



STATE OF NEW MEXICO
Educational Retirement Board

Investment Services Procurement Policy

A. Scope

Pursuant to NMSA 1978, Section 13-1-98(CC), the Procurement Code does not apply to contracts for investment advisory services, investment management services or other investment-related services entered into by the New Mexico Educational Retirement Board (“NMERB”). The Investment Services Procurement Policy (“Policy”) sets forth the NMERB’s policies and procedures for procuring professional, technical or consultant services that support or relate to investment of the Educational Retirement Fund (the “Fund”).

B. Purpose

The NMERB’s mission is to provide “secure retirement benefits for New Mexico’s educational employees – past, present and future. An important part of this mission is to generate investment returns sufficient to assist in paying those benefits.” The purpose of this Policy is to facilitate investment of the Fund by obtaining investment-related services from qualified providers through an efficient, open and fair competitive process while complying with applicable statutes, rules and policies.

C. Statutory, Rule and Policy References

Reference is made to the following statutes, rules and policies, as they may be amended or revised from time to time, in connection with the Investment Services Procurement Policy:

Educational Retirement Act, NMSA 1978, Chapter 22, Article 11;

Governmental Conduct Act, NMSA 1978, Chapter 10, Article 16;

Procurement Code, NMSA 1978, Section 13-1-28 through -199;

Educational Retirement Board Rules, Title 2, Chapter 82 NMAC;

Educational Retirement Board Policies and Procedures, October 19, 2012; and,

Educational Retirement Board Investment Policy, June 10, 2011.

D. Definitions

As used herein and in the implementation of this Policy:

1. “Board” means the Board of Trustees of the NMERB created by Section 22-11-3 (A) and is used in connection with actions to be taken by the Board itself pursuant to this Policy.
2. “Corrupt practice” means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official, or the threatening of injury to person, property or reputation, in connection with the procurement process or in contract execution in order to obtain or to retain business or other improper advantage in the conduct of business.
3. “Custodial bank” means a financial institution with the general fiduciary duties to manage, control and collect the assets of an investment fund, including receiving all deposits and paying all disbursements as directed by NMERB staff, safekeeping of assets, coordination of asset transfers, timely settlement of securities transactions and accurate and timely reporting by individual account and in total. *See* Section 22-11-6 (B) (1).
4. “Emergency” means circumstance(s) that are not expected or anticipated in the ordinary course of business that require an expedited response to prevent or mitigate a significant financial loss to the Fund where the normal procurement processes set forth in this Policy would not facilitate such response. For purposes of example only, and not by way of limitation, the term “emergency” may include the departure of a portfolio manager or other key personnel from a contractor without adequate notice, a criminal indictment of a contractor’s portfolio manager or key personnel, an enforcement action or civil charges brought by the SEC or another regulatory body, or the unanticipated loss by a contractor of its ability to continue in or conduct business in an orderly manner. Absent unique or special circumstances, poor investment performance will not be considered to be an “emergency.”
5. “Evaluation Committee” means a committee that may be designated to evaluate proposals to provide the NMERB the investment-related services sought pursuant to this Policy, regardless of the procurement process used; evaluation committees are not required.
6. “Fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract; “fraudulent practice” includes without limitation, collusive practices among offerors, regardless of whether prior to or after submission of an offer, designed to establish prices or terms of an offer at artificial or non-competitive levels or to deprive the NMERB of the benefits of offers that are not influenced by such collusive practices.
7. “Incumbent Provider” means a contractor currently providing investment-related services under a professional services agreement with NMERB.
8. “Investment Division” means the NMERB staff responsible for day-to-day management of the Fund’s investments.
9. “Investment-related Services,” a/k/a “investment services” means services directly related to the investment of the Fund, including without limitation, investment advisory or consulting services, investment management services, investment accounting services, investment information services, custodial banking services and safekeeping services, or a combination of such services. The term does not include the provision of tangible goods and other services required for the administration of the Investment Division

that are not directly related to the investment of the Fund and are acquired through a State of New Mexico statewide purchasing agreement or pursuant to the Procurement Code.

