



INVESTED IN TOMORROW.

**REQUEST FOR INFORMATION FOR:
LEGAL SERVICES FOR INVESTMENT-RELATED PUBLIC AND PRIVATE
VEHICLES
RFI NO. NM -002-FY22**

**RELEASE DATE:
October 20, 2021**

**DEADLINE FOR SUBMISSION:
November 22, 2021 3:00 P.M. MST**

New Mexico Public Employees Retirement Association**LEGAL SERVICES FOR EXTERNAL INVESTMENT COUNSEL****2021****PART I. BACKGROUND**

Public Employees Retirement Association of New Mexico ("PERA") invites submittal of sealed, responsive proposals from qualified Offerors for external legal counsel. As explained in more detail in this Request for Information ("RFI"), PERA requests that Offerors respond to this solicitation by submitting formal acknowledgements of Minimum Qualifications ("MQs") and a proposal for services in accordance with the deadlines described in the Procurement Schedule that is set forth in Section II, A of this RFI. PERA expects to select one or more proposals by no later than December 30, 2021 and execute a Professional Services Agreement ("Agreement") effective no later than January 1, 2022. PERA, in its discretion, may reject all proposals.

PERA is the public body of the State of New Mexico that is responsible for administering and managing the investment of all monies constituting the assets of the Public Employees Retirement Fund, the Judicial Retirement Fund, the Magistrate Retirement Fund, and the Volunteer Firefighters Retirement Fund (together "the Fund"). PERA is a qualified plan under Section 401(a) of the Internal Revenue Code. The Fund's assets were valued in excess of \$17 billion as of June 30, 2021.

PERA is governed by the Public Employees Retirement Board (the "Board"). The New Mexico Constitution obligates the Board to administer and invest the Fund for the sole and exclusive benefit of the members, retirees and other beneficiaries of PERA. The Uniform Prudent Investor Act, NMSA 1978, §§ 45-7-601 to 45-7-612 (*see* Appendix F), requires the Board to exercise the reasonable care, skill, and caution of a prudent investor when it invests and manages assets in its capacity as trustee of the Fund.

The service provider selected under this RFI shall serve in a fiduciary capacity to PERA and the Board and must agree to the indemnification and other provisions set forth in PERA's Professional Services Agreement (*see* Form of Professional Services Agreement attached as Appendix E to this RFI). Copies of pertinent New Mexico statutes are attached at Appendix F.

A. STRUCTURE AND CONTRACTING AUTHORITY OF REQUESTING PARTY

NMSA 1978, §§ 10-11-130 (A) (7), and 10-11-133 (E) authorize the Board to make and execute contracts for investment management services. NMSA 1978, § 13-1-98 (CC) exempts PERA from compliance with the New Mexico Procurement Code for all contracts for investment advisory services, investment management services or other investment-related services. PERA has adopted its Procurement Procedures for Investment-Related Services that governs this procurement. *See* Appendix G.

The Board has adopted its Investment Policy (revised April 30, 2020). *See* Appendix G. The Investment Policy provides that investment managers are hired by and accountable to the Board through the authority of PERA's Interim CIO. The service provider selected under this RFI shall serve in a fiduciary capacity to PERA and the Board and must agree to the indemnification and other provisions set forth in PERA's Professional Services Agreement (*see* Form of Professional Services

Agreement attached as Appendix E to this RFI). Copies of pertinent New Mexico statutes and administrative rules relating to investments are attached at Appendix F.

PERA is a public pension fund responsible for the investment of all monies constituting the assets of the Public Employees Retirement Fund, the Judicial Retirement Fund, the Magistrate Retirement Fund, and the Volunteer Firefighters Retirement Fund. The retirement systems are treated as qualified plans under Section 401(a) of the Internal Revenue Code. PERA manages a diversified investment portfolio for the exclusive benefit of participants of the several retirement systems for state employees and employees of participating municipalities and counties. State law authorizes PERA to further diversify the portfolio by allowing PERA to allocate assets to designated alternative investment vehicles. These include, but are not limited to, private equity partnerships, hedge funds, real assets (including commodities and Treasury Inflation Protection Securities), real estate and other complex private investments.

PERA's investment staff works with investment selection consultants and a general investment consultant. Contractor will work directly with investment staff and may be asked to interact with the consultants, if directed and at the discretion of and PERA's investment staff.

B. ETHICAL DISCLOSURES AND CONFLICTS OF INTEREST

Members of the Board and PERA employees are subject to NMSA 1978, § 10-11-130.1 (*see* Part VII Key Contractual Provisions, (G) Campaign Contributions and Gift Policy), which limits acceptance of anything of value directly or indirectly from a person or organization that has a current contract with PERA, is a potential bidder, Offeror or contractor of services to PERA, or from a person who is authorized to invest public funds pursuant to state or federal law. For purposes of this requirement, potential bidder means any person or entity that may provide services to PERA within the next twelve months.

All Offerors or incumbent providers are required to disclose any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under any contract with PERA. Offerors and incumbent providers shall certify that the requirements of the Governmental Conduct Act, NMSA 1978, §§ 10-16-1 through 10-16-18, regarding contracting with a public officer or state employee have been followed.

PERA's Procurement Policy requires that the RFI include a reference to NMSA 1978, § 10-11-133.1 which provides for disclosure of the identity and fees paid to any third-party marketer. Potential Offerors may be required to comply with this provision.

PERA's procurement policy also requires the following statement be included in this RFI: "That during the process leading to an award of any contract by PERA, no member of the Board or PERA employee shall knowingly communicate concerning any matter relating to the contract or selection process with any party financially interested in the contract, or an officer or employee of that party, unless the communication is: (1) part of the process expressly described in the request for proposal or other solicitation invitation; or (2) part of a noticed Board meeting; or (3) as provided below. Any applicant or bidder who knowingly participates in a communication that is prohibited by this paragraph shall be disqualified from the contract award.

The procedures and prohibitions prescribed by this section shall not apply to: (1) communications that

are incidental, exclusively social, and do not involve PERA or its business, or the Board or PERA employee's role as a PERA official; or (2) communications that do not involve PERA or its business and that are within the scope of the Board or PERA employee's private business or public office wholly unrelated to PERA."

PART II. SCOPE OF WORK

A. DESCRIPTION OF SERVICES SOUGHT

PERA is seeking a Contractor who can offer the following services:

A. General. The Contractor will be expected to familiarize itself with PERA's investment program and the fiduciary duties and responsibilities of the retirement board without cost. *See* Appendices F and G.

B. Transactional documents. Upon request, the Contractor shall review and provide legal due diligence and advice concerning all private placement memorandum and accompanying supplements, limited partnership agreements, LLC operating and management agreements, subscription agreements, investment management agreements, side letters, opinions of counsel and/or any other ancillary documents required in connection with the Board's commitment of funds to an investment (collectively, the "Transactional Documents"). The Contractor may be required to prepare, draft and negotiate Transactional Documents on behalf of PERA.

Upon request, Contractor shall prepare a memorandum and any other documents requested by investment staff, for each investment that sets forth (i) any issues relating to the key terms of the transactional documents and (ii) any legal, regulatory, tax and business issues specific to PERA (including, but not limited to public disclosure requirements, tax elections and limitations on the ability to indemnify the general partner) as identified based on information from PERA. As required, Contractor shall discuss the memorandum with PERA's investment and legal staff to determine which issues should be negotiated with fund counsel. Contractor, at PERA's discretion, shall negotiate and prepare any side letters that result from the discussions with PERA and fund counsel.

C. Due Diligence. The Contractor shall provide advice on matters relating to existing or prospective Investments, including (but not limited to) the following:

- 1) Issues raised by confidential offering memoranda, prospectuses, or similar offering materials;
 - 2) Due diligence issues identified by the PERA staff and/or the consultants, including, but not limited to public disclosure requirements, tax elections and limitations on the ability to indemnify general partners;
 - 3) Indemnification and limited liability provisions;
 - 4) Key economic terms (e.g., distribution waterfalls and partnership claw back provisions);
 - 5) Confidentiality issues;
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- 6) Other liability issues;
- 7) Issues concerning those laws, including, but not limited to securities laws, ERISA, and tax laws, that may apply to or otherwise affect the investment;
- 8) Review of documents or contracts concerning PERA investment related software/data system; and,
- 9) Any other matters pertaining to due diligence, including the general partner/lead member's status and authorization, pre-closing and post-closing issues, amendments, and MFN elections and to the extent required, drafting documents relating to all of these matters.

D. Monitoring, oversight and ongoing administration. The Contractor may be requested to provide advice with respect to PERA's monitoring, oversight and ongoing administration of its investments, including, but not limited to: (1) situations in which the limited partners are considering removal of the General Partner and/or altering terms of the investment; (2) bankruptcy matters (advisory and/or litigation services with a focus on protection of PERA's rights in proceedings brought under the federal bankruptcy or state receivership laws); (3) securities law issues that may arise in conjunction with the receipt of distributions consisting of restricted stock or other securities; review of existing legal agreements and (4) other general advisory or consultation services regarding PERA's investments program or as requested by investment staff.

E. General investment-related Advice. The Contractor may be requested to provide advice with respect to PERA's public investment management agreements, including, but not limited to negotiation of investment management agreements, amendments, ISDA agreements and other general or advisory legal services regarding PERA's investment program.

III. CONDITIONS GOVERNING THE RFI

A. Sequence of Events

<u>Action</u>	<u>Responsible Party</u>	<u>Due Dates</u>
1. Issue RFI	NM PERA	October 20, 2021
2. Acknowledgement of Receipt	Potential Respondents	October 29, 2021
3. Deadline for Questions	Potential Respondents	November 5, 2021
4. Response to Questions	RFI Manager/NM PERA	November 12, 2021
5. Submission of RFI	Respondents	November 22, 2021
6. Finalization of RFI	NM PERA	December 7, 2021

B. Explanation of Events

1. Release of RFI

This RFI is being issued on the date indicated in the sequence of events, above, by the Office of General Counsel of NM PERA with assistance from the Administrative Services Division of NM PERA.

2. Acknowledgement of Receipt

The Acknowledgement of Receipt form in Appendix D will be used to indicate the respondent's intent to participate in and respond to this RFI. The Acknowledgement of Receipt form should be received by 5:00 p.m. Mountain Daylight Time (MDT) as indicated in Section II. A. Sequence of Events, above.

3. Deadline for Questions

Questions regarding this RFI must be submitted in writing, by e-mail, to the RFI Manager and must be received by 5:00 p.m. Mountain Daylight Time (MDT) as indicated in Section II. A. Sequence of Events, above.

4. Response to Questions

Written responses to questions shall be provided to those companies that have returned the Acknowledgement of Receipt form by the date as indicated in Section II. A. Sequence of Events, above.

5. Submission of RFI Responses

All RFI responses must be received for review and evaluation by the RFI Manager **No Later Than 3:00 pm Mountain Standard Time (MST) as indicated in Section II. A. Sequence of Events.** The date and time of receipt will be recorded on each response. Responses must be addressed and delivered to the RFI Manager at the following address; or via fax or e-mail to:

Geraldine Garduno
Assistant General Counsel
33 Plaza La Prensa
Santa Fe, New Mexico 87507
Phone: (505) 476-9351
FAX: (505) 476-9403
E-Mail: Geraldine.garduno@state.nm.us

If mailed, responses must be sealed and labeled on the outside of the packages to clearly indicate that they are in response to the **RFI –Legal Services For Investment Vehicles**. Responses may also be submitted by facsimile or other electronic means.

6. Finalization of RFI

The RFI will be finalized at the time indicated in Section II.A. Sequence of Events. Based on responses received, it is anticipated that NM PERA will enter into a contract(s) for legal services beginning January 1, 2022. Any contract may be renewed every four years or at PERA's discretion and consistent with its policies.

C. General Requirements

Submission of a response constitutes acceptance of, and consent to the following General Requirements. In addition, PERA expects that selected Firms will agree to the terms and provisions set forth in the Form of Professional Services Agreement, attached to this RFI as Appendix E. The form of agreement also provides all material terms of the contract, such as term, termination, indemnification, and billing requirements for consideration by the responding Firm.

1. No Obligation

This RFI in no manner obligates NM PERA, the State of New Mexico, or any of its agencies to the issuance of an RFP or to the eventual contracting of any services that may be described, implied, or proposed.

2. Governing Law

This RFI and any subsequent procurement or contract shall be governed by the laws of the State of New Mexico.

3. Clarifications

All requests for clarifications should be directed to the RFI Manager.

4. Basis for Response

Only information supplied by the RFI Manager in writing, whether on paper, electronically, or in this RFI should be used in the preparation of responses.

5. Response Preparation Cost

Any cost incurred by the respondent in the preparation, transmittal or presentation of any response or material submitted in the response to this RFI will be borne solely by the respondent.

6. Use of Information

The State of New Mexico reserves all rights available to it by law. Respondents to this RFI are hereby notified that all information, documentation, and any specific content or approaches included in this RFI will be analyzed, may appear in various reports and may be used in the resulting solicitation. Therefore, do not submit any copyrighted, proprietary or

confidential information. The State of New Mexico cannot guarantee the confidentiality of the information submitted.

7. **Ownership of Materials**

Ownership of all data, material and documentation originated and submitted to the State of New Mexico, pursuant to the RFI, shall belong exclusively to the State of New Mexico and be subject to public inspection in accordance with the New Mexico Inspection of Public Records Act.

8. **Acceptance**

The State of New Mexico reserves the right to reject responses that arrive late or do not meet all of the specified requirements.

IV. **RESPONSE FORMAT AND ORGANIZATION**

A. **Number of Responses**

Respondents may submit only one (1) response to the RFI.

B. **Response Format**

The respondent's response to this RFI should be organized in the following format:

1. Letter of Transmittal
2. Response to RFI Questionnaire
3. Compensation Proposal (See Appendix E) (Exhibit A)
4. Other Supporting Materials/Documentation (optional)

V. **QUESTIONNAIRE**

Respondents are requested to respond to the following questions in narrative form. Additional supporting information may be provided as attachments and may be referenced from the narrative response as appropriate. Respondents are invited to provide additional information as they deem appropriate.

A. Please provide your name, address, telephone number, fax number and the name of a contact person who can discuss your responses, if necessary. If the Respondent has more than one office, please list the address, telephone number, and fax number for each office.

B. Prior Experience:

1. General Experience.

(a) Please provide a detailed description of the Respondent's experience in the field of Investments during the last five (5) years.

(b) A list of the approximate number of Illiquid Investment transactions (initial closings, subsequent closings, secondary market transactions, and other dispositions) in which the Respondent has represented public pension plans or other institutional investors as limited partners during the last five (5) years. Of those transactions, please select no more than five (5) illustrative transactions and provide the following information:

(i) Type of Illiquid Investment (i.e., venture capital limited partnership, buyout fund, hedge fund or other type of Illiquid Investment included in the diversified Illiquid Investment portfolios of large institutional investors);

(ii) The year and the dollar amount (stated within a range of \$5 million increments) of each transaction;

(iii) Type of party represented (e.g., public pension plan, endowment, other pension plan, investment manager or advisor);

(iv) Range of responsibilities: due diligence reviews; negotiating the transaction; crafting unique documents (specify).

