

STATE OF NEW MEXICO
NEW MEXICO EDUCATIONAL RETIREMENT BOARD

REQUEST FOR PROPOSALS
PROFESSIONAL LEGAL SERVICES FOR SECURITIES
LITIGATION

RFP # ERB 14-03

Issued: September 18, 2013

Deadline of Submission: October 30, 2013

Submit to:

Christopher G. Schatzman
General Counsel
701 Camino de los Marquez
Santa Fe, New Mexico 87505

TABLE OF CONTENTS

	<u>Page</u>
I. Introduction	3
II. General Information	3
III. Scope of Work	4
IV. Minimum Qualifications	5
V. Conditions Governing Procurement	5
VI. Required Fee Structure Information	9
VII. Response Format and Organization	9
VIII. Award and Issuance of Contract	14
IX. Ownership of Proposals	15
X. Contract Requirements	15
XI. Evaluation	16
Appendix A Minimum Qualifications	18
Appendix B Company Questionnaire	19
Appendix C Acknowledgment of Receipt Form	24
Appendix D Sample form of Contract	25

I. INTRODUCTION

The Educational Retirement Act (“ERA”) established a retirement system (the “Educational Retirement Fund” or the “Retirement Fund”) for employees of the public schools, colleges, universities, and selected state agencies in the State of New Mexico. The system was established in 1957 and operates under the authority of New Mexico Statutes, Sections 22-11-1 *et seq.* NMSA 1978, as amended. The Act is administered by the Educational Retirement Board (“ERB”) and its staff (collectively the “ERB”). As of June 30, 2012, the plan has approximately 60,855 active members, 37,337 inactive members and 34,032 retirees. The monthly benefits paid out for Fiscal Year 2012 are \$754,554,951.00. Assets of the Educational Retirement Fund under management are currently valued at approximately \$9.9 billion.

On December 31, 2012, the ERB fund was invested as follows:

Domestic Equities	24.7%
International Equities	15.0%
Fixed Income	32.9%
Real Estate	5.4%
Alternative Investments	20.8%
Cash	1.2%
TOTAL	100%

II. GENERAL INFORMATION

A. Background and Purpose.

The New Mexico Educational Retirement Board [“ERB”] seeks competitive proposals from attorneys and law firms (‘the Offeror’) interested in providing professional legal services to the ERB in connection with securities litigation in which ERB may be a party. Selection and assignments will be based upon the evaluation criteria listed below. The fixed price contract will have a maximum term of four years.

B. Who should respond to this RFP?

Any attorney[s] or law firm[s] interested in representing the ERB in securities litigation matters should submit a response to this proposal. No securities litigation matters will be assigned to attorneys or firms not completing this process. Failure to submit all requested information may result in disqualification from consideration.

III. SCOPE OF WORK

A. Claim Litigation.

The Offeror shall be required to provide such litigation services as the ERB shall require, including the following activities:

1. Litigate cases which have a primarily focus on investment related matters and/or claims regarding specialized securities;
2. Diligently gather facts and assess laws applicable to the litigation;
3. Review the ERB's investment records, and conduct interviews with the ERB investment staff, external managers, advisors and counsel, and others as appropriate;
4. Zealously represent the ERB (and, in any class action, the plaintiff class) at all stages of litigation;
5. If a settlement is proposed, provide a written, confidential report to the ERB General Counsel containing (a) the terms of any offer of settlement; (b) a summary of findings and significant events in the litigation; and (c) a recommendation as to whether the ERB should accept the proposed settlement, with a full explanation of reasons supporting the recommendation;
6. Be responsive to, and available on an "as needed" basis to confer with the ERB General Counsel and, in consultation with the ERB General Counsel, board and investment committee regarding case status, findings, settlement proposals and recommendations; and
7. Provide services, upon request, relating to other pending securities litigation matters, including, but not limited to (a) representation of the ERB where a determination is made to oppose the settlement of a class action or to intervene in any other manner in a pending case, (b) provide advice regarding general securities matters that may arise from time to time, and (c) provide any other related legal matters as assigned by the ERB General Counsel.

B. Other Requirements.

1. Confidential Relations. The Offeror will provide services under the direction of the ERB General Counsel, and the ERB General Counsel will be responsible for oversight of the Offeror's work and administration of any contract(s) awarded as a result of this Request for Proposal. Except as may be otherwise provided from time to time by the ERB General Counsel, the Offeror's work product and communications regarding the services to be performed under any resulting contract shall be attorney-client work product, confidential and privileged.

2. Contacts with the ERB. All of the Offeror's contacts with the ERB staff shall be through individuals designated by the ERB General Counsel. The ERB's designated investment staff will be available to provide the Offeror with any needed information, and to assist the Offeror in obtaining such data as may be required from the ERB.

IV. MINIMUM QUALIFICATIONS

Respondents to the RFP must meet all of the following minimum qualifications and requirements to be given further consideration. **FAILURE TO SATISFY THE FOLLOWING WILL RESULT IN THE REJECTION OF THE PROPOSAL.**

The firm must certify in writing that it meets all of the following minimum qualifications (See Appendix A). Such certification must include evidence of how each qualification is met and must be signed by an authorized member of Offeror's firm.

