



Board of
Education
Retirement
System

REQUEST FOR PROPOSALS

FOR

INVESTMENT CONSULTING SERVICES

RFP # 2024-003

Proposals will be received
via email to: BERSProcurement@bers.nyc.gov

Until: 5:00 PM On: July 12, 2024

NO LATE PROPOSALS WILL BE ACCEPTED

**EACH PAGE OF THE SUBMISSION MUST
BE LABELED WITH RFP # 2024-003:
INVESTMENT CONSULTING SERVICES**

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FOR PURPOSES OF THIS RFP, “WE,” “US” OR “OUR” SHALL MEAN THE NEW YORK CITY BOARD OF EDUCATION RETIREMENT SYSTEM, AND “YOU” OR “YOUR” MEANS THE ENTITY SUBMITTING THE PROPOSAL TO NYCBERS.

DEFINITIONS OF KEY TERMS USED IN THIS RFP

Term	Definition
Agency	For the purposes of this RFP and for contract and insurance purposes, it refers to the New York City Board of Education Retirement System (“BERS”).
Actuary	The Chief Actuary of the City of New York. The Chief Actuary is the legally designated technical advisor to the Boards of Trustees of the five New York City Retirement Systems, which include the New York City Employees’ Retirement System, the Teachers’ Retirement System, the Board of Education Retirement System, the New York City Police Pension Fund, and the New York City Fire Department Pension Fund.
BERS, New York City Board of Education Retirement System.	These terms are used interchangeably for the Board of Education Retirement System of the City of New York, its agents, employees, designees, etc. as the case may be.
BIPOC	Black, Indigenous, and People of Color
Board or Trustees	The Board of Trustees of the Board of Education Retirement System of the City of New York
Bureau of Asset Management or “BAM”	The New York City Comptroller’s Bureau of Asset Management oversees the investment portfolio for each system and related defined contribution funds. In this role, the Comptroller provides investment advice, implements Board decisions, and reports on investment performance.
Comptroller	The Comptroller of the City of New York. The Comptroller is by law the custodian of City-held trust funds and the assets of the New York City Public Pension Funds, and serves as Trustee on each of the funds. Further, the Comptroller is delegated to serve as investment advisor by all five pension boards.
City, NYC	The City of New York
“Party” and “Parties” (with or without capitalization)	Each or both, respectively, BERS and the Contractor.
Person (with or without capitalization)	Any person, corporation, limited liability company, limited liability partnership, general partnership, limited partnership, trust, association, sole proprietorship, governmental organization or agency, political subdivision, body politic, or other legal person or entity of any kind.
Private Markets Investment	The following asset classes: private equity, private real estate, opportunistic fixed-income, private debt, and private infrastructure.

<p>Proposer, Contractor, or Vendor, you, your</p>	<p>The firm, corporation, or entity submitting a proposal to provide BERS with the goods and/or services specified herein and who, if awarded a contract, is obligated to provide such goods and/or services in accordance with all the terms and conditions of the contract.</p>
<p>Request for Proposals ("RFP")</p>	<p>Used to define the method of solicitation used.</p>
<p>Staff (with or without capitalization)</p>	<p>Any and all of BERS' and/or vendor's, or its subcontractors' (if any), employees, officers, directors, members, partners, agents, or consultants.</p>

INSTRUCTIONS TO PROPOSERS

Contact for this RFP

This Request for Proposals (“RFP”) is issued by the NYC Board of Education Retirement System (“BERS” or the “Agency”).

Proposers are advised that from the date this RFP is issued until the award of the contract, NO contact with Agency personnel related to this solicitation is permitted, except via the e-mail designated below. Any inquiry regarding this solicitation must be made in writing. No telephone calls will be accepted regarding this RFP. All written inquires and all comments, questions, and correspondence regarding this RFP may be submitted via email to:

BERSProcurement@bers.nyc.gov

The subject line of email inquiries regarding this RFP must read: RFP 2024-003: Investment Consulting Services.

The deadline for submitting questions on this RFP is **no later than 5:00 PM (EST) on Monday, 05/20/2024**. After this date/time, no further inquiries will be accepted.

Responses by BERS to all substantive inquiries will be addressed in a written Q&A document, which will be posted on (<https://www.bers.nyc.gov/site/bers/notices/requests-for-proposals.page>) **no later than Monday, 06/03/2024** as a formal addendum. Overall, the agency shall issue responses to inquiries related to substantive questions received plus any other corrections or amendments to the RFP it deems necessary prior to the RFP response Due Date. Please continue to check the website for updates.

Additional Information for Proposers

Except as noted, there shall be no communication between any responding vendor or prospective responding vendor and:

1. Any member of BERS' Board of Trustees or their staff members.
2. Any employee of BERS (except as outlined herein); or
3. Any persons in a perceived position to influence decisions of BERS at any time during the process, and until the Agency makes its decision, except at times specified for oral presentations by selected firms, if any.

Direct communication with those persons referenced above, either in person, writing, or by phone in regard to these specifications, the RFP response, or the eventual awarding of the contract (should a contract ultimately be awarded), shall result in the disqualification of the respondent.

BERS reserves the right, without prejudice, to reject any or all RFP responses submitted. BERS will not reimburse proposers for any expenses incurred in preparing their responses to this RFP.

SECTION 1 PROGRAM SUMMARY, BACKGROUND, AND PURPOSE OF THE REQUEST FOR PROPOSALS (RFP)

1.1 PROGRAM SUMMARY

The NYC Board of Education Retirement System (“BERS” or “the Agency”) is an approximately 160-person agency responsible for providing pension services to designated employees of the NYC

Department of Education who are not eligible to participate in the New York City Teachers' Retirement System. BERS is governed by a 27-member Board of Trustees. The structure, procedures and benefits of the system are established by law, rules and regulations. BERS is administered by an Executive Director appointed by the Board of Trustees. In addition, BERS is open to certain other covered employers, such as the New York City School Construction Authority and others. BERS was chartered in 1921 and is one of five municipal pension systems within the City of New York.

BERS has approximately 50,000 active members and over 100,000 unique membership case files. BERS manages approximately \$9 billion in member assets through various investment instruments under the supervision of the New York City Office of the Comptroller and the evaluation of the New York City Actuary. BERS offers both a defined benefit (traditional pension) plan called the Qualified Pension Plan (QPP) and a defined contribution plan known as the Tax Deferred Annuity (TDA). BERS is responsible for the management and administration of retirement funds and the disbursement of retirement, disability and death benefits to members.

1.2 BACKGROUND AND PURPOSE OF THE REQUEST FOR PROPOSALS

BERS is requesting proposals to engage the services of an Investment Consultant to **report to** the BERS Board of Trustees ("Board") **and** assist the Board in carrying out the Board's fiduciary responsibilities. It is anticipated that this RFP will result in a three-year agreement beginning as soon as November 2024, with an optional two-year extension.

BERS' portfolio is invested in Fixed Income and Equity Funds, as well as Private Market funds. Most of BERS portfolio is invested and managed externally by investment managers. The Investment Consultant ("Consultant"), in conjunction with, BERS staff and the Comptroller of the City of New York (the "Comptroller") will provide advice in investment matters, develop and recommend overall investment policy, standards and guidelines and recommend the selection and retention of investment managers to BERS. The Bureau of Asset Management ("BAM") performs these functions in the Comptroller's Office. **BERS investment staff and** the Office of the Actuary also provide important input.

The purpose of this RFP is to solicit an independent investment consultant for BERS. This RFP solicits technical and cost proposals to provide financial consulting services for BERS' diversified portfolio as described in this RFP.

BERS is seeking to award a contract to one (1) Investment Consultant who can provide services regarding all items in the Scope of Work (See Section 3). However, BERS reserves the right to award a contract to up to two (2) vendors to provide services under this RFP – one (1) vendor to provide general investment consulting services ("the General Consultant"), and a second vendor to provide investment consulting services with regard to Private Markets Investment ("the Specialty Consultant").

Vendors choosing to submit more than one proposal must make sure that each proposal is complete and can stand on its own. Each proposal will be evaluated and scored on its own.

For the purposes of the RFP, “private markets investment” is defined as the following asset classes: private equity, private real estate, opportunistic fixed-income, and private infrastructure.

SECTION 2 MINIMUM QUALIFICATIONS

All proposals received on or before the proposal due date and time and at the email address specified in this RFP will be evaluated to determine whether they meet the following Minimum Qualifications. Proposals that fail to meet all minimum qualifications will not be considered.

1. Proposer(s) must provide evidence of being actively engaged in providing services herein, to the scale of similar size and/or complexity of BERS investment program. Include the firm’s history, information on year formed, assets under advisement, and ownership structure, including any parent, affiliates or subsidiaries, and any business partners or joint ventures. Be sure to include any relationships your company has with other organizations such as insurance companies, brokerage firms, investment banking firms, or mutual fund companies.
2. Proposer must be a registered investment advisor with the SEC under the Investment Advisers Act of 1940, as amended. Include a copy of your Form ADV.
3. Proposer(s) must have a minimum of 7 (seven) years’ experience in the provision of investment consulting services to institutional clients.
4. Proposals must provide evidence of demonstrated successful experience in providing investment consulting services to similar industry organizations. Proposer(s) must provide at least three (3) references for the service requirements described in Section 3 Scope of Services. For each reference, include name, contact person, title, address, telephone number, and the number of years the client has been with your firm. At least 2 of the 3 references must be client references.
5. Proposer(s) must be based in the United States.

IF THE SUBMITTED PROPOSAL DOES NOT PROVIDE ALL OF THE ABOVE, THEN THE PROPOSAL WILL NOT BE FURTHER EVALUATED.

SECTION 3 SCOPE OF SERVICES

The successful proposer(s) shall be required to perform the following services:

3.1 REQUIREMENTS FOR ALL INVESTMENT CONSULTANTS

The below items are required for **all** investment consultants, regardless of whether the consultant is providing general investment consulting services, private market investment consulting services, or both.

A. MEETINGS

Periodic in-person meetings are scheduled with the Trustees to review the holdings,

performance and organization of the portfolio. **There are approximately 15-24 meetings held by the Board of Trustees and its Executive Committee per year.**

The General Consultant will attend:

- **approximately 15 in-person meetings with the Board and its Executive Committee (this will include many, but not all, Executive Committee meetings and Board of Trustee meetings);**
- **some virtual joint investment committee meetings; and**
- **virtual meetings with BERS' Investment Strategy team on most months for discussion or to advise on strategic investment initiatives.**

The Specialty Consultant will attend:

- **approximately 24 in-person meetings with the Board and its Executive Committee (includes all Executive Committee meetings and most, but not all Board of Trustee meetings);**
- **some virtual joint investment committee meetings;**
- **approximately 12 virtual meetings with the BERS Investment Strategy team including additional meetings for broad strategic discussion on trustee-led strategic initiatives; and**
- **and virtual one-off discussions with respect to the portfolios at such times as the Executive Director or the Trustees may require.**

In addition to the above, the Consultant (General or Specialty) may, in rare circumstances, be requested to make additional presentations to the Trustees.

The cost of attending meetings must be borne by the Consultant.

B. ACCOUNTING SYSTEM

The Consultant shall maintain an accounting system for purpose of audit and examination of any books, documents, papers and records documenting the contract and all investment activities.

C. STANDARD OF CARE

The Consultant shall, in advising the System, exercise at all times the diligence and standard of care which is the highest to which any of the following is subject: (a) a professional fiduciary; (b) a trustee of an express trust the laws of the State of New York; (c) a fiduciary under Section 404 of the Employee Retirement Income Security Act of 1974 ("ERISA") or, if such law is enacted, any other law affecting the System which may impose a higher or comparable standard; or (d) an investment consultant and analyst in the industry.

D. PERFORMANCE EVALUATION

Consultant's performance shall be carefully reviewed and evaluated at least annually by BERS Executive Director and Board of Trustees.

3.2 GENERAL CONSULTING SERVICES

The below items are required for general investment consulting services.

A. INVESTMENT POLICY & STRATEGY

- a. Develop a written investment plan (written report and analytics/calculation and demonstration on an annual basis or upon request). The plan must include, but is not limited to:
 - i. Portfolio structure review and recommendations.
 - ii. Current asset class target allocations based upon long term asset allocation, their respectively designed tolerances, and other considerations.
- b. Provide recommendations, in writing, regarding General Consulting Services upon request.
- c. Perform a comprehensive and complete review of the Investment Policy Statement (“IPS”) at least annually. This review must be done in coordination with BERS staff. The IPS shall include long-term investment policies and objectives.

B. ASSET ALLOCATION AND PORTFOLIO CONSTRUCTION

- a. Work with BERS staff to incorporate liability risks into asset allocation construction.
- b. Work with BERS staff and conduct a portfolio structure review upon request at least every year and provide a detailed, written report of results and recommendations.
- c. **Build an annual asset allocation model and result every few years, but provide informal review and bespoke analysis on an annual basis. This includes a presentation at times of results and recommendations based on feedback from BERS investment staff. Advise on appropriate allocation and strategy with regard to BIPOC firms.**

C. PERFORMANCE EVALUATION

- a. Evaluate total portfolio investment performance and custom benchmark performance and provide written report.
- b. Provide performance review reports and commentary to BERS staff and trustees as frequently as necessary.
- c. Provide electronically detailed performance attribution and risk analysis by asset class, **any potential** external advisor, **BAM or any potential** internal management team, and at the aggregate fund level. All monthly reports should be provided within **two (2) business days of Custodian providing the consultant with the monthly report.**

- d. Prepare annual report (by Fiscal Year) regarding BERS investment activity for inclusion in BERS' Annual Comprehensive Financial Report.

D. TRAINING, EDUCATION AND CLIENT SERVICE DUTIES

- a. Provide investment education and training to BERS personnel and trustees as requested.
- b. Share all firm research, including white papers and one-off requests for manager or other data [or actuarial considerations], and provide access to BERS Staff and trustees as requested.
- c. **Introduce BERS Director of Investment Strategy to public managers upon request for performance updates.**

3.3 PRIVATE MARKET INVESTMENT CONSULTING

The below items are required for private market investment consulting services.

For the purposes of this RFP, "private markets investment" is defined as the following asset classes: private equity, private real estate, private debt, and private infrastructure.

A. STRATEGIC ADVICE

- a. Work with Trustees, BERS staff, other BERS' consultants (if any), and the Office of the New York City Comptroller's Bureau of Asset Management (BAM), as appropriate, to develop and implement annual implementation plans for the BERS' private markets investment program. The plans should encompass and address investment goals, market expectations, portfolio construction, including preferred sub-strategies and market sectors, pacing analyses (reflecting the impact of the proposed level of commitments to the overall private markets investment allocation), and commitment sizes for allocations. The Consultant should consider objectives for the BERS' private markets investment allocations, BERS liability risk modeling and portfolio risk considerations, current private market investments and commitments, risk factors, expected returns and market conditions, strategic initiatives, and include recommendations for changes, if any, to the goals, policies or strategies. In addition, the Consultant should systemically monitor and identify both existing and new BIPOC firms for potential review and consideration, develop and maintain informed perspectives and insight on such firms, and continuously update a pipeline of such firms coming to market.
- b. Prepare analyses of the private markets investment marketplace, including identifying trends and other factors affecting the terms and structures of private market investments. Work alongside BERS staff on scenario analysis concerning investment weights. This should include analyses of unique structures and strategies as they are introduced in the marketplace, as well as

recommendations with respect to proposed sub-asset allocations.

- c. Upon request, assist in review, development, and assessment of operating policies and procedures for BERS' private markets investment program, including policies and procedures for the initial screening of partnership/fund proposals, the commitment of funds and subsequent monitoring of investments.
- d. Perform special analysis or other special projects relating to management of the private markets investment program as reasonably requested by Trustees, BERS staff, or BAM.

