

**ERSRI - State of Rhode Island
RFP for Pension Administration Solution
ASP**

PART D: ERSRI TERMS AND CONDITIONS

1.0 RFP AMENDMENTS

ERSRI reserve the right to amend the RFP prior to the date of proposal submission. Amendments will be posted to the ERSRI Web site at the following address: www.ersri.org

2.0 PROPOSAL MODIFICATION OR WITHDRAWAL

Offerors who submit proposals in advance of the deadline may withdraw, modify, and resubmit proposals at any time prior to the deadline for submitting proposals. Offerors must notify the ERSRI Point of Contact, as identified in Section A-1.2, in writing if they wish to withdraw their proposals. If an offeror notifies ERSRI of its intent to withdraw its bid prior to the bid closing deadline, the bid will be returned to the offeror unopened. Notifications of intent to withdraw proposals may be delivered electronically via email, but responsibility for confirmation of the delivery and receipt by ERSRI rests solely with the offeror.

3.0 COST FOR PREPARING PROPOSALS

The costs for preparation and delivery of the proposal, as well as any other costs incurred in the pursuit of contract award (e.g., travel to bidders conference, preparation and presentation of product demonstrations), are the sole responsibility of the offeror. ERSRI will not provide reimbursement for such costs.

4.0 CONTRACT

The contract that ERSRI expects to award as a result of this Request for Proposal will be based upon the bid proposal submitted by the successful offeror and this RFP. The contract between ERSRI and the successful offeror shall be a combination of the specifications, terms and conditions of the Request for Proposal, including the terms contained in this Part D of the RFP, the offeror's technical and cost proposals, written clarifications or changes made in accordance with the provisions herein, and any other terms deemed necessary by ERSRI.

Note: Morneau Shepell agrees that the contract will be written to incorporate all relevant materials contained in each document mentioned in this section 4.0. Please see our comment in Section 4.3 below.

As a starting point for contract negotiation, the offeror is required to provide a draft contract. In addition to the vendor's terms and condition, the provided draft contract must address at least the following items:

- Schedule of system setup
- Detail Service Level Agreement
- Responsibilities of ERSRI
- Data security

The provided contract should also address all the specific items covered in the following section: 4.1-4.10

4.1 GOOD FAITH AND REVERSE HOLDBACK RELEASE

ERSRI is seeking an SaaS pension administration solution with a life of at least ten years. This ten-year expected life begins with the acceptance of the system by ERSRI, not upon signature of contract. ERSRI is expecting the offeror to price the solution in ten equal payments over the ten-year life of the solution – payable quarterly.

However, as a show of good faith, to assist the vendor with cash flow, ERSRI is prepared to pay the

selected vendor one-million dollars (\$1,000,000), spread as equal monthly payments over the implementation phase. The one-million dollars will be deducted from the annual payments, one-hundred thousand dollars per year.

Note that the 10 years starts upon acceptance and use of the system in production mode. The one-million dollars (\$1,000,000) will be based on the duration of the implementation phase as negotiated in the contract. The ERSRI Executive Director will meet quarterly with the SaaS implementation lead to assess the schedule. If it is determined that a change in the schedule is warranted, the Executive Director shall have the authority and ability to modify the schedule and equitably alter the payment schedule.

Note: Morneau Shepell understands ERSRI's need to amortize the implementation of this project; however, we would like to discuss different ways in which fees could be amortized over the terms of the agreement.

4.2 PAYMENT SCHEDULE

The annual payment to be made to vendor will be as determined during contract negotiations. ERSRI will pay the vendor Twenty-five percent (25%) of the negotiated annual payment on a quarterly basis (in arrears) for the duration of the agreement. For purposes of determining the quarters, the first quarterly payment will be made on the last day of the third month following system acceptance, and every three months thereafter that the agreements remain in force. For example, if system acceptance is on March 22, the first payment will be June 30.

Note: Morneau Shepell's standard payment schedule is on a monthly basis. However, we would be willing to discuss this further with ERSRI.

