

## ACT 44 PROCEDURE POLICY

The Erie Regional Airport Authority (“Authority”) will apply the following procedure for the procurement of professional services with respect to any affected employee retirement plan (“Plan”) pursuant to Act 44.

1. **Plan Administrator’s responsibility.** The Plan Administrator is responsible for administering the procedures set forth herein. The purpose of this Act 44 Procedure Policy is to establish a reasonable and consistent procedure for compliance with Act 44. The procedure set forth is intended to comply with Act 44 and to enable the Authority to select the most qualified person to enter into a professional services contract. The procedure is intended to ensure that the availability of a professional services contract is advertised to potential participants in a timely and efficient manner. The procedure includes sample forms that may be used as a guide for advertising and evaluating a proposal for a professional services contract and a sample contract disclosure form.

2. **Professional Service Contract Procurement.**

(a) **Policy Procedures.** If the Authority seeks to procure professional services within the scope of Act 44 with respect to the Plan, it shall proceed as set forth in this Paragraph 2.

(b) **Advertisement.** The Authority shall advertise the availability of a proposal for a professional services contract and such advertisement shall set forth:

- 1) The services that are the subject of the proposed contract.
- 2) Specifications relating to the services.
- 3) Procedures to compete for the contracts.
- 4) Required disclosures.

Attached hereto as Exhibit A is a sample form of Advertisement.

(c) **Limitation on communication.** Upon the advertisement for a professional services contract by the Authority, the contractor may not cause or agree to allow a third party to communicate with officials or employees of the Authority except for requests for technical clarification. Requests for technical clarification by the Plan or Authority shall be made by a designated employee of the Plan or Authority. Nothing in this subsection shall preclude a potential contractor from responding to requests for clarification or additional information from the Plan or Authority.

(d) **Review.** The Authority shall endeavor to select the most qualified person based upon factors which include, but are not limited to, the person’s qualifications, experience and expertise and the compensation to be charged. The Authority, shall also review the conflict of interest and disqualification elements of this Policy. See the sample request for proposal and

evaluation process attached hereto as Exhibit B. See also the sample RFP Application form attached as Exhibit C.

(e) Identification of Personnel. Prior to entering into a professional services contract for services to or for the Plan, the Authority shall require and the contractor candidate shall disclose the names and titles of each individual who will be providing professional services to the Plan, including advisors or subcontractors of the contractor. Such disclosure shall include all of the following:

- 1) Whether the individual is a current or former official or employee of the municipality entering into the contract.
- 2) Whether the individual has been a registered Federal or State lobbyist.
- 3) A description of the responsibilities of each individual with regard to the contract.
- 4) The resume of an individual included in the disclosure shall be provided to the municipality upon request.

The information under this subsection shall be updated as changes occur.

### 3. Conflicts of interest.

(a) One Year Restriction Applicable to Former Employees. In addition to any other conflict of interest policies or restrictions that the Authority or applicable State or other law may impose, there is a minimum one-year restriction on:

- 1) Former Contractor Employees. Participation by a former employee of a contractor or potential contractor in the review of a proposal or negotiation of a contract with that contractor.
- 2) Former Authority or Plan Employees. Participation by a former employee of the Authority or Plan in the submission of a proposal or the performance of a contract.

(b) Contributors. A person or an affiliated entity that, within the past two years, has made a contribution to an Authority official may not enter into a professional services contract with the Authority or Plan, except that the two-year restriction shall not apply to any contribution made prior to December 17, 2009.

(c) Relationships. A person or an affiliated entity that enters into a professional services contract with the Authority or Plan may not have a direct financial, commercial or business relationship with any official of the Authority or Plan unless the Authority and Plan consent in writing to the relationship following full disclosure.

(d) Gifts. A person with a professional services contract may not offer or confer a gift having more than a nominal value, including money, services, loans, travel, lodging,

entertainment, discount or other thing of value, to any official, employee or fiduciary of the Plan or Authority.

4. **Disclosures.**

(a) **Intermediaries, Agents, Lobbyists.** A person or an affiliated entity that intends to enter or that enters into a professional services contract shall disclose the employment or compensation of a third party intermediary, agent or lobbyist to directly or indirectly communicate with the Authority or Plan officials or employees in connection with any transaction or investment involving the contractor and the Plan. The disclosure shall not apply to an officer or employee of the investment firm who is acting within the scope of the firm's standard professional duties on behalf of the firm, including the actual provision of legal, accounting, engineering, real estate or other professional advice, services or assistance pursuant to a professional services contract with the Authority or the Plan.