B. PRIVATE MARKET NEW INVESTMENT IDENTIFICATION AND EVALUATION

- a. Identify on an ongoing basis, the universe of attractive private markets investment funds in the fundraising process, formally track such firms, and routinely report on them in calls or in meetings, as appropriate (including separate identification, reporting, tracking and evaluation of women and minority owned firms).
- b. Conduct thorough investment due diligence reviews of opportunities and provide written investment reports and recommendations presenting the results of such findings. Such investment due diligence reviews shall be customized to address the pertinent issues concerning the particular investment opportunity and how it would fit within the BERS' portfolios.
- c. Assist, if requested by the Trustees, BERS staff, or BAM as their delegated investment advisor, the Comptroller's legal staff and outside legal counsel in the negotiation of business (i.e., non-legal) terms in transaction documents upon request. Such assistance may include, but not be limited to, negotiating directly with fund sponsors on certain business terms when specifically requested by BERS staff or BAM and advising on what may be 'market' levels for certain business terms.
- d. Maintain and provide BERS staff and BAM access to a database containing information on general partners/proposers, their prior investments, the composition of their organizations, their investment strategy and names of their investors.
- e. Actively engage and appreciate the need to stay conservative on pacing target forecasts, liquidity considerations from the view of the BERS' investment strategist, and reject investments that stray from our asset allocation target weights.

C. PRIVATE MARKET ACTIVITY REPORTS

The Consultant will provide monthly written reports to the Trustees, BERS staff, and BAM listing and summarizing its activity with respect to preliminary screenings, due diligence assigned and completed, and any other program implementation work undertaken by the

Consultant. This includes regular monthly reports on pipeline and executed approved investments.

D. PRIVATE MARKET RESEARCH REPORTS

Provide research, reports, and commentary on emerging issues, proposed legislation, market trends, sectors, geographies, new investment structures and techniques affecting the private markets investment portfolio.

E. PRIVATE MARKET CONSULTING SERVICES- OPERATIONAL DUE DILIGENCE

- a. Conduct operational diligence and assess all operational-related items, including but not limited to environmental, social, and governance (ESG)-related items, current or pending material claims or litigation against the fund or general partners of the respective fund, third-party service providers, cybersecurity, regulatory, risk and compliance issues and processes, business continuity, the firm's monitoring and reporting capabilities and a review / assessment of middle and back-office capabilities and control functions (i.e., finance and operations).
- b. Maintain complete, written records of all operational diligence items and procedures.
- c. Provide a written summary report that includes an assessment and recommendation with respect to the results of the operational due diligence review for all investments, with the expectation of no waivers at the start of the contract.

F. PRIVATE MARKET PORTFOLIO PERFORMANCE MEASUREMENT & REPORTING

- a. Portfolio Analysis
 - i. Conduct quarterly performance reviews of BERS' portfolios on both an absolute and a relative basis no later than 75-90 days following the end of each quarter. Quarterly reviews should include data on outstanding commitments, distributions, valuations, analysis of returns, as well as information on the underlying portfolio holdings to allow for analysis of portfolio concentrations by industry, sub-strategy, geography (including continent-level), etc., as well as a risk report. Written commentary on the BERS portfolio against these risk factors is required.
 - ii. Provide a monthly performance summary based on previous market values and updated for cash flow activity. Performance reports should include short and long term performance against benchmarks, including the use of traditional QOQ and YOY market valuation differences. Performance reports should reflect performance by fiscal year and calendar year.
- b. Performance Measurement and Reports
 - i. The Consultant shall publish a customized quarterly private markets investment performance reporting reconciliation/ performance measurement report within ninety (90) days of quarter end or as otherwise reasonably required by the Trustees. The Consultant is expected to work in coordination with BERS Staff and BAM for the timely distribution and dissemination of materials related to the private markets investment portfolio. Such report requires the collection, compilation and review for reasonableness of all the data provided by fund managers both domestic and international as well as incorporation of other financial data impacting private

markets investment performance information. Included in the quarterly reports shall be a summary review of valuations, returns, and activity on an individual investment and aggregate portfolio basis, as well as significant valuation changes in funds and underlying portfolio companies, and an update on general market conditions. Such reports will be further customized as required.

- ii. The Consultant will obtain private markets investment data from BERS investment partners and managers quarterly. The Consultant will evaluate the accuracy of this information and calculate returns in US dollar terms, converting local currencies to US dollars as necessary, which will be reconciled with the performance calculations and currency conversions that may be reported by the fund managers. Each performance measurement report will also reflect portfolio and investment level diversification analysis by property type, sub-strategy and geography (**including continent-level**), as well as other risk mitigation factors.

G. PRIVATE MARKET MONITORING

- a. Advise on actions needed to protect the interests of BERS as an investor and to ensure compliance by general partners with the terms of the limited partnership agreements.
- b. Review all proposed partnership amendments, limited partner consents and waivers, and extension and other governance requests. Recommend courses of action if necessary unless instructed otherwise by BERS and BAM as delegated investment advisor and assist in negotiating or compiling research with respect to such governance requests.
- c. Consult with and advise BERS staff and BAM on advisory board consents and waivers as requested by the Boards or BAM as delegated investment advisor.
- d. Monitor BERS portfolio and advise the Trustees, BERS staff, and BAM as delegated investment advisor regarding significant fund developments.

H. PRIVATE MARKET BACK OFFICE SUPPORT

- a. Reconcile cash flows to quarterly reports from the investment managers and general partners on a quarterly basis including proper ownership percentage(s) calculations.
- b. Provide certification packages for capital calls, distributions, reinvestments and similar transactions. The Consultant will reconcile such transactions with the provisions of such fund's limited partnership agreement ("LPA") and verify that such transaction is in accordance with the BERS Investment Policy Statement as well as the LPA, and if a discrepancy exists, provide further analysis of the transaction. The Consultant will be required to notify BERS staff and BAM in writing that the capital calls, distributions, reinvestments and similar transactions meet the provisions and Investment Policy Statement and LPA via a "Certification Letter". The Certification Letter is to be transmitted to BERS staff and the BAM within two (2) business days of the Consultant's receipt of a partner/manager transaction, or, if additional research is required, as soon as possible thereafter.
- c. Transmit cash flow data including all receipts, contributions, disbursements and distributions to the custodial bank in a manner and time satisfactory to the custodian, BERS Staff, and BAM staff, to allow the custodian to prepare its monthly cash flow and performance monitoring

reports. Report all transactions and maintain a complete accounting system for private markets investment. The information must feed electronically to and interface with the custodian bank accounting system and internal data warehouse. Perform monthly reconciliations with custodian bank.

- d. Reconcile performance report with performance reporting by the custodian bank.
- e. The Consultant will review all investment transactions, such as capital calls, distributions, reinvestments, fee calculations and the allocation of profits, and determine whether they comply with the terms of the limited partnership agreement (“LPA”) as well as BERS Investment Policy Statement. For transactions, the Consultant will provide the following services:
 - i. Take necessary follow-up action to resolve discrepancies to ensure proper execution and accurate reporting.
- f. Upon request, and to the extent available, provide ILPA transaction types (as per the ILPA Capital Call & Distribution Notice Template) for investments where the GP has not prepared the ILPA Template.
- g. Monitor, validate and maintain appropriate cash flow records in a standard, consistent format regarding all investment cash flow activity to ensure compliance with the capital call and distribution terms of the LPA as well as any relevant opt out provisions. Maintain cash flows in accordance with ILPA Capital Call & Distribution Notice Template transaction types subject to manager’s preparation of the ILPA template. Classification of cash flow activity in accordance with ILPA transaction types will be effective as of the commencement of this contract.
- h. Review, verify, and approve cash flow transactions to the Custodian using the Custodian’s payment processing system.
- i. Respond to requests by the custodian/administrator, BERS staff, and BAM staff for review and resolution of transactional record-keeping discrepancies between the consultant, the GP and the custodian.
- j. Monthly and Quarterly Statements and Reconciliations.
 - i. gains/losses, and return of capital. The monthly valuation report will be used to price the private markets investment portfolios.
 - ii. Within thirty (30) days after month-end, provide a monthly unfunded commitments report. The statement should include an update of the partner/manager’s outstanding commitment indicating the amount remaining to be called. The Consultant shall create, maintain and track a commitment database that related to the commitment outstanding versus investments to-date, as specifically related to the interest in the fund or partnership.
 - iii. Within thirty (30) days after month-end, provide a monthly cost basis report showing beginning cost, current month cost basis cash flows, and ending cost by fund.
 - iv. Within thirty (30) days after quarter-end, perform quarterly reconciliations and prepare reconciliation statements comparing the Consultant’s records individually to each partner/manager’s records to include valuation, distributions, calls, management fees, unfunded commitment and activity at the detailed transaction level; for example, income, return of capital, etc. An electronic copy of this database will be provided to BERS staff and the Comptroller’s Office quarterly. These reconciliation statements and the electronic files are required no later than 30 days following the quarter-end.
- k. Additional Reconciliation and Analytics
 - i. On a quarterly basis, compile a list of the overall Limited Partners Gross IRR, Net IRR, Gross TVPI, Gross MOIC, Net TVPI, & Net MOIC for each investment, only if the amounts are reported by the investment managers and general partners in their ongoing Limited Partner correspondence. Also track which calendar quarter the

compiled amounts relate to. The monthly market valuation will be the quarterly investment capital account statement reported at current market value. The report summarizes the most recent market value by fund, adjusted for capital calls and distributions from the last valuation date. Cash flow information should also be segregated by capital calls, fees, capital gains/losses, and return of capital. The monthly valuation report will be used to price the private markets investment portfolios.

- ii. Within thirty (30) days after month-end, provide a monthly unfunded commitments report. The statement should include an update of the partner/manager's outstanding commitment indicating the amount remaining to be called. The Consultant shall create, maintain and track a commitment database that related to the commitment outstanding versus investments to-date, as specifically related to the interest in the fund or partnership.
- iii. Within thirty (30) days after month-end, provide a monthly cost basis report showing beginning cost, current month cost basis cash flows, and ending cost by fund.
- iv. Within thirty (30) days after quarter-end, perform quarterly reconciliations and prepare reconciliation statements comparing the Consultant's records individually to each partner/manager's records to include valuation, distributions, calls, management fees, unfunded commitment and activity at the detailed transaction level; for example, income, return of capital, etc. An electronic copy of this database will be provided to BERS staff and the Comptroller's Office quarterly. These reconciliation statements and the electronic files are required no later than 30 days following the quarter-end.

SECTION 4 PROPOSAL SUBMISSION REQUIREMENTS

BERS requests that all proposals be sent via email ("The Proposal Submission Email") to BERSProcurement@bers.nyc.gov (the "RFP Submission Email address"). Pages should be paginated. The proposal will be evaluated on the basis of content, not length¹.

As indicated in Section 1 above, vendors choosing to submit more than one proposal must make sure that each proposal is complete and can stand on its own. Each proposal will be evaluated and scored on its own.

Responses must address the Scope of Services and include the following four sections:

4.1 PROGRAM PLAN / NARRATIVE

The Program Plan/ Narrative must include a clear and concise description that addresses the proposer's overall program content, design, Scope of Services, ability to perform all required services, and comprehensive service plan.

Firms may submit proposals for general consulting only, private market consulting only, and/or for combined consulting (general and private markets). Each proposal should demonstrate how your firm's plan will meet the goals and objectives of this particular RFP. Proposers must provide a detailed description of the methods to be employed (**and their rationale**) to accomplish the tasks as noted in this RFP. Each proposal submitted must stand on its own in terms of addressing the requirements of this RFP.

4.2 ORGANIZATIONAL CAPACITY

A. ORGANIZATION AND BACKGROUND

¹ Failure to comply with any of the instructions in the above paragraph will not, by itself, be considered non-responsive

- a. Give a brief overview of your firm, including:
 - i. lines of business and approximate contribution of each line to total revenue and profit;
 - ii. the year founded;
 - iii. location of your headquarters and branch offices;
 - iv. the number of employees at each office;
 - v. current and historical ownership structure, including any parent company or affiliation with other financial services corporation (bank, investment bank, insurance company, asset management firm, etc.);
 - vi. provide an organization chart and policy guidelines on conflicts of interest;
 - vii. identify holders of 10% or more of equity;
 - viii. significant organizational developments taken place in the last five (5) years;
 - ix. anticipated changes in firm's corporate or organizational structure (including how it expects to grow **and any challenges it expects**); and
 - x. the number of years your firm has provided private markets investment advisory services (with a breakdown of each private markets investment category and assets under advisement).

- b. Give a breakdown in percentage terms and in dollar value as of December 31, 2023, of assets under your management by asset class.
 - i. Further, within each asset class provide a fractional breakdown between active versus passive managers.
 - ii. Provide 1, 3, 6, and 10 year returns net of fees. If less than 10 year returns do exist, please provide since inception date. Additionally, please provide individual calendar year returns net of fees, for the past 6 years.
 - iii. For calendar year 2023, within each asset class, provide the number of due diligence reports issued and dollars your firm has recommended investment in minority-owned investment firms. For calendar year 2023, within each asset class, provide the number and dollars your firm has invested in **MWBE and BIPOC firms**.

- c. With which regulatory authorities is your firm registered? Please provide the effective dates of these registration(s). Please submit a copy of Form ADV with your response.

- d. Does your firm carry an insurance policy(ies) covering errors and omissions or any other fiduciary or professional liability insurance? If yes, please describe and list insurance providers and level of coverage.

- e. Please provide a breakdown of your clients, their assets under management and your firm's mandate, including the portion of each client assets that you manage.

B. PROFESSIONAL STAFF

- a. Identify the team (including, location, title and role) and any immediate backups that would be responsible for providing services to BERS and their delegated investment advisor (BAM) (the "BERS Service Team") and the members of the Service Team that would be deemed key employees for the BERS engagement ("Key Professionals"). Provide resumes for each Service Team member and identify key clients they have served as well as a detailed description of the services. In addition, please provide information regarding any fiduciary training received by your team members. Indicate other clients for whom the Service Team or members of the Service Team currently provide services, including the nature of the services, and how they would divide their time between various other clients. Indicate the extent to which additional other clients might be serviced by such team members. Identify the length of time your officers, directors, partners, and Key Professionals have been in their current positions and with the firm.

- b. Give a brief description of your firm's compensation arrangements for professional staff, including any incentive bonuses, profit sharing, and potential equity participation.

- c. What is your client-to-consultant ratio? Do you limit the number of clients that might be assigned to a consultant?

C. STRATEGIC CONSULTING/COLLABORATION WITH BERS STAFF

- a. Describe your general private markets investment consulting services capability and your experience in providing such services.
- b. Describe your firm's ability to keep abreast of trends in private market investments with other institutional investors, opportunity funds, etc. **Describe some of the most interesting trends you currently see.**
- c. Describe your process and sources for market information and data. **Describe your process for sourcing and evaluating BIPOC firms.**
- d. Describe the different methodologies, measures and sources of data for calculating, analyzing and evaluating clients' private markets investment performance at the fund-level, as well as individual performance drivers within each fund. What benchmarks and databases are available? Which do you prefer and why?
- e. Describe your firm's experience in validating and reviewing incentive fee models, incentive fee calculations and incentive fee payments for client's managers/partners, including any benchmarking of said fees. Please include examples of your work in this area; remove confidential client information as applicable.