(c) A list of the approximate number of Illiquid Investment transactions (initial closings, subsequent closings, secondary market transactions, and other dispositions) in which the Respondent has represented the sponsors of, or placement agents for, Illiquid Investments during the last five (5) years.

2. Related Legal Experience.

(a) A brief description of areas of the law related to Illiquid Investments in which the Respondent has expertise, including, but not limited to, securities law, other transactional finance practice areas, corporate or partnership law, tax law, pension law (public or private), bankruptcy law, and contract law.

(b) A list of the attorneys who would work with NM PERA, the areas of law in which each specializes and the type of Investment-related transactions and/or litigation which the attorney has handled, the number of years of experience in such areas, and the extent to which each has analyzed laws and provided advice on issues relevant to the purpose of this RFI.

(c) Resumes of the lawyers identified in the preceding subsection (b).

C. Please provide a Cost Proposal containing the hourly rates that the Respondent will charge for attorney, law clerk, or paralegal services. Please include any flat rate cost proposals offered.

D. Please provide a description of the law firm's or attorney's professional liability insurance policy and a statement whether the policy complies with PERA's professional liability insurance requirements set forth in Paragraph 20 of the attached Sample Agreement. (PERA does not require proof of such insurance to be included in the Respondent's proposal but will require it prior to entering into any contract.)

E. Please provide a description of any conflicts of interest that the law firm or attorney may have if awarded a contract.

F. Please provide a narrative description of the steps that will be taken and procedures routinely used to ensure that any legal representation provided to PERA will be provided in a cost effective manner.

G Please provide at least three (3) references that we may contact. Please include the name of the organization, the industry of the organization, the nature of services provided, a contact person, telephone number, email address and mailing address.

H. Please list any other services you provide in addition to the ones already listed that you believe might be of benefit to NM PERA.

VI. REPRESENTATIONS, WARRANTIES, AND CERTIFICATIONS OF RESPONDING FIRMS

By submitting a proposal under this RFI, the Firm represents, warrants, and certifies to PERA as follows:

1. The Firm has read and understands this RFI and all the appendices including the provisions and terms of the Form of Professional Services Agreement (Appendix E);
2. Contractor serves as a fiduciary to PERA as that term is defined by the laws and rules governing the Board;

That at such time as the Firm may execute a contract under this RFI, that the Firm's undertaking of representation of PERA complies with the applicable Rules of Professional Responsibility or similar attorney regulations that may apply to the Firm;

3. The Firm and each attorney who may provide legal services under this RFI has or is able to obtain in a reasonable time after award such bar admissions as may be necessary to represent PERA;
4. That the Firm has or will obtain such certifications and authorizations as may be necessary to do business with a domiciliary of the State of New Mexico; and,
5. The Firm certifies that it is in compliance with the requirements of the Governmental Conduct Act, NMSA 1978, §§ 10-16-1 through 10-16-18, regarding contracting with a public officer or state employee;

VII. THE SELECTION PROCESS

A. General Information

In order to qualify for award of a contract, a Firm must comply with all of the requirements set forth in this RFI, including without limitation submittal of proposals by no later than the deadlines set forth in the Procurement Schedule.

PERA recognizes that it may be advantageous to select more than one Firm to fulfill the Scope of Work described in Part II of this RFI. PERA's goal is to hire a Firm or Firm's whose experience, whether broad-based or specialized, can best satisfy its needs.

This RFI may be canceled and any and all proposals may be rejected in whole or in part when it is in the best interests of PERA. This RFI shall not be modified except by written amendment.

B. Qualifications for Selection

In order to qualify for selection, a Firm must demonstrate that it meets all of the requirements of this RFI and has the talent, expertise, and practices to ensure delivery of the highest level of legal services described in the Scope of Work, efficiently and cost effectively.

VIII. EVALUATION OF SUBMITTALS

The evaluation of submittals will be conducted by the Evaluation Committee. Selection of External Legal Counsel shall be by the Executive Director in consultation with the General Counsel.

Submittals received after a deadline set forth in the Schedule of Events/Conditions Governing RFI, Part III, of this RFI cannot be considered. Submittals that are non-responsive may be eliminated from further consideration on the sole discretion of PERA. PERA will notify all responding Firms of its decision at the time the selection is made. Also, at its sole discretion, PERA may at any time during the evaluation process eliminate from further consideration proposals whose performance does not rank favorably relative to others responding to the RFI.

As part of the evaluation process, PERA may, in its sole discretion, invite selected Firms for interviews, discussions, or negotiations, in accordance with the requirements of the PERA Procurement Policy for Investment-Related Services. It should be clearly understood, however, that PERA reserves the right to accept proposals and make contract awards without conducting interviews, discussions or negotiations. Furthermore, as a condition of submitting a proposal, all Firms shall agree to provide the services required by this RFI and to adhere to all the requirements, specifications, terms, and conditions of this RFI.

If PERA elects to conduct interviews (whether in person or by electronic means), discussions or negotiations with Firms, PERA may establish a common date for submissions of best and final fee offers, if appropriate. Firms shall bear any and all costs incurred by them in the conduct of any discussions or negotiations, including travel to Santa Fe, New Mexico, for oral presentations. Any additional terms and conditions which may be the subject of interview, discussion or negotiation will be discussed only between PERA and the Firm who suggests them and shall not be deemed an opportunity to amend the Firm's proposal in any other respect.

The Evaluation Committee shall create a record, including but not limited to uniform evaluation sheets, showing the basis for its selection.

APPENDIX D
Acknowledgement of Receipt Form

New Mexico Public Employees Retirement Association
RFI - Legal Services For External Investment Counsel

OFFEROR/VENDOR NAME:

OFFEROR/VENDOR ADDRESS:

OFFEROR/VENDOR CONTACT PERSON:

CONTACT PERSON PHONE #:

CONTACT PERSON E-MAIL:

Return of this form acknowledges receipt by the Respondent of the above referenced RFI.
Please indicate below your planned actions regarding this RFI:

_____ We will submit a response to the RFI by the response deadline.

_____ We will not submit a response.

SIGNATURE:

DATE:

This form should be received no later than the date as indicated in Section II. A. Sequence of Events at 5:00 pm Mountain Daylight Time. Please email or fax to:

Geraldine Garduno
Office of General Counsel
33 Plaza La Prensa
Santa Fe, New Mexico 87507
Phone: (505) 476-9351
FAX: (505) 476-9403
E-Mail: Geraldine.garduno@state.nm.us

STATE OF NEW MEXICO
PUBLIC EMPLOYEES RETIREMENT ASSOCIATION
PROFESSIONAL SERVICES CONTRACT

THIS AGREEMENT is made and entered into by and between the State of New Mexico, Public Employees Retirement Association, hereinafter referred to as "Agency" and _____, hereinafter referred to as "Contractor". PERA and the Firm are referred to herein singularly as a "Party" and collectively as the "Parties."

Accordingly, the Parties agree as follows:

1. SCOPE OF SERVICES

A. Overview of Legal Services:

The legal services set forth in the Scope of Work emphasize all aspects of domestic and global investments (including but not limited to private assets , hedge funds, funds-of-one, parallel investment vehicles, separately managed accounts, and co-investment opportunities), and include matters or questions that may arise relating to any type of liquid or illiquid investment transaction. The Scope of Work also incorporates separate or ancillary issues that may arise in the context of liquid or illiquid investment transactions such as: PERA's status as investor qualified to invest in unregistered securities, PERA's status as a tax-exempt governmental plan, and the applicability of The Employee Retirement Income Security Act of 1974 ("ERISA") requirements to PERA, compliance with applicable securities regulations, and potential or pending securities-related litigation. Such services shall conform to PERA's investment rules, Investment Policy, and statutory investment requirements, as they may be amended from time to time.

B. Description of Specific Legal Services

1) General

A Firm selected under this RFI will be expected to familiarize itself with PERA's investment program and the fiduciary duties and responsibilities of the retirement board, and investment considerations for PERA as a public body subject to the laws of the State of New Mexico without cost, including but not limited to the Investment Policy, Investment Statutes, and Investment Policies and Practice Rule attached as Appendices F and G to the RFI, and as those policies, statutes, and rules may be amended from time to time.

2) Review of Investment Documents

Upon request, the Firm shall review and provide advice concerning all private placement memoranda (or similar offering materials) and accompanying supplements, limited partnership agreements, LLC operating agreements, subscription agreements, investment management agreements, side letters, opinions of counsel and/or any other ancillary documents required in connection with the Board's commitment of funds to an investment in unregistered securities (collectively, the "Transactional Documents"). The Firm may be required to prepare, draft, revise and negotiate Transactional Documents on behalf of PERA.

Upon request, the Firm shall prepare one or more memoranda for each investment that sets forth (i) any issues relating to the key terms of the Transactional Documents and (ii) any legal, regulatory, tax and business issues specific to PERA as identified based on information from PERA. The Firm shall discuss the memorandum with PERA's investment and legal staff to determine which issues should be negotiated with fund counsel.

In addition to any memoranda, upon initial review of the Transactional Documents, the Firm shall provide a tabular summary of the key terms of the Transactional Documents that indicates whether each key term is "favorable to the investor", "neutral", "unfavorable to the investor", or "out of market." Key terms depend on the potential investment and may include for example: key man events, LP warranties and representations, GP warranties and representations, LP default, GP default, commitment period, lock-up period, dissolution, termination for cause, no-fault termination, fund-size cap, fiduciary duties, management fees, management expenses, distribution waterfall, claw-back provisions, exculpation and indemnities, governing law, co-investment rights, tax withholding, foreign taxation, regulatory issues, scope of investment, credit facilities, advisory committees, subscription agreement issues such as representations regarding beneficial owners, and side-letter issues.

Upon completion of negotiation of transactional documents and prior to closing, a legal checklist must be completed for review by Investment staff.

- 3) List of Specific Issues for Legal Review: The Firm shall provide advice on matters relating to prospective or existing investments, including (but not limited to) the following:
 - a) issues and considerations in Transactional Documents including evaluation of terms and provisions against market norms and trends;
 - b) issues and considerations arising from laws and regulations that may apply to or otherwise affect the investment, including but not limited to the formation, operation, and governance of corporations, partnerships or other investment entities;
 - c) issues and considerations arising from securities laws and regulations that may apply to or otherwise affect the investment, including but not limited to compliance with applicable domestic and foreign securities laws and regulations, ERISA, and tax laws;
 - d) issues and considerations arising from laws and regulations that may apply to or otherwise affect the investment, including but not limited to the regulation of foreign

transactions, foreign asset and control regulations, money laundering, and prohibited individuals, transactions, or countries;

- e) due diligence issues identified by the PERA Office of the General Counsel, PERA Investment Division staff and/or PERA's investment consultants, including, but not limited to public disclosure requirements, litigation history, tax elections, and limitations on the ability to indemnify general partners;
 - f) standards of care and fiduciary duties to PERA;
 - g) legal analysis of economic and business terms of the Transactional Documents including without limitation: waterfall and carried interest, fees, expenses, clawback provisions, key man provisions, capital calls, manager removal, and termination and liquidation of the investment vehicle.
 - h) compliance with federal and New Mexico ethics laws including the Government Conduct Act and laws restricting gifts and contributions to Board members and employees as they may relate to illiquid investments;
 - i) compliance with limitations on placement agent fees;
 - j) whether the terms and provisions of Transactional Documents are consistent with terms and conditions offered by other investment managers;
 - k) indemnification provisions and other provisions limiting the liability of the investment manager and its affiliates;
 - l) key economic terms (e.g., distribution waterfalls and partnership clawback provisions, partnership expenses, operating expenses, incentives, PERA's duties with regard to third party lenders);
 - m) confidentiality issues and PERA's duties and obligations under New Mexico public disclosure laws;
 - n) potential conflicts of interest including investment activities of affiliates of the investment manager;
 - o) reporting and notice requirements; and,
 - p) any other matters pertaining to due diligence, including the general partner/lead member's status and authorization, pre-closing and post-closing issues, and to the extent required, drafting documents relating to all of these matters.
- 4) Monitoring, oversight and ongoing administration: The Firm may be requested to provide legal advice with respect to PERA's monitoring, oversight and ongoing administration of its investment portfolio, including, but not limited to: (1) situations in which the limited

partners are considering removal of the General Partner and/or altering terms of the investment; (2) bankruptcy matters (advisory and/or litigation services with a focus on protection of PERA's rights in proceedings brought under the federal bankruptcy or state receivership laws); (3) securities law issues that may arise in conjunction with the receipt of distributions consisting of restricted stock or other securities; (4) securities litigation (5) amendments/consent; and (6) other general advisory or consultation services regarding PERA's investments program.

2. COMPENSATION

A. Firm's Fee: In consideration for the services provided pursuant to this Agreement, the Firm shall bill PERA only the following charges:

Attorney services and costs may be billed as provided in the Compensation Schedule attached as Exhibit A and incorporated and made part of this Agreement. The Compensation Schedule may be amended from time in accordance with the terms of this Agreement.

B. Payment of Taxes: The Firm shall be responsible for paying any and all taxes, assessed on the compensation received under this Agreement and shall identify and pay those taxes under the Firm's federal and state identification number(s).

C. Wavier of Late Fees: The Firm waives assessment of any late payment charges.

D. Billing: The Firm shall invoice PERA monthly and by no later than 30 days after the last day of the month in which fees and costs have occurred.

3. TERM OF AGREEMENT

The initial term of the Agreement shall commence effective January 1, 2022 and terminates January 1, 2026. Notwithstanding the foregoing or any other provision of this Agreement, at any time during the term of the Agreement, this Agreement is subject to early termination or termination for lack of appropriations in accordance with Paragraph 4(A) or Paragraph 4(B), below.

4. TERMINATION

A. Early Termination. This Agreement may be terminated by either of the Parties upon written notice delivered to the other Party at least ten (10) business days prior to the intended date of termination. By such termination, neither Party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. This Agreement may be terminated immediately upon written notice to the Firm, if the Firm becomes unable to perform

the services contracted for, as determined by PERA or if, during the term of this Agreement, the Firm or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of state funds or due to the Appropriations paragraph herein THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT CONSTITUTE A WAIVER OF ANY OTHER LEGAL RIGHTS AND REMEDIES AFFORDED EITHER PARTY IN SUCH CIRCUMSTANCES AS DEFAULT OR BREACH OF CONTRACT BY THE OTHER PARTY.

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

C. Termination for Lack of Appropriations. The terms of this Agreement are contingent upon sufficient authorizations and appropriations being or having been made by the New Mexico Legislature for the performance of this Agreement. If sufficient authorizations and appropriations are not or have not been made by the New Mexico Legislature, or are discontinued by the New Mexico Legislature, this Agreement shall terminate upon written notice being given by PERA to the Firm. PERA's decision as to whether sufficient authorizations or appropriations are or have been made, or are or have been discontinued, shall be accepted by the Firm and shall be final. If PERA proposes an amendment to the Agreement to unilaterally reduce funding, the Firm shall have the option to terminate the Agreement or agree to the reduced funding within ten (10) business days of receipt of the proposed amendment.

