Investment and Defined Benefit Pension Administration Benchmarking Services

Contract Number 2019-01

The Iowa Public Employees’ Retirement System (IPERS or System), 7401 Register Drive, P.O. Box 9117, Des Moines, Iowa 50306-9117 has appointed CEM Benchmarking, Inc. (CEM), 372 Bay Street, Suite 1000, Toronto, Ontario, M5H 2W9, a Canadian Corporation, to provide investment and defined benefit pension administration benchmarking services to IPERS as described in this Contract.

**SECTION I: DEFINITIONS**

**A.** Boardshall mean the IPERS Investment Board as defined by Iowa law.

**B.** Committeeshall mean the IPERS Benefits Advisory Committee as defined by Iowa law.

**C.** Consultant shall mean CEM Benchmarking, Inc. (CEM), a Canadian corporation, its directors, officers, employees, agents, partners, affiliates, consultants, and other persons acting under the direction and control of the Consultant.

**D.** State shall mean the State of Iowa.

**E.** System shall mean the Iowa Public Employees’ Retirement System (IPERS), its Chief Executive Officer, board and committee members, and agency staff.

**SECTION II: SCOPE OF SERVICES**

**A.** **General Investment Benchmarking Services**

* Annually provide the required services unless IPERS elects not to utilize the service that particular year;
* Prepare, distribute, and utilize a common standardized data collection tool;
* Provide peer group data from at least twelve similarly sized defined benefit pension systems;
* Compare total return by component level, e.g. policy return and value added;
* Compare asset management costs by cost drivers;
* Analyze cost effectiveness;
* Compare risk levels and the relationship between risk and return;
* Provide historical trend analysis of the comparative data;
* Provide a written report including all of the comparative data as well as analysis and interpretation of the data;
* Attend and present the results at an IPERS Investment Board meeting.

**B. Specific Investment Benchmarking Services**

Each year that IPERS elects to receive investment benchmarking services, IPERS and CEM shall prepare and approve Attachment A to this contract. Attachment A shall describe the details of the services to be provided, the timeline, and the cost information.

**C. General Defined Benefit Pension Administration Benchmarking Services**

* Annually provide the required services unless IPERS elects not to utilize the service that particular year;
* Prepare, distribute, and utilize a common standardized data collection tool;
* Provide peer group data from at least twelve similarly sized defined benefit public pension systems;
* Compare service by activity, i.e. member transactions, employer services, communication, etc.;
* Compare costs by activity and identify cost drivers;
* Summarize costs per member and analyze cost effectiveness;
* Compare relative system complexity;
* Provide historical trend analysis of the comparative data;
* Provide a written report including all of the comparative data as well as analysis and interpretation of the data;
* Provide industry best practices information;
* Provide networking opportunities with peers;
* Attend and present the results at an IPERS Benefits Advisory Committee meeting.

**D. Specific Defined Benefit Pension Administration Benchmarking Services**

Each year that IPERS elects to receive defined benefit pension administration benchmarking services, IPERS and CEM shall prepare and approve Attachment B to this contract. Attachment B shall describe the details of the services to be provided, the timeline, and the cost information.

**SECTION III: TERM**

* 1. Contract Term

The Contract shall be in effect for a period beginning 1 July 2018 and ending 30 June 2021. The Contract may be renewed annually thereafter for three (3) additional periods of twelve (12) months each, at the discretion of IPERS.

**SECTION IV: COMPENSATION**

A. Fees

Annual fees for services provided during the initial three year term of this contract as defined in Section III shall be $US 95,0000 for investment benchmarking and $US 149,250 for defined benefit pension administration benchmarking. Fees for services provided in years beyond the initial three year term of the contract may not increase by more than 5% per year. Annual fees for each service shall be stated in Attachment A and Attachment B respectively.

* 1. Performance-based Fees

The fees stated in Attachment A and Attachment B shall be reduced by $US 250 per day for every day the final report is received past the deadlines set in Attachment A and Attachment B. Such fee reductions may be waived if both parties agree that CEM was not at fault.

* 1. Other Compensation Terms
  2. Unless otherwise agreed to in writing by the parties, the Consultant shall only be entitled to the compensation described in paragraph A of this section, and will not be entitled to receive any other payment or compensation from IPERS for any goods or services provided by or on behalf of the Consultant under this Contract. The Consultant shall be solely responsible for paying all other costs, expenses and charges it incurs in connection with its performance under this Contract.
  3. If IPERS in good faith determines that the Consultant has failed to perform or deliver any service or product as required by this Contract, the Consultant shall not be entitled to any compensation under this Contract until such service or product is performed or delivered.
  4. In the event that the Consultant owes the State any sum under the terms of this Contract, any other Contract, pursuant to any judgment, or pursuant to any provision of law, regulation or administrative rule, IPERS may set off the sum owed to the State against any sum owed by IPERS to the Consultant in the State’s sole discretion, unless otherwise required by law. The Consultant agrees that this provision constitutes proper and timely notice under the law of set-off.