4.3 ORDER OF PRECEDENCE

The executed contract between ERSRI and the selected offeror shall have precedence over all other documents relating to the project.

Note: Morneau Shepell cannot agree to incorporating the RFP and proposal into the contract. The RFP and proposal contain marketing and sales language that should not be part of the main legal contract between the parties. Details and description of the services and fee structure that are listed in the RFP and proposal will be inserted into the main contract and service schedules.

4.4 CONFLICT OF INTEREST

If an offeror has any existing client relationship(s) that involve the State of Rhode Island or ERSRI that would compromise its objectivity, the offeror must disclose such relationship(s).

In addition, ERSRI has an option to retain L. R. Wechsler, Ltd. (LRWL) to provide Project Management Oversight, Independent Validation & Verification and Quality Assurance services through the course of this project. The offeror should identify any pre-existing business relationships or legal proceedings it has that involve LRWL either directly or as a third party.

The offeror shall prepare and submit with the bid proposal a letter which the offeror shall certify that it developed the bid proposal independently. Included in the letter, the offeror shall also certify that no relationship exists or will exist during the contract period between the offeror and ERSRI that interferes with fair competition or is a conflict of interest. ERSRI reserves the right to reject a bid proposal or cancel the award if, in its sole discretion, any relationship exists that could interfere with fair competition or conflict with the interests of ERSRI.

4.5 CONFIDENTIALITY REQUIREMENTS

Deleted: In the event that there is a conflict or ambiguity within the text of the contract and any other incorporated documents, the order of precedence shall be:
 The executed contract and any other incorporated documents

Deleted: Addenda to this RFP (if any)
 This RFP
 Vendor Evaluation Questions and Answers (issued subsequent to the Bidder's Conference)
 Additional responses from selected offeror
 Offeror response to this RFP

The staff members that are assigned by the successful offeror to this project – be they employees of the offeror, sub-contractors to the offeror or employees of sub-contractors – may be required to sign an ERSRI non-disclosure statement.

ERSRI may treat all information submitted by a offeror as public information following the conclusion of the selection process unless the offeror properly requests that information be treated as confidential at the time of submitting the bid proposal. ERSRI's release of information is governed by the State of Rhode Island's "Access to Public Records" law (Title 38-2). Offerors are encouraged to familiarize themselves with this law before submitting a proposal. ERSRI will copy public records as required to comply with the public records laws.

Any request for confidential treatment of information must be included in the transmittal letter with the offeror's bid proposal. In addition, the offeror must enumerate the specific grounds in the State of Rhode Island's "Access to Public Records" law (Title 38-2) or other applicable law which support treatment of the material as confidential and explain why disclosure is not in the best interest of the public. The request for confidential treatment of information must also include the name, address, and telephone number of the person authorized by the offeror to respond to any inquiries by ERSRI concerning the confidential status of the materials.

Any bid proposal submitted which contains confidential information must be conspicuously marked on the outside as containing confidential information, and each page upon which confidential information appears must be conspicuously marked as containing confidential information. Identification of the entire bid proposal as confidential may be deemed non-responsive and disqualify the offeror.

If the offeror designates any portion of the proposal as confidential, the offeror must submit one copy of the bid proposal from which the confidential information has been excised or redacted. This excised copy is in addition to the number of copies requested in Section C-1 of this RFP. The confidential material must be excised in such a way as to allow the public to determine the general nature of the material removed and to retain as much of the bid proposal as possible.

ERSRI will treat the information marked confidential as confidential information to the extent such information is determined confidential under the State of Rhode Island's "Access to Public Records" law (Title §38-2) or other applicable law or by a court of competent jurisdiction.

The offeror's failure to request confidential treatment of material will be deemed by ERSRI as a waiver of any right to confidentiality which the offeror may have had.

