



IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

Gregory S. Samorajski, CFA
Chief Executive Officer

Kim Reynolds
Governor

Adam Gregg
Lt. Governor

June 15, 2020

Iowa Department of Administrative Services
Office of the Director
Attn: Legal Counsel
Hoover State Office Building, Third Floor
Des Moines, Iowa 50319-0104

To Whom It May Concern:

Attached you will find IPERS petition for waiver regarding 11 IAC 118.5(8A). IPERS is requesting a permanent waiver of the competitive selection process as it relates to private market investments only. The attached petition provides further detail for the basis of the waiver.

If you have any questions regarding this Petition for Waiver, please feel free to contact me at (515) 281-0070.

Sincerely,

A handwritten signature in black ink that reads "Gregory S. Samorajski". The signature is written in a cursive style.

Gregory S. Samorajski
Chief Executive Officer

Director of Department of Administrative Services Department of Administrative Services Hoover State Office Building Iowa Public Employees' Retirement System Petitioner	Petition for Waiver
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The Iowa Public Employees' Retirement System (IPERS), through its Chief Executive Officer, Gregory S. Samorajski, petitions the Director of the Department of Administrative Services to **permanently** waive Part 11 IAC 118.5(8A). This Petition for Waiver requests that the Director of the Department of Administrative Services permanently waive the competitive selection process as set forth in 11 IAC 118.5(8A) as it relates to private market investments only.

The statutory authority for this petition is Iowa Code § 17A.9A. The regulatory authority for this petition is 11 IAC Chapter 9 and 11 IAC 118.16.

On behalf of IPERS, I submit the following information as required by 11 IAC 9.6:

1. The name, address, and telephone number of the entity or person for whom a waiver is being requested and the case number of any related pending appeal.

Answer: Chief Executive Officer Gregory S. Samorajski, Iowa Public Employees' Retirement System, P.O. Box 9117, Des Moines, Iowa, 50306-9117, (515) 281-0070. There is no pending or related appeal associated with this petition.

2. A description and citation of the specific rule (and the stated requirement in a procurement, auction or sale) from which a waiver is requested.

Answer: 11 IAC 118.5(8A) states:

Use of competitive selection. State agencies may procure non-master agreement services from private entities without competition when the estimated value does not exceed \$5,000. Agencies shall use competitive selection to acquire services from private entities when the estimated annual value of the service contract is greater than \$5,000 or when the estimated value of the multiyear service contract in the aggregate, including any renewals, is greater than \$15,000 unless there is adequate justification for a sole source procurement pursuant to rule 11—118.7(8A) or emergency procurement pursuant to rule 11—118.8(8A) or unless awarded to a targeted small business pursuant to 11—paragraph 117.5(2)“a” or procured pursuant to another exception to competitive selection under another provision of law.

118.5(1) When the estimated annual value of the service contract is greater than \$50,000 or the estimated value of the multiyear service contract in the aggregate, including any renewals, exceeds \$150,000, a state agency shall use a formal competitive selection process to procure the service.

118.5(2) When the estimated annual value of the service contract is greater than \$5,000 but less than \$50,000 and the estimated value of the multiyear service contract in the aggregate, including any renewals, does not exceed \$150,000, a state agency, in its sole discretion, shall use either a formal or informal competitive selection process to engage a service provider.

118.5(3) The requirement to use competitive selection to select a service provider when the estimated annual value of the service contract is greater than \$5,000 or when the estimated value of the multiyear service contract in the aggregate, including renewals, is greater than \$15,000 applies even when the state agency purchases services from a private entity and designates the contract it enters into with the private entity as a 28E agreement.

3. The specific waiver requested, including the precise scope and duration, and any alternative means or other condition or modification proposed to achieve the purpose of the rule.

Answer: The permanent waiver that IPERS is requesting from 11 IAC 118.5(8A) pertains to private market investments only. Private market investments are defined in section 4, below, along with the requirements IPERS proposes to implement to ensure open and competitive bidding.

4. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in subrule 9.4(1) or the criteria in subrule 9.4(3) if the request relates to a procurement, sale or auction. This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition, and a statement of reasons that the petitioner believes will justify the waiver.