SECTION V: GENERAL TERMS AND CONDITIONS

1. **CONSULTANT PERSONNEL AND CHANGES.** IPERS has the right to approve the Consultant personnel assigned to this Contract and any personnel replacements or additions. IPERS approval shall not be unreasonably withheld. IPERS also may request replacement of any Consultant personnel believed unable to carry out the responsibilities of this Contract. IPERS' approval shall in no way lessen Consultant’s responsibility for the proper selection, assignment, management, and discipline of Consultant’s employees. Consultant shall provide reasonable notification to the System concerning such personnel, personnel changes and any other changes in Consultant's organizational relationships, ownership, professional staff, or services which may have an impact on Consultant's service to this account.
2. **AUDIT AND EXAMINATION OF RECORDS**.

(1) Consultant agrees that the Auditor of the State of Iowa or any authorized representative of the State or of the System shall have access to and the right to examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, and records of Consultant relating to this Contract.

(2) Consultant shall retain all records relating to this Contract for five (5) years following the date of final payment or completion of any required audit, whichever is later.

(3) Compliance with this clause does not relieve Consultant from retaining any records required by other laws or regulations of federal, state, or local government units.

1. **BREACH OF DUTY**. The System has the right to terminate this Contract immediately upon learning of a breach of duty and/or confidentiality by Consultant. Breach of duty and/or confidentiality includes but is not limited to: distributing confidential information without the System's prior approval to someone other than Consultant; failing to comply with the requirements of this Contract; violating state or federal law; and, refusing to account to the System on a timely basis for Consultant's actions. This list is illustrative only and is not meant to limit the System's definition of breach of duty and/or confidentiality.
2. **CONTRACT**. This Contract between IPERS and Consultant shall include the negotiated contract, the terms and conditions of IPERS and the State of Iowa, Consultant’s proposal, and any written clarifications or changes made in accordance with the provisions herein. In the event of conflict between the documents, the rights of IPERS and Consultant shall be determined by first examining this Contract, then examining any written clarifications or changes that follow the effective date of this Contract, Consultant’s responses to the proposal(s) presented.
3. **CONTRACT CHANGES**. Changes in any of the provisions of this Contract may be made only in writing and must be approved mutually by a duly authorized representative of Consultant and a duly authorized representative of the System.
4. **COUNTERPARTS**. This Contract may be executed in any number of counterpart copies, each of which when fully executed shall be considered as an original.
5. **EQUAL EMPLOYMENT OPPORTUNITIES**. Consultant shall comply with the provisions of federal, state, and local laws and regulations to ensure that no employee or applicant for employment is discriminated against because of race, religion, color, sex, disability, or national origin. Consultant shall have available on request an affirmative action policy and shall provide the appropriate state or federal agencies with reports required to ensure compliance with equal employment legislation and regulations. Consultant shall ensure that all authorized subcontractors comply with the provisions of this clause.
6. **ETHICS POLICY**. Consultant acknowledges that it has been provided with a copy of the IPERS Ethics Policy, and agrees to comply with that policy as a material requirement under this Contract. Consultant agrees that, except as otherwise disclosed and pre-approved by IPERS, it shall not be involved in relationships with IPERS’ Key Employees or with any other party providing products and/or services to IPERS where the relationships would constitute a conflict of interest under the IPERS Ethics Policy. In addition, Consultant agrees to certify upon IPERS’ reasonable request that the provisions of this paragraph continue to be true, and also to promptly notify IPERS and request a ruling using the IPERS disclosure statement at any time when the provisions of the paragraph may no longer be true because of a potential or actual conflict of interest.
7. **FEDERAL AND STATE STATUTORY AND REGULATORY COMPLIANCE**. It is Consultant's responsibility to establish and maintain compliance with appropriate federal and state statutory and regulatory requirements. Failure to comply will be considered a material breach of contract and may result in its immediate termination.
8. **FORCE MAJEURE:** Notwithstanding anything to the contrary herein, nonperformance of either party shall be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental action, failure of suppliers, earthquake, or any other reason where failure to perform is beyond the reasonable control of the non-performing party up to a maximum of ninety (90) days.
9. **INDEMNITY FROM LIABILITY.** The Consultant agrees to indemnify and hold harmless the State of Iowa, the System, and the System’s staff and board members (“Indemnified Parties”) jointly and severally, from and against any and all losses, claims, damages, judgments, costs (including attorney fees), or liabilities of any kind which result from the Consultant’s negligent or wrongful performance in breach of this Contract or of any agreement which the Consultant, in its capacity as such, entered into with a third party.