- A. Offeror must have at least four major clients as lead plaintiff or co-lead plaintiff in a securities litigation case, each client of which has assets of at least \$1 billion, at least two of which must be public pension or trust fund clients. Public pension funds can include state, city or county, or special districts, or some combination thereof;
- B. Offeror must have at least five years experience in securities litigation and must have litigated a minimum of four securities cases from inception to final judgment; and
- C. Securities litigation must be a major practice area for the Offeror involving substantial resources of the firm.

V. CONDITIONS GOVERNING THE PROCUREMENT

A. Sequence of Events.

	<u>Action</u>	<u>Responsibility</u>	<u>Targeted Date</u>
1.	Release RFP	ERB	09/18/13
2.	Deadline to submit written questions	Offeror	10/02/13
3.	Return "Acknowledgment of Receipt" form	Offeror	10/02/13
4.	Response to written questions	ERB	10/09/13
5.	Offeror submission of proposals	Offeror	10/30/13

6.	Evaluation of proposals ends	ERB	11/13/13
7.	Finalists' interviews	ERB	11/18/13
8.	Recommendation of Evaluation Committee	ERB	11/25/13
9.	Board Approval	ERB	12/11/13
10.	Contract negotiations begin	ERB	12/11/13
11.	Contract commences	ERB	01/01/14

B. Explanation of Events.

1. Release of RFP – The RFP will be released on or about September 18, 2013.
2. Deadline to submit written questions – Offerors may submit questions in writing as to the intent or clarity of this RFP by 4:00 p.m. Mountain Daylight Time (“MDT”) October 2, 2013 at the ERB office in Santa Fe. Questions should be submitted to the Educational Retirement Board, Attn: Christopher G. Schatzman, General Counsel, at the address and location shown below, or by fax transmission to (505) 827-1855, or by email to: chris.schatzman@state.nm.us. Inquiries received after the deadline stated above or inquiries not submitted in writing in accordance with these requirements will not be considered. No telephone inquiries or other non-written inquiries from Offerors will be accepted. **INQUIRIES TO OTHER ERB STAFF OR BOARD MEMBERS ABOUT THIS RFP WILL NOT BE ACCEPTED AT ANY TIME, UNDER ANY CIRCUMSTANCES, AND MAY RESULT IN DISQUALIFICATION OF THE OFFEROR FROM CONSIDERATION UNDER THIS RFP.**
3. Deadline to return Acknowledgment of Receipt – See Appendix C for the Acknowledgment of Receipt Form. Submission of the Acknowledgment by fax is acceptable. Failure to return the Acknowledgment will not preclude the ability to submit a proposal. However, only Offerors who return the Acknowledgment of Receipt form by 4:00 p.m. MDT October 2, 2013 will receive notification of any changes to the RFP and the responses to Offerors’ questions.
4. Response to written questions – Written responses to all Offerors’ written questions will be made by October 9, 2013. Answers to questions will be supplied by email unless otherwise requested by Offeror.
5. Offeror submission of proposals – Seven (7) copies of the proposal shall be delivered to the ERB. Proposals must be signed by an individual with the authority to commit

the Offeror organization and the authority of the individual signing must be stated thereon. If additional copies of the proposal are required from firms selected for personal interview they must be exact duplicates of the response submitted for evaluation. The proposal shall be sealed in an envelope which shall be clearly marked:

"SEALED PROPOSAL"
RFP # ERB 14-03

All mailed submissions must be addressed to:

NEW MEXICO EDUCATIONAL RETIREMENT BOARD
P. O. BOX 26129
SANTA FE, NM 87502-0129
ATTENTION: CHRISTOPHER G. SCHATZMAN, GENERAL COUNSEL

All hand and courier or express deliveries must be addressed to:

NEW MEXICO EDUCATIONAL RETIREMENT BOARD
701 CAMINO DE LOS MARQUEZ
SANTA FE, NM 87505
ATTENTION: CHRISTOPHER G. SCHATZMAN, GENERAL COUNSEL

Deadline for receipt of the proposal is 4:00 p.m. MDT, October 30, 2013. Date and time will be recorded on the proposals by ERB upon their receipt. **NO FAX TRANSMISSIONS OF THE RFP ARE ALLOWED. NO EXCEPTIONS TO THIS DEADLINE WILL BE ALLOWED. ANY PROPOSALS RECEIVED AFTER THE DEADLINE WILL BE REJECTED AND RETURNED TO THE OFFEROR UNOPENED.**

6. Evaluation of Proposals – The evaluation of proposals will be performed by ERB as specified in Section XI of this RFP. This process will take place between October 30, 2013 and November 13, 2013. During this time ERB may initiate discussions with Offerors who submit proposals, but proposals may be accepted without such discussion. Such discussion may not be initiated by Offerors. Office Visits – ERB staff may choose to ask all respondents to meet with ERB staff prior to the selection of finalists for interviews with the Evaluation Committee.
7. Finalist Interviews – The Evaluation Committee will conduct oral interviews of finalist candidates on November 18, 2013. Firms selected for final interview will be expected to make a presentation, including their best and final offer on fees, followed by a question/answer period. ERB staff will make every effort to notify finalists of their scheduled interview at least five (5) working days prior to the scheduled time. The Evaluation Committee may conduct due diligence visits of one or all of the finalists at the finalist's office.