5. CONTRACTOR'S ACKNOWLEDGEMENTS, WARRANTIES, AND REPRESENTATIONS

The Firm acknowledges, warrants, and represents to PERA that the following statements are true as of the effective date of this Agreement and that Firm will notify PERA in the event that any of the following statements becomes untrue during the term of the Agreement:

- A. the Firm serves as a fiduciary to PERA as that term is defined by the laws and rules governing the Board;
- B. the Firm's undertaking of representation of PERA complies with the applicable Rules of Professional Responsibility or similar attorney regulations that may apply to the Firm;
- C. the Firm has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. The Firm certifies that the requirements of the Governmental Conduct Act, NMSA 1978, Sections 10-16-1 et seq., regarding contracting with a public officer or state employee have been followed. New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.
- D. the Firm and each attorney who may provide legal services under this RFI has or is able to obtain in a reasonable time after award such admissions and licenses as may be necessary to represent PERA; and,
- E. the Firm has or will obtain such certifications and authorizations as may be necessary to do business with a domiciliary of the State of New Mexico.

6. GRATUITIES AND CAMPAIGN CONTRIBUTIONS

The Firm and its shareholders and employees are prohibited from soliciting or receiving campaign contributions, for or on behalf of any PERA Board member, or any political candidate in the State of New Mexico within the twelve (12) month period preceding to the date of submittal of materials under the solicitation document that governs this Agreement. In addition, The Firm shall comply with the prohibitions and restrictions upon making campaign contribution to PERA Board members and candidates for the position of PERA Board member, and giving gratuities to PERA Board members and PERA employees, contained in NMSA 1978, § 10-11-130.1. The Firm shall annually certify to PERA compliance with NMSA 1978, § 10-11-130.1, regarding restrictions on gratuities to PERA Board members and PERA employees. Violation of this Paragraph constitutes a breach by the Firm of its Agreement with PERA.

7. STATUS OF CONTRACTOR

The Firm and its agents and employees are independent contractors performing professional services for PERA and are not employees of the State of New Mexico. The Firm 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 Firm acknowledges that all sums received hereunder are personally reportable by it for income tax purposes as self-employment or business income and are reportable for self-employment tax.

8. ASSIGNMENT

The Firm 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 PERA's prior written approval.

9. SUBCONTRACTING

The Firm shall not subcontract any portion of the services to be performed under this Agreement without PERA's prior written approval.

10. RELEASE

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

11. CONFIDENTIALITY

For avoidance of doubt, the Firm's duty to preserve client confidentiality under applicable standards of professional responsibility extends to confidential information obtained in the course of review of any offering memoranda or other documentation provided by offerors of investment opportunities referred to the Firm for legal services under this Agreement and to any confidential information developed by the Firm in the performance of this Agreement. All such information shall be kept confidential and shall not be made available to any individual or organization by the Firm without PERA's prior written approval.

12. PRODUCT OF SERVICE—COPYRIGHT

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

13. EQUAL OPPORTUNITY COMPLIANCE

The Firm 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 Firm agrees to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If the Firm is found not to be in compliance with these requirements during the life of this Agreement, the Firm agrees to take appropriate steps to correct these deficiencies

14. WORKERS COMPENSATION

The Firm agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Firm fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by PERA.

15. LIABILITY INSURANCE

During the term of this Agreement, the Firm shall maintain professional liability insurance with coverage of not less than \$100 million or such lesser amount that the Firm justifies to PERA in writing.

16. RECORDS AND AUDIT

The Firm shall maintain such detailed records as may be necessary to demonstrate its performance of the duties required by this Agreement, including the date, time and nature of services rendered. The Firm shall maintain such time records for a period of three (3) years from the date of the final payment under this Agreement. Such records also shall be subject to

inspection by PERA, the New Mexico Department of Finance and Administration, and the State Auditor. PERA, the New Mexico Department of Finance and Administration, and the State Auditor shall have the right to audit billings both before and after payment; payment under this Agreement shall not foreclose the right of PERA to recover excessive or illegal payments.

17. WAIVER

No waiver of any breach of this Agreement or any terms or conditions hereof shall be held to be a waiver of any other or subsequent breach; nor shall any waiver be valid, alleged or binding unless the same is in writing and signed by the Party alleged to have granted the waiver.

18. APPLICABLE LAW

The laws of the State of New Mexico shall govern this Agreement.

19. AMENDMENT

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

20. NOTICES

Any notice required to be given to either Party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To PERA:

Misty Schoeppner, Acting General Counsel

Public Employees Retirement Association

33 Plaza La Prensa

Santa Fe, New Mexico 87507

Telephone: +1.505.476.9355

To the Firm:

21. MERGER AND SCOPE OF AGREEMENT

This Agreement incorporates all of the agreements, covenants and understandings between the Parties concerning the subject matter of this Agreement. No prior agreement or understanding, oral or otherwise, of the Parties or their agents shall be valid or enforceable unless embodied in this written Agreement or written amendment to this Agreement.

This Agreement incorporates by reference the following Exhibits, which are attached to this Agreement:

Exhibit A: Compensation Proposal

Signatures on following page.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date approved below.

PUBLIC EMPLOYEES' RETIREMENT

ASSOCIATION OF NEW MEXICO

By:

Date:

Greg Trujillo

Executive Director

CONTRACTOR

By:

Date:

Approved as to Legal Sufficiency for PERA:

By:

Date:

Misty Schoeppner

Acting General Counsel

PUBLIC EMPLOYEES' RETIREMENT ASSOCIATION OF NEW MEXICO

EXTERNAL INVESTMENT-RELATED LEGAL SERVICES

PROFESSIONAL SERVICES AGREEMENT

EXHIBIT A

COMPENSATION SCHEDULE

The Parties agree that cost of services rendered will be billed at blended hourly rates for services performed on behalf of PERA as set forth below.

The Parties further agree that these rates would escalate annually in accordance with the consumer price index or another measure of inflation.

- Senior Partner (20 or more years of experience):
- Partners and Of Counsel:
- Senior Associates (five or more years of experience):
- Associates:
- Paralegals:

The Firm agrees that it will not charge PERA for any routine expenses such as duplication, telephone, or facsimile charges.

The Firm will charge for overnight delivery at our cost, if used.

**REQUEST FOR INFORMATION FOR:
LEGAL SERVICES FOR INVESTMENT-RELATED PUBLIC AND PRIVATE
VEHICLES
RFI NO. NM -002-FY22**

APPENDIX F

**REQUEST FOR INFORMATION FOR:
LEGAL SERVICES FOR INVESTMENT-RELATED PUBLIC AND PRIVATE
VEHICLES
RFI NO. NM -002-FY22**

APPENDIX G

**THE PUBLIC EMPLOYEES
RETIREMENT ASSOCIATION
OF
NEW MEXICO**



INVESTED IN TOMORROW.

**PROCUREMENT
PROCEDURES FOR
INVESTMENT-RELATED
SERVICES**

Revised: May 30, 2019

Procurement Procedure for Investment-Related Services

Table of Contents

1.	Scope	1
2.	Purpose	1
3.	Legal Authority	1
4.	Services Subject to the Procedures	1
5.	Definitions.....	2
6.	Selection of Solicitation Process	4
7.	Exemption from the RFP and RFI Processes—Criteria for Identification of Illiquid Investments	6
8.	Public Notice.....	8
9.	Procurement Processes.....	8
10.	Sufficiency of Responses to RFPs and RFIs	12
11.	Selection Criteria.....	13
12.	Evaluation of Proposals.....	13
13.	Award.....	14
14.	Termination of Contract or Other Appropriate Action for Wrongful Conduct.....	15
15.	Public Disclosure	15
16.	Protest Procedure	15
17.	Emergency and Small Procurements.....	16
18.	Research and Information	17
19.	Penalties for Corrupt Practices and Fraudulent Practices	17
20.	Ethical Disclosures and Conflicts of Interest.....	17
	Approval by the Retirement Board	18
	Appendix I Decision Matrix	19

1. Scope

This Procurement Procedure for Investment-Related Services (this “Procedure”) sets forth the procedures and guidelines by which Public Employees Retirement Association of New Mexico (“PERA”) shall procure investment-related services and tangible goods that are adjunct to those services. This Procedure also applies to procurement of certain services for the PERA Fund and the PERA SmartSave Deferred Compensation Plan.

Pursuant to [NMSA 1978, Section 13-1-98\(CC\) \(2015\)](#), PERA is exempt from the Procurement Code ([NMSA 1978, Sections 13-1-28 through 13-1-199](#)) for all contracts for investment advisory services, investment management services or other investment-related services.

This Procedure does not apply to the procurement of tangible goods and services purchased through State of New Mexico statewide purchasing agreements or otherwise required for the administration of PERA investments.

Members of the Board and PERA employees are subject to the Governmental Conduct Act, [NMSA 1978, Sections 10-16-1 through 10-16-18](#), and the PERA prohibition on gifts and contributions, as explained in more detail in Section 19.

2. Purpose

The Public Employees Retirement Board (“the Board”) adopts this Procedure: 1) to provide an open and fair competitive process to acquire competent and qualified investment-related consultant and manager services and other investment-related services; 2) to allow PERA to respond to unacceptable performance and market changes in a flexible, efficient, and timely manner; and 3) to comply with all relevant laws, statutes, ethical codes of conduct, and other applicable policies adopted by the Board.

3. Legal Authority

PERA operates under the authority of the Public Employees Retirement Act of New Mexico, [NMSA 1978, Sections 10-11-1 to 10-11-142](#), as amended, the Volunteer Firefighters Retirement Act, [NMSA 1978, Sections 10-11A-1 to 10-11A-8](#), as amended, the Judicial Retirement Act, [NMSA 1978, Sections 10-12B-1 to 10-12B-19](#), as amended, the Magistrate Retirement Act, [NMSA 1978, Sections 10-12C-1 to 10-12C-18](#), as amended, the Public Employees Reciprocity Act, [NMSA 1978, Sections 10-13A-1 to 10-13A-4](#), and the State of New Mexico Deferred Compensation Act, [NMSA 1978, Sections 10-7A-1 through 10-7A-12](#), as amended, as well as other federal and New Mexico laws relating to qualified governmental plans.

4. Services Subject to the Procedure

This Procedure applies to the procurement of the services of the Board Investment Strategic Consultant, CIO Investment Consultants, Investment Consultants for the SmartSave Plan, Investment Managers for Liquid Investments and Illiquid Investments, and other investment-related services in

accordance with the legal authorities described in Section 3 of this Procedure, the Investment Policy, and the Investment Policy for the PERA SmartSave Deferred Compensation Plan. As required by the Investment Policy, the Board, the Investment Committee, the Chief Investment Officer, PERA employees, and service providers selected under this Procedure shall be disciplined in adhering to the Investment Policy including applicable investment criteria. An investment consultant or investment manager selected pursuant to this Procedure shall agree contractually to serve PERA and the Board as a fiduciary in accordance with all applicable federal and New Mexico law that provide for the fiduciary duties and obligations of PERA or the PERA Board.

This Procedure also governs procurement of external investment-related legal services through the General Counsel. PERA retains the services of external legal counsel for investment-related advice and to review and negotiate terms and provisions of Liquid Investment and Illiquid Investment documents. The use of external counsel is prudent and necessary due to rapid changes in regulation of global Liquid Investments and Illiquid Investments and the knowledge and experience of external counsel regarding the legal issues arising from those Investments. Providers of investment-legal services selected pursuant to this Procedure serve PERA in accordance with the applicable codes of professional responsibility and fiduciary laws applicable to PERA.

In addition, this Procedure governs procurement of other investment-related services that are necessary and appropriate to PERA's investment program such as transition managers, cash overlay managers, other specialty investment managers, custodial banking services, brokers, and other counter-parties.

Investment-related service providers are defined in the following section.

5. Definitions

"Board Investment Strategic Consultant" means the Third-Party Service Provider explained on page 3 of the Investment Policy that "provide[s] advice and recommendations to the Board or [Investment] Committee regarding its strategic objectives, risk budget, and oversight and implementation of principal investment objectives." The Board Investment Strategic Consultant also advises and confers with the Chief Investment Officer.

"CIO Investment Consultant" means an investment advisor other than the Board Investment Strategic Consultant that provides advice and recommendations to the Chief Investment Officer regarding selection of Investment Managers for Liquid Investments or Illiquid Investments.

"Corrupt Practice" is defined as offering, giving, soliciting, or receiving anything of value to influence the action of a public official or employee, or threatening injury, harm or retaliation to

any person or their property, position or reputation in connection with any procurement in order to obtain or retain business or any other advantage in the conduct of business.

"Emergency" means an unexpected circumstance that requires a rapid decision to prevent a significant financial loss where the normal processes required in this Procedure would not prevent or avoid such

loss. Poor performance by a service provider is not to be considered an Emergency. By way of example, an Emergency can include, although it is not limited to, the departure of an Investment Manager or other key personnel from a service provider without notice, SEC investigation or action against a service provider or individuals with a service provider, or a service provider's unexpected loss of its organizational capabilities.

“External Legal Counsel” means legal counsel retained to advise the General Counsel and Chief Investment Officer about all legal aspects of investment transactions undertaken for PERA, including but not limited to preparation and negotiation of investment contracts, the rights, obligations, and liabilities arising under applicable domestic and international securities laws, securities brokerage and trading laws, and laws pertaining to the organization, operation, and governance of the legal entities through which investments are made.

“Fraudulent Practice” means misrepresenting or omitting any material fact in order to influence or make a procurement.

“Fund” means the “trust funds” referred to in Article XX, Section 22 (A) of the New Mexico Constitution and as the term is used in the Investment Policy.

“Illiquid Investment” means an investment in global securities or other assets that cannot easily be sold or exchanged for cash without a substantial loss in value. As explained in the Investment Policy, an investment strategy involving these assets include illiquid equities (hedged and private equity), illiquid credit (private and distressed debt and hedged credit) and illiquid real assets (illiquid real estate, illiquid real assets and market-neutral strategies). Illiquid Investments generally target long-term return objectives. These assets are designed to provide the portfolio with higher risk-adjusted returns and/or enhanced diversification. Illiquid Investments are usually made outside of public securities exchanges by acquiring an interest in a limited partnership, limited liability company, fund of one, separate account, dedicated managed account, commingled fund, offshore entity, or similar investment vehicle, as appropriate for the individual investment. Illiquid Investments were typically referred to as alternative assets in prior versions of this Procedure.

“Incumbent Provider” means a service provider that is a party to a valid contractual relationship for providing investment-related services under a professional services agreement with PERA.

“Investment Committee” means the Committee of the same name established by the Board ([see NMAC 2.80.200.50 \(A\)\(5\)](#)) to assist in carrying out its duties and means the same as the term used in the Investment Policy.

