

# Reprographic & Document Management Services

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## Request for Proposal

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*July, 2019*



***Orange County Employees Retirement System (OCERS)***

2223 E Wellington Avenue Suite 100

Santa Ana, CA 92701 USA

1-(714)-558-6200

<http://www.ocers.org>

# Contents

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Section 1: Introduction .....	3
Section 2: General Information.....	3
Section 3: Scope of Services/Requirements .....	3
Section 4: OCERS’ Point of Contact.....	5
Section 5: Responses to this RFP .....	6
Section 6: Review and Evaluation Criteria.....	6
Section 7: Right to Reject Proposal.....	6
Section 8: Incomplete Responses; Defects in RFP .....	6
Section 9: Schedule of Events.....	7
Section 10: Addenda.....	7
Section 11: Notice Regarding the California Public Records Act and the Brown Act .....	7
Section 12: Engagement Agreement.....	8
Section 13: General Conditions.....	8
Section 14: Reservations by OCERS .....	8
Section 15: Non-Discrimination Requirement .....	8
Section 16: Where to Submit Proposals.....	9

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Attachment 1: Master Services Agreement .....	10
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## Section 1: Introduction

The Orange County Employees Retirement System (OCERS) was established in 1945 under the provisions of the County Employees Retirement Law of 1937 (CERL), and provides members with retirement, disability, death, and cost-of-living benefits. There are approximately 44,000 members served by OCERS, of which over 16,000 are retirees. The OCERS Board of Retirement (Board) consists of nine members, four of whom are appointed by the County's Board of Supervisors, four are elected by the active members of OCERS, and one, the County Treasurer, who serves as an ex officio member. There is also one elected alternate member. The Board has plenary authority and fiduciary responsibility for the investment of assets of the pension fund and administration of the retirement system. OCERS offices are located at 2223 E. Wellington Ave., Suite 100, Santa Ana, CA 92701.

OCERS is a multiple employer, defined benefit pension plan covering substantially all employees of the County of Orange and the following agencies: Orange County Transportation Authority, Department of Education (closed to new members), City of San Juan Capistrano (includes the Capistrano Valley Water District), UCI Medical Center (closed to new members), Foothill/Eastern/San Joaquin Hills Transportation Corridor Agency, Sanitation District of Orange County, Orange County Cemetery District, Orange County Fire Authority, Orange County Public Law Library, Orange County Children and Families Commission, Orange County Employees Retirement System, Orange County Superior Court, Local Agency Formation Commission, and Orange County In Home Support Services.

## Section 2: General Information

All terms, conditions, requirements and procedures included in this RFP must be met for a proposal to be qualified as responsive. A proposal that fails to meet any material term, condition, requirement or procedure of this RFP may be disqualified. OCERS reserves the right to waive or permit cure of non-material errors or omissions. OCERS reserves the right to modify, amend, or cancel the terms of this RFP at any time. All proposals must be submitted in accordance with the specific terms of this RFP, as set forth below. A proposal shall constitute an irrevocable offer for 120 business days following the deadline for submission. Reference to a certain number of days in this RFP shall mean business days unless otherwise specified.

If a respondent discovers an ambiguity, conflict, discrepancy, omission or other error in this RFP, notice should be provided to Jim Doezie at [jdoezie@ocers.org](mailto:jdoezie@ocers.org). OCERS is not responsible for, and has no liability for or obligation to correct any errors or omission in this RFP.

## Section 3: Scope of Services/Requirements

As part of OCERS' mission to provide superior customer service, OCERS is seeking reprographic and document management services provider in accordance with the requirements herein.

- Have at least five (5) years of recent experience in providing Reprographic and Document Management services
- Have the ability to produce and coordinate public election materials with the Registrar of Voters
- Have at least five (5) years of experience working with the Registrar of Voters
- Bidders shall have all required licensing and maintain said license(s) throughout the entire term of the Contract
- The selected provider must meet OCERS' information security and business continuity requirements. To that end, please provide a description of your cyber and data security processes that will ensure the data security of OCERS confidential materials
- Provide a sample of your original printer materials that demonstrates the quality of your work
- Provide a chart of pricing for various volumes, paper weights, color, black/white materials, and coordinating elections through the Registrar of Voters

- Please provide at least three (3) references from current clients
- The candidate shall provide an affirmative statement that he/she has not given a gift or political campaign contribution to any officer, Board member, or employee of OCERS within the past twenty-four (24) months
- Please confirm that you would be responsible for mistakes and re-print jobs at your own cost for jobs not done correctly
- Any other information that the respondent deems relevant to OCERS' selection process
- Please provide pricing for various items that OCERS produces each year as described below:

**1. At Your Service Newsletter**

- 46,000 copies each quarter
- 4-page newsletter folded to finished size of 8 3/8 x 10 7/8 inches
- Vendor provides OCERS' staff with laser proof of output of digital file created by OCERS' graphic artist; that file is provided via a pre-flight InDesign file
- Vendor provides OCERS' staff with press check at time of printing (mandatory)
- Printed on 100 LB Sonoma Matte paper
- Printed 4-color CMYK
- OCERS staff must attend initial printing to approve prior to full production
- Mailed to all Members via pre-sort Standard mail