10. “Investment Procurement Manager” means an individual designated by Director of the NMERB to manage the procurement of an investment-related service under this Policy.
11. “Investment Service Provider” means any person(s) or entity(ies) that provides a service pursuant to an agreement or contract entered into under this Policy.
12. “Offeror” means any person or entity responding to a solicitation issued by the NMERB, including a Request for Proposals, Request for Information, Sole Source Procurement or Emergency Procurement.
13. “Staff Selection Committee” means the committee established by the Investment Division of the NMERB to select managers, consultants and other investment service providers as outlined in this policy.
14. “Small Investment-Related Purchase” means the procurement of investment-related services having a value not exceeding the amount set forth in NMSA 1978 Section 13-1-125 (B), as it may be amended from time to time. For purposes of this Policy, a “small investment-related purchase” does not include contracts for investment management services that provide for performance-based compensation.

E. Selection of Service Providers

Except for the following, Service Providers will be selected by the Staff Selection Committee:

1. General investment consultant will be selected by the Board.
2. The custodial bank will be selected by the Board.
3. Small Investment-Related Purchase Service Providers may be approved by the Director of the NMERB.

F. Procurement Method

1. Investment Division staff will select a procurement method as applicable pursuant to Paragraph E, for a given procurement. When making a determination regarding the appropriate procurement method, the staff may consider among other things: (i) the number of investment service providers that could provide the service(s) being procured, (ii) how readily available information is about investment-related services that to be procured and about the potential investment-service providers, (iii) the technical nature or the complexity of the service(s) to be procured, and (iv) whether the information to be obtained about the investment-service providers will be quantifiable, objective, and comparative. The NMERB will maintain appropriate written records documenting each procurement.
2. At its discretion, the NMERB may select one of the following procedures for a procurement to effectively accomplish the goal of contracting with a qualified service provider(s).
 - a. Request for Proposal (“RFP”)

- (1) RFPs shall contain at a minimum:
 - (a) Specifications of the services to be procured including clearly identified “mandatory” and “preferred” (a/k/a “discretionary”) criteria and/or minimum required qualifications for prospective offerors and a statement that proposals from offerors which do not satisfy the “mandatory” criteria and/or minimum required qualifications shall not be considered;
 - (b) The proposed term of the anticipated contract;
 - (c) Description of any mandatory contract terms including but not limited to requiring that a contractor will act as a fiduciary with respect to assets managed on behalf of NMERB;
 - (d) Any anticipated compensation formula for the services to be procured;
 - (e) The location and method where proposals shall be delivered and a secure method for receipt and safeguarding the proposals; the NMERB shall have no obligation or responsibility to accept incorrectly delivered proposals or to provide for the redelivery of incorrectly sent proposals;
 - (f) The deadline for receipt of proposals including the calendar date and the time; such deadlines may only be extended in writing by the Investment Procurement Manager with the approval of the NMERB director upon good cause shown and notice of any extension must be given to other prospective offerors not later than twenty-four (24) hour prior to the original deadline;
 - (g) A statement that offeror may not modify or correct a proposal after the deadline for receipt of proposals; provided however that nothing in the foregoing shall preclude the NMERB from requesting an offeror clarify, provide additional information, or address an omission, provided that the such request shall be made, and the offeror’s response provided, in writing.
 - (h) A proposal cover sheet, which must be completed and signed by the offeror and submitted in original form and a statement that failure to complete and return an original fully executed proposal cover sheet with the offeror’s proposal will result in disqualification of the proposal;
 - (i) Description of a formal question and answer process, and a statement that informal or verbal questions and inquiries will not be accepted and can result in disqualification;
 - (j) The selection criteria to be used in selecting successful offerors and the relative weight to be given to each of the selection criteria in the evaluation of the responses; the selection criteria shall reflect and be appropriate for evaluation of proposals to provide the investment-related services sought through the RFP process.
 - (k) The anticipated date by which responses will be reviewed;
 - (l) The anticipated dates when due diligence and interviews of offerors will be conducted; and