(b) **Contractors.** The provisions of this subparagraph 4(b) shall apply to a person and an affiliated entity that has applied for, submitted an offer or bid for, responded to a request for proposal or otherwise solicited a professional services contract with the Authority regarding the Plan.

- 1) A person or an affiliated entity that has a professional services contract with the Authority regarding the Plan shall disclose all contributions to which all of the following apply:
  - i. The contribution was made within the last five years.
  - ii. The contribution was made by an officer, director, executive-level employee or owner of at least 5% of the person or affiliated entity.
  - iii. The amount of the contribution was at least \$500 in the form of:
    - A. A single contribution by a person included in subparagraph (ii).
    - B. The aggregate of all contributions by all persons listed in subparagraph (ii).
  - iv. The contribution was made to:
    - A. A candidate for any public office in the Commonwealth of Pennsylvania or to an individual who holds that office.
    - B. A political committee of a candidate for public office in the Commonwealth of Pennsylvania or of an individual who holds that office.

- 2) The information provided under this subsection 4(b) shall be updated annually.

(c) Additional disclosures. A person or an affiliated entity that has a professional services contract with the Authority regarding the Plan shall disclose all of the following:

- 1) Information relating to individuals making contributions. This includes:
  - i. The name and address of the contributor.
  - ii. The contributor's relationship to the contractor.
  - iii. The name and office or position of each person receiving a contribution.
  - iv. The amount of the contribution.
  - v. The date of the contribution.
- 2) Gifts to an official or employee of the Plan or Authority.
- 3) The employment or retention of any third-party intermediary, agent or lobbyist and the duties of that person.
- 4) The existence of any financial relationship under paragraph 3(c) above.

(d) Forms. Required disclosure shall be made on the form as attached hereto as Exhibit D – Disclosure Form. The form shall be attached to the contract and posted on the Authority or Plan's Internet website, if an Internet website is maintained. During the term of the contract, an updated form shall be filed annually with the Plan.

(e) Penalties. The following shall apply:

- 1) The Authority shall void the professional services contract of a person that knowingly makes a material misstatement or omission in a disclosure form and shall prohibit the person from entering into a contract for a period of up to three years.
- 2) If a contractor or person that has submitted a proposal or bid in violation of subparagraph (e)(1) more than two times in a 36-month period, all contracts between that contractor and the Authority shall be void and the person shall be debarred for a period of at least three years from the date of the last violation.

5. **Post Award Actions.**

(a) **Public information.** Following the award of a professional services contract, all applications and disclosure forms shall be public except for proprietary information or other information protected by law.

(b) **Increase.** A professional services contract shall not be amended to increase the cost of the contract by more than 10% or \$10,000, whichever is greater, unless the increase and a written justification for the increase are public and posted on the Plan or Authority Internet website, if an Internet website is maintained, at least seven days prior to the effective date of the amendment.

(c) **Notice and summary.** The relevant factors that resulted in the award of the professional services contract must be summarized in a written statement to be included in or attached to the documents awarding the contract. Within ten days of the award of the professional services contract, the original application, a summary of the basis for the award and all required disclosure forms must be transmitted to all unsuccessful applicants and posted on the Authority's Internet website, if an Internet website is maintained, at least seven days prior to the execution of the professional services contract.

6. **Amendment and Interpretation of Policy.** The Plan Administrator is charged with establishing and administering this Policy. The Plan Administrator may modify this Policy from time to time. The Plan Administrator has discretion to interpret the provisions of this Policy. Nothing in this Policy grants any right, benefit or privilege to participants except as may be expressly set forth in the Plan. The Authority shall be the designated Plan Administrator and the Authority employee charged with the duties described herein shall, unless such employee's duties are otherwise specifically restricted, have the power to carry out the duties of the Plan Administrator hereunder.

PLAN ADMINISTRATOR

\_\_\_\_\_  
Dated:\_\_\_\_\_

## **EXHIBIT A**

### **Sample Advertisement for Proposals for Professional Services**

Erie Regional Airport Authority is seeking proposals for the following professional services for the Erie Regional Airport Authority Pension Plan (the “Plan”): [select from the following sample listings or create a new description]

1. Custodial services to provide secure possession, investment placement and reporting of pension assets.
2. Investment counseling services to provide sound strategies for the stability, preservation, and growth of pension assets.
3. Actuarial services to provide data and information relative to the funding adequacy of the pension plan.
4. Administrative services to provide counseling, educational, and documentation services for the plan’s day to day pension operations.