“Investment Manager” means an entity and its agents that provide investment management services for Liquid Investments and Illiquid Investments.

“Investment Policy” means the PERA Investment Policy.

“Liquid Investment” means an investment in securities and other assets that are typically traded on public exchanges and can be converted into cash quickly and with minimal impact to the price

received. These assets are identified in the Investment Policy. As explained in the Investment Policy, Liquid Investments include global equities (public and low volatility equities), risk reduction and mitigation strategies (public domestic and global core bonds), credit (public high yield and emerging market debt), and real assets (liquid real estate and liquid real assets). Liquid Investments were typically referred to as traditional assets in prior versions of this Procedure.

“Offeror” means any person or persons responding to a Request for Proposal or a Request for Information.

“Other Service Provider” means a provider of investment-related services and its agents, other than those defined in this Procedure which typically provide services related to execution of investment decisions and custody of PERA assets such as brokers, counterparties, custodial banks, liquidation agents, and valuation agents.

“Runner-Up” means one or more Offerors not initially selected for award but qualified for award by meeting or complying with all mandatory criteria and formally designated as a Runner-Up by the evaluation committee.

“Small Purchase” means the procurement of investment-related services for total compensation that does not exceed fifty-thousand dollars (\$50,000.00). For purposes of this Procedure, a Small Purchase procurement includes investment-related services or tangible property ancillary to investment services, but does not include performance-fee compensation contracts for investment management services.

“SmartSave Investment Consultant” means the “Investment Consultant” defined on page 1 of the Investment Policy for the PERA SmartSave Deferred Compensation Plan that serves as “the principal investment consultant selected by the Board from time to time to advise the Board about the investment functions of the Plan.”

“Strategic Asset Allocation” means the strategic allocation target established by the Board and as the term is used in the Investment Policy.

“Third-Party Administrator” means the Deferred Compensation Carrier that performs recordkeeping and other functions of the Third-Party Administrator described in the Plan Document and means the same as the term defined in the Investment Policy for the PERA SmartSave Deferred Compensation Plan.

6. Selection of Solicitation Process

Except as otherwise provided in this Procedure, procurement of investment-related services by PERA shall be achieved by a competitive Request for Proposals process (“RFP”) or Request for Information process (“RFI”) in accordance with this Procedure.

a. Election of RFP or RFI Process

An RFP shall be used for procurement of the services of the Board Investment Strategic Consultant, the SmartSave Investment Consultant, CIO Investment Consultant, and the Third-Party Administrator.

Either the RFP or an RFI may be used for procurement of Investment Manager services for Liquid Investments, External Legal Counsel, or an Other Service Provider.

To determine whether to use the RFP and/or RFI, the Chief Investment Officer or the General Counsel, as appropriate, shall consider material factors including, but not limited to: 1) the number of service providers capable of providing the service; 2) the mandate being considered for procurement; 3) the nature of the services being procured; and 4) the relative weight to be given to pricing in making the selection. PERA shall maintain written documentation of each procurement consistent with applicable record retention policies and procedures.

b. Selections Exempt from the RFP or RFI Process

Competitive procurement through the RFP or RFI process is not necessary under any of the following circumstances:

- i. Procurement is for the services of an Investment Manager for an Illiquid Investment;
- ii. Procurement is for the services of an Investment Manager for a Liquid Investment for the PERA SmartSave Deferred Compensation Plan and that the selection may proceed in accordance with the Selection Procedure for investment managers set forth in the Investment Policy for the PERA SmartSave Deferred Compensation Plan.
- iii. Extension of a Contract. The Chief Investment Officer in consultation with the Executive Director may approve extension of a contract awarded through an RFP or RFI process for a given mandate for an incumbent Investment Manager for Liquid Investments that is currently providing satisfactory service for the same or substantially similar mandate on the equivalent or better terms to PERA. The Chief Investment Officer shall consider whether extension of the contract is prudent based on: i) the existing market conditions; ii) the terms, structure, and objectives of the investment, and; iii) the availability of qualified Offerors. Except for a contract for custodial banking services, the term of any such extension shall be for no more than (4) years unless the Chief Investment Officer concludes that a longer or indefinite term is prudent based on the considerations set forth in the previous sentence. A contract for custodial banking services may be extended for an unlimited time. This exemption shall be exercised by PERA by no less than thirty (30) days prior to the expiring term of the current contract;
- iv. Termination and Transition. In the event that the Chief Investment Officer terminates a contract for Investment Manager services for Liquid Investments, the Chief Investment Officer in consultation with the Executive Director may approve a new or amended contract for the transition of the assets subject to the terminated contract to another Incumbent Provider who: i) is currently providing satisfactory investment management services under a contract

awarded through an RFP or RFI process; and ii) is qualified to provide services for the asset class described in the terminated contract. The new or amended contract should be negotiated in connection with the transitioning of assets on equivalent or better terms to PERA. The term of the contract awarded under this paragraph shall be for no longer than four (4) years except as otherwise deemed prudent by the Chief Investment Officer based on the considerations set forth in paragraph 6(b)(iii);

- v. In the event that solicitation of qualified service providers is deemed to be impracticable, the Chief Investment Officer in consultation with the Executive Director may approve contracting with an Incumbent Provider or Investment Manager services for Liquid Investments that is currently providing satisfactory service under a contract that is the result of a RFP or RFI process, for the provision of services or a mandate not provided by an Incumbent Provider under an existing contract. The term of the contract awarded under this paragraph shall be for no more than four (4) years except as otherwise deemed prudent by the Chief Investment Officer based on the considerations set forth in paragraph 6(b)(iii);
- vi. The selection of an investment manager or investment option for the PERA SmartSave Deferred Compensation Plan as provided by the Investment Policy for the PERA SmartSave Deferred Compensation Plan.
- vii. Determination by the Chief Investment Officer in consultation with the Executive Director that the procurement is a Small Purchase procurement as defined in this Procedure; or
- viii. Determination by the Chief Investment Officer in consultation with the Executive Director that the procurement meets the requirements of an Emergency procurement as defined in this Procedure. Performance under any contract awarded under this paragraph shall be reviewed by the Chief Investment Officer in consultation with the Executive Director within twelve (12) months. In no event, however, shall the term of the contract awarded under this paragraph, including any and all extensions, exceed two (2) years. A contract awarded pursuant to this paragraph does not qualify for the other exceptions to competitive procurement set forth in this section.

7. **Exemption from the RFP and RFI Processes—Criteria for Identification of Illiquid Investments**

a. **Categories of Illiquid Investments**

Illiquid Investments principally involve direct investments in funds or other investment vehicles that acquire, hold, sell, and finance portfolio companies and other assets. For the purposes of the exceptions identified in Section 6, Illiquid Investments are defined as provided in Section 5 of this Procedure and in the Investment Policy. The asset types identified in the definition are further explained as follows:

- i. Illiquid Global Equities – Illiquid forms of global equities include private equity and hedge equity. The objective of the private equity allocation is to capture a premium from making

long-term, Illiquid Investments in predominantly non-publicly traded equity securities. Hedged equity investments look to reduce broad market risks to isolate security-specific returns. These vehicles will utilize long and short positions along with leverage to accomplish their investment objectives.

- ii. Illiquid Credit – Illiquid forms of credit include strategies in which the underlying debt securities trade infrequently or with a negotiated price as well as hedged credit strategies. The objective of illiquid credit strategies (such as distressed and private debt) is to capture a premium from making long-term, Illiquid Investments through non-public or negotiated transactions. Hedged credit strategies use leverage, shorting, and derivatives to generate greater risk-adjusted returns.
- iii. Illiquid Real Assets – Illiquid forms of real assets include private real assets, private real estate and market neutral strategies. The objective of private real assets and private real estate strategies is to capture a premium from making long-term, Illiquid Investments in predominantly non-publicly traded securities. Market neutral strategies target a zero correlation with broad market movements.

b. Considerations, Criteria, and Process for Selection of Illiquid Investments

The Chief Investment Officer is responsible for selection of Illiquid Investments, and may elect to use the services of the Board Investment Strategic Consultant and the CIO Investment Consultant to review and analyze the most appropriate investments from a comprehensive universe of investment opportunities.

The Chief Investment Officer shall consider the strategic objectives of the Board set forth in the Investment Policy and the legal and economic terms of an Illiquid Investment. Illiquid Investments shall be subject to due diligence analysis by PERA employees and an investment consultant sufficient to demonstrate the prudence of the investment. A report of the due diligence analysis and a complete evaluation of how the investment is expected to achieve the strategic objectives of the Board shall be presented to the Chief Investment Officer who shall have final authority to evaluate, select, monitor, and terminate Illiquid Investment Managers and investment vehicles in accordance with the terms of their contracts.

When evaluating a prospective Investment Manager for Illiquid Investments, the Chief Investment Officer shall manage operational and investment due diligence review to implement the objectives and considerations set forth in the Investment Policy and complimentary industry norms that include, but are not limited to, the following considerations:

- i. the prospective Investment Manager's organization and stability;
- ii. the track record of the prospective Investment Manager;
- iii. the qualifications, experience, and retention of the prospective Investment Manager's key personnel;
- iv. the proposed investment strategy including the bases of anticipated returns;

- v. the timing and structure of distributions;
- vi. fees and total costs;
- vii. the portfolio need and diversification benefits of the proposed investment strategy; and,
- viii. the sufficiency of legal and economic terms governing the investment strategy of prospective Investment Manager.

The General Counsel with the assistance of External Legal Counsel as the General Counsel may deem appropriate, shall review investment materials and information and advise the Chief Investment Officer about the favorability, legal risks, and sufficiency of the terms and provisions of an investment in accordance with the Investment Policy, applicable law, and generally accepted legal standards for private investments. The General Counsel negotiates the legal terms and provisions of an investment in consultation with the Chief Investment Officer.

8. Public Notice

Except for an Emergency procurement, notice of an RFP shall be published at least twenty-one (21) calendar days prior to the date set for opening of responses. Notices referred to in this Procedure may be published or furnished electronically, in print, or both at the Chief Investment Officer's discretion. Notice shall be posted on PERA's website and disseminated through media and other channels in a manner and as necessary to provide commercially reasonable notice to interested and qualified Offerors. Notice may be published in newspapers and/or trade journals in this or any other state, and internationally. In addition, PERA may provide notice directly to persons or businesses identified through prior solicitations, independent investment services, and through other information available in the investment industry.

9. Procurement Processes¹

a. The RFP Process—Initiation and Selection

- i. Board Investment Strategic Consultant, CIO Investment Consultants, SmartSave Investment Consultant, and the Third Party Administrator
 - Issuance of an RFP for the Board Investment Strategic Consultant, CIO Investment Consultants, SmartSave Investment Consultant, and the Third Party Administrator shall be approved by the Board.
 - Selection of the Board Investment Strategic Consultant, CIO Investment Consultant, SmartSave Investment Consultant, and the Third Party Administrator, is subject to final approval of the Board in accordance with this Procedure.

¹ See, Appendix 1, Decision Matrix

ii. Liquid Investment Managers, and Other Service Providers

- Issuance of an RFP for Investment Manager services for Liquid Investments, and for Other Service Providers shall be by the Chief Investment Officer. Notice shall be provided to the Investment Committee at the first meeting following the issuance of the RFP.
- Selection of Investment Manager services for Liquid Investments, and Other Service Providers through the RFP process shall be by the Chief Investment Officer in consultation with the Executive Director. Notice shall be provided to the Investment Committee at the first meeting following the approval.

iii. External Legal Counsel

- Issuance of an RFP for External Legal Counsel shall be by the General Counsel in consultation with the Executive Director, after prior notice to the Investment Committee.
- Selection of External Legal Counsel through the RFP process shall be by the Executive Director in consultation with the General Counsel. Notice shall be provided to the Investment Committee at the first meeting following the issuance of the selection.

b. **The RFP Process—Terms of Solicitation**

RFPs shall contain, as appropriate:

- specifications of the services to be procured including clearly identified "minimum" and "preferred" (discretionary) criteria and/or minimum mandatory qualifications for prospective Offerors;
- the term of a contract for the Board Investment Strategic Consultant, the SmartSave Investment Consultant, CIO Investment Consultant, Other Service Provider, (other than a custody bank), and Third-Party Administrator, shall be appropriate for the scope of services, but shall not to exceed eight (8) years;
- the term of a contract for liquid Investment Manager services shall be appropriate for the proposed mandate, but should not exceed eight (8) years unless the Chief Investment Officer in consultation with the Executive Director concludes that a longer or indefinite term is appropriate based on the structure and objectives of the investment;
- reference to [NMSA 1978, § 10-11-133.1](#) which provides for disclosure of the identity and fees paid to any third-party marketer;
- a contract for custodial banking services may be for an indefinite term, provided it is terminable at will by PERA on reasonable notice;
- description of PERA's mandatory contract terms that are appropriate for the services procured, including but not limited to a term stating that the contractor accepts fiduciary status with respect to assets managed on behalf of PERA;
- a proposal for compensation for the services to be procured;

- viii. the location and means of submittal of responses. Each RFP shall state that PERA shall have no responsibility or obligation to accept responses that are not submitted in accordance with the solicitation or to provide for redelivery of the same;
- ix. the deadline for receipt of proposals including the calendar date and the time. A deadline for receipt of proposals for solicitation of the Board Investment Strategic Consultant, CIO Investment Consultant, SmartSave Investment Consultant, and the Third-Party Administrator may be extended by the Board on the request of the Chief Investment Officer, to accommodate unforeseen circumstances outside of the control of an Offeror. A deadline for receipt of proposals for Investment Manager services for Liquid Investments, External Legal Counsel, or Other Service Provider may be extended the Chief Investment Officer, or the General Counsel, as appropriate, to accommodate unforeseen circumstances outside of the control of an Offeror. Any such extension must be requested and approved, with notice given to prospective Offerors within a reasonable time;
- x. a statement notifying Offerors as follows:

“That during the process leading to an award of any contract by PERA, no member of the Board or PERA employee shall knowingly communicate concerning any matter relating to the contract or selection process with any party financially interested in the contract, or an officer or employee of that party, unless the communication is: (1) part of the process expressly described in the request for proposal or other solicitation invitation; or (2) part of a noticed Board meeting; or (3) as provided below. Any applicant or bidder who knowingly participates in a communication that is prohibited by this paragraph shall be disqualified from the contract award.

The procedures and prohibitions prescribed by this section shall not apply to: (1) communications that are incidental, exclusively social, and do not involve PERA or its business, or the Board or PERA employee’s role as a PERA official; or (2) communications that do not involve PERA or its business and that are within the scope of the Board or PERA employee’s private business or public office wholly unrelated to PERA.”
- xi. a proposal cover sheet, to be completed and signed by the Offeror and submitted electronically;
- xii. a description of a formal question and answer process;
- xiii. the selection criteria and/or qualifications in the evaluation of the responses;
- xiv. citation to applicable statutes, rules and policies;
- xv. an agreement that the proposal is not confidential and is considered to be a public record; and
- xvi. any other information the Chief Investment Officer or the General Counsel believes will be useful in procuring the services sought to be procured.