- (m) Notice of applicable statutes, rules and policies including campaign contribution disclosures and placement agent disclosures.
 - (n) Any other information the Board or the Investment Procurement Manager, determines will be useful in procuring the services sought.
- (2) RFPs may be modified or amended prior to a recommendation for a contract award being made for the limited purposes of (i) clarifying or correcting errors or defects in the RFP, or (ii) modifying the schedule for the submission of responses and the deadline for receipt of responses. Notice of a modification or amendment of an RFP shall be:
- (a) Provided in the same manner a publication of the initial RFP if it occurs before the deadline for receipt of responses;
 - (b) Provided by written notice to all offerors if it occurs after the deadline for receipt of responses; and,
 - (c) In the case of a modification or amendment made for the purpose of clarifying or correcting errors or defects in the RFP, provide all offerors an opportunity to submit a sealed, written addendum to their proposal if such is necessary to appropriately respond to the modification or amendment.
- (3) Notice of an RFP shall be provided at least twenty-one (21) calendar days prior to the date set for opening of responses. Notice may be given electronically, by printed media or by both means, at the Investment Procurement Manager's discretion. Notice, whether given electronically or in print, shall be given in a commercially reasonable manner likely to make prospective offerors aware of the RFP and may include use of newspapers, trade journals, news services, or by other means, including use of independent investment service databases to identify persons or entities which would be likely offerors. If printed, notice may be published in New Mexico or any other state where such publication is most likely to provide notice to responsive offerors. In addition to the foregoing, all notices of an RFP shall be posted on the NMERB's website.

b. Request for Information with negotiation ("RFI")

- (1) The NMERB will issue a request for information and pricing regarding service(s) that it seeks. The RFI may include a listing of specific criteria for such service(s) and any objective(s) to be accomplished. Such criteria may include minimum qualifications or requirements that a prospective Investment Service Provider must satisfy to be selected. An RFI may include a request that respondents submit the requested information to provide services based upon a set price or formula.
- (2) Respondents will reply to the request by submitting information about the services they can supply, and if requested, the price at which those services would be provided.
- (3) The NMERB will evaluate the responses and determine what suite of services or price/service combination is best suited to fulfill its needs.

- (4) The NMERB will negotiate, and may enter contracts, with one or more of the respondents to secure that service(s) at a reasonable price.
 - (5) In the case of an RFI that requests services to be provided based upon a set price or formula, the NMERB may evaluate and choose one or more of the respondents taking into account the responses, criteria set out in the RFI and the prices offered.
 - (6) In addition to the foregoing, the NMERB at any time and irrespective of any existing contracts may conduct independent research or issue an RFI to survey the market and obtain information regarding the availability, nature and pricing of investment-related services.
 - (7) At the Investment Procurement Manager's discretion, or the direction of the Board or the Staff Selection Committee, as appropriate, notice of an RFI may be provided in the same manner as set forth above for an RFP.
- c. Independent research and selection process with negotiated price
- (1) When the Investment Division staff, a consultant or an independent firm has experience, knowledge with regard to a specific service or list of service providers, the NMERB may ask for a list of those service providers that are best suited to accomplish the objective.
 - (2) Once those service providers are identified by Investment Division staff, a consultant or an independent firm, the NMERB may negotiate with one or more of the potential service providers to obtain the highest quality of services at the most reasonable price.
 - (3) For purposes of example and not by way of limitation, this procurement process is most frequently used in the asset categories of private equity, real estate, infrastructure, real assets, global tactical asset allocation ("GTAA") and risk parity.
- d. Sole source procurement
- A contract with person or entity to provide investment-related services to the NMERB without use of another procurement process set forth herein or public notice. A memo, approved by the Staff Selection Committee, as applicable, shall be included in the file documenting each sole source procurement setting forth the basis on which the determination was made that sole source was the most appropriate process for that procurement.
- e. Emergency procurement
- Choice of procurement will depend upon the attendant conditions and situation causing and/or resulting from the emergency and the actions needed to resolve it.
- f. Combination of procurement methods

In addition to using any single method listed above, the NMERB may use any combination of the above methods if it reasonably believes it to be consistent with its fiduciary duties.