8. Recommendation – The Evaluation Committee will submit their recommended finalist to the Board of Trustees by November 25, 2013.
9. Board Approval and Announcement of Selected Offeror – ERB is expected to make the final decision and announcement regarding selection of the awarded proposal on December 11, 2013 or as soon as possible thereafter.
10. Agreement Negotiations – Contract negotiations will begin on December 11, 2013 or as soon as possible thereafter, with the Offeror that is awarded the procurement.
11. Commencement of Contract – No guarantee is made by ERB to respondents that contract will be activated, nor is a commitment made as to the timing of the contract. Continuation of the contract in subsequent years will depend on appropriation of funds in ERB’s budget. It is anticipated that this contract will become effective on or about January 1, 2014.

C. General Requirements.

To be considered, all proposals must comply with the requirements and specifications listed. Also, submission of a proposal constitutes acceptance of the evaluation process contained within Section XI of this RFP. **THE OFFEROR MUST INDICATE ACCEPTANCE OF THE GENERAL REQUIREMENTS CONTAINED WITHIN THIS SECTION IN THE LETTER OF TRANSMITTAL.**

During contract negotiations, if ERB is unable to agree to contract terms with the Offeror deemed to be most advantageous, ERB reserves the right to terminate contract negotiations with the Offeror without undertaking another RFP process. Thereafter, ERB may negotiate with the Offeror deemed to be the next most advantageous to ERB.

After a contract has been negotiated, if Offeror fails to meet the requirements of the contract, ERB reserves the right to cancel that contract and initiate contract negotiations with another finalist Offeror without undertaking another RFP process.

1. Termination – This RFP in no manner obligates the State of New Mexico or any of its agencies to the eventual procurement of services until confirmed by a written agreement. Progress toward this is solely at the discretion of ERB and may terminate at any time prior to the signing of a contract. ERB reserves the right to cancel this RFP at any time and to reject any and all proposals submitted in response to this RFP.
2. Proposal Applicability – To allow sufficient time for agreement negotiation, all prices and conditions stated in the proposal must be firm for a period of 120 days from the October 23, 2013 deadline for submission of proposals. Submission of a proposal constitutes acceptance of this condition.

3. Negotiation Requirement – ERB reserves the right to negotiate a change in Offeror representative if the assigned representatives are not supplying ERB's needs adequately or are not fully representing the Offeror.
4. Legal Review – The State of New Mexico expects that all Offerors will agree to be bound by the terms and conditions articulated in this RFP. **It is strongly recommended that Offerors have the terms and conditions contained herein reviewed with counsel of their choice and that Offeror concerns be brought to the attention of ERB through the proposal itself.**
5. Governing Law – This procurement and any agreement with an Offeror that may result shall be governed by the laws of the State of New Mexico, without giving effect to its choice of law provisions. Jurisdiction and venue for any dispute arising under the procurement and any agreement with an Offeror that may result shall be in the District Court for the First Judicial District, Santa Fe County, New Mexico.
6. Issuing Office – This RFP is issued by ERB. Questions concerning the RFP may be addressed as indicated in Section VII, B.2.
7. Basis for Proposal – Only information supplied by ERB in writing or in this RFP should be used in the preparation of Offeror proposals.

VI. REQUIRED FEE STRUCTURE INFORMATION

Please fully describe the fee structure you propose for this engagement, including expenses you propose to charge to the client.

VII. RESPONSE FORMAT AND ORGANIZATION

A. Proposal Format.

Respondents shall provide one (1) original and six (6) copies of the proposal.

B. All Documents to be Sealed.

New Mexico procurement law requires sealed proposals. Therefore, the ERB will not accept offers which are transmitted electronically or using facsimile equipment. This, however, does not apply to amendments or addenda, which may be required for clarification purposes prior to acceptance of proposals or to the transmittal of supplemental literature, drawings, and the like for clarification purposes prior to award of a contract.

C. All Proposals to be Date/Time Stamped.

Proposals will be dated and time stamped by the General Counsel as to the time and date received to establish that they were received prior to RFP deadline. Improper identification on

your submittal may result in premature opening of, or failure to consider the proposal. *No exceptions will be made for proposals that arrive after the designated time.*

D. Cover Letter.

A cover letter, which shall be considered an integral part of the proposal, shall be signed by the individual who is authorized to bind the respondent contractually. This cover letter must indicate the signer is so authorized and indicate the title or position that the signer holds in the respondent's firm. The letter shall also contain: a statement that the proposal is a firm and irrevocable offer for 120 days; the firm's name, address and telephone number; the firm's Federal Employer Identification Number; a statement expressing the proposer's willingness to perform the services as described in this RFP; and a statement as to the availability of staff to perform all services described.

E. Minimum Qualifications Compliance.

Respondents must submit a signed Appendix A and include a written statement as to how each minimum qualification is met. Failure to do so will result in the rejection of the Offeror's proposal.