Subject to appropriate and timely notification of Offerors, RFPs may be modified or amended prior to the selection for the limited purposes of:

- i. clarifying or correcting errors or defects; or

- ii. modifying the schedule for the submission of responses and the deadline for receipt of responses.

The requirement for notice of amendment of an RFP shall be:

- i. in the form and manner of the initial RFP if it occurs before the deadline for receipt of responses; and
- ii. by written notice to all Offerors if it occurs after the deadline for receipt of responses.

c. **The RFI Process—Initiation and Selection**

i. Liquid Investment Managers and Other Service Providers

- Issuance of an RFI for Investment Manager services for Liquid Investments and for Other Service Providers shall be by the Chief Investment Officer. Notice shall be provided to the Investment Committee at the first meeting following the issuance of the RFI.
- Selection of an Investment Manager for Liquid Investments and Other Service Providers through the RFI process shall be by of the Chief Investment Officer in consultation with Executive Director. Notice shall be provided to the Investment Committee at the first meeting following the issuance of the selection.

ii. External Legal Counsel

- Issuance of an RFI for External Legal Counsel shall be by the General Counsel in consultation with the Executive Director, after prior notice is provided to the Investment Committee.
- Selection of External Legal Counsel shall be by the Executive Director in consultation with the General Counsel. Notice shall be provided at the first meeting of the Investment Committee following the selection.

d. **The RFI Process—Considerations for Solicitation**

The following considerations apply to an RFI undertaken under this Procedure:

- i. notice of the solicitation shall be provided to potentially qualified service providers that have been identified through the means described in the last sentence of Section 8 of this Procedure;
- ii. the solicitation shall include a reference to [NMSA 1978, § 10-11-133.1](#) which provides for disclosure of the identity and fees paid to any third-party marketer;
- iii. description of PERA's mandatory contract terms that are appropriate for the services procured, including but not limited to a term stating that the contractor accepts fiduciary status with respect to assets managed on behalf of PERA;
- iv. a proposal for compensation for the services to be procured;

- v. a statement notifying Offerors as follows:

“That during the process leading to an award of any contract by PERA, no member of the Board or PERA employee shall knowingly communicate concerning any matter relating to the contract or selection process with any party financially interested in the contract, or an officer or employee of that party, unless the communication is: (1) part of the process expressly described in the request for proposal or other solicitation invitation; or (2) part of a noticed Board meeting; or (3) as provided below. Any applicant or bidder who knowingly participates in a communication that is prohibited by this paragraph shall be disqualified from the contract award.

The procedures and prohibitions prescribed by this section shall not apply to: (1) communications that are incidental, exclusively social, and do not involve PERA or its business, or the Board or PERA employee’s role as a PERA official; or (2) communications that do not involve PERA or its business and that are within the scope of the Board or PERA employee’s private business or public office wholly unrelated to PERA.”

- vi. analytical software and comprehensive databases will be used in an unbiased and fair manner to research, evaluate and compare Offerors;
- vii. Offerors may reply to the RFI by submitting information about the services they supply and the price at which those services would be provided;
- viii. the Chief Investment Officer in consultation with the Board Investment Strategic Consultant may review proposals and negotiate with one or more of the Offerors to obtain the highest quality of services at the most reasonable price;
- ix. the term of a contract for Investment Manager services for Liquid Investments shall be appropriate for the proposed mandate, but should not exceed eight (8) years unless with the Chief Investment Officer concludes that a longer or indefinite term is appropriate based on the structure and objectives of the investment;
- x. the term of a contract for an Other Service Provider (except for custodial banking services) or External Legal Counsel shall be appropriate for the scope of services, but shall not to exceed eight (8) years, and;
- xi. an agreement that the proposal is not confidential and is considered to be a public record; and,
- xii. a contract for custodial banking services may be for an indefinite term, provided it is terminable at will by PERA on reasonable notice.

10. Sufficiency of Responses to RFPs and RFIs

Responses received after the deadline will be rejected.

Responses shall not be corrected or modified after submittal.

Responses and Offerors that fail to meet all mandatory requirements shall be rejected.

Responses must include a proposal cover sheet, which has been fully completed, signed and submitted electronically on or before the deadline for responses to the RFP or RFI.

Telephone and other types of inquiries concerning the proposal, outside the formal question and answer process, shall be discouraged.

Successful Offerors and Runners-Up shall meet or comply with all minimum criteria and/or qualifications.

11. Selection Criteria

Selection criteria shall be appropriate for the proposed scope of services or investment mandate and the applicable PERA investment policy as determined by the Chief Investment Officer and the General Counsel, as applicable.

PERA may use internet-based or analytic software applications and comprehensive databases to research, evaluate, compare and select investment products across asset classes and vehicle types.

12. Evaluation of Proposals

The Chief Investment Officer, in consultation with one or more investment consultants shall evaluate and approve the selection of service providers through an RFP or RFI process.

a. Board Investment Strategic Consultant, SmartSave Investment Consultant, and Third Party Administrator

The Board Chair, with the advice of the Investment Committee Chair and the Chief Investment Officer, shall appoint an evaluation committee for each RFP for the Board Investment Strategic Consultant, a CIO Investment Consultant, SmartSave Investment Consultant, and Third Party Administrator. The designation of the evaluation committee is at the discretion of the Board Chair and may include members of the Board, the Executive Director, the Chief Investment Officer, the General Counsel, and PERA employees. Appointed Board members shall participate as voting members of the evaluation committee for the Board's Investment Strategic Consultant and the Third Party Administrator.

The Board, in consultation with the Executive Director, the Chief Investment Officer, or the General Counsel, as appropriate, shall approve the successful Offeror or Offerors for the Board's Investment Strategic Consultant, a CIO Investment Consultant, the SmartSave Investment Consultant, and the Third-Party Administrator under the RFP process based on the recommendation of the evaluation committee.

b. Investment Managers for Liquid Investments, External Legal Counsel, and Other Service Provider

For procurement of Investment Managers for Liquid Investments, External Legal Counsel, and Other Service Provider, the Chief Investment Officer or the General Counsel, as appropriate, may designate staff, board members and consultants to assist, consistent with their respective duties under this Procedure.

c. Evaluation of Proposals Submitted in Response to an RFP or an RFI

Selected Offerors may be invited for interviews, discussions or negotiations. Offerors who have participated in interviews, discussions or negotiations may be provided the opportunity to submit best and final offers. There is no right to an interview, discussion, negotiation, or the opportunity for best and final offers.

An Offeror's proposal shall be evaluated based on relevant and appropriate factors and considerations sufficient to justify the selection. Selection of an Investment Manager for Liquid Investments shall include but is not limited to the Offeror's;

1. business approach and methodology;
2. philosophy and process;
3. references, experience and qualifications of key personnel;
4. experience with the asset class under consideration;
5. verified or verifiable performance and portfolio data for a period of time that include a variety of economic and market environments;
6. the compensation proposal;
7. a history of consistently strong and successful performance versus peers and relevant benchmarks; and,
8. the results of a satisfactory background check, including federal, state and local criminal, civil, regulatory and enforcement matters.

Selection criteria for External Legal Counsel and Other Service Providers shall be appropriate for the services being procured and sufficient to justify the selection.

The Board, Chief Investment Officer, and the General Counsel, as appropriate, shall create a record that documents and explains the basis for the selection in accordance with this Procedure. PERA shall retain the record including all pertinent evaluation materials in accordance with applicable document retention requirements, but in no case for a period of less than the stated term of the contract procured pursuant to this Procedure and a reasonable audit period.

13. Award

A successful Offeror and all other responding parties shall be promptly notified in writing of the award.

Contracts may be awarded to more than one Offeror as a result of a single RFP or RFI process.

Contracts may be awarded to one or more Offerors designated as Runners-Up within two (2) years of the initial deadline set for receipt of RFP or RFI responses subject to due diligence and successful contract negotiations conducted by the Chief Investment Officer or the General Counsel.

14. Termination of Contract or Other Appropriate Action for Wrongful Conduct

In the event that the Board determines that violation of the New Mexico Government Conduct Act or paragraph 8.6.1 of the PERA Employee Code of Conduct materially impacted the award of a contract under this Procedure, and that termination of the contract or other appropriate action is consistent with applicable law and the Board's fiduciary duties to PERA members, the Board may direct the Executive Director to terminate the contract, or take other appropriate action. This provision shall be incorporated expressly in any contract entered into under the authority of this Procedure and such contract shall expressly provide that action taken by the Board or Director hereunder shall not constitute an event of default or other event causing adverse action by the other contracting parties.

15. Public Disclosure

After award of a contract under this Procedure, any written determination of award, any evaluation committee report, as applicable, and all proposals are subject to public inspection in accordance with applicable public record laws including the New Mexico Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 through 14-2-12. Any material claimed to be privileged, confidential, proprietary, or a trade secret must be clearly designated as such in advance and provided on separate pages.

16. Protest Procedure

PERA's procurement of investment-related services is exempt from the New Mexico Procurement Code (NMSA 1978, Sections 13-1-1 *et seq.*) and Offerors have no resort to the protest procedures set out in the New Mexico Procurement Code ([NMSA 1978, Sections 13-1-172 through 176](#)) or related options of the New Mexico Administrative Code involving procurement of investment-related services. As a trust fund, PERA has no authority to award money damages, costs or attorney fees to a party asserting a grievance under this Procedure. In the interest of providing a fair, open and competitive procurement process for investment-related services, the following protest procedure is provided.

An Offeror responding to an RFP or an RFI who is not awarded an investment-related services contract may file a Notice of Protest with PERA.

A Notice of Protest shall state the full factual basis for the protest. A Notice of Protest must be in writing and received or post-marked within ten (10) calendar days of the award by the Board that gives rise to the protest.

A Notice of Protest shall be sent or delivered to:

NMPERA
Office of General Counsel
33 Plaza La Prensa
Santa Fe, New Mexico 87507
Attention: Notice of Protest

The filing and receipt of a Notice of Protest shall not stop or delay the execution of an investment-related services contract between and the successful Offeror.

The General Counsel or his or her designee shall conduct an interview with the protestor, either in person or telephonically and may, in his or her sole discretion, conduct interviews with others who have or may have information relating to the award and/or the protest.

The General Counsel shall promptly issue a written recommendation to the Board. The written recommendation shall state whether or not the General Counsel recommends that the contract whose award gave rise to the protest process should be terminated, and whether or not the General Counsel recommends an alternative contract award to the protestor or whether the RFP or RFI should be cancelled and reissued. The written recommendation shall state the full factual basis for the recommendation.

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

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

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

17. Emergency and Small Procurements

In the case of Emergency and Small Purchase procurements, as defined in this Procedure, the Chief Investment Officer may, preselect or invite a provider of investment-related services to present an offer. The Chief Investment Officer, in his or her discretion, may negotiate a contract with that provider if the offer is deemed acceptable and subject to the following conditions:

The Small Purchase procurement for investment-related professional services must have a value not exceeding fifty thousand dollars (\$50,000), excluding applicable state and local gross receipts taxes in accordance with applicable professional services contract procedures promulgated by the department of finance and administration.

Investment-related tangible property or services having a value of not more than fifty thousand dollars (\$50,000.00) may be procured under this section by issuing a direct purchase order to a contractor based upon the best obtainable price.

Procurements shall not be artificially divided to fall within the Small Purchase procurement exemption.

18. Research and Information

At any time and irrespective of any existing contracts, PERA may conduct independent research or may issue an informal request for information to survey the marketplace about the availability, quality, and price of investment-related services.

19. Penalties for Corrupt Practices and Fraudulent Practices

Upon discovery of any Corrupt Practice or Fraudulent Practice as defined in this Procedure, the Board may reject a proposal, reject a recommendation for an award or declare an individual or firm ineligible for a stated period of time or the Board may impose any combination of these measures.

In addition, a Corrupt Practice or a Fraudulent Practice relating to activities that are subject to this Procedure may constitute fraud, bribery, and illegal gratuities and kickbacks that are crimes classified as felonies under New Mexico law.

Civil and criminal penalties are imposed for violation of the Governmental Conduct Act, [NMSA 1978, Sections 10-16-17, 18](#).

Civil penalties are imposed for antitrust violations of the Trade Practices and Regulation Act, [NMSA 1978, Sections 57-1-1, 6](#).

20. Ethical Disclosures and Conflicts of Interest

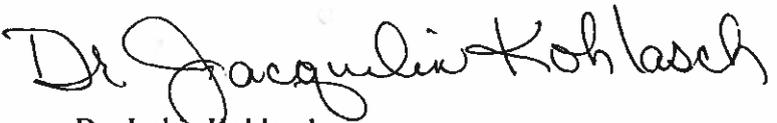
Members of the Board and PERA employees are subject to [NMSA 1978, Section 10-11-130.1](#), which prohibits acceptance of anything of value directly or indirectly from a person or organization that has a current contract with PERA, is a potential bidder, Offeror, or contractor of services to PERA, or is authorized to invest public funds pursuant to state or federal law. For purposes of this Procedure, a potential bidder means any person or entity that has either offered services in response to a request issued pursuant to this Procedure or demonstrated an interest in offering services to PERA during the period commencing twelve-month prior to the issuance of the solicitation, or has otherwise been identified as a potential bidder by the Chief Investment Officer or General Counsel.

All Offerors or Incumbent Providers are required to disclose any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under any contract with PERA. Offerors and Incumbent Providers shall certify compliance with the requirements of the Governmental Conduct Act, [NMSA 1978, Sections 10-16-1 through 10-16-18](#). Contracts executed in accordance with this Procedure shall provide for the prohibitions and disclosures explained in this section.

Approval by the Retirement Board

By signing this Procurement Procedure for Investment-Related Services, the Board, through its Chair, approves the statements contained in this Procedure.

Adopted: January 26, 2006
Amended: August 31, 2006
Amended: November 30, 2006
Amended: October 30, 2014
Amended: August 25, 2016
Amended: May 30, 2019

By: 
Name: Dr. Jackie Kohlasch
Retirement Board Chair

APPENDIX 1

DECISION MATRIX

	RFP or RFI	Issuance	Selection	Prior Notice	Notice	Terminate	Extension	Transition
Board Inv. Strat. Consult	RFP only	Board/ED	Board	-	-	Board	Board	Board
CIO Investment Consultant	RFP only	Board/ED	Board	-	-	Board	Board	Board
Liquid Manager	CIO	CIO	CIO	-	IC	CIO/Board*	CIO	CIO
Illiquid Manager	-	-	CIO	-	IC	CIO/Board*	-	-
Other Provider	CIO	CIO	CIO	-	IC	CIO/Board*	-	-
External Legal Counsel	GC	ED/GC	ED	-	IC	ED/GC/Board*	-	-
SmartSave Third Party Administrator	RFP only	Board/ED	Board	IC	-	Board	Board	Board
SmartSave Investment Consultant	RFP only	Board/ED	Board	-	-	Board	Board	Board
SmartSave Investment Manager	SmartSave IP	CIO	CIO	-	IC	CIO/Board*	CIO	CIO

Legend

Board* = *see* Sec. 14 (Termination of Contract for Conflicts of Interest)

CIO = Chief Investment Officer

ED = Executive Director

GC = General Counsel

IC = PERA Investment Committee

IP = Investment Policy

- = not applicable

In the event that the Decision Matrix is inconsistent with the terms of the Procedure, the terms of the Procedure shall prevail.