D. INVESTMENT ADVISOR/MANAGER SEARCH AND SELECTION/PHILOSOPHY ON PASSIVE MARKET INVESTING

- a. Please describe your advisor/manager database and its capabilities, including whether it is proprietary or purchased and aspects that you feel are unique. Indicate the number and types of managers/funds contained in your database, as well as numbers of any relevant sub-categories. **Please describe your advisor/manager database and its capabilities with regard to BIPOC firms. Please describe the strengths and weaknesses of this database and capabilities with the same with regard to passive index funds.**
- b. Do you receive a fee or other consideration from managers who wish to be maintained on your database? Do you receive compensation directly or indirectly from the sale of this information? What fees do you receive from managers for providing data regarding their performance?
- c. Describe your firm's experience capabilities, and track record in identifying, analyzing, evaluating and reporting on small and emerging funds, including women and minority owned firms, **BIPOC firms, and firms in frontier markets.**
- d. Please describe the firm's process and capabilities in negotiating non-legal investment terms. Describe examples where you have achieved favorable terms, fees or changes to key terms for clients.
- e. Identify and describe the investment strategies and opportunities your firm sees as most attractive today and over the next three (3) to six (6) years for these types of programs, on a risk-adjusted and risk-unadjusted basis. How would these strategies differ for small and emerging funds, including women and minority owned firms?
- f. Due Diligence and Approval Process: Provide a thorough description of your investment strategy and operational due diligence processes and who on the BERS Service Team are involved in each. Be sure to address s and any other relevant steps in your process. Please

provide a sample due diligence report and sample investment recommendation as well as any relevant materials you use during the normal course of performing due diligence.

- g. Please describe your post-investment monitoring process. **What is your criteria for a sell-recommendation or a divestment, and what fraction of your investments in the past 6 years met this criteria?**
- h. Please describe how your team focuses on operational diligence (as opposed to investment strategy diligence). Are there individuals who are dedicated to operational diligence? How commonly do you “refresh” operating diligence with a manager after conducting the initial diligence?

E. RESEARCH

- a. Describe the internal structure and organization of your research department. List all areas and different types of research that you have provided to clients. (If no separate department exists, describe how this function is performed.) Please describe any third-party peer review of your performance or research.
- b. What vendors are used to obtain data? Is the research and data integrated into firm's analysis, and if so, how is it integrated? What is the value-added by the firm's research, integration and analysis?
- c. Describe the extent to which your firm shares its industry databases, pricing models, research papers, and other analyses with clients, either on an ongoing or ad hoc basis (please specify). If any models, analyses, research, or databases are not shared with clients, please provide the reason.

F. PERFORMANCE MONITORING AND MEASUREMENT

- a. Describe your methodology and sources of data for analyzing and evaluating the client's private markets investment portfolios and individual fund performance and comparison to the performance of similar portfolios and funds, including your methodology for computing returns, the treatment of cash flows, the treatment of fees, measuring aggregate exposures, and the frequency of reviews. Describe the peer universe and benchmarks to which a client such as BERS would be compared.
- b. Outline your process for providing continuous review of manager/advisor compliance with client guidelines and policies. How do you report manager/advisor non-compliance?
- c. Describe your process for reviewing and issuing recommendations with respect to LPA consent requests and other fund governance requests.
- d. Please provide typical monthly, quarterly and annual performance reports.
- e. Please describe the firm's procedure for interface with a client's custodian bank. Describe the process for handling and reconciling differences with the custody bank. Is a specific team member designated to perform this function?
- f. How does the firm handle the external appraisal process for separate accounts? Does the firm help a client find an appraiser? Does the firm help mediate any disagreements between an outside appraiser and the investment manager?

G. Technology Tools and Back Office Capabilities

- a. Describe the technology tools and resources your firm uses to communicate with the client and the custodian for transactions and reporting. Describe how your firm's technology facilitates the flow of information between the general partner, your firm, the custodian and the client(s). What distinguishes your firm from other consultants in this regard?
- b. Describe your firm's back office resources, procedures, and technological capabilities for:
 - i. data input, review, and validation of partnership activities and financial reporting, portfolio valuation and performance reporting;
 - ii. accounting and cash flow reporting for each partnership investment at the fund and portfolio level; and
 - iii. notification, monitoring, and validation of partnership funding commitments, capital calls, disbursements, and netted fees.
- c. Describe the extent to which your technology tools, platforms, performance reporting, and other resources are made available for use by clients, either on an ongoing or ad hoc basis (please specify).

H. Alignment of Interest with the System

- a. Does the firm offer its own investment products or services, including fund of funds, discretionary accounts or commingled funds? If yes, please identify the size, strategies, allocation policies for investment opportunities, and provide the Firm's Conflict of Interest policy.

I. Conflicts and Ethical Compliance

- a. Refer to the BERS Ethics and Compliance Policy, **Attachment J** to this RFP. Indicate your firm's ability and willingness to comply with the Policy by completing the RFP Certification and BERS Ethics and Compliance Policy and submitting it along with your proposal.
- b. Provide in a separate attachment all information and disclosures requested by the Policy on actual or potential conflicts of interest, including relational or compensation conflicts or conflicts relating to any of BERS managers. Describe your firm's policies and procedures to mitigate or control any such conflicts.
- c. If the firm accepts soft dollars as a method of payment for services, describe the parties involved, the nature of such arrangements, and complete the table below.
- d. Does your firm have a Code of Ethics as specified in § 2 of the Policy "Compliance With Law", **Attachment J**? If yes, provide your Code of Ethics with your proposal.
- e. Does your firm have a periodic review of its compliance manual as specified in §2(a) of the Policy, **Attachment J**?
- f. Does your firm have a written personal trading policy and established methods for monitoring same? Have there been any violations of the personal trading policy within the past 24 months? If so, what was the response?
- g. Does your firm have financial relationships with other than affiliated organizations that may present a conflict of interest regarding the services requested in this RFP (e.g. brokerage firms, insurance companies, commercial banks, investment banking firms, money management firms, including funds)? If yes, disclose in detail all such financial relationships.

- h. In the past three (3) years, has there been an occasion where you have recommended any affiliates of your organization to your clients? If yes, please indicate if they were hired by your clients and also list:
 - i. Each client who retained one of your affiliates;
 - ii. The amount of the compensation;
 - iii. The purpose of the compensation;
 - iv. The terms of the agreement; and
 - v. If you believe that this compensation or agreement does not create a conflict of interest for your evaluation of the proposing firm, explain the reason for that belief.
- i. Has the firm been involved in litigation within the last (5) five years relating to the management of clients' assets or the provision of advisory services such as those proposed? If yes, disclose the history and status of any such litigation.
- j. Within the past five (5) years, has the firm, or any officer or principal of the firm, been the subject of, or sanctioned as a result of, any criminal or civil administrative proceeding or investigation by a federal, state or local prosecuting or investigative agency (other than routine examinations) relating to investment advisory or related services? If yes, describe and provide the outcome and/or status.
- k. Within the past five (5) years, has the firm been determined to have violated any qualified investor, prospectus or private placement guideline restrictions? If yes, describe the violation and measures taken to address such violation.
- l. Is the firm registered by the SEC or other regulator? Have there been any material deficiencies or other issues identified by such regulators? Are any inquiries ongoing?
- m. Within the past five (5) years, has your firm been the subject of any actions, complaints or adverse determinations concerning violations of federal, state or city equal employment opportunity laws or regulations? If yes, provide information on all such actions, complaints or determinations including current status and/or outcome.
- n. Has the SEC or any other regulatory agency conducted any reviews of the firm? If yes, which agency(ies) conducted such review, when was the review and what were the results? Were any deficiency letters issued? If yes, how were the issues addressed/cured?

J. Quality of Service and Responsiveness

- a. Provide a list of at least three (3), and as many as 10 references. If available, please include a reference for at least one public pension fund. Include name of institutional investor and/or pension fund, address, primary firm contact and this individual's e-mail, phone and fax numbers.
- b. Provide the following, reports and plans:
 - i. Three (3) due diligence reports recommending investment;
 - ii. Three (3) due diligence reports recommending against investment. If your firm does not issue recommendations "not to invest" discuss how your firm conveys concerns regarding an investment firm to its clients;
 - iii. One (1) due diligence reports recommending divestment **or a sell-rating, or an explanation if unavailable;**
 - iv. One (1) sample proposed annual investment plan;
 - v. One (1) sample portfolio quarterly report;

- vi. One (1) sample of portfolio risk report, as well as a risk analysis within a due-diligence investment report
 - vii. One (1) proposed three-to-five-year plan (e.g., the format of what the organization and contents of such a plan might be).
 - viii. One (1) industry or sector research report;
 - ix. One (1) LPA consent / amendment recommendation; and
 - x. One (1) sample fund monitoring report.
- c. Does your firm have a (1) written equal employment opportunity (EEO) policy and (2) written diversity and inclusion policy approved by senior leadership? If yes, please provide.
 - d. Does your firm provide for ways to ensure management accountability for the progress of diversity and inclusion initiatives and policies? If yes, please describe or provide a copy of any applicable policy (policies).
 - e. Does your firm make proactive efforts to promote a diverse pool of candidates in hiring, recruiting, retention, and promotion, as well as in selection of board members and senior leadership? If yes, please describe.
 - f. Does your firm conduct periodic mandatory training for management and staff on your EEO Policy and on diversity and inclusion? If yes, please describe, including frequency of trainings and required participants.
 - g. Does your firm use quantitative and/or qualitative measurements to assess workforce diversity and inclusion efforts in areas such as applicant tracking, hiring, promotions, separations, career development, and retention? If yes, please describe measures, standards, or analysis used.
 - h. Does your firm measure or evaluate the business impact, such as improvements to investment performance and risk management, of aspects of your diversity? If yes, please describe measures, standards, or analysis used.
 - i. In the past five (5) years, has your firm or any of its affiliates been the subject of any actions, complaints, or adverse determinations concerning alleged violations of federal, state or city equal opportunity or anti-discrimination laws, rules or regulations? If yes, please describe, including any steps taken by your firm to respond.
 - j. Does your firm have a supplier diversity policy that (a) provides for a fair opportunity for minority-owned and women-owned businesses to compete for the procurement of goods and services, including but not limited to asset management, brokerage services, and consulting services; (b) promotes a diverse supplier pool through outreach; and (c) includes methods and metrics to evaluate its supplier diversity? If yes, please describe.
 - k. Does your firm conduct or participate in educational or career advancement programs or activities that enhance opportunities for diverse individuals to advance in careers in asset management and finance? If yes, please describe.

4.3 DEMONSTRATED EFFECTIVENESS

Proposal must include a description of all prior experience in the provision of the requested services or similar services. In addition to the information required to be submitted to meet the Minimum Qualifications noted in Section 2, the Proposal should include a list of government contracts, awarded to the proposer in the past ten (10) years (if any). If your organization has provided investment consulting services to one of the five New York City Retirement Systems in the past five

(5) years or is currently providing such services, please indicate which New York City Retirement System and the years such consulting services were provided. BERS reserves the right to verify a proposer's performance in the execution of such contracts.

4.4 FEE PROPOSAL

The fee proposal should contain two parts: (i) a fixed maximum fee (for each year) which covers all of the services described in this RFP and (ii) a variable rate fee schedule, stated as a cost per labor hour, for special projects requested from time to time by the BERS. Planned payments to the proposer for the work described in this RFP will not exceed this maximum. Please note any services described in this RFP which are not covered by the proposed maximum fee (e.g. creation of a new investment program, standing up operational facilities for a new legislation, or significant advisory on an unforeseen asset class).

The second part of the fee proposal should include a schedule of hourly fees by contract year (1-5) for each personnel-level for any additional special work that may be required by BERS. BERS will pay the consultant according to the rates on this schedule if it requires the consultant to perform related additional special work for the System.

Certification is required indicating that no other client of comparable structure with a similar scope of work has a lower fee. See Price Certification Clause **Attachment E**.

All firms should recognize that fees are a material element in selection, and that all selections will be made competitively. BERS reserves the right to negotiate fees and request best and final offers. BERS reserves the right to select other than the lowest cost proposer.

SECTION 5 PROPOSAL EVALUATION PROCESS

5.1 EVALUATION PROCEDURE

All proposals received by the BERS will be reviewed to determine if they meet all of the submission and Minimum Qualifications Requirements prescribed in the Request for Proposals. Proposals meeting these requirements will be evaluated and rated by an Evaluation Committee, applying the evaluation criteria prescribed below. BERS reserves the right to conduct site visits to verify facility or other information contained in a proposal and may require a Proposer to make a demonstration/oral presentation of their services or submit additional written material in support of a proposal.

5.2 EVALUATION CRITERIA

The scoring table below will be used to evaluate each submitted proposal. Criteria are worth the point values indicated in the table, adding up to a maximum possible total of 100 points. The same criteria listed for each category will be applied to each proposal.

A notable absence of acceptability on any of these criteria may cause a candidate to be eliminated. All data is subject to verification by BERS and the Comptroller. The review of proposals will be conducted in two steps: all timely-submitted proposals will be reviewed to determine whether such proposal meets the minimum qualifications stated in this RFP. Those proposals meeting minimum qualifications will be provided to the evaluation committee for review.

BERS reserves the right to negotiate fees and request best and final offers.

BERS reserves the right to select other than the lowest cost proposer. By soliciting proposals, BERS is not obligated to award a contract.

Evaluation Criteria	Description	Maximum Points
Program Plan/Narrative	<ul style="list-style-type: none"> • Proposal meets the specifications of the scope of work as specified in the RFP. • Proposal demonstrates a clear understanding of the needs, goals, and objectives as specified in the RFP. • Proposed approach is comprehensive, addressing relevant aspects of the scope of work as specified in the RFP. 	18
Organizational Capacity / Knowledge and Experience	<ul style="list-style-type: none"> • Proposal must include strong and unequivocal evidence that the organization's human, organizational, financial, technical, and professional resources and abilities can support the proposed services. • Proposal must indicate the staff required fully and/or partially dedicated to work for BERS • Proposal must include an Organizational Chart that includes titles and staff with clear roles for the proposed work. • Proposal provides resumes of key personnel who demonstrate the qualifications required to deliver . 	23
Demonstrated Effectiveness	<ul style="list-style-type: none"> • Proposal demonstrates the most recent accomplishments delivering similar services to public pension funds and/or to organizations of similar size of BERS. • Proposer's demonstrated ability to meet service requirements, including ability to communicate with Trustees, BERS Staff, and the Comptroller on both ongoing and special issues and to respond to concerns as they arise, including the operational plan for fulfilling its duties and the quality of professional staff assigned to this project. 	22
Fee Proposal Annual Fee	<ul style="list-style-type: none"> • The following calculation will be used to score price based on the criteria of the lowest price based upon a potential 5 year contact term: Evaluation Points = Lowest Estimated Total Contract Amount (divided by (/)) Proposer's Estimated Total Contract Amount (multiplied by (x)) Maximum Points Score for Price (28) 	28

Fee Proposal: Hourly Rate	<ul style="list-style-type: none"> Up to 9 points will be awarded based upon the hourly rates provided 	9
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5.3 M/WBE Price Preference

BERS will apply a 10% price preference to New York City Certified M/WBE vendors. Please include a copy of your M/WBE Certification Letter.

SECTION 6 PROPOSAL PACKAGE FORMAT

- 6.1 The electronic copy of the proposal must be submitted in pdf format. Proposer shall submit a Proposer’s Cover Sheet (**Attachment A**), an Acknowledgement of Addenda (**Attachment B**), and completed Doing Business Data form (**Attachment H**), with the proposal package to the Board of Education Retirement System via email to BERSProcurement@bers.nyc.gov. All forms shall be signed and dated by an authorized individual.
- 6.2 Proposers should include in their proposals a Table of Contents and page numbers Although there is no specific limit on the number of pages that applications may contain, applicants are encouraged to be as concise and succinct as possible.
- 6.3 Each proposer must submit their proposal package via email to BERSProcurement@bers.nyc.gov. Please include “RFP # 2024-003 –Investment Consulting Services” in the subject of the email.

