



PERA

Public Employees
Retirement Association
of New Mexico

INVESTED IN TOMORROW.

REQUEST FOR INFORMATION

Actuarial Audit Services

Issuance Date: September 3, 2024

Deadline for Submittal of Responses: October 4, 2024

I. BACKGROUND

The New Mexico Public Employees Retirement Board (“Board”) is the Trustee of the Public Employees Retirement Association (“PERA”) and the funds created by state statute.¹ As Trustees, Board Members are fiduciaries to the various PERA funds and must prudently administer these retirement systems for the sole and exclusive benefit of PERA members, retirees and beneficiaries.² Additionally, the Executive Director also has a fiduciary duty to prudently administer these retirement systems for the sole and exclusive benefit of PERA members, retirees and beneficiaries. The retirement systems are treated as qualified plans under Section 401(a) of the Internal Revenue Code. The Fund’s assets were valued in excess of \$17.6 billion as of June 30, 2024.

Through this Request for Information (“RFI”), PERA seeks to select and retain a qualified provider for the following Scope of Work:

The purpose of the proposed audit is to have an independent actuary (“Contractor”) review the work of the PERA’s current actuary, Gabriel, Roeder, Smith & Company (“Consulting Actuary”). The audit will review the most recent annual valuation and experience study for PERA to express an opinion and assure the results presented are sound and reasonable. All plan actuarial data will be provided using the ProVal software application.

The Contractor will not fully replicate the consulting actuary’s valuation, but instead, use a sampling of the PERA’s participant data to test the results of the most recent valuation and experience study. Contractor shall employ a risk-based approach using the appropriate mathematical modeling and “test lives” sampling of plan participant data sufficient to research a conclusion on the validity of the actuarial computed liabilities of each division and the required contributions thereof. The test lives shall be selected by the Contractor to provide the greatest assurance that the results are correct and can be relied upon. In addition, the Contractor shall examine the Consulting Actuary’s method and assumptions for reasonableness and internal consistency. To accomplish this objective, the Contractor shall, in accordance with generally accepted actuarial standards, perform the following:

- 1) Validate the results of the June 30, 2024 actuarial valuation by performing an audit in which the Contractor shall verify the accuracy of the valuation through sampling;
- 2) Validate the results of the June 30, 2024 experience study by performing an audit in which the Contractor shall review for reasonableness and conformity with generally accepted actuarial standards;

¹ Public Employees Retirement Act, NMSA 1978, Sections 10-11-1, et seq. (1999), the Judicial Retirement Act, NMSA 1978, Sections 10-12B-1 et seq. (1997), the Magistrate Retirement Act, NMSA 1978, Sections 10-12C-1 et seq. (1997) the Volunteer Firefighters Retirement Act, NMSA 1978, Section 10-11A-1 et seq. (1997) and the Deferred Compensation Act, NMSA 1978, Sections 10-7a-1 et seq. (1981).

² N.M. Const. art. XX, § 22.

- 3) Determine if the Consulting Actuary's use of certain demographic and economic actuarial assumptions are reasonable and are based on generally accepted actuarial standards.
- 4) Determine if the actuarial cost method and actuarial asset valuation method used by the Consulting Actuary are reasonable, including whether different methods may be more appropriate.
- 5) Determine if the census data used by the Consulting Actuary is valid, complete and contains the necessary data elements.
- 6) Determine if the mortality tables used for all PERA divisions are reasonable, including whether different methods may be more appropriate.
- 7) Prepare a comprehensive report containing an opinion whether:
 - a. The conclusions of the year ending June 30, 2024 valuation reports accurately portray the actuarial status of PERA and are properly reflected in the employer contribution rates and liabilities;
 - b. The PERA experience study for the year ending June 30, 2024 is complete and accurate;
 - c. The conclusions of the valuation reports accurately portray the actuarial status of PERA and are properly reflected in the employer contribution rates and liabilities; and
 - d. The report shall include an analysis of any errors or deviations from generally accepted accounting principles and generally accepted actuarial principles and practices having a significant and material financial effect on the valuation results and the employer contribution rates. The report shall be completed by December 31, 2024.

II. CONDITIONS GOVERNING THE RFI

A. Schedule of Events

The following schedule governs procurement under this RFI. Please note that these dates may be adjusted at PERA’s discretion without the need to amend the RFI. PERA will notify respondents of adjustments to the schedule of events through modification to the RFI on the website – www.nmpera.org and notification of offeror/vendor contact.