THE PUBLIC EMPLOYEES RETIREMENT ASSOCIATION OF NEW MEXICO



INVESTED IN TOMORROW.

INVESTMENT POLICY

Revised
April 30, 2020

TABLE OF CONTENTS

I.	INTRODUCTION	1
A.	Statutory Authority	1
B.	Authority and Duties of the Board.....	1
C.	Mission Statement.....	1
D.	PERA Roles and Responsibilities/Delegations of Authority.....	1
II.	OVERVIEW OF INVESTMENT POLICY	3
A.	Purpose of the Investment Policy	3
B.	Investment Principles	4
III.	INVESTMENT OBJECTIVES	4
A.	Primary Objective	4
B.	Long-Term Returns	4
C.	Evaluation of Risk.....	5
IV.	ASSET ALLOCATION.....	5
A.	Strategic Asset Allocation Targets.....	5
B.	Active Management Strategic Target	6
C.	Risk Budgeting.....	6
D.	Rebalancing Strategy	6
V.	PERFORMANCE BENCHMARKS	6
A.	Total Fund Benchmark	6
B.	Mandate-Level Benchmarks	7
VI.	INVESTMENT GUIDELINES	7
A.	Investments	7
B.	Other Investment Considerations.....	9
C.	Prohibited Investments.....	9
VII.	REVIEW AND APPROVAL OF INVESTMENT POLICY	10

THE PUBLIC EMPLOYEES RETIREMENT ASSOCIATION OF NEW MEXICO

INVESTMENT POLICY

I. INTRODUCTION

A. Statutory Authority

The Public Employees' Retirement Association of New Mexico (PERA) was created by law in 1947 and is authorized to administer the Public Employees Retirement Act of New Mexico, NMSA 1978, Sections 10-11-1 to 10-11-142, as amended (the PERA Act), the Volunteer Firefighters Retirement Act, NMSA 1978, Sections 10-11A-1 to 10-11A-8, as amended, the Judicial Retirement Act, NMSA 1978, Sections 10-12B-1 to 10-12B-19, as amended, the Magistrate Retirement Act, NMSA 1978, Sections 10-12C-1 to 10-12C-18, as amended, and the Public Employees Reciprocity Act, NMSA 1978, Sections 10-13A-1 to 10-13A-4, as well as other federal and State laws relating to the administration of public employees' retirement systems in the State of New Mexico. As of April 2016, PERA administers thirty-one retirement plans under a defined benefit structure for state employees, municipal employees, county employees, police, firefighters, judges, magistrates, and legislators. PERA is governed by the Retirement Board (the Board).

B. Authority and Duties of the Board

Article XX, Section 22 of the New Mexico Constitution obligates the Board to administer and invest the PERA trust funds (the Fund) for the sole and exclusive benefit of the members, retirees and other beneficiaries of PERA. The PERA Act, NMSA 1978 §§ 10-11-132 and 10-11-133 generally describe the authority of the Board to invest the Fund. Both those sections incorporate and adopt the Uniform Prudent Investor Act (UPIA), NMSA 1978, §§ 45-7-601 to 45-7-612, which require the Board to exercise the reasonable care, skill, and caution of a prudent investor when it invests and manages assets in its capacity as trustee of the Fund. Among other things, the UPIA requires that Fund investments be diversified to minimize the risk of large losses, unless under the circumstances, it is clearly prudent not to do so. The Board also recognizes that care must be exercised to maintain PERA's status as a government plan that is exempt from the requirements of the federal Employees Retirement Income Security Act of 1974 and as a qualified plan that is exempt from taxation under the Internal Revenue Code.

C. Mission Statement

In recognition of its fiduciary responsibility, the Board adopts the following as the mission statement for PERA:

The mission of the Board of the Public Employees Retirement Association is to preserve, protect, and administer the trust to meet its current and future obligations and provide quality services to Association members.

D. PERA Roles and Responsibilities/Delegations of Authority

To accomplish its mission, the Board relies on PERA employees and third-party investment consultants (Investment Consultants) to properly administer the Fund and implement the investment strategies it adopts. Because of the number of parties involved, their roles in investing and managing the Fund must be clearly explained. Doing so increases operational efficiency, ensures clear lines of responsibility, and reduces or eliminates duplication of effort.

Ethics and Conflicts of Interest

The Board, and PERA employees are obligated to act in the exclusive interest of PERA members, retirees, and beneficiaries. Investment Consultants serve in a fiduciary capacity to PERA. Board members and PERA employees shall refrain from personal business activity that could conflict with the proper execution and management of the investment program, or that could impair their ability to make decisions in accordance with PERA's mission statement.

Board of Trustees

The primary fiduciary responsibility of the Board is to ensure prudent investment and management of the Fund. It is the responsibility of the Board to ensure that PERA employees administer investments of the Fund at reasonable cost, while preserving the quality of investments. All principal investment policy decisions are subject to approval by the Board. The Board shall oversee the management of the Fund in compliance with this Investment Policy and all applicable federal and State laws and regulations concerning the administration of a government pension plan. The Board, with the assistance of PERA investment staff (Staff) and consultants, determines the strategic direction of investment of the Fund including the strategic asset allocation target, adoption of a risk budget, and the active management strategy target, all of which shall be reviewed at least semiannually.

Investment Committee

To assist the Board in carrying out its duties, it established an Investment Committee (the Committee). The Committee makes recommendations to the Board on strategic asset allocation target, the risk budget, and the active management strategy target. The Committee establishes benchmarks, including a reference portfolio, for evaluating the performance of the total investment portfolio. The Committee shall also adopt an annual work plan and, at least quarterly, review all principal investment policy actions and performance of the portfolio. The Committee may invite Staff and Investment Consultants to inform and make recommendations to the Committee on any topic or issue pertinent to PERA's investment operations. The Committee Chair shall have the duty and the authority to set Committee meeting agendas and request specific analyses and reports from Staff and Investment Consultants.

Executive Director

The Board appoints the Executive Director (the Director). The Director is responsible for planning, organizing, and administering the operations of PERA under policy guidance and direction from the Board. In fulfilling these investment responsibilities, the Director retains and relies on Staff and Investment Consultants.

Chief Investment Officer and Investment Staff

Staff reports directly to the Chief Investment Officer (the CIO) who in turn reports to the Director. The CIO, with the assistance of Staff, has the responsibility and authority to assist the Board and the Committee in establishing investment and administrative policies. The CIO and Staff are responsible for implementing the policies and programs established by the Board. The CIO has primary responsibility to implement and direct all decisions necessary and appropriate to carry out the Board's investment policies, including the strategic asset allocation target, risk budget, and active management strategic target approved by the Board. The CIO shall report on all decisions and the progress of implementation of those decisions to the Committee.

The CIO and Staff shall manage the portfolio according to the Board's policies, advise and inform the Board about investments, assist with development and review of investment policies and procedures, report on the progress of the Fund in meeting its investment objectives, and monitor and report to the Board on the performance of the Fund against the appropriate benchmarks. The CIO and staff shall have

the delegated authority to evaluate, select, monitor and terminate investment vehicles and managers necessary and appropriate to implement the Board's policies. Their actions shall be disclosed to the Board periodically, as directed by the Committee. Staff exercises the same fiduciary responsibility under applicable law as the Board.

General Counsel and Legal Staff

The Office of General Counsel and legal staff (Legal Counsel) are primarily responsible for legal compliance of the investment program and advises the Board, the Director, the CIO, and Staff on investment-related legal matters. Legal Counsel exercises the same fiduciary responsibility under applicable law as the Board.

Third Party Service Providers

- **Investment Consultants.** Investment Consultants are hired by and accountable to the Board through the authority of the Director. Investment Consultants shall report to the Board or the Committee as directed. An Investment Consultant's duty is to work with the Board and Staff in the oversight and implementation of investment objectives.

The Board's investment strategic consultant shall provide advice and recommendations to the Board or Committee regarding its strategic objectives, risk budget, and oversight and implementation of principal investment objectives.

Investment selection and monitoring consultants shall provide advice and recommendations regarding selection of investment managers and portfolio monitoring to the CIO and Staff.

- **Custodian Bank.** The Custodian Bank serves as the bank of record for the assets comprising the Fund and is responsible for maintaining the official book of record under the supervision of Staff, calculating investment performance, and serving as the primary layer of risk control in the safekeeping of Fund assets. The Custodian Bank is responsible for the ongoing pricing and valuation of all assets, collection of income generated by those assets, and any corporate action notification. The Custodian Bank cooperates with and provides assistance to Staff and Investment Managers in the reconciliation process. PERA may opt to designate other duties to the Custodian Bank as stipulated in the professional services agreement.
- **Investment Managers.** The Board believes that external management of Fund assets optimizes the potential to maximize risk-adjusted returns and minimize the associated expenses. Investment Managers are selected by the CIO and, subject to the terms and conditions of this Policy, serve PERA through contracts that specify in principal part: investment guidelines, administrative requirements, responsibilities, and performance expectations for management of each mandate. Proxy voting is considered to be a component of the investment decision process and will be exercised in accordance with the established PERA Proxy Voting Policy. Investment Managers will report to Staff on the performance of the Fund using formats and at intervals specified by Staff. This information will be synthesized by Staff and presented to the Committee on at least a quarterly basis in accordance with established performance monitoring and oversight procedures.
- **External Legal Counsel.** The General Counsel may retain external legal counsel to advise Staff and negotiate and prepare contracts with Investment Consultants and Investment Managers to protect PERA's interests and status as a tax-exempt government plan.

II. OVERVIEW OF INVESTMENT POLICY

A. Purpose of the Investment Policy

The purpose of the Investment Policy (the Policy) is to explain implementation of the investment principles and objectives of the Board. The Policy provides a reference point for the management of PERA's assets. The Policy provides guidance to the Board and Staff, as well as Investment Consultants, Investment Managers, and the Custodian Bank. The Policy is intended to provide parameters that ensure prudence and care in the execution of the investment program.

It is the intent of the Policy to provide the foundation for prudent management of the Fund, including the standards and disciplines by which the Board can evaluate Staff, Investment Consultants, Investment Managers, and the Custodian Bank.

B. Investment Principles

Accordingly, the Board adopts the following principles and objectives to guide its investment strategies and decisions:

- Preserve the long-term principal of the Fund.
- Maximize total return within prudent risk parameters.
- Maintain sufficient liquidity to meet PERA's obligations.

III. INVESTMENT OBJECTIVES

A. Primary Objective

PERA's primary objective is to prudently invest assets in order to meet its statutory obligations to its members. The Board will manage the Fund in a manner that reflects the Fund's unique liabilities and funding resources, incorporates accepted investment theory, and targets growth and returns appropriate to prudent levels of risk based on reliable empirical evidence. Accordingly, the Board adopts the following principles:

- Strategic asset allocation is the most significant factor influencing the Fund's ability to meet its stated investment objectives.
- Risk is an unavoidable component of investing and shall be taken into account in assessing investment policy and strategy. In evaluating specific investments, both the risks associated with that investment as well as the impact of the investment to the overall portfolio shall be considered.
- Diversification distributes a portfolio across asset categories to avoid excessive exposure to any one source of risk.
- The Fund's liabilities are long-term and the investment strategy must incorporate the appropriate balance between short- and long-term considerations.
- Sufficient liquidity will be maintained to meet the anticipated cash flow requirements of the Fund.

B. Long-Term Returns

Due to the long-term nature of PERA's pension obligations and the inherent risks in short-term tactical investing, PERA must maintain a long-term perspective in formulating and implementing its investment policy, and in evaluating its investment performance. Therefore, the Board: (1) targets a long-term rate of return commensurate with the actuarial assumed rate of return; (2) adopts an allocation policy

developed to meet the targeted rate of return over long periods of time, while minimizing volatility (risk); (3) adopts a risk budget developed to identify the risk tolerances of the total portfolio; (4) adopts an active management strategic target; and (5) minimizes the costs of investing through efficient use of internal and/or external resources.

Investment performance is measured by the following long-term objectives:

- The actuarial assumed target rate of return is the key actuarial assumption affecting future funding rates and payment of pension obligations. Investment performance that exceeds or underperforms the target rate may materially impact future funding rates. The Board seeks to have long-term investment performance that will meet or exceed its actuarial assumed rate of return while managing risk.
- The policy benchmark is calculated by applying the investment performance of the asset class benchmarks to the Fund's asset allocation targets. The policy benchmark permits the Board to compare the Fund's actual performance to a total fund benchmark and to measure the contribution of active investment management and policy adherence.

PERA's progress in meeting these return measures will be reported to the Committee on at least a quarterly basis.

C. Evaluation of Risk

The Board adopts a strategic asset allocation target that is appropriate for existing and anticipated circumstances. In targeting returns, the Board takes into account the benefit levels and structure of the plans supported by the Fund. PERA will periodically conduct and present to the Committee an asset/liability study to determine the extent to which the long-term asset allocation is consistent with the liabilities of the retirement plans that it administers. In determining a prudent level of risk for the targeted returns, PERA shall consider the total Fund risk, expected volatility, liquidity, and general sensitivity of the overall asset allocation by monitoring the major assets classes utilized by the Fund and develop a risk budget. PERA will regularly measure and monitor Fund risks in its management of the Fund.

In accordance with generally accepted principles for prudent investors, the allocation of capital across asset categories increases the probability of meeting or exceeding the Fund's objectives at a prudent level of risk. In establishing its risk tolerance, PERA will consider its ability to withstand short- and intermediate-term volatility in investment performance and fluctuations in financial condition of the Fund.

IV. ASSET ALLOCATION

A. Strategic Asset Allocation Targets

Based on recommendations by Staff and Investment Consultants, the Board shall choose the strategic asset allocation target based on its determination of the appropriate risk tolerance for PERA, and its long-term return expectations. Each asset class allocation percentage has a long-term target position within the overall portfolio and a maximum and minimum range around that target allocation. Asset class policy targets and ranges are listed in Appendix A, which is separately adopted by the Board.

The Board recognizes that the long-term target allocation may take an extended period to implement. Staff and Investment Consultants will provide the Board with regular updates on the status of targeted asset allocation of the Fund as a whole and the component asset classes. The Board will prudently monitor this progress and the Fund's performance throughout the implementation period.

The target allocation will be reviewed annually for significant economic and market changes, and as appropriate, to changes in the Fund's long-term goals and objectives. A comprehensive asset allocation study should be conducted at least every three years to verify or revise the targets.