The specifications for the requested services shall relate to applicants’ qualifications, experience, expertise, and desired compensation with respect to the requested services; and such other specifications as may be required by state or federal law. Preference may be accorded to applicants who can provide multiple, or all, of the Authority at:

Procedure to compete for the contract shall require applicant’s obtaining application and disclosure forms from the requestor at

**[ ADDRESS ]**

and submission of relevant material to the same address on or before \_\_\_\_\_.

Each application must be accompanied by all disclosures required by Pennsylvania Act 44 of 2009.

## **EXHIBIT B**

### **Sample Request for Proposal and Evaluation Process**

Erie Regional Airport Authority invites proposals for \_\_\_\_\_ (e.g., investment consulting, custodial, administrative, and actuarial services).

We are seeking a service provider for the above listed services, (but will consider proposals which are limited to one or more of the listed services). We will employ the enclosed Evaluation Process and will require evidence that the responder has a history of providing a complete package of services and/or such elements of the total package as the responder proposes to provide.

In responding to this request, please:

1. Identify and describe the specific professional services with respect to which you are proposing.
2. Describe your history and experience in providing such services.
3. Identify the limits, if any, of services provided under your proposed fee, and your fee schedule for other services.
4. Describe with particularity the nature and frequency of consultative services you will provide.
5. State whether your services include the providing of IRS qualified documents for governmental plans; and any additional cost associated with such documents.
6. Set forth any facts or factors, not otherwise addressed in this RFP, which you feel are relevant to the selection of professional service providers.

All interested respondents must complete each section of the enclosed application and disclosure forms and to forward \_\_\_\_ ( ) copies of each to:

**Erie Regional Airport Authority**

**Attention:** \_\_\_\_\_

The postmark deadline for all proposals is \_\_\_\_\_ at \_\_\_\_\_ a.m.

## SAMPLE EVALUATION PROCESS

The evaluation of responses to this RFP and final decision will be conducted by the Erie Regional Airport Authority. The Authority may appoint a committee to conduct preliminary evaluations and to recommend one or more finalists for further review and investigation.

The relevant factors that bear upon the Authority's decision will be summarized in a written statement to be included in the documents of award. Within ten (10) days after the award, the approved application, a summary of the basis for the award, and all required disclosure forms will be transmitted to all unsuccessful applicants and posted at least seven (7) days prior to the execution of the document.

The criteria to be used shall center upon the responder's qualifications, experience, expertise, proposed fee schedule, the Authority's prior experience with and knowledge of the responder, and the Authority's cumulative confidence in the successful responder. The evaluation process shall include, but not be limited to, consideration of the responder's:

commitment to assisting the Authority in providing service to it and its participating employees.

ability to provide continuing educational services

experience in managing pension funds

ability to act as a fiduciary to the Authority's program

knowledge of Act 205, Act 600, & Act 44

ability to coordinate custodial services

ability and commitment to provide administrative services

ability to provide actuarial services

ability to provide investment and other consultative services to the Authority and participating employees

the quoted fee and a description of rates and services which would fall outside of and be in addition to the quoted fee

availability and willingness to attend meetings

accurate and full disclosure of all items required by the letter and spirit of Act 44, including disclosure of all fund expense and revenue sharing arrangements associated with pension funds

the Authority's prior experience in dealings with the responder



## EXHIBIT C

### Sample RFP Application Form

- A. Narrative Response to RFP
- B. Responder's history, ownership and organization
  - 1. List your organization's complete name, address, telephone and fax numbers. Briefly describe the organization, the year it was founded, location of its headquarters and other offices, its ownership structure and affiliation with other companies.
  - 2. Provide a brief history of your organization and affiliated entities, if any.
    - a. What is the total asset base of the pension funds on which you consult and what portion are government pensions?
    - b. How many plans do you provide administrative services for? Actuarial services? Consultative services? Custodial services?
    - c. Describe your organization's level of experience and knowledge of the particular elements of the Authority's pension program.
    - d. Describe your level of experience in advising authorities on defined contribution programs.
  - 3. Describe the range of activities of your organization and any affiliated entities.
  - 4. Within the last five (5) years has your organization or an officer or principal been involved in any business litigation or other legal proceedings relating to your professional activities? If so, provide an explanation and indicate the current status or disposition.
  - 5. Identify the consultants and other key staff who would be involved in serving our account. Provide resumes for these individuals.
- C. Services. Describe your proposal regarding the services.