F. Proposal Format.

All proposals must be printed on standard 8 ½" x 11" paper, indexed, and placed within a binder. All supporting forms provided by ERB must be completely filled out. Completeness, clarity and brevity are expected.

The Offeror's response to this proposal must be organized and indexed in the following format:

1. Cover letter
2. Letter of Transmittal Format:
 - a. identify the RFP number;
 - b. identify the submitting organization;
 - c. identify the name and title of the person authorized by the organization to contractually obligate the organization;
 - d. identify the names, titles and telephone numbers of persons to be contacted for clarification;
 - e. explicitly indicate acceptance of the general requirements as described in Section VII. C; and,
 - f. be signed by a person authorized to contractually obligate the organization.
4. Signed Minimum Qualifications Compliance – Appendix A
5. Completed Questionnaire – Appendix B
6. Supplementary materials (sample reports, etc.)
7. A minimum of four (4) client references, of which at least two (2) are public funds or trust fund clients.

The Offeror must provide client references where the services provided were similar to the services solicited by this RFP. At least two of these references should be large public organizations similar to the Educational Retirement Board. In providing this information, each Offeror thereby grants permission to the ERB to contact any or all such references. The minimum information that must be provided for each reference is:

1. Name of client organization;
2. Address of client organization;
3. Name of client company contact; and
4. Telephone number of client company contact.

The evaluation team also reserves the right to contact additional clients other than those client references provided.

Within each section of the proposal, Offeror should address the items in the RFP in the order in which they appear in the RFP. Further, each question in the RFP should be repeated in its entirety before the answer.

Any proposal that does not strictly adhere to this format, and which does not address each specification and requirement within the RFP may be deemed non-responsive.

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

G. Business Specifications.

1. Work Environment – Other than for purposes of visits to the ERB offices, the ERB will not provide workspace, furniture, terminal access or a telephone.
2. Contact Person – Any questions that arise prior to the submission of proposals by the Offeror must be submitted in accordance with Section V of this RFP.
3. RFP Revisions and Supplements – If it becomes necessary to revise any part of this RFP or if additional information is necessary to clarify any provision of the RFP, the revision and/or additional information will be provided to all Offerors who returned the Acknowledgement of Receipt Form by the deadline of October 2, 2013.
4. RFP Termination – ERB reserves the right to cancel this process at any time for any reason, and to reject any or all proposals submitted in response to the RFP.
5. Oral Interview – Any Offeror who submits a proposal in response to this RFP may be asked to be interviewed by ERB staff. Such an interview shall in no way change the Offeror's proposal originally submitted, except for a "best and final" fee proposal to be made at the interview. ERB will schedule the times and locations for these interviews. ERB will not be responsible for any costs or expenses incurred by an Offeror for an interview.

6. Evaluation of Proposals – ERB will officially announce any award to all Offerors who submit a proposal. Such award shall be contingent upon successful negotiation of a final agreement.

Ownership of Information Supplied with Proposal – all responses to this RFP will become the property of ERB.

H. Where to Send.

Submit proposals in a sealed envelope or box clearly identified on the outside as follows:

FROM: Your Firm Name
Address
City, State, Zip

TO: New Mexico Educational Retirement Board
C/O Christopher G. Schatzman
General Counsel
701 Camino de los Marquez
Santa Fe, New Mexico 87505

(Please note on outside of envelope/box)
“Request for Proposal for Legal Services
for the New Mexico Educational Retirement Board
RFP Deadline October 30, 2013
TO BE OPENED ONLY BY ADDRESSEE”

I. Disclosure of Proposal Contents and Confidential Data.

The proposals will be kept confidential until a contract is awarded by the ERB.

J. No Obligation.

This procurement in no manner obligates the ERB to the use of legal services until a valid written and signed offer is approved by the ERB.

K. Incurring Cost.

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

L. Amended Proposals.

An Offeror may submit an amended proposal before the deadline for receipt of proposals. Such amended proposals must be complete replacements for previously submitted proposals and must

be clearly identified as such in a letter of transmittal. Proposals must be sealed and marked as indicated in this section. The ERB will not merge, collate, or assemble proposal materials.

M. 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 ERB.

N. Compliance to RFP Guidelines.

All proposals will be reviewed for compliance with the mandatory requirements stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.

O. RFP Clarifications.

The General Counsel may contact the Offeror for clarification of the response as specified herein.

P. Validation of Abilities Stated in RFP.

The General Counsel may use other sources of information to perform the evaluation as specified herein and may make investigations necessary to determine the background and ability of Offeror to perform the contract services prior to award. The ERB reserves the right to reject any proposal if the evidence submitted, or results on an investigation warrants the ERB's refusal to enter into a contract should it become apparent that the Offeror has misrepresented their qualifications.

Q. Opening of Proposals.

Proposals will not be opened publicly, but will be opened privately by the General Counsel. Proposals will be kept confidential by the General Counsel until the selection of a successful Offeror and award of a contract is made. After award of contract, the proposals will become open public record.

R. Selection of Finalist(s).

The General Counsel, depending on the number of responses received to this solicitation, may choose to select a minimum of three (3) responsive proposals that have the highest cumulative scores to be evaluated against each other using the same criteria and factors upon which the initial proposals were scored.