SECTION 7 REQUEST FOR PROPOSALS TIMETABLE AND GENERAL INFORMATION

7.1 REQUEST FOR PROPOSALS (RFP) TIMETABLE

<u>EVENT</u>	<u>DATE AND TIME:</u>
Release of RFP	Monday, May 6, 2024
<u>Release of RFP Addendum #1</u>	<u>Wednesday, May 8, 2024</u>
Last Date to Submit Questions	Monday, May 20, 2024
Response to Questions Posted	Monday, June 3, 2024
<u>Release of RFP Addendum #2</u>	<u>Tuesday, June 18, 2024</u>
Proposal Due Date	Friday, <u>July 12, 2024</u>

Proposals Received After the Specified Date and Time Will Not Be Considered

7.2 REQUESTS FOR CLARIFICATION AND ADDENDA

Any inquiry regarding this solicitation shall be made in writing by Monday, May 20, 2024. To be considered, all written inquiries must be emailed to the authorized email address as follows:

New York City Board of Education Retirement System
Email: BERSProcurement@bers.nyc.gov

Only written responses should be considered official responses of BERS. Proposer’s questions (unidentified as to sources) and their respective answers will be posted on the BERS website at <https://www.bers.nyc.gov/site/bers/notices/requests-for-proposals.page>. Proposers should not rely on any representations, statements, or clarifications not made in either this RFP or a formal addendum. It is the proposer’s responsibility to check the website regularly for any updates and addenda to this solicitation.

7.3 INCURRING COSTS

BERS shall not be held liable for any pre-contract activity or costs incurred by Proposers in the preparation of their proposals, or during any negotiations on proposed contracts, or for any work performed or materials provided in connection therewith.

7.4 ORAL PRESENTATIONS/DEMONSTRATIONS

BERS may require Proposers to give oral presentations after the proposal due date regarding their proposals. At such oral presentation, Proposers may be required to demonstrate or exhibit aspects relating to their proposal as requested by BERS.

7.5 NEGOTIATIONS

BERS reserves the right to: (i) reject all proposals submitted; (ii) accept any proposal or alternate as submitted without negotiations; (iii) accept or negotiate with all proposals submitted which fall within a competitive range; (iv) require revisions to, corrections of, or other changes to any proposal submitted as a condition to its being given any further consideration; (v) select for negotiations only the overall best proposal or alternate submitted, as determined by BERS; (vi) negotiate with one or more Proposers in any manner it deems fit, (such negotiations may be concurrent or sequential as BERS determines); (vii) following the conclusion of any such negotiations solicit Best and Final Offers (BAFO) utilizing an appropriate procedure; (viii) re-open negotiations after the BAFO procedure, if it is in BERS' best interest to do so. No proposer shall have any rights against BERS arising at any stage of the solicitation from any negotiations that take place, or from the fact that BERS does not select a proposer for negotiations.

7.6 TERMS AND CONDITIONS

All contracts resulting from this RFP shall be subject to the attached Terms and Conditions (**Attachment D** - BERS Terms and Conditions).

7.7 CONTRACT AWARD

The New York City Board of Education Retirement System reserves the right to award a contract to other than the proposer offering the lowest overall cost. As indicated in Section 1.2, BERS is seeking to award a contract to one (1) Investment Consultant who can provide services regarding all items in the Scope of Work. However, BERS reserves the right to award a contract to up to two (2) vendors to provide services under this RFP – one (1) vendor to provide general investment consulting services, and a second vendor to provide investment consulting services with regard to Private Markets Investment. The contract resulting from this solicitation shall be awarded to the qualified proposer(s) whose proposal the New York City Board of Education Retirement System has determined to be the most advantageous, based on the evaluation criteria set forth in this Request for Proposals.

All contracts resulting from this RFP shall be signed by the proposer within a reasonable time upon receipt, which period shall not exceed 30 days. Thereafter the proposer is deemed delinquent, at BERS' option, the contract may be voided. The contract award shall be subject to the following conditions, where applicable. They are not required to be part of your proposal submission.

- A. Completion and submission of an appropriate Office of Equal Opportunities form.
- B. Completion and submission of the appropriate VENDEX Questionnaires.
- C. Completion and submission of the Affirmation Sheet (**Attachment F**).
- D. Submission of an appropriate Certificate of Insurance.

7.8 TERMINATION OF CONTRACT

Any contract(s) resulting from this RFP may be terminated at any time upon thirty (30) days written notice, by the Executive Director. No claim for damages will be made by, or allowed to, the Contractor because of such termination.

SECTION 8 CONTRACT TERM

It is anticipated that services will begin in late 2024/early 2025.

BERS anticipates entering into a three (3) year professional services agreement with one (1) to two (2) vendors resulting from this Request for Proposals (RFP). The resulting contract(s) will provide BERS with options to extend the term of the agreement for two (2) additional one (1) year periods.

SECTION 9 TYPE OF CONTRACT PAYMENT

This RFP will result in the award of a full value contract.

SECTION 10 PROPOSER CHECKLIST

Documents for submitting the proposal:

- Proposer's Cover Letter (**Attachment A**)
- Acknowledgment of Addenda (**Attachment B**)
- No Proposal Response Form (**Attachment C**)
- BERS Terms and Conditions (**Attachment D**)
- Price Certification Clause (**Attachment E**)
- Affirmation (**Attachment F**)
- Iran Divestment Act Compliance Rider for New York City Contractors (**Attachment H**)
- Proposal (Including Program Plan Narrative)
- Pricing Form (**Appendix A**, Microsoft Excel File)
- A copy of the published Q&A document (if any)
- A copy of all attachments, addendums, and amendments posted (if any)
- Doing Business Data Form (**Attachment H**) Form may also be downloaded at:

<http://www.nyc.gov/html/dot/weekendwalks/downloads/pdf/doing-business-data-form-2018.pdf>

- RFP Certification- Ethics and Compliance Policy (**Attachment I**)

Also, please be sure to:

1. Review the entire Request for Proposals to ensure an understanding of the scope of the requirements and the role of each of the attached forms. Please review the Scope of Services for this RFP carefully before completing the response sections.
2. View the Terms & Conditions (**Attachment D**) in this document. Some of the Terms & Conditions may have changed since the last RFP.

[NO FURTHER TEXT ON THIS PAGE]

ATTACHMENT A

**PROPOSER'S COVER SHEET
RFP#: 2024-003 –Investment Consulting Services**

Company Name: _____

Address: Administrative Office:

Federal Tax Identification #: _____

Contact Name: _____

Title: _____

Phone: (_____) _____ Fax: (_____) _____

E-mail Address: _____

Address: Service/Operations for New York City:

Contact Name: _____

Title: _____

Phone: (_____) _____ Fax: (_____) _____

Year Firm Founded: _____

Year firm began serving institutional clients: _____

Proposer's Name: _____

Proposer's Signature: _____

ATTACHMENT C

**NO PROPOSAL RESPONSE FORM
RFP#: 2024-003 –Investment Consulting Services**

PLEASE COMPLETE AND RETURN THIS FORM IF YOU WILL NOT BE SUBMITTING A PROPOSAL BUT WISH TO REMAIN ON THE NEW YORK CITY BOARD OF EDUCATION RETIREMENT SYSTEM'S BIDDERS LIST.

Feedback from vendors is also encouraged so that any reasons for not proposing may be evaluated with the intention of improving future solicitations for this commodity or service in the hopes of encouraging and expanding the field of competition.

All vendors who respond with a "No Response" response or choose not to propose, are requested to provide the information requested below and return this form by the proposal due date (**July 12, 2024**).

REASONS FOR NOT PROPOSING AT THIS TIME:

VENDOR NAME AND ADDRESS:

SIGNED: _____ **TITLE:** _____ **DATE:** _____

ATTACHMENT D

BERS TERMS AND CONDITIONS

1. Captions

The headings in this Agreement, the paragraphs, and subparagraphs of this Agreement, and of any attachments, are included solely for convenience and reference, and they shall not be used in any way to interpret this Agreement.

2. Compliance With Laws

In connection with the performance of this Agreement, the Contractor shall comply with all applicable laws, rules and regulations. The parties hereto agree that every provision of law required to be inserted herein be deemed a part hereof. It is further agreed that if any such provision is not inserted or is incorrectly inserted, through mistake or otherwise, this Agreement shall be deemed amended so as to comply strictly with the law.

3. Unlawful Provisions Void

If this Agreement contains any unlawful provision or portions thereof, they shall be deemed deleted from the Agreement and the remainder of the Agreement shall remain in full force and effect. If the deletion of such provision frustrates the purpose of this Agreement, either party may make application to the Evaluation Committee for relief.

4. Religious Activity Prohibited

There shall be no religious worship, instruction, proselytizing, or other religious activity in connection with the performance of this Agreement.

5. Political Activity Prohibited

No BERS property provided to the Contractor hereunder for the purpose of this Agreement shall be used for any political activity or to further the election or defeat of any candidate for public office. As used herein the term "BERS property" shall include, but not be limited to, supplies, work sites, funds advanced and services.

6. Publication And Publicity

The Contractor or anyone employed by the Contractor may not publish the results of its participation or findings in the performance of this Agreement without the prior written approval of the Chair of the BERS Board of Trustees or his/her designee. All approved publications shall acknowledge that the program is supported by funds from BERS. Ten (10) true copies of each approved publication shall be furnished to BERS without charge.

7. Copyright

If the Contractor or anyone employed by the Contractor shall write, record or otherwise produce copyrightable material within the scope or in furtherance of this Agreement, BERS shall be considered the author for purposes of copyright, renewal of copyright, and termination of copyright and, unless expressly waived in a written instrument signed by the Chair of the Board of Trustees or her designee, the owner of all of the rights comprised in the copyright.

8. Patents

Any invention or discovery arising out of or developed in furtherance of this Agreement shall be promptly and fully reported to BERS. BERS shall have the exclusive right to apply for patent protection on such invention or discovery

and to determine how the rights in said invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered.

9. Insurance

The following types of insurance coverage with insurance companies acceptable to BERS, and which name BERS as an additional insured, except where otherwise provided herein, shall be obtained and maintained by the Contractor for the duration of this Agreement.

A. Worker's Compensation Insurance as and to the extent required by the laws of this state. Worker's Compensation Insurance need not name BERS as an additional insured. The Contractor shall not begin work at, about or upon the property of BERS until a certificate showing compliance with the provisions of said law is submitted to the Executive Director.

B. Comprehensive General Liability Insurance (including Product Liability): The Contractor, its agents and employees, and subcontractors, if any, and BERS and its directors, employees, agents and representatives as additional insured, during the operation and in the performance of this Agreement, shall be insured against claims for bodily injury, including death, disease, sickness and property damage as shall arise because of any services performed by the Contractor, or its agents, employees or subcontractors, either directly or indirectly, or because of any negligent act of the Contractor, or its agents, employees or subcontractors. The limit of liability under this comprehensive general liability insurance coverage (including Products Liability Insurance) for bodily injury, including death, disease and property damage, shall be at least \$1,000,000 per occurrence. The limit of liability required for property damage shall be at least \$100,000 for one (1) claimant in anyone (1) occurrence and at least \$200,000 for two (2) or more claimants in anyone (1) occurrence. Such coverage shall include all injuries to, or destruction of, property of such claimant(s), as well as the loss of use occasioned by the occurrence.

C. The contractor covenants not to use motor vehicles in the performance of this agreement. If, through inadvertence or otherwise, the Contractor should use motor vehicles in the performance of this agreement, then the provisions in subparagraph I below shall apply.

I. Motor Vehicle Liability Insurance shall insure the Contractor and its employees and agents, BERS, and the City of New York during and arising out of the performance of work under this Agreement against all present and future claims for bodily injury, sickness, disease, death, and property damages as shall arise because of a motor vehicle accident. The limit of liability shall be at least \$1,000,000 for all injuries sustained in anyone accident. The limit of liability required for property damage shall be at least \$100,000 for one claimant and at least \$200,000 for two or more claimants in anyone accident. Such damages shall include claimant as well as the loss of use occasioned by the accident.

D. Property Loss Insurance, having a limit of liability of at least \$50,000 per occurrence, protecting the Contractor's products prepared for BERS, while not yet delivered to BERS premises against "All Risks" of loss, which is to include, but not limited to, fire, lightning, windstorm, hail, riot, civil commotion, vandalism, malicious mischief, burglary, theft, floods, earthquakes, hurricanes, tornadoes and other perils including mysterious disappearance, but only while products are in the possession, control or responsibility of the Contractor, its subcontractors or anyone directly or indirectly employed by either of them. In the event there is a loss incurred as a result of any of the above, reimbursement for claims submitted shall be on a dollar for dollar basis for the cost incurred by BERS for either the loss of services, repair, restoration or replacement, whichever is applicable. This coverage may be a "Broad Form" policy covering any/all possible contingencies.

E. The policies required herein shall insure BERS and the City of New York against claims outlined in the coverage required herein for Worker's Compensation in the same amounts as are required in specifications for the Contractor or subcontractor, when applicable. Such coverage may be by separate policies, or by endorsement to this effect on existing policies.

F. The policies required herein, insuring BERS and the City of New York against claims arising out of any services performed by the contractor, its agents, employees or subcontractors, shall contain, by rider attached to such policies, the following provisions:

I. Notice under this policy by the Insurance Company should be addressed to: Executive Director
New York City Board of Education Retirement System
65 Court Street, Room 1602
Brooklyn, New York 11201

II. Notice of accident shall be given by the insured to the Insurance Company within a reasonable period of time after notice to the said Executive Director of such accident, but within less time than that provided by the policies.

III. The policy shall not be canceled, or terminated by the Insurance Company unless sixty (60) days prior written notice is sent to the insured by registered mail and addressed to the said Executive Director, nor shall it be canceled, terminated, modified or changed by the Contractor securing such policy without the prior consent of BERS.

10. Accounting for Property

If any property is acquired by the Contractor with funds provided by BERS under this Agreement, the property shall be deemed purchased by BERS for the use of the Contractor during the term of the Agreement and shall be permanently embossed "Property of New York City Board of Education Retirement System" and shall be returned to BERS, at the Contractor's expense, within thirty (30) days after the end of said term, unless the Contractor is otherwise notified in writing by the Executive Director or his designee.

11. Non-Reimbursable Expenses

The following items may not be claimed as a direct or indirect cost of the services provided under this Agreement:

- A. rental expenses of apartments;
- B. interest on loans;
- C. penalties for delinquent filing of tax returns;
- D. political or charitable contributions;
- E. advertising and promotions;
- F. legal expenses;
- G. key-man life insurance premiums;
- H. federal, state and city income tax; state and city franchise taxes; and costs for the preparation of such tax returns;
- I. expenses incurred in preparing for operations;
- J. cost of employee meals and lodging except when traveling outside the city and pursuant to the specifications of the contract;
- K. entertainment, gratuities, and any other items of a personal nature;
- L. long distance telephone calls unless directly related to the services provided under the terms of this Agreement;
- M. any expense not ordinary, necessary or reasonable in the performance of the Agreement.

12. No Extra Compensation

The Contractor shall not seek, ask for, demand, sue for or recover, as extra compensation or otherwise, any sum for labor, materials or services other than the compensation agreed upon and fixed.

13. Invoices And Payments

The Contractor shall furnish proof with each invoice, and shall comply with all BERS requirements concerning the manner in which invoices are to be submitted. The Contractor shall not be entitled to demand or receive full or partial

payment, until each and every one of the provisions of this Agreement is complied with, and the Executive Director or his/her designee shall have given written certification to that effect. Nothing contained herein shall be construed to affect the right hereby reserved by BERS to reject the whole or any portion of the performance, should said certification be inconsistent with the terms of this Agreement, or otherwise erroneously given.