D. Fees

1. Please provide a fee proposal for the services outlined in this request. Itemize separate charges for separate services where appropriate.
2. Provide an hourly fee schedule for any additional services not included in the basic scope of services.

E. [If applicable] Investment policy, research and reporting

1. Describe your approach to investment research.
2. How are investment managers evaluated?
3. Describe the educational services which you expect to provide or make available within the quoted fee.
4. Describe your asset allocation process for pension investments. Be sure to address the development of investment policies, portfolio structure, and guidelines for investment managers.
5. What is your firm's process for establishing client objectives?
6. Describe the due diligence process utilized in the selection of investment products.
  - a. Do you receive any direct or indirect compensation from investment product providers?
7. Comment on your philosophy regarding portfolio structure for governmental pension plans.
8. Describe your reporting procedures.
9. What methods and sources of data do you use in calculating investment performance of a pension portfolio? How often are performance reports produced and delivered? Include a sample performance evaluation report.

F. Scope of services: Please indicate any additional services your firm proposes to provide within the quoted fee or that you believe are necessary and the additional cost associated with such services.

## **Exhibit D**

### **Sample Disclosure Form**

- 1) State the names and titles of each individual in your organization who will be providing professional services to the Authority Plan including, if any, outside advisors or subcontractors; and describe the responsibilities of each named individual.
- 2) State whether any of the above named individuals, or your organization:
  - a. Is a current or former official or employee of this Authority .
  - b. Is or has been a registered federal or state lobbyist.
  - c. What are the responsibilities of each individual named above with regard to the proposed contract.
- 3) If the answer to either 2(a) or 2(b) is “yes”, explain the circumstances, including dates of employment.
- 4) Confirm that resumes of any of the above named individuals will be provided upon request.
- 5) Confirm that any information provided in this form will be updated annually and if and when changes occur.
- 6) State whether your organization has provided employment or compensation to any third party intermediary, agent, or lobbyist to directly or indirectly communicate with any Authority or Plan official or employee, or municipal official or employee in connection with any transaction or investment involving your firm and the Plan.
- 7) State whether your organization, or any agent, officer, director, or employee of your organization has solicited or made a contribution to any Authority official or member, or to the political party or political action committee of such an official or member.
- 8) State whether, following the advertisement of the Request for Proposal by Erie Regional Airport Authority your firm has caused or knowingly allowed any third party to communicate with Erie Regional Airport Authority or the Plan about the award of a professional services contract, except for requests for technical clarification.
- 9) State whether your organization, or any affiliated entity, has made a contribution within the previous two years to any Authority official or member. State the dates of any such contributions.

- 10) State whether your organization, or any affiliated entity, has any direct financial commercial or business relationship with any official of the Plan or Erie Regional Airport Authority.
- 11) State whether your organization or any affiliated entity has offered or conferred a gift of more than nominal value to any member, official, or employee of the Authority or plan fiduciary..
- 12) State and disclose all contributions made by your organization or any affiliated entity which meet the following criteria:
  - i. The contribution was made within the last five years
  - ii. The contribution was made by an officer, director, executive-level employee or owner of at least 5% of your organization or affiliated entity
  - iii. The amount of the contribution was at least \$500 in a form of:
    - a) A single contribution by a person included in subparagraph ii.
    - b) The aggregate of all contributions by all persons in subparagraph ii.
  - iv. The contribution was made to:
    - a) a candidate for any public office in the Commonwealth or to an individual who holds that office.
    - b) a political committee of a candidate for public office in the Commonwealth or of an individual who holds that office. The information provided under this item shall be updated annually.
- 13) State the following information with respect to all persons identified as contributors in the preceding sub-paragraph:
  - i. Name and address of the contributor
  - ii. The contributor's relationship to your organization
  - iii. The name and office or position of each person who received a contribution
  - iv. The amount of the contribution
  - v. The date of the contribution

- 14) State and disclose any gifts by your organization, or any affiliated entity, to an official, employee or member of the Authority.
- 15) State whether your organization, or affiliated entity, employs or retains any third party intermediary agent or lobbyist; and that person's duties.
- 16) State whether there exists any financial relationship between your organization, or any affiliated entity, and any official of the Plan or Erie Regional Airport Authority.

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