<u>Action</u>	<u>Responsible Party</u>	<u>Date</u>
1. Issue RFI	PERA	September 3, 2024
2. Acknowledgement of Receipt	Potential Respondents	September 13, 2024 - 5 PM MDT
3. Deadline for Questions	Potential Respondents	September 13, 2024 - 5 PM MDT
4. Response to Questions	RFI Manager/PERA	September 20, 2024 - 5 PM MDT
5. Submission of RFI	Respondents	October 4, 2024 - 3 PM MDT
6. Contract Award	PERA	October 25, 2024 - 5 PM MDT

B. Explanation of Events

1. Release of RFI

This RFI is being issued on the date indicated in the schedule of events, above, by the RFI Manager.

2. Acknowledgement of Receipt

The Acknowledgement of Receipt form (Attachment A) 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. Schedule 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. Schedule of Events, above.

4. Response to Questions

Written responses to questions shall be provided to those respondents that have returned the Acknowledgement of Receipt form by the date as indicated in Section II. A. Schedule 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 Daylight Time (MDT) 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 e-mailed to:

Heather Miller
33 Plaza La Prensa
Santa Fe, New Mexico 87507

Phone: (505) 616-1707
E-Mail: Heather.Miller@pera.nm.gov

If mailed or delivered in person, responses must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the **RFI –Actuarial Audit Services.**

6. Contract Award

PERA will select a respondent(s) to provide actuarial audit services at the time indicated in Section II.A. Schedule of Events. Based on responses received, it is anticipated that PERA will enter into a contract(s) for actuarial audit services beginning on the date the contract is approved by the New Mexico General Service Department’s State Purchasing Division – Contract Review Bureau.

C. General Requirements

Submission of a response constitutes acceptance of, and consent to the following General Requirements:

1. No Obligation

This RFI in no manner obligates 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

PERA 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. PERA cannot guarantee the confidentiality of the information submitted.

7. Ownership of Materials

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

8. Acceptance

PERA reserves the right to reject responses and other materials that arrive late or do not meet all of the specified requirements. The contents of offers responsive to this RFI shall not be disclosed prior to the final signature required by PERA for Contract Award as indicated in Section II. A. Schedule of Events, above.

9. Consent

The successful respondent agrees that the professional services that are the subject of this Request for Information shall be provided in substantial accordance with the terms

and provisions of the Sample Professional Services Agreement that is attached to this Request (Attachment B).

III. 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. Other Supporting Materials/Documentation (optional)

IV. 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: name, address, telephone number, and the name and e-mail address of a contact person who can discuss submitted responses, if necessary. If the Respondent has more than one office, please list the address and telephone number for each office.

B. Please provide: Experience

1. A detailed description of the Respondent's experience in providing actuarial audit services to a large public pension plan during the last five (5) years.

2. A list of the employees who would work with PERA, their areas of specialization, actuarial audits which the employee has handled, the number of years of experience in such areas, and the extent to which each has provided services relevant to the purpose of this RFI. In addition, please provide copies of the resumes of the employees identified in the response to this item.

C. Please provide a Cost Proposal containing the total number of hours and total cost to provide the actuarial audit services outlined in the Scope of Work.

- D.** Please provide a description of your organization's professional liability insurance policy. 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 your organization or employees may have if awarded a contract.
- F.** 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, e-mail address and mailing address.
- G.** Please list any other services you provide in addition to the ones already listed that you believe might be of benefit to PERA.

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ATTACHMENT A

Public Employees Retirement Association of New Mexico
Request for Information

Actuarial Audit Services

Acknowledgement of Receipt Form

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 indicated in Section II. A. Schedule of
Events at 5:00 pm Mountain Daylight Time. Please email to:

Heather Miller
E-Mail: Heather.Miller@pera.nm.gov

ATTACHMENT B

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 the “Agency,” and **NAME OF CONTRACTOR**, hereinafter referred to as the “Contractor,” and is effective as of the date set forth below upon which it is executed by the General Services Department/State Purchasing Division (GSD/SPD Contracts Review Bureau).

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work.

The Contractor shall perform the following work:

A. The purpose of the proposed audit is to have an independent actuary (“Contractor”) review the work of the PERA’s current actuary, Gabriel, Roeder, Smith & Company (“Consulting Actuary”). The audit will review the most recent annual valuation and experience study for PERA to express an opinion and assure the results presented are sound and reasonable. All plan actuarial data will be provided using the ProVal software application.