14. No Estoppel

BERS shall not be precluded or estopped by a statement or document issued by or on behalf of BERS, from indicating the true value of services performed by the Contractor or by any other person pursuant to or as a result of this Agreement.

15. Acceptance of Final Payment

Receipt and negotiation by the Contractor, or by any person claiming under this Agreement, of the Final Payment hereunder, notwithstanding whether such payment be made pursuant to any judgment or order of any court, shall constitute a general release of BERS from any and all claims and liability for anything done, furnished, or relating to the labor, materials or services provided, or for any act of omission or commission of BERS or its agents and employees. Said release shall be against the Contractor, the Contractor's representative, heirs, executors, administrators, successors and assigns.

16. Claims -Limitation of Action

No action at law or equity shall be maintained by the Contractor, its successors, against BERS on any claim based upon or arising out of this Agreement, or out of anything done in connection with this Agreement, unless such action shall be commenced within six (6) months after the date of filing of the voucher for final payment hereunder, or within six (6) months of the required completion date for the services performed hereunder, whichever is sooner. None of the provisions of Article 2 of the Civil Practice Law and Rules shall apply to any action against BERS arising out of this Agreement.

17. Notices

The Contractor's address stated on Page 1 of this Agreement is hereby designated as the place where all notices, letters or other communications directed to the contractor shall be served, mailed or delivered. Any notice, letter or other communication directed to the Contractor and delivered to such address, or sealed in a post-paid wrapper and deposited in any post office box regularly maintained by the United States Postal Service, shall be deemed sufficient service thereof upon the Contractor. Said address may be changed at any time by an instrument in writing, executed and acknowledged by the Contractor and delivered to the Executive Director's designee. Nothing herein contained shall be deemed to preclude or render inoperative personal delivery of any notice, letter or other communication, written or oral, to the Contractor. Whenever it shall be necessary or required to prove the delivery of any notice, an affidavit describing such delivery shall be conclusive evidence of such delivery.

18. Amendments and Waivers

A. This Agreement may be amended by a written Instrument signed by an authorized officer for the Contractor, and by the Chair or his/her designee. No amendment materially affecting the substance hereof shall be effective unless approved by a Resolution of the BERS Board of Trustees, and a copy of said Resolution is attached to the amendment and incorporated herein.

B. No waiver by BERS of any terms or condition hereof shall be effective unless in writing and signed by the Chair or his/her designee. Any waiver shall be specifically limited to its terms, and shall not be deemed applicable to subsequent like circumstances.

C. Any purported oral amendment or waiver shall be void.

19. Suspension of Deliveries

The Executive Director or his designee, may postpone, delay, or suspend the delivery of the goods or services, or any part thereof, without additional compensation to the Contractor. In such event, (A) the time established for performance by the Contractor of any duty during the term of this Agreement may, at the Contractor's option, be extended for the number of days the Contractor was delayed by said suspension, postponement, or delay provided the term is not thereby extended; however, (B) the term may, at BERS' option, be extended for the number of days the contractor was delayed by said suspension, postponement or delay.

20. Cancellation

A. If the Contractor violates any provision of this Agreement, the Executive Director or his designee may pursue any legal or equitable remedies available to BERS. In addition, the Executive Director or his designee may seek to have the Contractor declared in default by the Evaluation Committee. In the event that the Contractor is declared in default, BERS may cancel this Agreement and shall thereafter be relieved of all liability hereunder. Upon a finding of default in violation of this contract, the Contractor shall be deemed not responsible and disqualified from bidding for a period of four years, unless in such finding of default, a lesser penalty is imposed by reason of mitigating circumstances.

B. In the event of breach of this Agreement by the Contractor, the Contractor shall have thirty (30) days time to cure the breach before being in default. BERS shall have the right to cancel and terminate said Agreement, and the Contractor shall be liable to BERS for any additional cost of completion of the within services, BERS' other cost in connection with the termination, reletting and completion of the services. All such costs, along with any liquidated damages for delay provided herein, may be assessed by BERS against the Contractor and deducted by BERS from payment to be made to the Contractor under this or any other Agreement at any time between the Contractor and BERS or the City. In the event that said cost exceed all sums owed at the termination date of the Agreement, the Contractor shall pay the amount of such excess to BERS upon notice from BERS of said amount, and in the event that said costs and liquidated damages are less than the sum payable under this Agreement, as if same had been completed by the Contractor, the Contractor shall forfeit all claims to the difference to BERS. If BERS undertakes to secure the services or any part thereof under this section of the Agreement, the certificate of the Executive Director or his designee indicating the amount of services secured, the cost and excess cost, if any, of completing this Agreement, and the amount of liquidated damages hereunder, shall be conclusive and binding upon the Contractor, its assigns and all other claimants.

21. BERS Determination

The Executive Director or his/her designee shall in all cases determine the acceptability of the labor, materials, or services which are delivered pursuant to this Agreement, including but not limited to their quality, delivery, and condition, and shall in all cases decide every question which may arise relative to the performance of this Agreement. The Contractor may not rely upon, and BERS shall not be bound by, any explanations, determinations or other statements by or from BERS which are not in writing and signed by the Executive Director or his/her designee.

22. Investigations

A. The Contractor agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York (State) or City of New York (City) governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the governmental agency which is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.

B (a) If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of, or performance under, any transaction, agreement, permit, contract, or license entered into with the City, the State, or any

political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York, or;

(b) If any person refuses to testify for a reason other than the assertion of his or her privilege against self incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, permit, contract, or license entered into with the City, the State, or any political subdivision thereof, or any local development corporation within the City, then;

C. (a) The commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license may convene a hearing, upon not less than five (5) days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

(b) If any non governmental party to the hearing requests an adjournment, the commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination to paragraph E below without the City and BERS incurring any penalty or damages for delay or otherwise.

D. The penalties which may attach after a final determination by the commissioner or agency head may include but shall not exceed:

I. The disqualification for a period not to exceed five (5) years from the date of the adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or obtaining any contract, lease, permit or license with or from the City or BERS; and /or

II. The cancellation or termination of any and all such existing City and BERS contracts, leases, permits or license that the refusal to testify concerns and that have not been assigned as permitted under this Agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City and BERS incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals or fees accrued prior to the cancellation or termination shall be paid by the Board.

E. The commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in paragraph I and II below. He or she may also consider, if relevant and appropriate, the criteria established in paragraph III and IV below in addition to any other information which may be relevant and appropriate:

I. The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

II. The relationship of the person who refused to testify to any entity that is a party to the hearing, including but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

III. The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City and BERS.

IV. The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under paragraph D above, provided that the party or entity has given actual notice to the commissioner or agency head upon the acquisition of the interest, or at the hearing called for in paragraph C, part I above gives notice and proves that such

interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

F. The term "license" and "permit" as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.

The term "person" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

The term "entity" as used herein shall be defined as any firm, partnership, corporation, association or person that receives monies, licenses, leases or permits from or through the City or BERS or otherwise transacts business with the City or BERS.

The term "member" as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.

G. In addition to and notwithstanding any other provisions of this agreement, the commissioner or agency head may in his or her sole discretion terminate this Agreement upon not less than three (3) days written notice in the event the Contractor fails to promptly report in writing to the Commissioner of Investigations of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or BERS, or any other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this Agreement by the Contractor or affecting the performance of this agreement.

23. Reports, Inspection and Records

A. The Contractor shall promptly provide all reports required by BERS, including without limitation, financial, program, statistical, analytical, narrative and progress reports. Unless otherwise provided herein, the final payment hereunder shall not be made until all reports have been submitted and approved by BERS.

B. The Contractor shall, until six (6) years after completion of its services hereunder or six years after date of termination of this Agreement, whichever is later, maintain and retain complete and correct books and records relating to all aspects of the Contractor's obligation hereunder. Records must be maintained separately, so as to identify clearly the hours charged to this Agreement and be distinguishable from all other hours charged which are not related to this Agreement.

C. The Contractor shall make its staff, and premises, books, records, operations, and services provided under this Agreement, and those of its subcontractors, available to BERS and to any person, agency or entity designated by BERS, at any time, for program audit, fiscal audit, inspection, observation, sampling, visitation and evaluation, and shall render all assistance and cooperation for said purposes. The Contractor agrees to attend, upon demand, any investigation conducted by BERS to produce any records and other documents required by BERS at that investigation, to cooperate with BERS, and to give sworn testimony pertaining to those documents or the subject of the investigation; provided only that the investigation, testimony, records and documents relate to the subject of the Contractor's relationship with BERS. If a corporation, partnership or government agency, the Contractor agrees to require its officers, employees and partners to comply with the forgoing.

D. In its' record keeping the Contractor shall also comply with all federal, state and local laws and regulations pertaining to such records, including, without limitation, the regulations of the Comptroller, and shall require its subordinates to do likewise.

E. In the event that any federal, state or local government agency, or other public or private agency conducts an audit of any of the Contractor's operations which pertains directly or indirectly to the goods and services provided pursuant to this Agreement, within five (5) working days after the receipt by the Contractor of notice of the commencement of such audit, the Contractor shall give notice of such commencement to BERS; and

within five (5) working days after receipt by the Contractor of a copy of any resulting interim or financial audit report, the Contractor shall supply on copy thereof to BERS.

24. Non-Assignment Of Contract

The Contractor shall give its personal attention to the faithful performance of this Agreement. The Contractor covenants that it will not assign, transfer, convey, sublet or otherwise dispose of this Agreement or its right, title or interest therein or its power to execute such Agreement, to any other person or corporation without the previous written consent of the Executive Director or his/her designee. If the Contractor in any way violates the terms of this provision, BERS shall have the right to cancel and terminate this Agreement, and BERS shall thereon be relieved from all liability thereunder. Nothing contained herein shall be construed to effect an assignment by the Contractor for the benefit of its creditors made pursuant to the statutes of the State of New York. No right under this Agreement, or to any monies due to become due hereunder, shall be asserted against BERS or the City in law or in equity by reason of a purported assignment of this Agreement, or any part thereof, or any monies due or to become due hereunder, unless authorized as aforesaid.

25. Contractor's Staff

The Contractor shall employ or contract for the service of only competent workmen, consultants, independent contractors and other employees as are, or reasonably may be, necessary for the performance of the Services hereunder.

The Contractor warrants that it shall be solely responsible for its employees' work, direction, safety and compensation.

The Contractor agrees to replace immediately any employee, and not engage such employee in the performance of this Agreement, if the Contractor is notified in writing that, in the opinion of either the Executive Director, or his/her designee, such employee is incompetent or otherwise impedes the performance of the services hereunder.

26. Confidentiality Of Records

All personally identifiable member and staff information obtained by or furnished to the Contractor by BERS, and all reports and studies containing such information prepared or assembled by the Contractor, are to be kept strictly confidential by the Contractor and shall not be provided or disclosed to any third party without the express written permission of the Executive Director or his/her designee. The Contractor shall limit access to such material in its control to those of its employees performing services pursuant to this Agreement strictly on a need to know basis. The Contractor shall restrict its use of the information to its performance under this Agreement and shall return all such material to BERS upon the completion of the services herein.

27. Testimony

If the project which is the subject matter of this Agreement at any time becomes involved in a proceeding, to which BERS or the City is a party, before any court, board, tribunal, panel, arbitrator, referee or agency, the Contractor shall provide such knowledgeable witnesses as BERS shall require, free of additional compensation of any kind. Nothing herein shall require the Contractor to provide testimony in any proceeding in which it is a party with interests opposed to those of BERS.

28. No Personal Liability

Neither the members of BERS nor the Executive Director nor any officer, employee, agent or representative of BERS or of the City shall be personally liable, based upon any theory of law or equity, to the Contractor or to any party claiming on behalf of or through the Contractor, under this Agreement, or by reason of any individual's actions or failure to act in any way connected with this Agreement, whether or not the action shall have been within or without an individual's scope of authority. The scope of this provision includes personal injury to any personal interest (commercial or otherwise), physical injury (including death), property damages, and any pecuniary damages where such injuries or damages result from or arise out of negligence. The Contractor further waives any and all rights to make a claim or commence an action or special proceeding, in law or equity, against any of the aforementioned

individuals, and the Contractor hereby assigns its complete right, title, and interest in any such claim, action, or special proceeding to BERS.

29. Indemnification

The Contractor shall protect, indemnify and hold harmless BERS from any and all claims, suits, actions, costs and damages to which BERS may be subjected by reason of injury to person or property, or wrongful death, as may result of any act, omission, carelessness, malpractice or incompetence of the Contractor, or anyone employed or engaged by the Contractor, in connection with the performance of this Agreement.

30. Conflict Of Interest

A. Except in accordance with applicable provisions of law and regulations governing such conduct, the Contractor may not have on its Board of Directors (or comparable body), employ, or contract for the services of I) any present employee of BERS, or II) any person who is presently on leave from employment with BERS, or III) any former employee of BERS.

B. The Contractor warrants that, other than a bona fide employee or contractor regularly working as a sales representative for the Contractor, no person, selling agency, or other entity has solicited or secured this Agreement, or has been employed or retained to do so, for a commission, percentage, brokerage fee or contingent fee.

C. The Contractor shall not give, and warrants that it has not given or promised to give, any gift or thing of value to any officer, employee or other person whose salary is payable in whole or part from BERS or City funds, or other funds under this Agreement. The phrase "gift or thing of value" shall include, without limitation, money, tangible goods, services, loans, promises or negotiable instruments.

D. If the Contractor violates any provision of this paragraph, BERS may, at its option, I) cancel and terminate this Agreement and be relieved of all liability hereunder, II) deduct all amounts paid by the Contractor or other value given by the Contractor in violation of this paragraph, from payments made or to be made to the Contractor under this or any other Agreement at any time, III) require the refund of any funds paid hereunder, or IV) any combination of the foregoing. Any breach of the warranties or violation of the provisions of this paragraph shall be grounds to preclude the Contractor or its principals as a responsible bidder on other BERS or City contracts.

31. Antitrust

The Contractor assigns to BERS its right, title and interest in and to any claim or cause of action arising under the antitrust laws of New York State or the United States relating to the goods or Services purchased or procured by BERS pursuant to this Agreement.

32. Merger and Choice Of Law

This written Agreement constitutes the entire agreement of the parties, and not other prior or contemporaneous agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind any of the parties hereto, or to vary any of the terms contained herein. This agreement shall be governed and construed in accordance with the laws of the State of New York without regard to its conflict of law rules.

33. Participation In An International Boycott

A. The Contractor agrees that neither it nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations of the United States Department of Commerce promulgated thereunder.

B. Upon the final determination by the Commerce Department or any other agency of the United States that the Contractor or a substantially-owned affiliated company thereof, participated, or is participating, in an international boycotting violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations promulgated thereunder, the Executive Director or his designee may, at his option, render forfeit and void this contract.

34. No Discrimination

A. The Contractor will strictly comply with all applicable Federal, State and Local laws pertaining to the subject of discrimination on any ground, as they may now read or as they may hereafter be amended.

B. The Contractor is, and will remain, an Equal Opportunity Employer. In addition to the other requirements of this paragraph 34, the Contractor shall provide equal opportunity for all qualified persons, and shall not discriminate in employment because of race, creed, gender, color, age, sexual orientation, national origin, handicapping condition, marital status, or religion and shall promote the full realization of equal opportunity.