By submitting a bid proposal, the offeror agrees that ERSRI may copy the bid proposal for purposes of facilitating the evaluation of the bid proposal or to respond to requests for public records. The offeror consents to such copying by submitting a bid proposal and warrants that such copying will not violate its rights or the rights of any third party. ERSRI shall have the right to use ideas or adaptations of ideas that are presented in the bid proposals.

4.6 INSURANCE

The following requirements shall be adhered to by Contractor throughout the duration of the Contract, and as may otherwise be specified herein. Contractor shall procure and maintain insurance, which shall protect the Contractor and the State from any claims for bodily injury, property damage, and/or personal injury, which may arise out of operations under the Contract. Contractor shall procure the insurance policies at the Contractor's own expense and shall furnish the State an insurance certificate of the coverage required in this Section. Contractor is required to obtain and maintain the following types of insurance coverage for the duration of the Contract:

Insurance / Limits of Liability:

- Worker's Compensation** – Statutory
- Unemployment Insurance** – Statutory

☐ **Commercial General Liability Insurance** – The minimum limits of coverage of such insurance will be \$500,000 per person and \$1,000,000 per occurrence for personal and bodily injury and \$100,000 for property damages.

☐ **Liability, Malpractice, and/or Errors and Omissions Insurance** – The contractor shall maintain malpractice and/or an errors and omissions insurance policy in the amount of at least \$1,000,000.

Additionally, the contractor shall maintain adequate business insurance to include an umbrella liability policy of at least \$3,000,000 total. Coverage under these policies must include protection from the fraudulent conduct and breach of fiduciary responsibility of the contractor.

Contractor will indemnify, and save harmless ERSRI, its directors, officers, employees and agents from and against any and all claims, actions, damages, liabilities, costs, and expenses pursuant to Section 4.8 below.

Deleted: arising out of Contractor's operation and performance under this Contract including all claims for bodily and personal injuries, sickness, death and/or damages to property

All offerors must submit within ten (10) calendar days after notification of intent to award the original or a certified true copy of insurance certificate(s) confirming coverage as stipulated above. If this information is not provided within this time frame, the proposal will be rejected. All insurance coverage costs must be exclusive of any legal costs.

New insurance shall be promptly furnished in the event of insolvency, bankruptcy or failure of any insurance company. The contractor shall notify ERSRI thirty (30) days in advance of cancellation, termination or alteration of insurance policies as required by this RFP. A renewal policy or certificate shall be delivered to ERSRI at least thirty (30) days prior to the expiration date of each expiring policy. If at any time, any of the policies shall be or become unsatisfactory to ERSRI, acting reasonably, as to form or substance, or any of the carriers issuing such policies shall be or become unsatisfactory to ERSRI, acting reasonably, the Contractor shall promptly obtain a new and satisfactory policy in replacement.

Deleted: If determined necessary by ERSRI's Representative/Contract Administrator, the Contractor shall deliver to ERSRI's Representative upon demand a certified copy of any policy required herein for review.

Note: As a policy, Morneau Shepell does not provide copies of our insurance policies to clients.

Insurance certificates must be submitted and accepted by ERSRI prior to the commencement of work under this RFP and accompanying contract. Failure to obtain insurance satisfactory to ERSRI will result in the rescission of any Notice of Award to the offeror. Any contract awarded shall be void if this requirement is not met.

4.7 ADHERENCE TO ERSRI WORKPLACE POLICIES

It is anticipated that a number of the offeror's project team will be on-site – some regularly over the course of the project; others periodically as the need arises. Regardless of their purpose in being on-site or the frequency with which they are there, all offeror staff must adhere to ERSRI workplace policies as described below.

Background Check – The offeror shall provide proof, via BCI check or similar, of all staff and subcontractor staff that perform work either on-site or remotely have recently undergone a Background check.

Building Access – In addition, any staff that work on-site shall be subject to ERSRI building access rules. The ERSRI Project Manager shall be responsible for allocating building access, equipment access, and any other necessary services available from ERSRI which may be used by the offeror. Any use of ERSRI facilities, equipment, internet access, and/or services shall only be for project purposes as authorized by the ERSRI Project Manager.