S. Best and Final Offers.

The General Counsel may open discussions with the Finalist(s) for the purpose of obtaining "best and final" offers. The Finalist(s) who is asked or who choose to submit revised proposal(s) for

this purpose will have their points recalculated accordingly. The ERB reserves the right to amend the date of award of contract to allow a fair evaluation of best and final offer(s).

T. Recommendation for Award.

The Evaluation Committee shall determine the responsible Offeror whose proposal is most advantageous to the ERB, taking into consideration the evaluation factors, and will recommend that Offeror to the ERB for contract award. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of the overall score.

VIII. AWARD AND ISSUANCE OF CONTRACT

A. Terms and Conditions.

Once awarded, any contract issued as a result of this solicitation, will be the final expression of the agreement between the parties and may not be altered, changed, or amended except in writing. The terms and conditions herein shall become a part of that contract, unless otherwise expressly stated in writing.

Counsel retained to provide services to the ERB in these matters will do so pursuant to a professional service contract for a period of up to four years from the date of execution, pursuant to the provisions of the New Mexico Procurement Code [Section 13-1-28 et seq., NMSA1978].

B. Protests.

Anyone who is aggrieved in connection with the award may protest to the ERB within fifteen (15) calendar days after knowledge of the facts or occurrence giving rise thereto.

C. Status of Offerors.

Offeror, its agents and employees must be independent contractors performing services for the ERB and not be employees of the ERB. The Offeror, its agents and employees shall not be entitled to annual or personal leave, retirement, insurance, or any other benefits that may accrue or be available to ERB employees and shall not be covered by workers' compensation insurance purchased by the ERB.

D. Subcontracting.

All personnel engaged in the work represented by this proposal shall be fully qualified and authorized to perform such services as the contract may require. Work may not be subcontracted nor may the Offeror assign any interest in this agreement without prior written consent of the ERB. No assignment or transfer shall relieve the Offeror from his/her obligations and liabilities.

E. Records.

Records shall be maintained by the successful firm as required by, as stated in any contract entered into as a result of this solicitation. The successful Offeror shall make available during normal working hours, all records relevant to this or any subsequent agreement. The ERB reserves the right to audit, examine, and/or make excerpts or transcripts from such records that may pertain to the agreement as a result of this solicitation, including but not limited to billing records, invoices, materials, payrolls, records of personnel, conditions of employment or any other such data as may be pertinent.

F. Termination.

This Request for Proposals may be canceled at any time and any and all proposals may be rejected in whole or in part when ERB determines such actions to be in its best interests.

G. Governing Law.

The laws of the State of New Mexico shall govern this solicitation and any agreement with Offerors and ERB that may result. The Procurement Code, Section 13-1-199 NMSA 1978, imposes civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kick-backs.

H. Right to Waive Minor Irregularities.

The ERB reserves the right to waive minor irregularities. The ERB also reserves the right to waive mandatory requirements provided that all of the otherwise responsive proposals failed to meet the same mandatory requirements and the failure to do so does not otherwise materially affect the procurement. This right is at the sole discretion of the ERB within the governing laws.

IX. OWNERSHIP OF PROPOSALS

If specifically requested by an Offeror, all documents submitted in response to this solicitation shall be returned to the Offeror, at the Offeror's expense after the expiration of the protest period with the following exception. One complete copy of the selected Offeror's proposal including the Best and Final Offer, if one was submitted, shall be placed into the procurement file. Those documents will become the property of the ERB.

X. CONTRACT REQUIREMENTS

A. Contract.

Any contract between ERB and the successful Offeror will follow the format specified by ERB and will contain the New Mexico Department of Finance and Administration's ("DFA") standard terms and conditions for professional services contracts, which are attached hereto as Appendix D. The contents of the RFP as revised and/or supplemented and the successful Offeror's proposal will be incorporated into the contract.

B. Contract Deviation.

Any additional terms and conditions which may be the subject of negotiation will be discussed only between ERB and the successful contractor and shall not be deemed an opportunity to amend the Offeror's proposal.

XI. EVALUATION

A. Evaluation Process.

The evaluation of proposals will be accomplished by the Evaluation Committee (“the Committee”) of ERB. The Committee will determine which proposals are most advantageous to ERB, taking into consideration the evaluation factors set forth in this RFP. The following process will be used to evaluate proposals:

1. All proposals will be reviewed for compliance with the minimum mandatory requirements as stipulated within this RFP. Proposals found not to be in compliance will be rejected from further consideration.
2. Proposals not rejected will then be evaluated. The finalist Offerors will be the ones with the highest point total and deemed to be the most advantageous to ERB. However, a serious deficiency in any single criteria may be grounds for rejection.
3. The Committee will have at its option the ability to contact the Offeror for clarification of any portion of the proposal. The Committee may also use sources aside from the information supplied by the Offeror to verify that compliance with the requirements of the RFP can be achieved.
4. Finalist Offerors will make presentations before the Committee. The Committee will select the successful Offeror, subject to approval by the Board on the basis of the information presented in both the RFP and in the oral presentation.
5. Selection of the successful Offeror is subject to successful negotiation of an agreement with that Offeror. If this is not possible within ERB's required time frame, ERB reserves the right to negotiate an agreement with the Offeror deemed the next most advantageous. In that case, ERB would not be required to initiate another request for proposal.
6. Cost will be evaluated on the lowest cost over the life of the contract. The cost score will be adjusted for any best and final offers that are received. **Only the finalists will be allowed to revise their fee schedules through a best and final offer.**
7. Proposal Preparation Cost – Any cost incurred by the Offeror in the preparation, transmittal or presentation of any proposal or material submitted in response to this RFP will be borne solely by the Offeror.