C. Pursuant to the provisions of the New York State Labor Law, the Contractor agrees, in its operations performed within the State of New York:

- I. That in the hiring of employees for the performance of work under this contract or any subcontract hereunder, not any person acting on behalf of such contractor or subcontractor, shall by origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;
- II. That no contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, creed, color, sex or national origin;
- III. That there may be deducted from the amount payable to the contractor by the state or municipality under this contract a penalty of five dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the contract;
- IV. That this contract may be canceled or terminated by the state or municipality, and all monies due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this section of the contract;
- V. The aforesaid provisions of this section covering every contract for or on behalf of the state or a municipality for the manufacture, sale or distribution of materials, equipment or supplies shall be limited to operations performed within the territorial limits of the State of New York; and
- VI. That BERS is, for purposes of this subparagraph C., a "state or municipality."

35. Equal Employment Opportunity Requirements For Professional Contractors

A. Definition of Terms for the Implementation of a Program of Affirmative Action.

The following terms, when used in this paragraph, shall have the meanings given for them

- I. "Employee": Any person employed full or part-time in any capacity by the Contractor or sub-contractor.
- II. "Minority Groups and Affected Classes": Blacks, Hispanics (Non-European), Asian Americans, American Indians, females and individuals with handicapping conditions.
- III. "Program of Affirmative Action": A detailed, result-oriented set of written procedures submitted by a Contractor or sub-contractor which when implemented with conscious effort results in compliance with the Equal Opportunity Policy herein, through full utilization and equal treatment of minorities, women and individuals with handicapping conditions at all levels and in all segments of the Contractor's or sub-contractor's work force. An effective Program of Affirmative Action shall include but not necessarily be limited to, the following elements:

- a. Development or reaffirmation of the Contractor's or sub-contractor's Equal Opportunity Policy;
- b. Dissemination of the Policy;
- c. Responsibility for implementation;
- d. A survey and analysis of employment at all levels and in all categories and aspects of the Contractor's or sub-contractor's work force, which determines if and at which levels, categories, and aspects there is an under-utilization of minority and female employees;
- e. Establishment of goals and timetables toward the attainment of which the Contractor's or subcontractor's good faith effort must be directed to remedy any identifiable underutilization of minorities and women;
- f. An analysis of employment policies and practices, including but not limited to seniority system, recruitment, training, promotion, insurance and job benefits and their effects upon minorities, women and individuals with handicapping conditions;
- g. Corrective actions taken, or to be taken, toward the elimination of any employment policy or practice having a discriminatory effect on minority group members and women; and
- h. Description of the Contractor's efforts to engage, as sub-contractors, bona fide minority business enterprises and female enterprises.

IV "Goals and Timetables": Projected levels of achievement resulting from an analysis by the Contractor or sub-contractor of its deficiencies, and of what it can reasonably do to remedy them within a specified time period.

V. "Underutilization": Having fewer minorities, women and individuals with handicapping conditions in a particular job classification than would reasonably be expected by their availability in the appropriate labor force.

VI. "The Office": The Office of Equal Opportunity of BERS.

B. Required Program of Affirmative Action

I. The Contractor is required to identify and eliminate overt and covert discriminatory practices and implement the Program of Affirmative Action. Upon demand of the Office the Contractor shall submit to the Office a detailed written Program of Affirmative Action (hereinafter referred to as a "P.A.A."). In the event the Contractor submits a P.A.A. not acceptable to the Office, the Office will require the correction or revision of the P .A.A. to its satisfaction.

II. In the event the Contractor fails to submit such an acceptable P .A.A. within the time specified in the demand, the Contractor may be declared in default. The Director shall be the sole judge of the P.A.A.'s acceptability.

The P.A.A. shall:

- a. Apply to all Board of Education professional services contracts with the Contractor;
- b. Encompass all phases of the employment process, including evaluation of job classification to ensure job relatedness, recruitment, selection, validity of examinations, retention, layoffs, seniority, assignments, training, promotion, salary and benefits;
- c. Fulfill the following requirements:
 - i. Include measurable goals, reasonable timetables and specific programs to be implemented by the contractor to identify and eliminate deficiencies in employment practices with respect to the manifest underutilization of members of minority groups and members of affected classes;
 - ii. Include a statement of the present utilization of minority group members and women in the Contractor's work force and a projection of the minority utilization in

the Contractor's work force for the life of the Contract and for at least a one-year period succeeding its completion. This statement and projection shall include present and project 1) rates or hiring and promotion or minority group members and women in specific job categories at each wage rate within each level of employment and according to major organizational unit, and (2) percentages of minority group and women utilization in specific job categories at each wage rate within each level of employment, and according to major organizational work force;

iii. Include all of the Contractor's facilities within New York City as well as those facilities located elsewhere within the continental limits of the United States;

iv. Specify the union(s) or other employee organizations to which the Contractor's employees belong, and shall include commitments to good faith efforts to effect Equal Opportunity changes directly or indirectly, in programs by such unions or organizations to recruit, train, qualify or otherwise select members, if such changes are deemed necessary. The P.A.A. shall also include a copy of any agreement with an employee association which affects employment policies and practices;

v. Be submitted in such format as shall be specified by the Director of the Office; vi. Include a commitment to submit to the Director a separate P.A.A., of the form (i) to (v) hereof, for each subcontractor prior to approval of the subcontractor by BERS;

vii. Include a written evidence or proof which shows that minority entrepreneurs have been solicited and given an equal opportunity to submit proposals and that such proposals have been given equal consideration for award;

viii. Contain commitments as to goals for minority and affected classes employment and adoption of equal employment practices not less strict than the commitments contained in the Contractor's most recent P.A.A. which was approved by the Office.

C. Compliance Inspection Report

Upon demand of the Office, the Contractor shall, within the specified time, submit to the Office a Compliance Inspection Report. The completed Compliance Inspection Report must be returned to the Office within such time as is specified in the requisition for information accompanying the report form.

D. Conferences

The Contractor shall attend such conferences as shall be required by the Office for the purpose of acquainting it with the statutory and contractual requirements and what specific measures shall constitute an acceptable P.A.A..

E. Implementation of P.A.A.

During the Term of the Contractor, the Contractor shall successfully implement the P.A.A.. approved by the Office. F. Board of Review

If, in the opinion of the Office, the Contractor has breached any of the requirements of paragraphs 33 or 34 hereof, it may seek to have the Contractor declared in default by the Evaluation Committee as provided elsewhere herein.

For further information concerning these rules, regulations or procedures, contractors may consult with the Office of Equal Opportunity of BERS.

36. MacBride Principles Provisions for Board of Education Contractors

ARTICLE I. MACBRIDE PRINCIPLES PART A

In accordance with section 6-115.1 of the Administrative Code of the City of New York, the Contractor stipulates that such Contractor and any individual or legal entity in which the Contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the Contract either 1) have no business operations in Northern Ireland, or 2) shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of their compliance with such principles.

PART B

For purposes of this section, the following terms shall have the following meanings:

1. "MacBride Principles" shall mean those principles relating to nondiscrimination in employment and freedom of workplace opportunity which require employers doing business in Northern Ireland to:
 - a. increase the representation of individuals from underrepresented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs;
 - b. take steps to promote adequate security for the protection of employees from underrepresented religious groups both at the workplace and while traveling to and from work;
 - c. ban provocative religious or political emblems from the workplace;
 - d. publicly advertise all job openings and make special recruitment efforts to attract applicants from underrepresented religious groups;
 - e. establish layoff, recall and termination procedures which do not in practice favor a particular religious group;
 - f. abolish all job reservations, apprenticeship restrictions and different employment criteria which discriminate on the basis of religion;
 - g. develop training programs that will prepare substantial numbers of current employees from underrepresented religious groups for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade and improve the skills of workers from underrepresented religious groups;
 - h. establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement; and
 - i. appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.

ARTICLE II. ENFORCEMENT OF ARTICLE I.

The Contractor agrees that the covenants and representations in Article I above are material conditions to this contract. In the event the contracting entity receives information that the Contractor who made the stipulation required by this section is in violation thereof, the contracting entity shall review such information and give the Contractor an opportunity to respond. If the contracting entity finds that a violation has occurred, the entity shall have the right to declare the Contractor in default and/or terminate this contract for cause and procure the supplies, services or work from another source in any manner the entity deems proper. In the event of such termination, the Contractor shall pay to the entity, or the entity in its sole discretion may withhold from any amounts otherwise

payable to the Contractor, the difference between the contract price for the uncompleted portion of this contract and the cost to the contracting entity of completing performance of this contract either itself or by engaging another contractor or contractors. In the case of a requirements contract, the Contractor shall be liable for such difference in price for the entire amount of supplies required by the contracting entity for the uncompleted term of its contract. In the case of a construction contract, the contracting entity shall also have the right to hold the Contractor in partial or total default in accordance with the default provisions of this contract, and/or may seek debarment or suspension of the Contractor. The rights and remedies of the entity hereunder shall be in addition to, and not in lieu of, any rights and remedies the entity has pursuant to this contract or by operation of law.

37. Non-Collusive Bidding

If this Agreement was awarded by BERS based upon the submission of bids or proposals, Contractor warrants under penalty of perjury, that its bid or price quotation was arrived at independently and without collusion aimed at restricting competition.

38. Set-Off Rights

The BERS shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the Board's option to withhold for the purposes of set-off any moneys due and owing to the BERS with regard to this agreement, any other agreement with the BERS, including any agreement for a term commencing prior to the term of this Agreement, plus any amounts due and owing to the Board for any other reason. The BERS shall exercise its set-off rights in accordance with normal BERS practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the BERS, its representatives, or the State or City Comptroller.

39. Fair and Ethical Business Practices

Fair and Ethical Business Practices shall be strictly adhered to during the term of this Agreement. During the term of this Agreement, Contractor shall not:

- A. File with a government office or employee, a written instrument which intentionally contains a false statement or false information;
- B. Intentionally falsify business records;
- C. Give, or offer to give, money, gifts or anything of value or any other benefit to a labor official or public servant with intent to influence that labor official or public servant with respect to any of his or her official acts, duties or decisions as a labor official or public servant;
- D. Give or offer to give, money, gifts or anything of value or any other benefit to a labor official or public servant for any reason;
- E. Give, or offer to give, money, gifts or other benefit(s) to an official or employee of a private business with intent to induce that official or employee to engage in unethical or illegal business practices;
- F. Knowingly participate in the criminal activities of any organized crime group, syndicate or "family," nor shall any person employed by or associated with any such organized crime "family," syndicate or group participate through criminal means in any of the business affairs of Contractor.

40. Indemnification

The Contractor shall defend, indemnify and hold BERS and the City harmless from and against any and all claims, suits, damages, judgments, liabilities, costs, and expenses, including reasonable attorneys' fees, to which they may be subject because of or related to any claim that the Copyrightable Materials or their use constitutes an infringement by the Contractor or a violation by the Contractor of the copyright, patent, trademark, or any other property or personal right of any third party. For the purposes of this provision, "Copyrightable Materials" shall include any reports, documents, data, photographs, software, and/or other materials provided pursuant to this agreement, regardless of whether the copyright in such materials is or shall be owned by BERS, the Contractor, or third parties. This indemnification shall survive the termination or expiration of this Agreement. This indemnification provision shall not be limited in any way by the Contractor's obligations to obtain insurance as provided under this Agreement. Furthermore, Contractor shall defend and settle at its sole expense all suits or proceedings brought against Contractor arising out of the foregoing. However, in cases involving software, no such settlement shall be made that prevents BERS from continuing to use the software without BERS' prior written consent, which consent shall not be withheld unreasonably.

41. NYC Earned Safe and Sick Time Act Contract Rider

A. Introduction and General Provisions.

1. The Earned Safe and Sick Time Act ("ESSTA"), codified at Title 20, Chapter 8 of the New York City Administrative Code, also known as the "Paid Safe and Sick Leave Law," requires covered employees (as defined in Admin. Code § 20-912) in New York City ("City") to be provided with paid safe and sick time. Contractors of the City or of other governmental entities may be required to provide safe and sick time pursuant to the ESSTA. The ESSTA is enforced by the City's Department of Consumer and Worker Protection ("DCWP"), which has promulgated 6 RCNY §§ 7-101 and 201 *et seq.* ("DCWP Rules").
2. The Contractor agrees to comply in all respects with the ESSTA and the DCWP Rules, and as amended, if applicable, in the performance of this agreement. The Contractor further acknowledges that such compliance is a material term of this agreement and that failure to comply with the ESSTA in performance of this agreement may result in its termination.
3. The Contractor must notify (with a copy to DCWP at ComplianceMonitoring@dcwp.nyc.gov) the Agency Chief Contracting Officer of the City Agency or other entity with whom it is contracting in writing within 10 days of receipt of a complaint (whether oral or written) or notice of investigation regarding the ESSTA involving the performance of this agreement. Additionally, the Contractor must cooperate with DCWP's guidance and must comply with DCWP's subpoenas, requests for information, and other document demands as set forth in the ESSTA and the DCWP Rules. More information is available at <https://www1.nyc.gov/site/dca/about/paid-sick-leave-what-employers-need-to-know.page>.
4. Upon conclusion of a DCWP investigation, Contractor will receive a findings letter detailing any employee relief and civil penalties owed. Pursuant to the findings, Contractor will have the opportunity to settle any violations and cure the breach of this agreement caused by failure to comply with the ESSTA either i) without a trial by entering into a consent order or ii) appearing before an impartial judge at the City's administrative tribunal. In addition to and notwithstanding any other rights and remedies available to the City, non-payment of relief and penalties owed pursuant to a consent order or final adjudication within 30 days of such consent order or final adjudication may result in the termination of this agreement without further opportunity to settle or cure the violations.
5. The ESSTA is briefly summarized below for the convenience of the Contractor. The Contractor is advised to review the ESSTA and the DCWP Rules in their entirety. The Contractor may go to www.nyc.gov/PaidSickLeave for resources for employers, such as Frequently Asked Questions, timekeeping tools and model forms, and an event calendar of upcoming presentations and webinars at which the Contractor can get more information about

how to comply with the ESSTA and the DCWP Rules. The Contractor acknowledges that it is responsible for compliance with the ESSTA and the DCWP Rules notwithstanding any inconsistent language contained herein.

B. Pursuant to the ESSTA and DCWP Rules: Applicability, Accrual, and Use.

1. An employee who works within the City must be provided paid safe and sick time¹. Employers with one hundred or more employees are required to provide 56 hours of safe and sick time for an employee each calendar year. Employers with fewer than one hundred employees are required to provide 40 hours of sick leave each calendar year. Employers must provide a minimum of one hour of safe and sick time for every 30 hours worked by an employee and compensation for such safe and sick time must be provided at the greater of the employee's regular hourly rate or the minimum wage at the time the paid safe or sick time is taken. Employers are not discouraged or prohibited from providing more generous safe and sick time policies than what the ESSTA requires.
2. Employees have the right to determine how much safe and sick time they will use, provided that an employer may set a reasonable minimum increment for the use of safe and sick time not to exceed four hours per day. For the use of safe time or sick time beyond the set minimum increment, an employer may set fixed periods of up to thirty minutes beyond the minimum increment. In addition, an employee may carry over up to 40 or 56 hours of unused safe and sick time to the following calendar year, provided that no employer is required to carry over unused paid safe and sick time if the employee is paid for such unused safe and sick time and the employer provides the employee with at least the legally required amount of paid safe and sick time for such employee for the immediately subsequent calendar year on the first day of such calendar year.
3. An employee entitled to safe and sick time pursuant to the ESSTA may use safe and sick time for any of the following:
 - a. such employee's mental illness, physical illness, injury, or health condition or the care of such illness, injury, or condition or such employee's need for medical diagnosis or preventive medical care;
 - b. such employee's care of a family member (an employee's child, spouse, domestic partner, parent, sibling, grandchild, or grandparent, the child or parent of an employee's spouse or domestic partner, any other individual related by blood to the employee, and any other individual whose close association with the employee is the equivalent of a family relationship) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;
 - c. closure of such employee's place of business by order of a public official due to a public health emergency;
 - d. such employee's need to care for a child whose school or childcare provider has been closed due to a public health emergency; or
 - e. when the employee or a family member has been the victim of a family offense matter, sexual offense, stalking, or human trafficking;

¹ Pursuant to the ESSTA, if fewer than five employees work for the same employer, and the employer had a net income of less than one million dollars during the previous tax year, such employer has the option of providing such employees uncompensated safe and sick time.