Network Connection – The offeror will be expected to provide its own personal computers which must comply with ERSRI security policies before use is allowed at ERSRI. A copy of the Visitor Computer Access Policy can be found in Appendix E-10.

4.8 INDEMNIFICATION AND LIABILITY RESTRICTIONS

ERSRI has no obligation to provide legal counsel or defense to the offeror if a suit, claim, or action is brought against the offeror or its sub-contractors as a result of the offeror's performance of its obligations under the contract. In addition, ERSRI has no obligation for the payment of any judgments or the settlement of any claims against the offeror as a result of the offeror's performance of its obligations under the contract. The offeror shall immediately notify ERSRI of any claim made or suit filed against the offeror resulting from the offeror's obligations under the contract. The offeror will cooperate, assist, and consult with ERSRI in the defense or investigation of any claim made or suit filed against ERSRI resulting from the offeror's performance under the contract.

Deleted: The offeror will indemnify ERSRI against liability for any suits, actions, or claims arising from correlating to performance of the offeror under this contract.

Save and except as stipulated in this Contract, ERSRI will not indemnify the offeror for any reason associated with the offeror's performance under this contract. ERSRI has not waived any right or entitlement to claim sovereign immunity under this contract.

The offeror agrees to indemnify and hold ERSRI, its Executive Director, managers, Board, elected and appointed officials, and employees harmless from any and all liabilities, damages, settlements, judgments, costs and expenses, including reasonable attorney fees of ERSRI staff or of the Rhode Island Attorney General's Office, if applicable, and the costs and expenses and attorney fees of other counsel ERSRI may retain, related to or arising from:

1. property damage, personal injury or death which may be or be alleged to be caused by or suffered as a result of or in connection with the performance of Services or obligations under this Contract,

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2. claims for infringement of patents, trademarks, trade secrets, or copyrights in the United States arising from this contract, provided that the alleged infringement does not result from any unauthorized alterations, modifications or enhancements to the Software, Services, or Deliverables made by ERSRI or on its behalf by a third party, or the use or operation of the Services in combination with other software, products, data, apparatus or equipment not provided for in this Contract, or

Deleted: , loss costs, expense or other harm arising out of, resulting from, relating to or connected with any act or omission by the offeror, its divisions, subsidiaries, subcontractors, partners, principals, employees, agents, elected or appointed officials, officers and directors in fulfilling this contract; or

3. the gross negligence, willful misconduct or fraud on the part of offeror,

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provided that offeror is notified promptly in writing, has the exclusive right to control such defence and, at its request and expense, is given authority and assistance by ERSRI reasonably required for such defence.

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Deleted: ; or any breach or any claimed breach of this contract by the offeror or by any of its subcontractors, partners, principals, officers, directors, employees and agents.

For clarity, offeror shall not be liable for any damages, resulting from

- (a) errors caused by erroneous ERSRI data or by parameters or data entered by ERSRI in the Software or in the database of the Software;
- (b) the use by ERSRI, without the concurrence of offeror, such concurrence not to be unreasonably withheld, of any computer system other than the designated equipment; and
- (c) any modification made by ERSRI to the Software, the third party software, the configuration or combination of the Software with the third party software or the licensed materials, but this subsection (c) does not imply that ERSRI has the right to make any such change.

Notwithstanding anything herein to the contrary, neither party will have any liability to the other party or any third party for special, incidental, indirect, exemplary or consequential damages (including but not limited to, loss of profits or goodwill, loss of opportunity, downtime, damage to or replacement of software or data) arising from claims based in warranty, contract, tort (including negligence), strict tort, or otherwise, under any theory of law, even if such other party has been advised of the possibility of such damage. Morneau Shepell's total liability for damages arising hereunder will not exceed [●].

For clarity, nothing in this Contract shall limit either party's liability for (a) death or personal injury caused by a party's negligence or liability for fraud, (b) or for claims for infringement of patents, trademarks, trade secrets, or copyrights relating to the Software or Services.