The Consultant shall, at its sole cost, have control over the defense, payment, settlement, or other disposition of, any third party action, claim, suit, dispute, arbitration, or proceeding (referred to in this paragraph as “action”) involving any obligation or liability assumed by or imposed upon the Consultant pursuant to this subsection K. The Consultant shall have the right to conduct and control all negotiations and proceedings with respect thereto; provided, however, that (1) the Consultant shall fully and promptly keep all Indemnified Parties informed of the status of such actions, and (2) no settlement or disposition shall be made without written approval of the System, which approval shall not be unreasonably withheld.

Notwithstanding the foregoing, an Indemnified Party shall at all times be entitled to employ counsel separate from counsel for the Consultant and from any other party in such action, and in such event, the Indemnified Party and its counsel may participate in such action as it deems necessary. All reasonable fees and disbursements of such separate counsel shall be paid by the Consultant. If the Indemnified Parties desire separate counsel, the Indemnified Parties (if more than one) shall select one separate counsel, unless the Consultant agrees to the selection of individual separate counsel for each Indemnified Party in such action, or unless, in the reasonable opinion of the separate counsel, a conflict of interest exists or may exist between or among any Indemnified Parties, in which event those Indemnified Parties with conflicting interests shall be entitled to individual, separate counsel.

If the Consultant makes any payment to an Indemnified Party under this subsection K, the Consultant shall be subrogated in the amount of such payment to all rights of the Indemnified Party against any person or entity with respect to the loss or expense which caused the payment to be made.

1. **INDEPENDENT CONTRACTOR.** Consultant understands and agrees that its status under this Contract shall be that of an independent contractor. The System shall not provide the Consultant with an office, support staff, equipment, tools, or supervision beyond what is expressly stated in this Contract.
2. **JURISDICTION OF DISPUTES**. This Contract shall be interpreted in accordance with the laws of the State of Iowa without giving effect to the choice of law principles thereof. Any action relating to this Contract shall be commenced only in the Iowa District Court in and for Polk County and in the United States District Court for the Southern District of Iowa.
3. **INSURANCE REQUIREMENTS.** The consultant shall maintain in full force and effect, at the Consultant’s expense, insurance covering its work during the entire term of this Contract and any extensions or renewals. The Consultant’s insurance shall, among other things, be occurrence based and shall insure against any loss or damage resulting from or related to the Consultant’s performance of this Contract regardless of the date the claim is filed or expiration of the policy.

Consultant shall maintain insurance coverage in the amount of $1,000,000. Coverage must include protection in the indicated amount from malpractice, negligence, and intentional or wrongful acts or omissions. In addition, the Consultant shall ensure it has necessary workers’ compensation and employer liability insurance as required by Iowa Law, if applicable.

All insurance policies required by this Contract shall remain in full force and effect during the entire term of this Contract and any extensions or renewals thereof and shall not be canceled or amended except with the advance written approval of the System. The System may require, upon execution of this Contract and at least annually thereafter, the Consultant to submit certificates of insurance, which indicate coverage and notice provisions as required by this Contract.

1. **NOTICE.** Any notice, advice or report to be given to the System pursuant to this Contract shall be delivered or mailed to the System at:

Darla Iverson

Chief Financial Officer

Iowa Public Employees’ Retirement System

7401 Register Drive

Des Moines, Iowa 50321-2990

Email: Darla.Iverson@ipers.org

Phone: (515) 281-0056

Fax: (515) 281-0055

Any notice, advice, or report to be given to Consultant pursuant to this Contract shall be delivered or mailed to Consultant at:

Paul Martiniello

Director

CEM Benchmarking, Inc.

