGUAGE FOR EACH FISCAL YEAR COVERED BY THE AGREEMENT -- USE FISCAL YEAR NUMBER TO DESCRIBE EACH YEAR; DO NOT USE FY1, FY2, ETC.).

B. Payment in FYXX, FYXX, FYXX, and FYXX is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the DFA. All invoices MUST BE received by the Agency no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

C. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the Agency finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the Agency that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the agency shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

3. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE DFA. This Agreement shall terminate on **(DATE)** unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with NMSA 1978, § 13-1-150, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in NMSA 1978, § 13-1-150.

4. Termination.

A. Grounds. The Agency may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the Agency's uncured, material breach of this Agreement.

B. Notice; Agency Opportunity to Cure.

1. Except as otherwise provided in Paragraph (4)(B)(3), the Agency shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

2. Contractor shall give Agency written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Agency's material breaches of this Agreement upon which the termination is based and (ii) state what the Agency must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the Agency does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Agency does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the Agency; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to Paragraph 5, "Appropriations", of this Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the Agency's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE AGENCY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.*

D. 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 records generated under this Agreement. Any non-expendable

personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the Agency upon termination and shall be submitted to the agency as soon as practicable.

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 to 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 reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. 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.

7. Assignment.

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. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the Procuring Agency.

9. Release.

Final payment of the amounts 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.

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 developed or 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; Governmental Conduct Act.

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, 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.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

1) in accordance with NMSA 1978, § 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Agency employee while such employee was or is employed by the Agency and participating directly or indirectly in the Agency's contracting process;

2) this Agreement complies with NMSA 1978, § 10-16-7(A) because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by NMSA 1978, § 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;

3) in accordance with NMSA 1978, § 10-16-8(A), (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the Agency's making this Agreement;

4) this Agreement complies with NMSA 1978, § 10-16-9(A) because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-7(A), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

5) in accordance with NMSA 1978, § 10-16-13, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

6) in accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Agency.

C. Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the Agency relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the Agency if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the Agency and notwithstanding anything in the Agreement to the contrary, the Agency may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Article 12(B).

13. Amendment.

A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

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. Penalties for violation of law.

The Procurement Code, NMSA 1978 §§ 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

16. 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 assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, 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 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.

17. Applicable Law.

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, § 38-3-1 (G). By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

18. 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.

19. 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

20. 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.

21. New Mexico Employees Health Coverage.

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage

already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <http://insurenemexico.state.nm.us/>.

22. Employee Pay Equity Reporting.

Contractor agrees if it has ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification, at any time during the term of this contract, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. If contractor has (250) or more employees contractor must complete and submit the PE250 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, contractor also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual contract anniversary date of the initial submittal date or, if more than 180 days has elapsed since submittal of the last report, at the completion of the contract, whichever comes first. Should contractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor agrees to provide the required report within ninety (90) days of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter. Contractor also agrees to levy this requirement on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor will submit the required report, for each such subcontractor, within ninety (90) days of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. Contractor shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. Contractor acknowledges that this subcontractor requirement applies even though contractor itself may not meet the size requirement for reporting and be required to report itself.

Notwithstanding the foregoing, if this Contract was procured pursuant to a solicitation, and if Contractor has already submitted the required report accompanying their response to such solicitation, the report does not need to be re-submitted with this Agreement.

23. Invalid Term or Condition.

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

24. Enforcement of Agreement.

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

25. 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:

Jan Goodwin, Executive Director

Educational Retirement Board of New Mexico

Street: 701 Camino de los Marquez, Santa Fe, New Mexico 8750-0129

Mail: P.O. Box 26129, Santa Fe, New Mexico 87505-1826

To the Contractor:

[insert name, address and email].

26. Authority.

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature by the DFA Contracts Review Bureau below.

By: _____
Agency

Date: _____

By: _____
Agency's Legal Counsel – Certifying legal sufficiency

Date: _____

By: _____
Agency's Chief Financial Officer

Date: _____

By: _____
Contractor

Date: _____

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

ID Number: 00-000000-00-0

By: _____ Date: _____
Taxation and Revenue Department

This Agreement has been approved by the DFA Contracts Review Bureau:

By: _____ Date: _____
DFA Contracts Review Bureau

The New Mexico Taxation and Revenue Department has determined that this contractor is not subject to gross receipts taxes as the work under this contract is performed outside the state of New Mexico.

By: _____ Date: _____
Taxation and Revenue Department

This Agreement has been approved by the DFA Contracts Review Bureau:

By: _____ Date: _____
DFA Contracts Review Bureau

APPENDIX C
CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to NMSA 1978, § 13-1-191.1 (2006), any person seeking to enter into a contract with any state agency or local public body **for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources** must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective Contractor must disclose whether they, a family member or a representative of the prospective Contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the Contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the Contractor signs the contract, if the aggregate total of contributions given by the prospective Contractor, a family member or a representative of the prospective Contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body shall void an executed contract or cancel a solicitation or proposed award for a proposed contract if: 1) a prospective Contractor, a family member of the prospective Contractor, or a representative of the prospective Contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective Contractor fails to submit a fully completed disclosure statement pursuant to the law.

THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT HE/SHE/IT, HIS/HER/ITS FAMILY MEMBER, OR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

“Applicable public official” means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective Contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

“Campaign Contribution” means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to either statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

“Family member” means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-

law or son-in-law.

“Pendency of the procurement process” means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

“Person” means any corporation, partnership, individual, joint venture, association or any other private legal entity.

“Prospective Contractor” means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or a small purchase contract.

“Representative of a Prospective Contractor” means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective Contractor.

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

(Attach extra pages if necessary)

Signature

Title (Position)

Date

—OR—

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE to an applicable public official by me, a family member or representative.

Signature

Title (Position)

Date