B. Active Management Strategic Target

Based on recommendations by Staff and Investment Consultants, the Board shall choose the active management strategic target that seeks an additional return expectation for active management over and above the strategic asset allocation target.

C. Risk Budgeting

Based on recommendations by Staff and Investment Consultants, the Board shall set a risk budget that identifies the risk tolerance of the total Fund that is budgeted into two key components; 1) strategic asset allocation target risk; and 2) active risk. Active risk is the additional risk or deviation from the strategic asset allocation benchmark to achieve the active management strategic target.

D. Rebalancing Strategy

The Board authorizes the CIO and Staff to rebalance the portfolio in accordance with policy guidelines and established procedures on an ongoing basis. The goal in implementing the rebalancing policy is to minimize transaction costs, market impact, and opportunity costs.

The Board adopts a rebalancing policy that considers allocation ranges rather than time periods. Upper and lower allocation limits established for each asset class are defined in Appendix A. When the allocation to all asset classes remains within these limits, Staff will use cash flow to maintain the overall allocation as closely as possible to the target.

In the event that a liquid strategy within an asset class deviates from an upper or lower allocation limit, the asset class will be rebalanced to return to its strategic asset allocation target range within ninety (90) days. Within this ninety-day window it may be impractical or costly to reallocate capital towards less liquid investment strategies within each major asset category.

Rebalancing shall consider liquidity so that investments can be converted into cash in a short time, with little or no loss in value, as necessary to facilitate the objectives of the Fund. The marketability of an asset will be considered when rebalancing within each asset category. The rebalancing strategy may be implemented through the use of the cash overlay program.

Staff will report the results of rebalancing activities to the Committee by no later than the subsequent regular meeting.

V. PERFORMANCE BENCHMARKS

A. Total Fund Benchmark

Each asset class is described by an associated benchmark that describes, in general terms, the opportunity set and return characteristics associated with the asset class. For certain private or more complex asset classes the benchmark serves as a proxy for expected returns rather than an approximation of the actual investments that will characterize that component of the portfolio. Those benchmarks are referred to as the "Policy Index" and are identified in Appendix B, which is separately adopted by the Committee. The Board may use the Policy Index to compare the Fund's actual performance to its Total Fund Benchmark, and to measure the contributions of active investment management and policy adherence.

B. Mandate-Level Benchmarks

Benchmarks relevant to an investment shall be used as standards to measure the performance of Investment Managers. Acceptable benchmarks include but are not limited to:

- the appropriate market indices on a nominal and risk-adjusted basis;
- the performance of peers within their style group;
- adherence of the Investment Manager to the stated investment philosophy and style; and
- adherence to this Policy and the guidelines established in the investment contract.

The Board will work with Staff and the Investment Consultants to identify appropriate sub-asset class benchmarks. Staff and Investment Consultants will review the appropriateness of these benchmarks and report to the Committee on a regular basis.

VI. INVESTMENT GUIDELINES

Recognizing that capital markets are global in nature, the Board shall consider asset classes that represent all investment opportunities appropriate for PERA, as long as such investments comply with the UPIA. The terms and conditions of investment contracts are subject to legal review for compliance with applicable law and applicable investment standards.

A. Investments

Global Equity

An appropriately diversified Fund should include, commensurate with market conditions, global equity investments, both public and private. This allocation is structured to help the Fund meet its total return goals and will be implemented through strategies that include both liquid and illiquid mandates.

- **Public Equity.** The objective of public equity investments is to provide exposure to global economic growth opportunities and seek to capture capital appreciation and current income. The public equity allocation must anticipate long-term capital appreciation as it targets economic growth with an acceptable exposure to price volatility and the risk of loss. Public equity includes hedged investments that reduce broad market risks by isolating security-specific returns. The vehicles will utilize long and short positions along with leverage to accomplish their investment objectives. Equity-hedged investments will retain some broad market risk, but will generally be less volatile and have a lower correlation to broad equity markets over a full cycle.
- **Private Equity.** The objective of the private equity allocation is to capture a premium from making long-term, illiquid investments in predominantly non-publicly traded equity securities. In making private equity investments, PERA shall consider that private equity Investment Managers typically have concentrated portfolios and generate returns by making operational changes to the acquired businesses and often employ leverage to generate superior returns.

Risk Reduction and Mitigation

An appropriately diversified Fund should include, commensurate with market conditions, an allocation of assets for risk reduction and mitigation to provide diversification, a dependable source of current income, and downside protection. PERA shall consider the risk reduction and mitigation allocation as a component of the total investment portfolio that provides lower expected volatility and a greater expectation for the preservation of capital. The risk reduction and mitigation allocation includes, but is

not limited to the following investment types:

- **Core and Global Fixed Income.** Bonds, notes or other obligations of the U.S. government, its agencies, government-sponsored enterprises, corporations, or collateralized obligations, including but not limited to mortgages are targeted to achieve risk reduction and mitigation. In addition, these portfolios may include debt obligations of non-U.S. governmental or quasi-governmental entities and corporations with an investment grade rating, which may be denominated in foreign currencies.
- **Operating Cash Management.** In order to mitigate risk and ensure liquidity, commensurate with market conditions, the services of the State Treasurer may be used for overnight investment of short-term assets. Use of a separate or commingled short-term investment fund administered by the Custodian Bank may be considered.
- **Currency.** As means to mitigate risk while realizing returns, PERA should consider active currency strategies that do not necessarily hedge existing international holdings, but instead, seek absolute return which may include leverage, cross-hedging, emerging markets, and interest-rate futures.
- **Securities Lending:** The Board may authorize a securities lending program for all or any portion of the assets held as investments by PERA. Securities may only be loaned by the designated agent(s) by contracting for the temporary exchange of securities, for a specified fee or consideration for periods not to exceed one year, with broker-dealers, banks or other recognized institutional investors.
- **Cash Overlay:** Overlay strategies may be used to manage risk, asset allocation, and market exposures through futures, options, swap agreements, or forward agreements.

Credit-Oriented Fixed Income

An appropriately diversified Fund should include, commensurate with market conditions, global credit-oriented fixed income investments to deliver positive returns over a complete market cycle while maintaining sufficient liquidity. Credit-oriented fixed income investments shall be targeted to provide current income and total return with a strong focus on preservation of capital. In making these investments, PERA shall consider the potential volatility as compared to the risk reduction and mitigation allocation. PERA shall also consider credit-oriented fixed income investments that utilize leverage, shorting, derivatives, and illiquidity to generate greater risk-adjusted returns. Credit-oriented fixed income investments include similar types of securities as those in the risk reduction and mitigation allocation, but may have different credit characteristics at the time of purchase.

Real Assets

An appropriately diversified Fund should include, commensurate with market conditions, investments in real assets to generate current income and provide capital appreciation. In making such investments, PERA shall consider the benefits of diversification that these investments provide as a hedge against inflation. Real assets investments may include but are not limited to liquid and illiquid securities in real estate, infrastructure, commodities, natural resources, timber, agriculture and farmland. The real assets portfolio includes market neutral strategies—these portfolios seek to avoid elevated exposure to broad market risk through the use of hedges. Market neutral strategies shall target a zero correlation with broad market movements and provide diversification benefits for the total fund.

Multi-Risk Allocation

An appropriately diversified Fund should include, commensurate with market conditions, investments

in balanced risk-based exposures to equalize the risk contribution of asset classes or risk factors comprised in the portfolio. In making such investments, PERA shall consider the benefits of diversification that these investments provide as a liability hedge and stabilized return generator. Multi-risk investments shall include, but are not limited to, Risk Balanced/Parity strategies. PERA shall also consider multi-risk investments that utilize leverage and derivatives to generate a greater risk adjusted return.

B. Other Investment Considerations

The Board may, after consideration of pertinent investment risk and reward attributes, and liquidity, cost and administrative complexity, authorize any investment except as otherwise expressly prohibited.

Securities Regulations

PERA shall consider, based on market considerations, whether engagement of Investment Managers registered under the Investment Company Act of 1940 is appropriate. This Act governs the operations of investment companies and their managers. PERA should work with its Investment Consultants and Investment Managers to ensure compliance with all federal and state securities laws including, but not limited to, the Securities Act of 1933 and the Investment Advisers Act of 1940. PERA recognizes that such registration is not applicable to all investment strategies or to investment opportunities located outside the United States.

Leverage

Leverage is implicit in many investment strategies and leverage in and of itself is not strictly prohibited so long as activities do not materially increase the risk level of the Plan. Leverage will be considered when deciding to retain an Investment Manager, and the Board, in conjunction with Staff, Investment Consultants, and Investment Managers, will avoid managers who employ unreasonable levels of leverage.

Liquidity

The Fund must maintain an easily accessible balance of cash equivalents and other reasonably liquid assets for the purposes of meeting the financial obligations of the Fund. The Board will govern these liquidity requirements through the utilization of a structural hierarchy, which will classify asset classes according to liquidity availability and pricing sensitivity during market stress. Convertible Liquidity is defined as a level of access from asset classes that can be liquidated in a relatively short amount of time with minimal pricing impact. Delayed Liquidity will capture all remaining asset classes that can be sold, but at a greater expense and/or over a longer time frame. Within these two classifications asset classes will be further classified across tiered availability. Liquidity guidelines are listed in Appendix C, which is separately adopted by the Board.

Derivatives

Investment Managers may use derivative instruments such as futures, options, swaps, and forwards, to implement investment strategies in a low cost, efficient manner or construct portfolios with risk and return characteristics that cannot be created with cash market securities. Derivatives may also be used within the context of a cash overlay program. The cash overlay program, administered by an Investment Manager, may buy, sell, and hold exchanged-traded derivative instruments and exchange-traded funds.

C. Prohibited Investments

In accordance with UPIA guidelines, the Board, Staff, Investment Consultants, and Investment

Managers are expected to perform their fiduciary duties as a prudent investor would and to conform to all applicable federal and state statutes governing the investment of retirement funds for a qualified government plan. Accordingly, the following investments are prohibited:

Investments precluded by law or regulation:

- Transactions that involve a broker acting as a "principal" where such broker is also the Investment Manager who is making the transaction are prohibited unless otherwise approved in each manager's respective PSA.
- Any other investments as specified in each Investment Manager's respective contract.
- An investment that violates the placement agent limitations set forth in the PERA Act.

VII. REVIEW AND APPROVAL OF INVESTMENT POLICY

The Board shall review the Policy from time-to-time to determine if modifications are necessary or desirable but will delegate Staff to review the Policy on an annual basis. Staff will recommend modifications as warranted. If modifications are made, they shall be promptly communicated to all Investment Managers and other interested persons.

By signing this Investment Policy the Board through its Chair, indicates its agreement therewith.

Adopted: June 25, 1992
Amended: September 14, 1993
April 28, 1994
September 28, 1995
January 29, 1998
March 23, 1998
January 27, 2000
September 26, 2002
July 31, 2003
October 31, 2003
July 1, 2005
September 28, 2005
December 29, 2005
July 27, 2006
August 31, 2006
September 28, 2006
June 1, 2007
August 30, 2007
July 31, 2008
June 24, 2010
November 29, 2012
August 28, 2014
December 18, 2014
September 24, 2015
April 28, 2016
December 14, 2017
July 26, 2018
April 30, 2020

By: 

John Melia, Board Chair
Public Employees Retirement Association of New
Mexico

APPENDIX A. ASSET ALLOCATION TARGETS AND REBALANCING RANGES

Effective July 26, 2018

Asset Class	Lower Limit	Strategic Asset Allocation Target	Upper Limit
Global Equity	30.5%	35.5%	40.5%
Risk Reduction and Mitigation	16.5%	19.5%	22.5%
Credit Oriented Fixed Income	11.0%	15.0%	19.0%
Real Assets	16.0%	20.0%	24.0%
Multi-Risk Allocation	06.0%	10.0%	14.0%

Adopted: July 26, 2018

By:



James Maxon, Board Chair

Public Employees' Retirement Association of New Mexico

APPENDIX B. BENCHMARKS

Effective: January 1, 2019

Global Equity	Custom Blended Benchmark
Global Public Stock	MSCI ACWI IMI (\$net)
Global Low Volatility Equity	MSCI ACWI Minimum Volatility (\$net)
Hedged Equity	MSCI ACWI Minimum Volatility (\$net)
Private Equity	MSCI ACWI IMI (\$net)
Risk Reduction & Mitigation	Custom Blended Benchmark
Core Fixed Income	Bloomberg Barclays U.S. Aggregate
Global Core Fixed Income	Bloomberg Barclays Global Aggregate (Hedged)
Credit Oriented Fixed Income	Custom Blended Benchmark
Liquid Credit	Bloomberg Barclays Global High Yield (Hedged)
Emerging Market Debt	50% JP Morgan EMBI Global Diversified (\$) 50% JP Morgan GBI (\$)
Illiquid Credit	Bloomberg Barclays Global High Yield (Hedged)
Credit Oriented Hedge Funds	Bloomberg Barclays Global High Yield (Hedged)
Real Assets	Custom Blended Benchmark
Liquid Real Estate	Wilshire Global REITs
Illiquid Real Estate	Wilshire Global REITs
Liquid Real Assets	Alerian MLP Index / Dow Jones – Brookfield Global Infrastructure Index / Bloomberg Barclays – U.S. TIPS / Bloomberg Commodity – Commodity Index (TR)
Illiquid Real Assets	Dow Jones – Brookfield Global Infrastructure Index / Bloomberg Commodity – Commodity Index (TR)
Multi-Risk Allocation	Custom Blended Benchmark
Risk Balance	Custom Blended Benchmark

Adopted: November 29, 2018

By: 
 James Maxon, Board Chair
 Public Employees' Retirement Association of New Mexico

APPENDIX C. LIQUIDITY GUIDELINES

Effective: April 30, 2020

At no time shall Tier 1 assets fall below 10% of the total fund market value. For the purposes of liquidity, tier classifications and their corresponding asset classes are as follows:

Convertible Liquidity		
Tier 1	1-5 Day Liquidity	Core Fixed Income Global Core Fixed Income Cash and Cash Overlay
Tier 2	5-90 Day Liquidity	Global Public Stock Global Low Volatility Equity Liquid Credit Emerging Market Debt Liquid Real Estate Liquid Real Assets Risk Balance
Delayed Liquidity		
Tier 3	90-365 Day Liquidity	Hedged Equity Hedged Credit / Alternative Credit
Tier 4	1 Year + Liquidity	Private Equity Illiquid Credit Illiquid Real Estate Illiquid Real Assets Bond Plus/Portable Alpha

Adopted: April 30, 2020

By: 
 John Melia, Board Chair
 Public Employees' Retirement Association of New Mexico

West's New Mexico Statutes Annotated
Chapter 45. Uniform Probate Code
Article 7. Trust Administration
Part 6. Uniform Prudent Investor Act (Refs & Annos)

N. M. S. A. 1978, § 45-7-601

§ 45-7-601. Short title

Currentness

Sections 45-7-601 through 45-7-612 NMSA 1978 may be cited as the "Uniform Prudent Investor Act".