Answer: The Director may issue an order waiving in whole or in part the requirements of a rule if the Director finds that there is good cause for a waiver. Good cause includes, but is not limited to, a showing that a requirement or provision of a rule should be waived because the requirement or provision would likely result in an unintended, undesirable, or adverse consequence or outcome. An example of good cause for a waiver is when a contract duration period of longer than six years is more economically or operationally feasible than a six-year contract in light of the service being purchased by the state agency. Additionally, a waiver may be granted if the director finds based on clear and convincing evidence each of the following:

- A. The application of the rule would pose an undue hardship on the person for whom the waiver is requested;
- B. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
- C. The provisions of the rule subject to the petition for a waiver are not specifically mandated by a statute or another provision of the law; and
- D. Substantially equal protection or public health, safety and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

The rule requires a competitive selection process as defined by the rules in IAC 11-118. IPERS requests the permanent waiver because it needs the ability to act quickly when private market opportunities arise. IPERS needs more flexibility in building and maintaining its Private Markets investment portfolio, which is an important driver of the Fund's total return and ultimately the Fund's ability to pay benefits.

IPERS is a \$35 billion pension fund with over \$8.5 billion invested in Private Market investments. IPERS currently has a solid roster of Private Market investment managers, but is oftentimes thwarted in its ability to take advantage of opportunities created by market dislocations or changes in the investment or regulatory environments because of the need to perform a lengthy formal competitive selection process as required under the administrative rules. The RFP process takes too long to capture the best opportunities when they are available. This results in unintended and adverse consequences for IPERS as well as its members.

Private Market investments are defined to include funds, partnerships, fund-of-funds, or separately managed accounts that invest in buyouts, venture capital, growth equity, special situations, distressed debt, credit opportunities, corporate or real estate debt, direct lending, real estate, farmland, timberland, infrastructure, absolute return strategies, or any other type of investment designated as a Private Market investment by the IPERS Investment Board in its policies. Private Market investments do not include commingled funds or separately managed accounts that invest "long-only" in traditional, unlevered publicly traded investments such as stocks or bonds.

If granted the waiver, IPERS would create a "qualified manager list" of private market investment management firms, selected through a formal competitive request for qualifications process based on a firm's experience, expertise, and performance in their respective Private Market strategies. The top three to five most qualified managers within each respective Private Markets strategy would be placed on the qualified managers list.

Each qualified manager would alert IPERS when a new investment opportunity arose within their area of expertise, and submit a proposal to IPERS' investment staff, which would evaluate the opportunity. If IPERS' investment staff reached a positive conclusion on the proposal, it would submit a formal hiring recommendation to the IPERS Investment Board and seek the Board's approval before negotiating fund agreements or contracts to invest in the opportunity.

IPERS would seek to "refresh" the qualified managers list by issuing an RFQ every 3 to 5 years, at which time firms could be added and/or deleted based on the qualification criteria stated in the RFQ.

IPERS believes the proposed process meets the intent of open and competitive bidding while also allowing IPERS the flexibility it needs in building investment portfolios that will allow IPERS to meet its investment objectives and funding obligations.

IPERS is aware of alternatives in the statute relating to sole source procurements and emergency procurement. However, the requirements for sole source services do not apply in this case as there should be many firms capable of providing the services. IPERS is asking for the flexibility to select many qualified providers in advance so that it can act quickly to take advantage if/when a good market opportunity becomes available. The issue here is the ability to

move quickly once a market opportunity comes to our attention. An emergency procurement is also not applicable, as IPERS does not face an emergency need to acquire the services.

IPERS' seeks to institute a flexible procurement process similar to the Invitation to Qualify (ITQ) process that the Department administers under IAC 11-117.9(7) for the purchase of goods and services of a general use for state agencies. In those rules, one of the stated purposes is to reduce time required for solicitation of proposals from vendors for individual procurements. IPERS has the same purpose in asking for the waiver. A key difference is that IPERS is a trust fund, and its Board, staff and consultants have fiduciary and legal duties to the IPERS members to responsibly and prudently select external investment management services and needs to manage the process itself.

Permanently waiving the rule with the understanding that IPERS will institute a competitive pre-qualification process (with the process repeated every 3 to 5 years), should serve the public interest of competitive bidding while allowing IPERS the flexibility to act quickly on market opportunities if/when they arise in private markets.

5. A history of any prior contacts between the department and the petitioner relating to the activity that is the subject of the requested waiver including, but not limited to, a list or description of contested hearings relating to the activity within the past five years, and penalties relating to the proposed waiver.