B. The Contractor will not fully replicate the consulting actuary’s valuation, but instead, use a sampling of the PERA’s participant data to test the results of the most recent valuation and experience study. Contractor shall employ a risk-based approach using the appropriate mathematical modeling and “test lives” sampling of plan participant data sufficient to research a conclusion on the validity of the actuarial computed liabilities of each division and the required contributions thereof. The test lives shall be selected by the Contractor to provide the greatest assurance that the results are correct and can be relied upon. In addition, the Contractor shall examine the Consulting Actuary’s method and assumptions for reasonableness and internal consistency. To accomplish this objective, the Contractor shall, in accordance with generally accepted actuarial standards, perform the following:

- 1) Validate the results of the June 30, 2024 actuarial valuation by performing an audit in which the Contractor shall verify the accuracy of the valuation through sampling;
- 2) Validate the results of the June 30, 2024 experience study by performing an audit in which the Contractor shall review for reasonableness and conformity with generally accepted actuarial standards;

- 3) Determine if the Consulting Actuary's use of certain demographic and economic actuarial assumptions are reasonable and are based on generally accepted actuarial standards.
- 4) Determine if the actuarial cost method and actuarial asset valuation method used by the Consulting Actuary are reasonable, including whether different methods may be more appropriate.
- 5) Determine if the census data used by the Consulting Actuary is valid, complete and contains the necessary data elements.
- 6) Determine if the mortality tables used for all PERA divisions are reasonable, including whether different methods may be more appropriate.
- 7) Prepare a comprehensive report containing an opinion whether:
 - a. The conclusions of the year ending June 30, 2024, valuation reports accurately portray the actuarial status of PERA and are properly reflected in the employer contribution rates and liabilities;
 - b. The PERA experience study for the year ending June 30, 2024 is complete and accurate;
 - c. The conclusions of the valuation reports accurately portray the actuarial status of PERA and are properly reflected in the employer contribution rates and liabilities; and
 - d. The report shall include an analysis of any errors or deviations from generally accepted accounting principles and generally accepted actuarial principles and practices having a significant and material financial effect on the valuation results and the employer contribution rates. The report shall be completed by December 31, 2024.

2. Compensation.

A. The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed (AMOUNT). This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the Agency when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.

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

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

3. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE GSD/SPD Contracts Review Bureau. This Agreement shall terminate on January 17, 2025, unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with NMSA 1978, § 13-1-150, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in NMSA 1978, § 13-1-150.

4. Termination.

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

B. Notice; Agency Opportunity to Cure.

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

2. Contractor shall give Agency written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Agency's material breaches of this Agreement upon which the termination is based and (ii) state what the Agency must do to cure such material breaches. Contractor's notice of termination shall only be

effective (i) if the Agency does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Agency does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

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

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

D. Termination Management. Immediately upon receipt by either the Agency or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the Agency; 2) comply with all directives issued by the Agency in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the Agency shall direct for the protection, preservation, retention or transfer of all property titled to the Agency and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the Agency upon termination and shall be submitted to the agency as soon as practicable.

5. Appropriations.

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

Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

6. Status of Contractor.

The Contractor and its agents and employees are independent contractors performing professional services for the Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

7. Assignment.

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

8. Subcontracting.

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Agency. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the Procuring Agency.

9. Release.

Final payment of the amounts due under this Agreement shall operate as a release of the Agency, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

10. Confidentiality.

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

11. Product of Service -- Copyright.

All materials developed or acquired by the Contractor under this Agreement shall become the property of the State of New Mexico and shall be delivered to the Agency no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the

Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

12. Conflict of Interest; Governmental Conduct Act.

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

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

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

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

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

4) this Agreement complies with NMSA 1978, § 10-16-9(A) because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest,

disclosure has been made as required by NMSA 1978, § 10-16-7(A), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

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

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

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

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

13. Amendment.

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

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

14. Merger.

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

15. Penalties for violation of law.

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

16. Equal Opportunity Compliance.

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

17. Applicable Law.

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

18. Workers Compensation.

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

19. Records and Financial Audit.

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Agency, the General Services Department/State Purchasing Division and the State Auditor. The Agency shall have the right to audit billings both before and

after payment. Payment under this Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments

20. Indemnification.

The Contractor shall defend, indemnify and hold harmless the Agency and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the Agency and the Risk Management Division of the New Mexico General Services Department by certified mail.

21. New Mexico Employees Health Coverage.

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

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

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

22. Invalid Term or Condition.

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

23. Enforcement of Agreement.

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other

provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

24. Notices.

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

To the Agency:
Anna Williams, Deputy Director
Public Employees Retirement Association
33 Plaza La Prensa
Santa Fe, NM 87507
(505) 259-8489
AnnaE.Williams@pera.nm.gov

To the Contractor:
[insert name, address and email].

25. Authority.

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

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

By: _____ Date: _____
Greg Trujillo, Executive Director

By: _____ Date: _____
Anthony Montoya, General Counsel

By: _____ Date: _____
Lynette Sanders, Chief Financial Officer

By: _____ Date: _____
Contractor

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

ID Number: 00-000000-00-0

By: _____ Date: _____
Taxation and Revenue Department

This Agreement has been approved by the GSD/SPD Contracts Review Bureau:

By: _____ Date: _____
GSD/SPD Contracts Review Bureau