8. Confidential Data – Offerors may request nondisclosure of confidential data in writing. Such data shall accompany the proposal and shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. After award and execution of a contract, each proposal, except those portions for which the Offeror has made a written request for confidentiality, shall be open to public inspection.
9. Offeror Qualifications – ERB may make such investigations as necessary to determine the ability of the Offeror to adhere to the items as identified within Section VIII of this RFP. ERB reserves the right to reject the proposal of any Offeror who, in ERB's opinion, is not a responsive Offeror as defined in Section 13-1-83, NMSA 1978 which states:
10. Responsive 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.

EVALUATION POINT ALLOCATION

Proposal Evaluation Factors:	Weight
1. Experience in Securities Litigation	40
2. Resources of the Firm	30
3. Cost	30
TOTAL POSSIBLE POINTS	100

**APPENDIX A
RFP # ERB 14-03**

MINIMUM QUALIFICATIONS COMPLIANCE

The respondent hereby certifies that it meets all of the following minimum qualifications. Submit written evidence of how each qualification is met.

- A. Offeror must have at least four major clients as lead plaintiff or co-lead plaintiff in a securities litigation case, each client of which has assets of at least \$1 billion, at least two of which must be public pension or trust fund clients. Public pension funds can include state, city or county, or special districts, or some combination thereof.

Yes _____

No _____

- B. Offeror must have at least five years experience in securities litigation and must have litigated a minimum of four securities cases from inception to final judgment.

Yes _____

No _____

- C. Securities litigation must be a major practice area for the Offeror involving substantial resources of the firm.

Yes _____

No _____

Authorized Signature

Date

Title

Name of Firm

**APPENDIX B
RFP # ERB 14-03**

**REQUEST FOR PROPOSAL
SECURITIES LITIGATION SERVICES
QUESTIONNAIRE**

FIRM NAME: _____

ADDRESS: _____

TELEPHONE: _____ FACSIMILE: _____

EMAIL: _____

CLIENT CONTACT: _____

SIGNED: _____

Name (print): _____

Title: _____

Date: _____

QUESTIONNAIRE

A. Offeror Attorney/Firm Qualifications and Resources

1. Please provide a statement of your or your law firm's history including the year the firm was organized and the year the firm began securities litigation.
2. Describe the ownership of the firm, including but not limited to:
 - a. ownership structure;
 - b. affiliated companies or joint ventures;
 - c. if an affiliate, specify the percentage of parent firm's total revenue generated by your organization; and
 - d. if the firm is a joint venture partner, identify the percentage of ownership and revenues recognized by each association partner.
3. Provide an organizational chart diagramming the relationships between the professional staff as well as the parent, subsidiary, affiliate, or joint venture entities.
4. List the total number of persons employed by discipline, and also provide a separate breakdown of the number of persons involved in investment consulting services.
5. Describe any material developments in your organization (changes in ownership, personnel, business, etc.) over the past three years. Do you anticipate any such material developments in the near future? If so, explain in specific detail.
6. How many attorneys in your firm have experience working on securities litigation matters and, of those attorneys, how many do you expect to be assigned under this appointment?
7. Please provide the number of securities litigation matters your firm currently handles on annual basis.
8. Please provide the name of each attorney expected to work under this assignment.
9. For each attorney expected to work on this assignment, please provide the following information:
 - a. Current Resume
 - b. A statement that each attorney is a member in good standing of the New Mexico bar or bar(s) in other jurisdictions in which the attorney is a member and has not been disqualified to practice law in any other jurisdiction or forum.
 - c. A statement of each attorney's hourly billable rate.

- d. A statement of any malpractice claims against your law firm or any attorney in your firm within the last five years and the status or outcome of each claim.
 - e. A statement of any criminal or SEC investigations involving your law firm or any attorney in your firm and the status or outcomes of such investigations.
 - f. A statement affirming that no ethics complaints have been filed against your law firm or any attorney in your firm within the last five years
 - g. A detailed description of the securities litigation experience of each attorney expected to work on this assignment. This description should include:
 - 1. Years of securities litigation experience;
 - 2. Percent of practice related to securities litigation matters;
 - 3. Percent of securities litigation practice representing plaintiffs and percent representing defendants:
10. Please describe any other staff/resources you expect to use in performing this assignment (i.e. Paralegals, Legal Assistants, etc.).
11. State whether you are equipped to handle all aspects of securities litigation actions by yourself or whether you expect to assign certain aspects of the work to other firms or lawyers not employed by you or your law firm.
12. Over the past five years, has your organization or any of its affiliates or parent, or any officer or principal been involved in any business litigation, regulatory or legal proceedings? If so, provide an explanation and indicate the current status. Describe any potential conflicts of interest your firm may have in the handling of this account.
13. Have any senior personnel left or joined the firm in the last three years? If so, please indicate when and why. In which division and position were they involved?
14. Describe your firm's backup procedures in the event the key consultant professional assigned to this account should leave the firm or be transferred to other accounts or duties.
15. Please describe your hiring and internal retention procedures for client consultants and research analysts.
16. Please identify the total number of public pension clients your firm services, by assets, as follows:
 - Less than \$1 billion:
 - \$1 billion to \$5 billion:
 - Over \$5 billion:

17. Please provide a list of clients involved in litigation who have terminated their relationship with your firm within the last three years. Indicate number of years of relationship, date, and reason for termination.

B. Prior Clients/Representations

1. Have you or your firm brought action against or represented governmental entities or political subdivisions in securities litigation matters in the past?
 - a. If you have formerly represented or are currently representing a governmental entity in this type of matter, please describe the scope of the representations, including the clients represented and the type of matters handled. Please designate in your response which representations are closed and which are current.
 - b. If you have formerly represented or are currently representing a party adverse to a governmental entity in this type of matter, please describe the scope of that representations, including the clients you represented, any state entities adversely interested, and the type of matters handled. Please designate in your response which representations are closed and which are current.
2. Other than representation in securities litigation matters as described above, have you or your firm brought action against or represented any governmental entities in other matters in the past? If yes, please describe the scope of the representations, including the clients represented, any governmental entities adversely interested, and types of matters handled. Please designate in your response which representations are closed and which are current.
3. Regarding any securities litigation matters that you have handled for any client, please state or describe:
 - a. Which matters, if any, you have served in the capacity as lead counsel;
 - b. Which matters, if any, went to trial and the result thereof; and
 - c. Which matters, if any, were settled or otherwise resolved by alternative dispute resolution mechanisms.

C. Consulting philosophy, policy and process.

RFP # ERB 14-03 - Securities Litigation

1. Please describe your research and securities litigation philosophy. Please address the decision making process and the titles and responsibilities of the various individuals involved at each stage of the process.
2. How does your firm implement this philosophy?
3. Research:
 - a. If you have an internal research capability, state the location(s) where such research is carried out and what specific research is conducted at each location.
 - b. Provide any commentary you feel would communicate the uniqueness of your firm's research efforts.
4. How large is your client universe, and how was it created? Please discuss the makeup of this universe, *i.e.* public fund, private corporation, *etc.*
5. Identify four (4) major clients, at least two (2) of which must be public trust or pension funds, for which you presently provide research, reports and recommendations similar to that requested in this RFP.

**APPENDIX C
RFP #ERB 14-03**

ACKNOWLEDGMENT OF RECEIPT FORM

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

This acknowledgment of receipt should be signed and returned to the coordinator (see below) no later than 4:00 pm MDT on October 2, 2013. Only vendors who elect to return this form and who intend to respond will receive copies of all vendor written questions and ERB's written responses as well as any revisions to the content of this RFP.

FIRM: _____

REPRESENTED BY: _____

TITLE: _____ PHONE: _____

FAX: _____ EMAIL: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

SIGNATURE: _____ DATE: _____

This name and address will be used for all correspondence related to this RFP.
Firm does/does not (circle one) intend to respond to this Request for Proposals.

Mailing address: NEW MEXICO EDUCATIONAL RETIREMENT
BOARD,
P.O. BOX 26129, SANTA FE, NM, 87502-0129

Street address: NEW MEXICO EDUCATIONAL RETIREMENT
BOARD,
701 CAMINO DE LOS MARQUEZ, SANTA FE, NM,
87505

ATTENTION: CHRISTOPHER G. SCHATZMAN
FAX NUMBER: (505) 827-1855 TELEPHONE: (505) 476-6135
EMAIL: chris.schatzman@state.nm.us

**APPENDIX D
RFP #ERB 14-03**

SAMPLE FORM OF CONTRACT

**EDUCATIONAL RETIREMENT BOARD OF NEW MEXICO
PROFESSIONAL SERVICES CONTRACT # 14-352-0000-10**
("Agreement")**

THIS AGREEMENT is made and entered into by and between the State of New Mexico, **NEW MEXICO EDUCATIONAL RETIREMENT BOARD** (hereinafter "the Agency" or "NMERB") and *, (hereinafter "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.

- A. The Contractor shall provide the following services:
- B. Services will be performed in New Mexico and elsewhere as directed by Agency's General Counsel.