1. to obtain services from a domestic violence shelter, rape crisis center, or other shelter or services program for relief from a family offense matter, sexual offense, stalking, or human trafficking;
 2. to participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members from future family offense matters, sexual offenses, stalking, or human trafficking;
 3. to meet with a civil attorney or other social service provider to obtain information and advice on, and prepare for or participate in any criminal or civil proceeding, including but not limited to, matters related to a family offense matter, sexual offense, stalking, human trafficking, custody, visitation, matrimonial issues, orders of protection, immigration, housing, discrimination in employment, housing or consumer credit;
 4. to file a complaint or domestic incident report with law enforcement;
 5. to meet with a district attorney's office;
 6. to enroll children in a new school; or
 7. to take other actions necessary to maintain, improve, or restore the physical, psychological, or economic, health or safety of the employee or the employee's family member or to protect those who associate or work with the employee.
4. An employer must not require an employee, as a condition of taking safe and sick time, to search for a replacement. However, where the employee's need for safe and sick time is foreseeable, an employer may require an employee to provide reasonable notice of the need to use safe and sick time. For an absence of more than three consecutive work days, an employer may require reasonable documentation that the use of safe and sick time was needed for a reason listed in Admin. Code § 20-914; and/or written confirmation that an employee used safe and sick time pursuant to the ESSTA. However, an employer may not require documentation specifying the nature of a medical condition, require disclosure of the details of a medical condition, or require disclosure of the details of a family offense matter, sexual offense, stalking, or human trafficking, as a condition of providing safe and sick time. Health information and information concerning family offenses, sexual offenses, stalking or human trafficking obtained solely due to an employee's use of safe and sick time pursuant to the ESSTA must be treated by the employer as confidential. An employer must reimburse an employee for all reasonable costs or expenses incurred in obtaining such documentation for the employer.
5. An employer must provide to all employees a written policy explaining its method of calculating sick time, policies regarding the use of safe and sick time (including any permissible discretionary conditions on use), and policies regarding carry-over of unused time at the end of the year, among other topics. It must provide the policy to employees using a delivery method that reasonably ensures that employees receive the policy. If such employer has not provided its written policy, it may not deny safe and sick time to an employee because of non-compliance with such a policy.
6. An employer must provide a pay statement or other form of written documentation that informs the employee of the amount of safe/sick time accrued and used during the relevant pay period and the total balance of the employee's accrued safe/sick time available for use.
7. Safe and sick time to which an employee is entitled must be paid no later than the payday for the next regular payroll period beginning after the safe and sick time was used.

C. *Exemptions and Exceptions.* Notwithstanding the above, the ESSTA does not apply to any of the following:

1. an independent contractor who does not meet the definition of employee under N.Y. Labor Law § 190(2);

2. an employee covered by a valid collective bargaining agreement, if the provisions of the ESSTA are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the ESSTA for such employee;
3. an audiologist, occupational therapist, physical therapist, or speech language pathologist who is licensed by the New York State Department of Education and who calls in for work assignments at will, determines their own schedule, has the ability to reject or accept any assignment referred to them, and is paid an average hourly wage that is at least four times the federal minimum wage;
4. an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;
5. an employee whose work is compensated by a qualified scholarship program as that term is defined in the Internal Revenue Code, Section 117 of Chapter 20 of the United States Code; or
6. a participant in a Work Experience Program (WEP) under N.Y. Social Services Law § 336-c.

D. Retaliation Prohibited.

An employer shall not take any adverse action against an employee that penalizes the employee for, or is reasonably likely to deter the employee from or interfere with the employee exercising or attempting in good faith to exercise any right provided by the ESSTA. In addition, an employer shall not interfere with any investigation, proceeding, or hearing pursuant to the ESSTA.

E. Notice of Rights.

1. An employer must provide its employees with written notice of their rights pursuant to the ESSTA. Such notice must be in English and the primary language spoken by an employee, provided that DCWP has made available a translation into such language. Downloadable notices are available on DCWP's website at <https://www1.nyc.gov/site/dca/about/Paid-Safe-Sick-Leave-Notice-of-Employee-Rights.page>. The notice must be provided to the employees by a method that reasonably ensures personal receipt by the employee.
2. Any person or entity that willfully violates these notice requirements is subject to a civil penalty in an amount not to exceed \$50.00 for each employee who was not given appropriate notice.

F. Records.

An employer must retain records documenting its compliance with the ESSTA for a period of at least three years, and must allow DCWP to access such records in furtherance of an investigation related to an alleged violation of the ESSTA.

G. Enforcement and Penalties.

1. Upon receiving a complaint alleging a violation of the ESSTA, DCWP must investigate such complaint. DCWP may also open an investigation to determine compliance with the ESSTA on its own initiative. Upon notification of a complaint or an investigation by DCWP, the employer must provide DCWP with a written response and any such other information as DCWP may request. If DCWP believes that a violation of the ESSTA has occurred, it has the right to issue a notice of violation to the employer .

2. DCWP has the power to grant an employee or former employee all appropriate relief as set forth in Admin. Code § 20-924(d). Such relief may include, but is not limited to, treble damages for the wages that should have been paid; statutory damages for unlawful retaliation; and damages, including statutory damages, full compensation for wages and benefits lost, and reinstatement, for unlawful discharge. In addition, DCWP may impose on an employer found to have violated the ESSTA civil penalties not to exceed \$500.00 for a first violation, \$750.00 for a second violation within two years of the first violation, and \$1,000.00 for each succeeding violation within two years of the previous violation. When an employer has a policy or practice of not providing or refusing to allow the use of safe and sick time to its employees, DCWP may seek penalties and relief on a per employee basis.
3. Pursuant to Admin. Code § 20-924.2, (a) where reasonable cause exists to believe that an employer is engaged in a pattern or practice of violations of the ESSTA, the Corporation Counsel may commence a civil action on behalf of the City in a court of competent jurisdiction by filing a complaint setting forth facts relating to such pattern or practice and requesting relief, which may include injunctive relief, civil penalties and any other appropriate relief. Nothing in § 20-924.2 prohibits DCWP from exercising its authority under section 20-924 or the Charter, provided that a civil action pursuant to § 20-924.2 shall not have previously been commenced.

H.. *More Generous Polices and Other Legal Requirements.*

Nothing in the ESSTA is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous safe and sick time policy, or the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous safe and sick time. The ESSTA provides minimum requirements pertaining to safe and sick time and does not preempt, limit, or otherwise affect the applicability of any other law, regulation, rule, requirement, policy or standard that provides for greater accrual or use by employees of safe and sick leave or time, whether paid or unpaid, or that extends other protections to employees. The ESSTA may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation.

42. Whistleblower Protection Expansion Act Rider

1. In accordance with Local Law Nos. 30-2012 and 33-2012, codified at sections 6-132 and 12-113 of the New York City Administrative Code, respectively,

- (a) Contractor shall not take an adverse personnel action with respect to an officer or employee in retaliation for such officer or employee making a report of information concerning conduct which such officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee relating to this Contract to (i) the Commissioner of the Department of Investigation, (ii) a member of the New York City Council, the Public Advocate, or the Comptroller, or (iii) the City Chief Procurement Officer, ACCO, Agency head, or Commissioner.
- (b) If any of Contractor's officers or employees believes that he or she has been the subject of an adverse personnel action in violation of subparagraph (a) of paragraph 1 of this rider, he or she shall be entitled to bring a cause of action against Contractor to recover all relief necessary to make him or her whole. Such relief may include but is not limited to: (i) an injunction to restrain continued retaliation, (ii) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (iii) reinstatement of full fringe benefits and seniority

rights, (iv) payment of two times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorney's fees.

- (c) Contractor shall post a notice provided by the City in a prominent and accessible place on any site where work pursuant to the Contract is performed that contains information about:
 - (i) how its employees can report to the New York City Department of Investigation allegations of fraud, false claims, criminality or corruption arising out of or in connection with the Contract; and
 - (ii) the rights and remedies afforded to its employees under New York City Administrative Code sections 7-805 (the New York City False Claims Act) and 12-113 (the Whistleblower Protection Expansion Act) for lawful acts taken in connection with the reporting of allegations of fraud, false claims, criminality or corruption in connection with the Contract.
- (d) For the purposes of this rider, "adverse personnel action" includes dismissal, demotion, suspension, disciplinary action, negative performance evaluation, any action resulting in loss of staff, office space, equipment or other benefit, failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected officer or employee.
- (e) This rider is applicable to all of Contractor's subcontractors having subcontracts with a value in excess of \$100,000; accordingly, Contractor shall include this rider in all subcontracts with a value a value in excess of \$100,000.

2. Paragraph 1 is not applicable to this Contract if it is valued at \$100,000 or less. Subparagraphs (a), (b), (d), and (e) of paragraph 1 are not applicable to this Contract if it was solicited pursuant to a finding of an emergency. Subparagraph (c) of paragraph 1 is neither applicable to this Contract if it was solicited prior to October 18, 2012 nor if it is a renewal of a contract executed prior to October 18, 2012.


WHISTLEBLOWER PROTECTION EXPANSION ACT POSTER



REPORT

CORRUPTION, FRAUD, UNETHICAL CONDUCT
RELATING TO A NYC-FUNDED CONTRACT
OR PROJECT

CALL THE NYC DEPARTMENT OF INVESTIGATION
212-825-5959

<p>DOI CAN ALSO BE REACHED BY MAIL OR IN PERSON AT: New York City Department of Investigation (DOI) 80 Maiden Lane, 17th floor New York, New York 10038 Attention: COMPLAINT BUREAU</p> <p>OR FILE A COMPLAINT ON-LINE AT: www.nyc.gov/doi</p> <p>All communications are confidential</p>	 <p>Or scan the QR Code above to make a complaint</p>
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**THE LAW PROTECTS EMPLOYEES OF
CITY CONTRACTORS WHO REPORT CORRUPTION**

- Any employee of a City contractor, or subcontractor of the City, or a City contractor with a contract valued at more than \$100,000 is protected under the law from retaliation by his or her employer if the employee reports wrongdoing related to the contract to the DOI.
- **To be protected by this law**, an employee must report to DOI – or to certain other specified government officials – information about fraud, false claims, corruption, criminality, conflict of interest, gross mismanagement, or abuse of authority relating to a City contract valued at more than \$100,000.
- Any employee who makes such a report and who believes he or she has been dismissed, demoted, suspended, or otherwise subject to an adverse personnel action because of that report is entitled to bring a lawsuit against the contractor and recover damages

ATTACHMENT E

PRICE CERTIFICATION CLAUSE (REVISED 11/13/78)

The proposer certifies that the prices, warranties, conditions, benefits and terms quoted herein are at least equal or more favorable to the Board of Education Retirement System of the City of New York than the prices, warranties, conditions, benefits and terms currently quoted by the proposer to any customers for the same or a substantially similar quantity and type of item(s) or services as described herein. This certification shall not apply to prices, warranties, conditions, benefits and terms under contracts in effect between the proposer and other customers at the date of submission of the proposal within, except as provided herein.

The successful proposer (hereinafter called the "Contractor") further certifies that during the period between the proposal submission date and the completion of the term of this contract, should subcontractor offer prices, warranties, conditions, benefits, and terms more favorable than those quoted herein, or provide changed prices, warranties, conditions, benefits and terms more favorable than those quoted herein under a contract in effect at the proposal submission date with any customer, for the same or a substantially similar quantity and type of item(s) or services, then the contractor shall immediately thereafter notify the New York City Board of Education Retirement System, Purchasing Management. Regardless of whether such notice is sent by the contractor or received by the New York City Board of Education Retirement System, this contract shall be deemed amended retroactively to the effective date of more favorable treatment, to provide the more favorable prices, warranties, conditions, benefits, and terms. The Board of Education shall have the right and option to decline any such amendment.

If the contractor is of the opinion that an apparently more favorable price, warranty, benefit, condition, and term quoted, offered or provided to a customer is not more favorable treatment, the contractor shall immediately notify the Executive Director, of the Board of Education Retirement System in writing setting forth in detail the reasons why the contractor believes the apparently more favorable treatment is not in fact more favorable treatment. The Director of Purchase, Purchasing Management, after consideration of the written explanation may, in their sole discretion, decline to accept the explanation and thereupon the terms will be at least equal to or more favorable to the Board of Education Retirement System than the prices, warranties, conditions, benefits and terms offered by the contractor to any customer for the same or substantially similar quantity and type of item(s) and/or services as of the effective date of the revision.

The contractor hereby authorizes the inspection, review and copying of contracts and documents that pertain or relate to the performance of this clause of the contract. The contractor shall be obligated to keep the contracts and documents referred to in the above paragraph during the effective period(s) of this contract and for a period of three years after the final payment of this contract.

PROPOSER (ORGANIZATION NAME)	AUTHORIZED SIGNATURE	DATE
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PRINTED NAME

TITLE

ATTACHMENT F

AFFIRMATION

RFP#: 2024-003 –Investment Consulting Services

The undersigned proposer affirms and declares that said proposer is not in arrears to the City of New York upon debt, contract or taxes and is not a defaulter, as surety or otherwise, upon obligation to the City of New York, and has not been declared not responsible, or disqualified, by any agency of the City of New York, nor is there any proceeding pending relating to the responsibility or qualification of the proposer to receive public contracts except _____

Full Name of Proposer _____

Address _____

City _____ State _____ Zip Code _____

CHECK ONE AND INCLUDE APPROPRIATE NUMBER

___ A: Individual or Sole Proprietorship
SOCIAL SECURITY NUMBER _____

___ B. Partnership, Joint Venture or other unincorporated organization
EMPLOYER IDENTIFICATION NUMBER _____

___ C. Corporation
EMPLOYER IDENTIFICATION NUMBER _____

___ Certified Woman Owned Enterprise ___ Certified Minority Owned Enterprise

Please submit copy of Certification Letter with RFP

___ Certified Locally Based Enterprise ___ Certified Non-Profit Enterprise

BY: _____
Signature

Title

If a Corporation place seal here

Must be signed by an officer or duly authorized representative

Under the Federal Privacy Act the furnishing of Social Security Numbers by proposers on city contracts is voluntary. Failure to provide a Social Security Number will not result in a proposer's disqualification. Social Security Number will be used to identify proposers to ensure their compliance with laws, to assist the City in enforcement of laws, as well as to provide the City a means of identifying businesses which seek City Contracts.

ATTACHMENT G

IRAN DIVESTMENT ACT COMPLIANCE RIDER FOR NEW YORK CITY CONTRACTORS

The Iran Divestment Act of 2012, effective as of April 12, 2012, is codified at State Finance Law ("SFL") §165-a and General Municipal Law ("GML") §103-g. The Iran Divestment Act, with certain exceptions, prohibits municipalities, including the City, from entering into contracts with persons engaged in investment activities in the energy sector of Iran. Pursuant to the terms set forth in SFL §165-a and GML §103-g, a person engages in investment activities in the energy sector of Iran if:

- (a) the person provides goods or services of twenty million dollars or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or
- (b) The person is a financial institution that extends twenty million dollars or more in credit to another person, for forty-five days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created pursuant to paragraph (b) of subdivision three of Section 165-a of the State Finance Law and maintained by the Commissioner of the Office of General Services.