Credits

L. 1995, Ch. 210, § 82, eff. July 1, 1995.

NMSA 1978, § 45-7-601, NM ST § 45-7-601

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Chapter 45. Uniform Probate Code
Article 7. Trust Administration
Part 6. Uniform Prudent Investor Act (Refs & Annos)

N. M. S. A. 1978, § 45-7-602

§ 45-7-602. Prudent investor rule

Currentness

A. Except as otherwise provided in Subsection B of this section, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in the Uniform Prudent Investor Act.

B. The prudent investor rule, a default rule, may be expanded, restricted, eliminated or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust.

Credits

L. 1995, Ch. 210, § 83, eff. July 1, 1995.

NMSA 1978, § 45-7-602, NM ST § 45-7-602

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Chapter 45. Uniform Probate Code

Article 7. Trust Administration

Part 6. Uniform Prudent Investor Act (Refs & Annos)

N. M. S. A. 1978, § 45-7-603

§ 45-7-603. Standard of care; portfolio strategy; risk and return objectives

Currentness

A. A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution.

B. A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

C. Among circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:

(1) general economic conditions;

(2) the possible effect of inflation or deflation;

(3) the expected tax consequences of investment decisions or strategies;

(4) the role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interest in closely held enterprises, tangible and intangible personal property and real property;

(5) the expected total return from income and the appreciation of capital;

West's New Mexico Statutes Annotated
Chapter 45. Uniform Probate Code
Article 7. Trust Administration
Part 6. Uniform Prudent Investor Act (Refs & Annos)

N. M. S. A. 1978, § 45-7-604

§ 45-7-604. Diversification

Currentness

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

Credits

L. 1995, Ch. 210, § 85, eff. July 1, 1995.

NMSA 1978, § 45-7-604, NM ST § 45-7-604

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Chapter 45. Uniform Probate Code
Article 7. Trust Administration
Part 6. Uniform Prudent Investor Act (Refs & Annos)

N. M. S. A. 1978, § 45-7-605

§ 45-7-605. Duties at inception of trusteeship

Currentness

Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets, in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements and other circumstances of the trust, and with the requirements of the Uniform Prudent Investor Act.

Credits

L. 1995, Ch. 210, § 86, eff. July 1, 1995.

NMSA 1978, § 45-7-605, NM ST § 45-7-605

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Chapter 45. Uniform Probate Code
Article 7. Trust Administration
Part 6. Uniform Prudent Investor Act (Refs & Annos)

N. M. S. A. 1978, § 45-7-606

§ 45-7-606. Loyalty

Currentness

A trustee shall invest and manage the trust assets solely in the interest of the beneficiaries.

Credits

L. 1995, Ch. 210, § 87, eff. July 1, 1995.

NMSA 1978, § 45-7-606, NM ST § 45-7-606

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Chapter 45. Uniform Probate Code

Article 7. Trust Administration

Part 6. Uniform Prudent Investor Act (Refs & Annos)

N. M. S. A. 1978, § 45-7-607

§ 45-7-607. Impartiality

Currentness

If a trust has two or more beneficiaries, the trustee shall act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries.

Credits

L. 1995, Ch. 210, § 88, eff. July 1, 1995.

NMSA 1978, § 45-7-607, NM ST § 45-7-607

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Chapter 45. Uniform Probate Code

Article 7. Trust Administration

Part 6. Uniform Prudent Investor Act (Refs & Annos)

N. M. S. A. 1978, § 45-7-608

§ 45-7-608. Investment costs

Currentness

In investing and managing trust assets, a trustee may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust and the skills of the trustee.

Credits

L. 1995, Ch. 210, § 89, eff. July 1, 1995.

NMSA 1978, § 45-7-608, NM ST § 45-7-608

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Chapter 45. Uniform Probate Code

Article 7. Trust Administration

Part 6. Uniform Prudent Investor Act (Refs & Annos)

N. M. S. A. 1978, § 45-7-609

§ 45-7-609. Reviewing compliance

Currentness

Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

Credits

L. 1995, Ch. 210, § 90, eff. July 1, 1995.

NMSA 1978, § 45-7-609, NM ST § 45-7-609

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Chapter 45. Uniform Probate Code

Article 7. Trust Administration

Part 6. Uniform Prudent Investor Act (Refs & Annos)

N. M. S. A. 1978, § 45-7-610

§ 45-7-610. Delegation of investment and management functions

Currentness

A. A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill and caution in:

(1) selecting an agent;

(2) establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and

(3) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

B. In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

C. A trustee who complies with the requirements of Subsection A of this section is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

D. By accepting the delegation of a trust function from the trustee of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state.

Credits

L. 1995, Ch. 210, § 91, eff. July 1, 1995.

West's New Mexico Statutes Annotated
Chapter 45. Uniform Probate Code
Article 7. Trust Administration
Part 6. Uniform Prudent Investor Act (Refs & Annos)

N. M. S. A. 1978, § 45-7-611

§ 45-7-611. Language invoking standard

Currentness

The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under the Uniform Prudent Investor Act: “investments permissible by law for investment of trust funds”, “legal investments”, “authorized investments”, “using the judgment and care under the circumstances then prevailing that persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital”, “prudent man rule”, “prudent trustee rule”, “prudent person rule” and “prudent investor rule”.

Credits

L. 1995, Ch. 210, § 92, eff. July 1, 1995.

NMSA 1978, § 45-7-611, NM ST § 45-7-611

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Chapter 45. Uniform Probate Code
Article 7. Trust Administration
Part 6. Uniform Prudent Investor Act (Refs & Annos)

N. M. S. A. 1978, § 45-7-612

§ 45-7-612. Application to existing trusts

Currentness

The Uniform Prudent Investor Act applies to trusts existing on and created after its effective date. As applied to trusts existing on its effective date, the Uniform Prudent Investor Act governs only decisions or actions occurring after that date.

Credits

L. 1995, Ch. 210, § 93, eff. July 1, 1995.

NMSA 1978, § 45-7-612, NM ST § 45-7-612

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10-11-132. Investment of funds; prudent investor standard; indemnification of board members.

The funds created by the state retirement system acts are trust funds of which the retirement board is trustee. Members of the retirement board jointly and individually shall be indemnified by the state from the funds administered by the retirement board from all claims, demands, suits, actions, damages, judgments, costs, charges and expenses, including court costs and attorney fees and against all liability losses and damages of any nature that members shall or may sustain by reason of any decision made in the performance of their duties pursuant to the state retirement system acts. The retirement board shall invest and reinvest the funds in accordance with the Uniform Prudent Investor Act [45-7-601 through 45-7-612 NMSA 1978].

History: Laws 1987, ch. 253, § 132; 1989, ch. 46, § 1; 1992, ch. 116, § 11; 1995, ch. 94, § 1; 1997, ch. 189, § 11; 2003, ch. 345, § 1; 2005, ch. 240, § 4.

10-11-133. Investment of funds; prudent investor standard; conditions.

- A. Commissions paid for the purchase and sale of any security shall not exceed brokerage rates prescribed and approved by stock exchanges that have been approved by or are under the control of the United States securities and exchange commission or by industry practice.
- B. The retirement board shall invest and manage the funds administered by the retirement board in accordance with the Uniform Prudent Investor Act [45-7-601 through 45-7-612 NMSA 1978].
- C. The retirement board shall provide quarterly performance reports to the legislative finance committee and the department of finance and administration. Annually, the retirement board shall ratify and provide its written investment policy, including any amendments, to the legislative finance committee and the department of finance and administration.
- D. Securities purchased with money from or held for any fund administered by the retirement board and for which the retirement board is trustee shall be in the custody of the state treasurer who shall, at the direction of the retirement board, deposit with a bank or trust company the securities for safekeeping or servicing.
- E. The retirement board may consult with the state investment council or state investment officer and request information or advice with respect to the retirement board's overall investment plan, may utilize the services of the state investment council and state investment officer and may act on their advice concerning the plan. The state investment council and state investment officer shall render investment services to the retirement board without expense to the retirement board. The retirement board may also employ the investment management services and related management services of a trust company or national bank exercising trust powers or of an investment counseling firm or brokers for the purchase and sale of securities, commission recapture and transitioning services and may pay reasonable compensation for such services from funds administered by the retirement board. The terms of any such investment management services contract shall incorporate the statutory requirements for investment of funds under the retirement board's jurisdiction.

- F. The retirement board shall annually provide for its members no less than eight hours of training in pension fund investing, fiduciary obligations or ethics. A member elected to the retirement board who fails to attend the training for two consecutive years shall be deemed to have resigned from the retirement board.
- G. Except as provided in the Public Employees Retirement Act, a member of the retirement board, employee of the retirement board or any person connected with the retirement board in any manner shall not:
- (1) have any direct or indirect interest in the gains or profits of any investment made by the retirement board;
 - (2) receive any direct or indirect pay or emolument for services provided to the retirement board or the association;
 - (3) directly or indirectly, for the member, employee or person, for themselves or as agent or partner of others, borrow any of the funds or deposits of the association or in any manner use them except to make current and necessary payments authorized by the retirement board; or
 - (4) become an endorser or surety or become in any manner an obligor for money of the retirement board loaned or borrowed.

History: Laws 1987, ch. 253, § 133; 1989, ch. 46, § 2; 1992, ch. 116, § 12; 2005, ch. 240, § 5; 2009, ch. 288, § 11.

10-11-133.1. Disclosure of third-party marketers; penalty.

- A. The retirement board shall not make any investment, other than investments in publicly traded equities or publicly traded fixed-income securities, unless the recipient of the investment discloses the identity of any third-party marketer who rendered services on behalf of the recipient in obtaining the investment and also discloses the amount of any fee, commission or retainer paid to the third-party marketer for the services rendered.
- B. Information disclosed pursuant to Subsection A of this section shall be included in the quarterly performance reports of the retirement board.
- C. Any person who knowingly withholds information required by Subsection A of this section is guilty of a fourth degree felony and shall be punished by a fine of not more than twenty thousand dollars (\$20,000) or by imprisonment for a definite term not to exceed eighteen months or both.
- D. As used in this section, "third-party marketer" means a person who, on behalf of an investment fund manager or other person seeking an investment from the fund and under a written or implied agreement, receives a fee, commission or retainer for such services from the person seeking an investment from the fund.

History: Laws 2009, ch. 152, § 2.

TITLE 2 PUBLIC FINANCE
CHAPTER 80 PUBLIC EMPLOYEES RETIREMENT
PART 300 INVESTMENT POLICIES AND PRACTICES

2.80.300.1 ISSUING AGENCY: Public Employees Retirement Association, P. O. Box 2123, Santa Fe, New Mexico 87504-2123
[10-15-97; 2.80.300.1 NMAC - Rn, 2 NMAC 80.300.1, 12-28-00]

2.80.300.2 SCOPE: This rule applies to the public employees retirement board and its investment managers and brokerage firms.
[10-15-97; 2.80.300.2 NMAC - Rn, 2 NMAC 80.300.2, 12-28-00]

2.80.300.3 STATUTORY AUTHORITY: This rule is authorized by NMSA 1978, Sections 10-11-130, 10-11-132, 10-11-133 and 10-11-133.1, as amended.
[10-15-97; 2.80.300.3 NMAC - Rn, 2 NMAC 80.300.3, 12-28-00; A, 9-30-10]

2.80.300.4 DURATION: Permanent.
[10-15-97; 2.80.300.4 NMAC - Rn, 2 NMAC 80.300.4, 12-28-00]

2.80.300.5 EFFECTIVE DATE: May 4, 1994 unless a different date is cited at the end of a section.
[10-15-97; 2.80.300.5 NMAC - Rn, 2 NMAC 80.300.5, 12-28-00]

2.80.300.6 OBJECTIVE: The objective of this rule is to set the public employees retirement board's investment policy for investments of funds under NMSA 1978, Sections 10-11-132 and 10-11-133, as amended.
[10-15-97; 2.80.300.6 NMAC - A, 2 NMAC 80.300.6, 12-28-01; A, 8-15-01]

2.80.300.7 DEFINITIONS: [Reserved]
[2.80.300.7 NMAC - A, 2 NMAC 80.300.7, 12-28-00]

2.80.300.8 - 9 [Reserved]

2.80.300.10 INVESTMENT COMMITTEE: [Reserved]
[2.80.300.10 NMAC - A, 2 NMAC 80.300.10, 12-28-00]

2.80.300.11 - 19 [Reserved]

2.80.300.20 MANAGEMENT AND PHILOSOPHY: [Reserved]
[2.80.300.20 NMAC - A, 2 NMAC 80.300.20, 12-28-00]

2.80.300.21 - 29 [Reserved]

2.80.300.30 BEST EXECUTION AND BEST PRICE

A. Statement of policy: The New Mexico public employees retirement board adopts the following statement as its policy with respect to securities transactions of the PERA investment funds.

(1) The board serves as trustee of the retirement funds created under the Public Employees Retirement Act, NMSA 1978, Section 10-11-1 et seq.; the Judicial Retirement Act, NMSA 1978, Section 10-12B-1 et seq.; the Magistrate Retirement Act, NMSA 1978, Section 10-12C-1 et seq.; and the Volunteer Firefighters Retirement Act, NMSA 1978, Section 10-11A-1 et seq.

(2) As trustee of these funds, the board has a fiduciary responsibility to invest these funds solely in the interest of the members, retirees, and beneficiaries and exclusively to provide benefits to the members, retirees, and beneficiaries and to pay reasonable administrative costs. The board also has a fiduciary obligation to give primacy to the preservation of trust funds and to insure the procurement of a reasonable income while avoiding undue investment risks.

(3) The board has delegated the investment of the funds under its jurisdiction to external investment managers.

(4) By contractual agreement, the board has delegated to its investment managers full discretion with regard to securities transactions so long as they conform to New Mexico state statutes, the PERA investment policy and the specific PERA investment objectives and guidelines for each particular investment portfolio.

(5) Both by contract and by virtue of common law trust principles, the investment managers serve as fiduciaries to PERA and must at all times act in a fiduciary capacity to PERA and the investment accounts assigned to them.

(6) As fiduciaries of the funds, both the board and its investment managers are obligated to require that all securities transactions be made on the basis of best execution under the circumstances at the lowest available price.

(7) The board's policy is that all securities transactions shall be executed on the basis of best execution under the circumstances at the lowest available price and that all investment decisions shall be made solely for the benefit of the members, retirees and their beneficiaries.

B. [Reserved]

[10-15-97; 2.80.300.30 NMAC - Rn & A, 2 NMAC 80.300.30, 12-28-00; A, 8-15-01, A, 9-30-10]

HISTORY of 2.80.300 NMAC:

Pre-NMAC History: The material in this part was derived from the previously filed with the State Records Center and Archives under: Rule 300.00, Investment Policies and Practices, filed on 10-4-79; PERA Rule 300.00, Investment Policies and Practices, filed on 11-19-81; PERA Rule 300, Investment Policies and Practices, filed on 7-1-91; PERA Rule 300, Investment Policies and Practices, filed on 5-4-94.