G. Evaluation and Contract Award

1. Responsive proposals to provide investment-related services will be evaluated based on the selection criteria developed for that procurement. Proposals from offerors that do not satisfy the mandatory criteria and/or minimum required qualifications will not be evaluated.
2. Discussions or negotiations with some or all offerors which have satisfied the mandatory criteria and/or minimum required qualifications may be held at the discretion of the evaluation committee, if any, or the Investment Procurement Manager. Interviews, including of offerors submitting proposals in response to an RFP, are not required.
3. Offerors which have satisfied the mandatory criteria and/or minimum required qualifications may be asked to submit best and final offers, at the discretion of the evaluation committee, if any, or the Investment Procurement Manager.
4. Award of a contract(s) to an offeror(s) shall be made by the Board or the Staff Selection, as applicable, except as otherwise provided in this Policy;
5. Records of the evaluation process, including score sheets, and recommendation(s) for the award of a contract(s) shall be maintained for so long as required by the NMERB records retention policy, but for no less than the term of the contract entered as a result of the procurement process.

H. Exceptions

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

1. If the Board or the Staff Selection, as applicable, approves, a contractor currently providing satisfactory service under a contract for a given mandate that was entered into pursuant to this Policy will be afforded an opportunity to extend an existing contract or negotiate a new contract to become effective upon the expiration of the existing contract for the same or substantially similar mandate on equivalent terms or terms more favorable to the NMERB;
2. After termination of an investment manager contract for any reason, the Staff Selection may decide that it is necessary to transition the assets subject to the terminated contract to another incumbent provider that is (i) currently providing investment management services under an existing contract entered into pursuant to this Policy and (ii) qualified to serve as a replacement investment manager for the subject asset class;
3. If the Board or the Staff Selection, as applicable, votes that an incumbent provider currently providing satisfactory service under a contract entered pursuant to the Investment Services Procurement Policy, should be given the opportunity to negotiate a new or amended contract in connection with the provision of new services or a new mandate not provided by that incumbent under the existing contract, the new contract may not exceed four (4) years; or,

4. The procurement is a small investment-related purchase procurement as defined in this policy.

I. Term of Contracts

1. Contracts for all investment consultant, custodial bank services, and investment managers of publically traded assets will be limited to an initial term of four (4) years. Other than a contract for custodial banking services, a single contract extension of up to two (2) years may be granted by the Board or the Staff Selection, as applicable. Thereafter, a procurement shall be conducted using the procurement processes set forth in Paragraph F (Procurement Method), with the RFP process being the preferred process. Contract extensions for custodial banking services may not exceed two (2) years for each extension and shall be approved by the Board. There shall be no limit on the number of extensions of a contract to provide custodial banking services. Contract extensions shall be approved by the Board or the Staff Selection, as applicable. There will be no limit on the number of extensions that may be granted. In the case of the negotiation of a new contract with an existing contractor approved by the Board or the Staff Selection, as applicable, the term of the new contract may not exceed four (4) years. These provisions will also apply to investment manager contracts for the management of public equity or public debt investments in separately managed accounts;
2. Investments in certain types of illiquid assets may only be made pursuant to contracts that are for longer terms than those with investment managers that invest in publically traded assets. Assets of this type typically include, but are not limited to, opportunistic credit, real assets, private equity, and privately-held real estate. The term of contracts, and any extensions thereof, pursuant to which these investments are made will be individually approved by the Staff Selection and are not limited by this Policy.
3. Contracts for investment in certain types of assets do not have a fixed term or termination date but provide that the NMERB may withdraw its capital within a fixed period, such as one (1) year after giving notice of withdrawal or cancellation of the contract. Assets of this type typically include, but are not limited to, hedge funds, opportunistic credit, GTAA, risk parity, absolute return and emerging market debt. The Staff Selection will approve the provisions of the contracts under which these investments are initially made and will thereafter review the contracts with the investment managers subject to this paragraph not less than every four (4) years. The Staff Selection will either approve continuing the contract, subject to review by the Committee within a period not to exceed four (4) years or will direct the contract be terminated and the NMERB's assets withdrawn.