A bid or proposal shall not be considered for award nor shall any award be made where the bidder or proposer fails to submit a signed and verified bidder's certification.

Each bidder or proposer must certify that it is not on the list of entities engaged in investment activities in Iran created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law. In any case where the bidder or proposer cannot certify that they are not on such list, the bidder or proposer shall so state and shall furnish with the bid or proposal a signed statement which sets forth in detail the reasons why such statement cannot be made. The City of New York may award a bid to a bidder who cannot make the certification on a case by case basis if:

- (1) The investment activities in Iran were made before the effective date of this section (i.e., April 12, 2012), the investment activities in Iran have not been expanded or renewed after the effective date of this section and the person has adopted, publicized and is implementing a formal plan to cease the investment activities in Iran and to refrain from engaging in any new investments in Iran: or
- (2) The City makes a determination that the goods or services are necessary for the City to perform its functions and that, absent such an exemption, the City would be unable to obtain the goods or services for which the contract is offered. Such determination shall be made in writing and shall be a public document.

**BIDDER'S CERTIFICATION OF COMPLIANCE WITH
IRAN DIVESTMENT ACT**

Pursuant to General Municipal Law §103-g, which generally prohibits the City from entering into contracts with persons engaged in investment activities in the energy sector of Iran, the bidder/proposer submits the following certification:

[Please Check One]

BIDDER'S CERTIFICATION

- By submission of this bid or proposal, each bidder/proposer and each person signing on behalf of any bidder/proposer certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief, that each bidder/proposer is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law.
- I am unable to certify that my name and the name of the bidder/proposer does not appear on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law. I have attached a signed statement setting forth in detail why I cannot so certify.

Dated: _____, New York
_____, 20__

SIGNATURE

PRINTED NAME

TITLE

Sworn to before me this
_____ day of _____, 20__

Notary Public

Dated:

ATTACHMENT H

Doing Business Data Form

<http://www.nyc.gov/html/dot/weekendwalks/downloads/pdf/doing-business-data-form-2018.pdf>

ATTACHMENT I

RFP Certification and BERS Ethics and Compliance Policy

1. I, _____, in connection with the Systems' RFP for an Investment Consultant (the "RFP") dated Monday, May 6, 2024 hereby certify:

2. That I am the duly authorized representative of _____ (the "Undersigned") and that I have been duly authorized to execute this Certification on behalf of the Undersigned;

3. That the Undersigned agrees to be a fiduciary to the System and that the Undersigned shall, in investing a System's assets, exercise at all times the diligence and standard of care of a fiduciary under Section 404 of the Employee Retirement Income Security Act of 1974 ("ERISA") or, if such law is enacted, any other law affecting any of the New York City Retirement Funds and Systems that may impose a higher or comparable standard;

4. That the Undersigned has received copies of and read BERS Ethics and Compliance Policy (attached) and that the Undersigned agrees to abide strictly by the terms and conditions of that Policy throughout the term of this engagement if selected;

Signed _____

Title _____

Dated _____

Firm: _____

ATTACHMENT J

BERS ETHICS AND COMPLIANCE POLICY

A. Purpose of the Policy

The New York City Retirement Systems (the “Systems”), in furtherance of the management and investment of the assets of the Systems, have determined to establish a comprehensive written Ethics and Compliance Policy (the “Policy”) for investment consultants (the “Consultants”) and for investment managers (the “Managers”) that do or seek to do business with the Systems. The Boards of Trustees of the Systems (the “Boards”) have requested that the Bureau of Asset Management (“BAM”) of the New York City Office of the Comptroller implement the Policy on behalf of the Systems.

The purposes of the Policy are:

- to identify and ensure disclosure of any potential risk, conflicts of interest and/or other ethical issues both before and after entering into contracts or transactions with the Consultants’ and the Managers’ firms;
- to ensure that proper internal compliance controls are in effect at the Consultants’ and Managers’ firms, so as to reduce the risk to the Systems;
- to provide a protocol for ensuring that Consultants and Managers are in compliance with the federal securities laws and the rules of the U.S. Securities and Exchange Commission (“SEC”), and other applicable law;
- to obtain timely disclosure from the Consultants and the Managers as to actual or alleged non-compliance with the Consultants’ and the Managers’ internal controls or with applicable law; and
- to assist BAM and the Systems in identifying and responding to non-compliance on the part of any Consultant and/or Manager.

BAM will not recommend continuation of or selection of any Consultant or Manager which does not meet the standards of compliance with this Policy. In addition, a Consultant or Manager which discloses a conflict of interest or other violation of this Policy to BAM must refrain from giving advice or making decisions about any matters affected by the conflict of interest or other violation of this Policy, until and unless authorized by the Board.

B. Annual Certification Obligation of Consultants and Managers

Annually, on or before June 15th of each year, Consultants and Managers shall submit an Annual Certification and Compliance Statement (the “Annual Statement”) to BAM,

which Annual Statement shall, in addition to providing an update on conflicts of interest, include the NYCRS Ethics and Compliance Certification form in which the Consultant or Manager makes the following representations: 1) that the Consultant or Manager is a fiduciary of the Systems; 2) that the Consultant or Manager has received and read this Policy; 3) that the Consultant or Manager is in full compliance with the Policy, except as disclosed in the Annual Statement; 4) that the Consultant or Manager is in full compliance with any other applicable policies and procedures of the Systems that apply to such Consultant or Manager, except as disclosed therein; and 5) that the Consultant or Manager is in full compliance with all applicable laws and regulations.

In addition to the above certification, Consultants and Managers, in their Annual Statements, must disclose all information specified in sub-sections A and B below. Although the firm's Form ADV or other SEC filings may be provided as a supplement; the firm must make full and complete disclosure in the body of the Annual Statement itself.

1. Conflicts

A conflict of interest exists for a Consultant or Manager whenever the Consultant or Manager has a direct or indirect pecuniary interest or a relationship (without regard to whether the relationship is direct, indirect, personal, private, commercial, or business) with a third party, and the interest or relationship could diminish the Consultant's or the Manager's independence of judgment in the performance of the Consultant's or the Manager's responsibilities to the Systems.

Consultants and Managers must promptly disclose conflicts of interest in writing to BAM, which shall promptly disclose such conflicts to the Systems for review.

Relational Conflicts, Generally

- a) Each Manager/Consultant is required to include a written statement to BAM specifying its affiliates and the lines of relationship between itself and said affiliates, their lines of business, and whether affiliates have any role in the investment process related to the Systems.
- b) Each Manager/Consultant must also disclose to the Systems at least annually any actual or potential conflicts of interests between the Manager/Consultant (including its affiliates) and the Systems, such as with respect to: i) investment of the Systems' assets in investment vehicles marketed or managed by the Manager/Consultant or affiliates; ii) allocation of investment opportunities as between the Systems and either the Manager/Consultant, affiliates or other clients; or iii) use, on behalf of the Systems, of services provided by affiliates, such as brokerage or auditing services. Managers/Consultants must also immediately notify BAM of any additional such conflicts that have arisen since the last Annual Statement.

- c) Managers/Consultants must also report to the Systems the procedures in place to prevent such conflicts and/or mitigate their effects should they occur; and to the Manager's/Consultant's policy in relation to the allocation of investment opportunities among its affiliates, between itself and outside clients, and also among outside clients.

Compensation Conflicts

- a) Managers/Consultants must disclose to the Systems all matters, including beneficial ownership of securities or other investments that reasonably could be expected to interfere with their duty to the Systems or with their ability to make unbiased and objective decisions in the investment of the Systems' assets. Managers/Consultants must also promptly notify the Systems of any additional such matters that have arisen since the last Annual Statement.
- b) Managers/Consultants must also disclose to the Systems:
 - i) all monetary compensation or other benefits that are in addition to compensation or benefits conferred by the Systems, and that they, their affiliates or their personnel have received or may receive for any services performed or to be performed that relate in any way to assets of the Systems, including services for "portfolio companies" of the Systems (those companies whose securities the Manager holds on behalf of the Systems, other than in an index fund);
 - ii) any referral fees or other consideration or benefit received by the Manager/Consultant or delivered to others for the recommendation of any services to the Systems; and iii) the full details of any services for portfolio companies of the Systems that the Manager/Consultant has undertaken, performed, or agreed to perform.
- c) Managers/Consultants must also promptly notify the Systems of any additional such compensation or benefits or earned, received or agreed, or services undertaken, performed, or agreed to, to since the last Annual Statement.

Conflicts Relating to Systems' Other Advisors

- a) Managers must disclose whether any Consultant is an affiliate of the Manager. Consultants must disclose whether any Manager is an affiliate of the Consultant. Affiliate for this purpose includes a parent, subsidiary, debtor, creditor, entity under common ownership, entity in which the Manager/Consultant has invested or which has an investment in the Manager/Consultant or entity with which the Manager/Consultant has a strategic alliance. If yes, the Annual Statement must include a detailed description of the nature of the affiliation.

- b) Managers must further disclose whether in the past five years, the Manager or any affiliate of the Manager has paid any compensation to any Consultant, or entered into any agreement with any Consultant, under which the Manager or any affiliate of the Manager may pay compensation in the future. Compensation for this purpose means any payment, product or service, and includes, but is not limited to, conference registration fees, research or consulting fees, and brokerage commissions, paid either directly or through soft-dollar arrangements. If so, the Annual Statement must, with respect to each and every such Consultant, describe in detail:
- (i) the full name of the Consultant;
 - (ii) the amount(s) of the compensation;
 - (iii) the year(s) in which it was paid;
 - (iv) the purpose of the compensation; and
 - (v) the terms of the agreement.
- c) Consultants must further disclose whether in the past five years, the Consultant, or any affiliate of the Consultant, has paid to or received from any Manager any compensation, or has entered into any agreement with any Manager, under which the Consultant or any affiliate of the Consultant may pay or receive compensation in the future. Compensation for this purpose means any payment, product or service, and includes, but is not limited to, conference registration fees, research or consulting fees, and brokerage commissions, paid either directly or through soft-dollar arrangements. If so, the Annual Statement must, with respect to each and every such Manager, describe in detail:
- (i) the full name of the Manager;
 - (ii) the amount(s) of the compensation;
 - (iii) the year(s) in which it was paid;
 - (iv) the purpose of the compensation; and
 - (v) the terms of the agreement.
- d) Consultants must further disclose:
- (i) whether they have any arrangements with broker-dealers under which they or an affiliate will benefit if any Managers place trades for the Systems with such broker-dealers, and if so, must disclose the full details of those arrangements; and

- (ii) what percentage of their public pension plan or ERISA clients utilize investment managers, investment funds, brokerage services or other service providers from whom the Consultant or any affiliate receives fees.
- e) Managers that have “soft dollar” arrangements with broker-dealers must further disclose whether, in connection those arrangements, they have received any of the following three categories of compensation from any broker-dealer in the past twelve months, and if so, must disclose in detail what they received in those three categories, and from whom:
 - (i) physical or tangible items, such as computer hardware and accessories, phone lines or office equipment;
 - (ii) payment of travel expenses or meals or entertainment associated with attending seminars; or
 - (iii) software or consultant services that relate primarily to a Manager’s internal management or internal operations.

2. Compliance with Law

Managers and Consultants, as applicable, shall further certify compliance with, and provide any disclosures required by, the following:

Managers/Consultants Must Have a Code of Ethics

Every Manager/Consultant must have a Code of Ethics that satisfies the requirements of Rule 204A-1 under the Investment Advisers Act, regardless of whether the Manager/Consultant is required to register under that Act.

Managers/Consultants Must Have Third-Party Review of Controls

- a) Each Manager/Consultant must certify that it has a periodic review of its Compliance Manual and compliance controls by an independent third-party at least once every three years. Internal review by the General Counsel, Chief Compliance Officer, or similar official of the firm or any of its affiliates does not qualify as an independent review. If the Manager/Consultant has not yet completed an independent third-party review, the first review must be completed no later than June 2008. However, Managers/Consultants first entering into contract(s) with the Systems after June 2005 must complete their first such review no later than 3 years from the date of the initial contract with the Systems. Should any third-party review identify any deficiencies in the compliance controls or Compliance Manual, the firm must provide to BAM a copy of the third-party’s report and an explanation of any remedial actions taken or planned.

- b) In addition to the third-party review of the Compliance Manual and compliance controls, the Systems encourage Managers managing assets aggregating over \$3 billion for all clients to have conducted at least a Level I SAS 70 review, or the equivalent of a SAS 70 in the country of incorporation or formation. The third party review of the Compliance Manual and compliance controls may be conducted as an explicit add-on to a SAS 70 review.

Managers/Consultants Must Monitor Personal Trading

Each Manager/Consultant must certify that it has a written personal trading policy with an established method for monitoring same. For Managers/Consultants managing, or advising as to, assets aggregating over \$3 billion for all clients, the Systems encourage the use of an automated system, such as STAR Compliance. The Manager/Consultant must report in detail any personal trading violations within the last 12 months and report the Manager/Consultant's response to it. It is acceptable if the disclosure of these violations is grouped according to categories of violations and of employees in some reasonable manner.

Managers Must Have a Policy on Mutual Funds Trading

The Manager must certify that it has a written policy on disclosure of market timing and late trading of mutual funds, where applicable, which should comply with the requirements of the SEC RIN 3235-A199. The Manager should notify BAM, i) annually; and ii) promptly upon occurrence, of any violations and/or any investigations by any government agency or any securities exchange involving or against the Manager or any of its personnel within the last three years with respect to such trading.

Managers Must Report Violations Relating to Restricted Securities

Managers are required to include a report to BAM on any inquiry or other action by any governmental agency relating to the improper sale within the last three years by the Manager to any person of any restricted securities (such as those covered by Rule 144a).

Managers/Consultants Must Provide Updates on Government Investigations and Enforcement Actions

- a) Managers and Consultants must, unless prohibited by law, regularly and promptly notify BAM in detail with respect to the commencement of, status of, or significant developments in, any government investigation of the Manager or Consultant or its employees in connection with any potential violations of applicable laws, or any enforcement action in connection therewith.
- b) Managers and Consultants must promptly provide such updates, and must promptly provide all disclosure called for by this Policy, regardless of whether the Manager or Consultant is required to file an SEC Form 8K or is yet due to file a Form ADV.

C. Non-Compliance with this Policy - Reporting Requirements

1. BAM Will Report Non-Compliance to the Boards

To the extent BAM receives or obtains information indicating that a Consultant or Manager is substantially out of compliance with the Policy and/or substantially in violation of applicable law, BAM will report such information to the Board for whatever action the Board deems appropriate, which may include termination of the Consultant or Manager.

D. Dissemination of Policy to Consultants and Managers

1. Current Consultants and Managers

Upon amendment of this Policy by the Boards, BAM shall immediately forward copies of the amended Policy to all current Consultants and Managers.

2. Prospective and New Consultants and Managers

- 1 Consultants and Managers seeking to do business with the Systems will be required to certify compliance with the Policy, and provide the disclosures required by the Policy, at the time they submit their response to a Request for Proposals (“RFP”) or, in the event that there is no RFP process, during the selection process.
- 2 If awarded a contract with the Systems, including any assignment of an existing contract, all new Consultants and Managers will be required to file with BAM, prior to signing the contract, their first Annual Certification and Compliance Statement, as described above (the “Initial Statement”). If the date of a new Manager/Consultant’s submitting its Initial Statement is after January 1 of a given year; then on June 15 of that year, the Manager/Consultant need only file a statement disclosing any updates to the information contained in its Initial Statement.