2. Compensation.

- A.
 - (1) Hourly Fees; Total Amount Payable Based on Hourly Fees. For those matters in which the Agency determines that Contractor shall be compensated on an hourly fee basis, the Agency shall pay to Contractor in full payment for services satisfactorily performed at the rates (the "Hourly Fees") set forth in Attachment 2 (Fee Schedule), such compensation not to exceed \$*, excluding gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Agreement totaling \$* shall be paid by the Agency to Contractor. The total amount payable to Contractor for those matters compensated under this Paragraph 2(A)(1), including gross receipts tax and expenses, as provided for below in Paragraph 2(A)(5) (Expenses), shall not exceed \$*.
 - (2) After making a determination that Contractor shall be compensated for a matter on an hourly basis, the Agency shall issue a letter to Contractor and **, jointly, stating the name of the matter and that the work performed thereon shall be compensated on an Hourly Fee basis as set forth herein.
 - (3) The Agency and Contractor agree that the Hourly Fees may be increased by a maximum of five percent (5%) by amendment if the initial Term of this Agreement is extended. Hourly Fees may be increased by amendment only if, and at such time as, the Term of the Agreement is extended.

(4) The \$* amount is a maximum under this Paragraph 2(A)(1) and not a guarantee that the work assigned to Contractor to be performed under this Agreement shall equal the amount stated herein. The parties do not intend for Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the Agency when the services provided under this Agreement reach \$*. Contractor's invoice shall include the Total Compensation available, the amount previously billed, the amount of the current invoice, and the balance remaining available (e.g. Total Compensation, less total of amount previously billed and current billing = balance remaining available). In no event will Contractor be paid for services provided in excess of the Total Compensation amount without this Agreement being amended in writing prior to those services in excess of the Total Compensation amount being provided.

B. Payment 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 (30) 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 (30) 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 one year from its effective date unless terminated pursuant to paragraph 4, (Termination) or paragraph 5 (Appropriations). In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

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 thirty (30) days prior to the intended date of termination; *provided however, that such termination must comply with Rule 16-116 of the New Mexico Rules of Professional Conduct or such equivalent rule in the jurisdiction in which the contractor is licensed (emphasis added).* Except as

otherwise allowed or provided under this Agreement, the Agency's sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination, if the Agency is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; 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. Notwithstanding the foregoing, 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 or if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent. *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 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. Other than names of members and local administrative units by which a member was employed; dates of employment, retirement and reported death; service credit; reported salary; and amounts of contributions made by members and local administrative units, Contractor shall not allow public inspection or disclosure of any information regarding a member or retired member to anyone except: (1) the member, retired member or the spouse or authorized representative of the member or retired member; (2) other persons specifically identified in a prior release and consent, in the form prescribed by the Educational Retirement Board, executed by the member, retired member, spouse or authorized representative; or (3) the attorney general, appropriate law enforcement agencies, the state auditor or the public education department or higher education department, if the information provided relates to contributions, payments or management of money received by, or the financial controls or procedures of, a local administrative unit. No person receiving information disclosed by a violation of the Laws of 2013, Chapter 248 shall disclose that information to any other person unless authorized by an applicable confidentiality agreement, Educational Retirement Board rule or state law. Whoever knowingly violates a provision of the Laws of 2009, Chapter 248 is guilty of a petty misdemeanor and shall be sentenced in accordance with Section 31-19-1 NMSA 1978. Contractor will not disclose any information provided by the Procuring

Agency, regardless of whether it is confidential, unless it first receives written permission from the Procuring Agency's Executive Director, Deputy Director, General Counsel, or Chief Information Officer. Contractor shall promptly notify Procuring Agency if they receive any requests for member or retiree information.

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, Sections 13-1-28 through 13-1-199, NMSA 1978, 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 Section 38-3-1 (G) NMSA 1978. 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, Chapter 52, Article 1, NMSA 1978, 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 Agreement, Contractor certifies, by signing this Agreement, to:

1. have in place, and agree to maintain for the term of the Agreement, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2008 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed one million dollars, or;

2. have in place, and agree to maintain for the term of the Agreement, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2013 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$500,000 dollars, or;

3. have in place, and agree to maintain for the term of the Agreement, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2014 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: (1) accepted health insurance; (2) declined health insurance due to other health insurance coverage already in place; or (3) 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/>.

D. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it), Contractor agrees these requirements shall apply the first day of the second month after the contractor reports combined sales (from state and, if applicable, from local public bodies if from a State price agreement) of \$250,000, \$500,000 or \$1,000,000, depending on the dollar value threshold in effect at that time.

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
Mail: P. O. Box 26129
Santa Fe, NM 87502-0129

With a copy separately addressed and delivered to the Agency's General Counsel.

To the Contractor:
(contractor information)

Each Party may designate a contact person to coordinate communication for ordinary activities carried out to complete the work contemplated by this Agreement. The contact persons shall be:

For the Agency: Christopher G. Schatzman
General Counsel
(505) 476-6135
Fax: (505) 827-1855
Email: chris.schatzman@state.nm.us

For the Contractor:

(contractor information)

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.

NEW MEXICO EDUCATIONAL RETIREMENT BOARD

By: _____ Date: _____
Jan Goodwin
Executive Director

By: _____ Date: _____
Agency Counsel - certifying legal sufficiency

By: _____ Date: _____
Agency's Chief Financial Officer

CONTRACTOR

By: _____ 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:

By: _____ Date: _____
Taxation and Revenue Department

RFP # ERB 14-03 - Securities Litigation

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

By: _____
DFA Contracts Review Bureau

Date: _____