Answer: None.

6. Any information known to the requester regarding the department's treatment of similar cases.

Answer: IPERS is unaware of any information regarding the department's treatment of similar cases.

7. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the granting of a waiver.

Answer: There are no other public agencies or political subdivisions that regulate the activity in question, or that would be impacted by granting the waiver.

8. The name, address, and telephone number of any entity or person who would be adversely affected by the granting of a petition, if reasonably known to the petitioner.

Answer: IPERS is unaware of anyone or any entity that would be impacted by granting the waiver.

9. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

Answer:

- a. Gregory S. Samorajski, Chief Executive Officer
IPERS
P.O. Box 9117
Des Moines, Iowa 50306-9117
(515) 281-0070

- b. Karl Koch, Chief Investments Officer
IPERS
P.O. Box 9117
Des Moines, Iowa 50306-9117
(515) 281-0040

- c. Elizabeth A. Hennessey, General Counsel
IPERS
P.O. Box 9117
Des Moines, Iowa 50306-9117
(515) 281-0054

10. Signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver or variance.

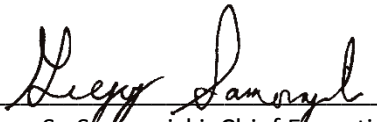
Answer: See Attachment 2.

Conclusion:

IPERS believes that granting this permanent waiver will result in no unintended, undesirable, or adverse consequences or outcome. IPERS further believes that granting the petition would not pose an undue hardship on any person or prejudice the substantial legal rights of any person or entity.

For the reasons stated herein, IPERS is requesting a permanent waiver to the rule to allow IPERS to institute its own pre-qualification selection process to take advantage of private market investment opportunities as they arise.

Dated this 15th day of June 2020

By: 
Gregory S. Samorajski, Chief Executive Officer
Iowa Public Employees' Retirement System
7401 Register Drive, P.O. Box 9117
Des Moines, IA 50306-9117

Attachments: (1) Signed Statement of Petitioner
(2) Signed Release

ATTACHMENT 1

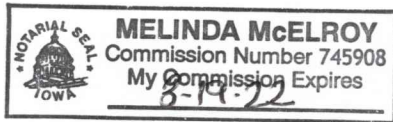
Iowa Public Employees' Retirement System Petitioner	Signed Statement of Petitioner
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I, Gregory S. Samorajski, the Petitioner in this action, attest to the accuracy of the facts and statements made in this petition. I make this statement in my capacity as the Chief Executive Officer of the Iowa Public Employees' Retirement System.

By: Gregory Samorajski
Gregory S. Samorajski, Chief Executive Officer
Iowa Public Employees' Retirement System
7401 Register Drive, P.O. Box 9117
Des Moines, IA 50306-9117

Before me appeared Gregory S. Samorajski, the Petitioner in this action, who attested to the accuracy of the petition and placed his signature on this document on the 15th day of June 2020.

By: Melinda McElroy
Melinda McElroy, Executive Assistant
Notary Public, Commission No. 745908
Iowa Public Employees' Retirement System
7401 Register Drive, P.O. Box 9117
Des Moines, IA 50306-9117



ATTACHMENT 2

Iowa Public Employees' Retirement System Petitioner	Signed Release of Information
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I, Gregory S. Samorajski, the Petitioner in this action, authorize the following people to release any information to the Department of Administrative Services that may assist it in making a determination relative to this Petition. I make this authorization in my capacity as the Chief Executive Officer of the Iowa Public Employees' Retirement System.

- a. Gregory S. Samorajski, Chief Executive Officer
IPERS
P.O. Box 9117
Des Moines, Iowa 50306-9117
(515) 281-0070
- b. Karl Koch, Chief Investments Officer
IPERS
P.O. Box 9117
Des Moines, Iowa 50306-9117
(515) 281-0040
- c. Elizabeth A. Hennessey, General Counsel
IPERS
P.O. Box 9117
Des Moines, Iowa 50306-9117
(515) 281-0054

By: 
Gregory S. Samorajski, Chief Executive Officer
Iowa Public Employees' Retirement System
7401 Register Drive, P.O. Box 9117
Des Moines, IA 50306-9117

Before me appeared Gregory S. Samorajski, the Petitioner in this action, who placed his signature on this document on the 15th day of June 2020.



By: 
Melinda McElroy, Executive Assistant
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