Note: Morneau Shepell requests a commercially reasonable limitation on its liability to be negotiated between the parities. We also request that either party will only ever be responsible for direct damages.

4.9 NEGOTIATIONS WITH SUBCONTRACTOR

In order to protect ERSRI's interests, ERSRI reserves the right to attempt to resolve any contractual disagreements that may arise between the offeror and its subcontractor(s) after award of the contract.

4.10 PROJECT TERMINATION

Offerors are advised that ERSRI expects to complete the effort with a single offeror. However, the proposals and ensuing contracts shall provide that unless ERSRI commences use of the Software in a live production environment, which shall be deemed acceptance of the Software, if the Software fails an agreed acceptance test more than three times, ERSRI may, at its sole discretion and with no penalty, terminate the effort and not move forward with the offeror. The acceptance test which would trigger a right of termination upon its third failure shall be the final acceptance test performed on the Software prior to going live.

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Note: Morneau Shepell requires a notice period for termination for convenience and a cure period for a termination for default.

Should either party elect to terminate the project for convenience by giving the other party 180 days written notice, the termination shall be subject to the following terms and conditions:

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ERSRI shall only be liable for payment of an amount equal to the costs allocated to the work units already provided to ERSRI; ERSRI shall not be liable for any other cost, overhead, profits, or damages. As such, during contract negotiations, costs will be allocated to the offeror defined work units. Note: This would include all remaining unpaid portion of the implementation costs.

Deleted: Termination shall become effective upon ERSRI sending written or electronic notice to the offeror.

If a party is in material breach of this Contract, the other party shall without prejudice to any other rights or remedies it has, give the party in material breach written notice of default in order that the defaulting party may remedy the breach.

Deleted: Termination shall not be considered for cause or for default, and notice of termination shall not constitute an admission or accusation of any wrongdoing on the offeror's part in connection with the termination.

- (a) Such notice shall identify in reasonable detail the events which the non-defaulting party believes have occurred and which constitute or evidence a default, the provisions that have not been performed or complied with, and the actions which, in the opinion of the non-defaulting party, would be required to comply with such provisions and cure the default. A default shall be deemed not to have occurred unless the non-defaulting party has given notice as above but the mere giving of such notice shall not be conclusive as to whether or not a default has occurred.
- (b) Following the date of the receipt of such notice of default, the defaulting party shall have thirty (30) days in which to take the necessary steps to cure its breach or non-performance. Except for a default in the payment of Fees, such 30-day remedy period shall be extended for a period of up to ninety (90) days, or longer if the parties agree in writing, if:
 - (i) the defaulting party is taking steps to promptly cure the breach;
 - (ii) the cure cannot practically be achieved within the 30-day period; and
 - (iii) the defaulting party gives the non-defaulting party, within the initial 30-day period, written notice of a need for extension and the actions it is taking to

cure its breach or non-performance and the number of days which it will require to cure its breach or non-performance.

Upon termination, each party shall return the other party's proprietary materials and data, which shall include all software, original files and other materials, and all copies, including unauthorized copies, of such materials in all media, including portions of either originals or copies, in the receiving party's possession or under its control. Each party shall agree that it will refrain from using any such materials or copies thereof owned by the other party. The proprietary materials consist of but are not limited to software, devices, records, data, notes, reports, proposals, business cards, letters, specifications, drawings, equipment, and other materials. Each party shall agree to return, erase or destroy any of the other party's proprietary materials and portions thereof contained in all types of computer memory, and so warrant in writing to that party within thirty (30) days of termination.

Note: Morneau Shepell cannot agree to execute a covenant not to sue and a general release of all claims on termination. At the time of termination, it is possible that ERSRI may have defaulted under the contract which resulted in the contract being terminated. For example, if ERSRI misuses the licensed software, Morneau Shepell will want to have the remedies available to it post termination.

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