372 Bay Street, Suite 1000

Toronto, Ontario M5H 2W9

E-mail: bruce@cembenchmarking.com

Phone: (416) 369-9007

Fax: (416) 369-0879

1. **REMEDIES**. In addition to the right to terminate this Contract, the System may also file suit against Consultant and any individuals involved for breach of duty and/or confidentiality. Should the System or the State obtain a judgment against Consultant as a result of a breach of contract, Consultant consents to such judgment being set-off against any monies owed by the State or the System to Consultant under this or other contracts. This section shall not be interpreted to limit the State's or the System's remedies as provided for by law.
2. **RIGHTS IN PRODUCTS.** The System retains all rights to all data, reports, programs, designs and other works made for hire that are the unique and exclusive result of this Contract. Consultant may not reproduce or otherwise use such products of this Contract without the written consent of the System. The System reserves first publication rights to any such products of this Contract and the System may place these Products in the public domain without permission of Consultant. The System acknowledges that CEM owns the confidential benchmarking database, related software, and associated materials used to produce the benchmarking reports.
3. **SECURITY, CONFIDENTIALITY, AND OWNERSHIP OF DATA**. Some data files of the System are of a confidential nature. Consultant's employees and agents shall be allowed access to these files only as needed for their duties related to this Contract and in accordance with the rules established by the custodian of the records. Consultant shall preserve the confidentiality of these files and shall maintain positive policies and procedures for safeguarding the confidentiality of such data. Consultant recognizes that it may be liable civilly or criminally for the negligent release of such information.
4. **SEVERABILITY**. If any provision of this Contract is deemed invalid or unenforceable, the remainder shall be valid and enforceable.
5. **SUBCONTRACTS AND ASSIGNMENTS**. Consultant shall receive the System’s written approval of all subcontracts and assignments entered into by Consultant for the purpose of completing the provisions of this Contract. All such subcontractors and assignees shall be procured with adequate attention to the principles of competition and reasonableness of costs. All records relating to subcontracts and assignments shall be available for audit or examination.
6. **TAXES - STATE AND LOCAL**. The System is exempt from federal excise taxes, and from state and local sales and use taxes on the services supplied pursuant to this Contract. No payment will be made for any such taxes nor for any taxes levied with respect to Consultant's employees' and agents’ compensation.
7. **TERMINATION OF CONTRACT**. IPERS reserves the right to terminate this Contract without penalty under any one of the following circumstances:

(1)At IPERS’ discretion, with or without cause, after thirty (30) days written notice to Consultant;

(2)As a result of Consultant’s material breach of contract; or

(3)As a result of the non-availability or non-appropriation of funds. IPERS shall have the right to terminate this Contract without penalty after 30 days written notice to Consultant documenting the lack of funding, program discontinuance, or alteration. In the event of termination of the Contract due to non-availability or non-appropriation of funds, the Consultant’s exclusive, sole, and complete remedy shall be payment for services rendered prior to termination.

(4) If this Contract is terminated by IPERS for any reason, IPERS shall pay only those amounts, if any, due and owing to the Consultant for services actually rendered up to and including the date of termination of the Contract and for which IPERS is obligated to pay pursuant to the Contract. Payment will only be made upon submission of invoices and proper proof of the Consultant's claim.

(5) If IPERS obtains a money judgment against the Consultant as a result of a breach of this Contract, the Consultant consents to such judgment being offset against monies owed to the Consultant by IPERS under this or any other agreement with IPERS or the State of Iowa.

(6) Amounts due to IPERS as performance fee disincentives or pursuant to a negotiated settlement agreement for a claim arising from this agreement may be deducted by IPERS from any money payable to the Consultant pursuant to this agreement. IPERS shall notify the Consultant in writing of any claims for damages on or before the date IPERS deducts such sums from money payable to the Consultant.

1. **TERMINATION/TRANSITION DUTIES.** If the Contract is terminated with or without cause, or is not renewed, the Consultant, upon receipt of notice from IPERS, shall:

(1)Cease work under this Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work under the Contract, including, without limitation, results accomplished, conclusions resulting therefrom, or any other matters IPERS may require.

(2) Immediately cease using and return to IPERS any personal property, records, data, or materials, whether tangible or intangible, provided by IPERS to the Consultant, unless otherwise directed by IPERS.

(3) Comply with IPERS’ instructions for the timely transfer of any active files and work product produced by the Consultant under this Contract.

(4) Cooperate in good faith with IPERS, its employees, agents, and contractors during the transition period between the notification and the substitution of any replacement contractor.

(5) Immediately return to IPERS any payments made by IPERS for services that were not rendered by the Consultant.

1. **WAIVER OF INFORMALITIES**. The failure of the System at any time to require strict performance of any provision of this Contract shall not constitute a waiver of that provision nor in any way limit the enforcement of the provision.
2. **WARRANTY AGAINST CONTINGENT FEES**. Consultant warrants that no person or selling agency has been employed or retained to solicit and secure this Contract upon an agreement or understanding for commission, percentage, brokerage or contingency; excepting bona fide employees or selling agents maintained by Consultant for the purpose of securing business. For breach or violation of this warranty, the System shall have the right to award this Contract without liability, or in its discretion, to deduct from the Contract price or to otherwise recover, the full amount of such commission, percentage, brokerage or contingency.

In witness whereof the parties have agreed to all provisions contained herein and do therefore execute this Contract.

**Iowa Public Employees’ Retirement System**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: Donna M. Mueller

Title: Chief Executive Officer

**CEM Benchmarking, Inc.**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: Paul Martiniello

Title: Director