J. Joint Procurements

1. The NMERB may participate in, sponsor, conduct or administer a cooperative request for services with the PERA, State Investment Council or both. Such collaboration may include any or all parts of the procurement process but need not result in a joint decision on service providers or joint agreement among service providers.
2. The NMERB may coordinate and develop policies and procedures with the other public pension funds or state permanent funds for collaborative efforts that comply with this Policy.

K. Protest Procedure

1. NMERB's procurement of investment-related services is exempt from the Procurement Code. The provisions of the Code and the related portions of the New Mexico Administrative Code relating to protesting a procurement decision are not applicable to procurements made pursuant to this Policy. The resolution of a protest shall not include the award of any money damages, costs or attorney's fee; the NMERB has no authority to award money damages, costs or attorney's fees.
2. The following procedure shall govern protests of investment-related services made under this Policy.

- a. 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, addressed as follows:

NMERB Office of General Counsel
Attention: Protest of Award of Investment-related Services Contract
Street Address: 701 Camino de los Marquez, Santa Fe, New Mexico 87505
Mail: P.O. Box 26129, Santa Fe, NM 87502-0129

- b. 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 for 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. 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.
- d. The filing and receipt of a Notice of Protest shall not stop or delay the execution of an investment-related services contract between NMERB and the successful offeror.
- e. The General Counsel or the General Counsel's designee shall conduct an interview with the protestor, either in person or telephonically, and may, in the General Counsel's sole discretion, conduct interviews with others who have or may have information relating to the award and/or the protest and shall review any documentary evidence provided by the protestant.
- f. The General Counsel shall issue a written recommendation to Board, within 30 calendar days of the receipt of the protest. The written recommendation shall state whether the General Counsel recommends that the contract whose award gave rise to the protest process should be terminated, and whether or not the General Counsel recommends an alternative contract award to the protestor or whether the RFP should be cancelled and competitively rebid. The written recommendation shall state the full factual basis for the recommendation.
- g. The General Counsel shall mail the written recommendation to the protestor and shall provide written notice of the when the Board shall consider the recommendation.

- h. The Board shall vote on the recommendation at its first regularly scheduled meeting that occurs not less than two (2) weeks following the General Counsel's issuance of the written recommendation.
- i. The Office of General Counsel shall notify the protestor in writing of the Board's action.

L. Fraud and Corruption

1. 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 NBMERB and the State of New Mexico and in their general business practices.
2. 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 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.

M. Ethical Disclosures and Conflicts of Interest

1. Except for gifts of food or beverage given in a place of public accommodation, consumed at the time of receipt, not exceeding fifty dollars (\$50.00) for a single gift and the aggregate value of which gifts may not exceed one hundred fifty dollars (\$150) in a calendar year, neither a member of the Board nor an NMERB employee shall receive or accept anything of value directly or indirectly from a person or organization that (i) has a current contract with the NMERB, (ii) is a potential bidder, offeror or contractor of services to the NMERB, (iii) is authorized to invest public funds pursuant to state or federal law, or (iv) is an organization, association or other entity having a membership that includes persons described in Paragraphs (i) through (iv). For purposes of this Policy, potential bidder means any person or entity that may provide services to NMERB within twelve (12) months after the start of a procurement process in which that person or organization is offering to provide investment-related services to the NMERB.
2. All offerors or current providers of investment-related services are required to disclose any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under any contract with the NMERB. Offerors and incumbent providers shall certify that the requirements of the

Governmental Conduct Act regarding contracting with a public officer or state employee have been followed.

N. Equal Opportunity Employer; Americans with Disabilities Act (“ADA”)

The NMERB will include in all contracts entered into pursuant to the this Policy a provision requiring all contractors to abide by all federal and state statutes, rules and regulations, and executive orders of the Governor of the State of New Mexico pertaining to equal employment opportunity and with the Americans with Disabilities Act (“ADA”).