**2. Comprehensive Annual Financial Report ("CAFR")**

- CAFR is printed on an annual basis
- About 150 books perfect bound; 10 books have double loop wire-o bound
- The length is about 152 pages + cover. The length will vary depending on content
- The cover is printed on 100 LB PaceSetter digital gloss cover stock
- The text (inside pages) are printed on 100 LB PaceSetter digital gloss book
- The cover is 4 over 4 Indigo CMYK
- The text is 4 over 4 Indigo CMYK
- The cover gets Aqueous coated on outside front & back covers
- Bindery Requirements:
  - Dye/Hinge score the cover;
  - Trim & fold the cover;
  - Gather with the text, perfect bind with PUR glue;
  - Final trim, carton pack

**3. OCERS by the Numbers**

- OCERS by the Numbers is printed once annually
- The quantity is 35 booklets
- 44 pages + cover
- 4/4 CMYK 80 LB Gloss Cover
- 4/4 CMYK 80 LB Gloss Text
- Digitally printed
- Saddle Stich to finished size 8.5" x 11"

**4. Information Folders**

- Folders are printed on an as-needed basis, typically 500 at a time
- 20.4375" x 16" flat size
- 9.6875" x 12" finished size (back panel is .75" wider than front panel)
- 100 LB Mohawk Superfine Cover-Ultra White
- Die cut, Score, Fold, Glue
- Must include dye charge(s) in the pricing

**5. Tri-fold Brochures**

- OCERS brochures are printed on an as-needed basis; quantity 500
- Brochures are printed via 4/4 CMYK
- 8.5" x 11" 100 LB Gloss Book with Satin AQ
- Tri Fold/Letter Fold

**6. Business cards**

- Multiple times a year – quantity varies
  - A box of 250 cards
  - Four color
  - Matte finish
  - Double-sided
- Please also reference your standard lead-times to proof and produce the items referenced above
  - What are the incremental costs for "rush" jobs?
  - In many cases, OCERS will need design and format support. What are the incremental costs for these services?

## **Section 4: OCERS' Point of Contact**

From the date of issuance of this RFP until the selection of a vendor is completed and announced, respondents are not permitted to communicate with any OCERS staff member or Board Members regarding this RFP, except through the Point of Contact named herein. Respondents violating the communications prohibition may be disqualified at OCERS' discretion. Respondents having current business with OCERS must limit their communications to the subject of such business.

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**The Point of Contact for questions and all matters relating to this RFP is:**

<b>Name &amp; Title:</b>	Jim Doezie, Contracts, Risk, and Performance Administrator
<b>Address:</b>	Orange County Employees Retirement System 2223 E Wellington Ave., Suite 100 Santa Ana, CA 92701
<b>Telephone:</b>	(714) 569-4884
<b>Email:</b>	<a href="mailto:jdoezie@ocers.org">jdoezie@ocers.org</a>
<b>OCERS Website:</b>	<a href="http://www.ocers.org">www.ocers.org</a> . See the OCERS website for status of the RFP and announcements.

## Section 5: Responses to this RFP

It is the responsibility of the respondent to ensure that its proposal arrives on or before the specified time and date. Failure to comply with this provision will result in disqualification of the proposal. Proposals must be received by OCERS by 5 p.m. (Pacific Time Zone) by the due date stated below in the RFP Calendar.

Proposals shall be submitted electronically in Microsoft Word or Adobe Acrobat PDF format to the email address noted in *Section 4*. OCERS will also accept hard-copies of the proposal to be delivered to the OCERS address referenced above.

Note that proposals will be subject to disclosure to the public upon written request under the California Public Records Act. See *Section 13: Notice Regarding the California Public Records Act and the Brown Act* below for additional information.

## Section 6: Review and Evaluation Criteria

Respondents will be evaluated in the discretion of OCERS based upon the following factors:

- Information provided in the proposal, including samples
- Information provided by references
- Interviews, if any
- Value of the services and pricing

The factors will be considered as a whole. The balancing of the factors is in OCERS' sole discretion. Factors other than those listed may be considered by OCERS in making its selection. OCERS reserves the right in its discretion to request additional information from any respondent, although such requests may not be made to all respondents. OCERS reserves the right to require one or more interviews with or personal presentations by finalists to be conducted with OCERS staff, management and/or Board Members.

During the evaluation process, OCERS reserves the right to request additional information from the prospective vendor including, without limitation, writing samples, references, previous implementation experience and features/functional information needed about information security and business continuity.

Part of the evaluation process may include formal Interviews. In this case, qualified candidates will be asked to attend an interview with OCERS' personnel.

## Section 7: Right to Reject Proposal

By submitting a proposal, respondents acknowledge that they have read this RFP, understand it, and agree to be bound by its requirements unless clearly and specifically noted in the response submitted. OCERS reserves the right without prejudice to reject any and all responses and to cancel this RFP. OCERS reserves the right to modify the terms and requirements of this RFP. Any such changes or corrections will be posted on OCERS' website, available at [www.ocers.org](http://www.ocers.org).

## Section 8: Incomplete Responses; Defects in RFP

If the information in a response is deemed to be insufficient for evaluation, OCERS reserves the right to request additional information or to reject the proposal outright. False, incomplete or unresponsive statements in connection with a proposal may be sufficient for its rejection. The selection of the fulfillment of the requirements will be determined by OCERS and such judgment shall be final.

## Section 9: Schedule of Events

Respondents must communicate any questions regarding this RFP by the deadline stated in the RFP Calendar. Questions should be sent in writing via email to [jdoezie@ocers.org](mailto:jdoezie@ocers.org). Questions and answers will be communicated to all respondents by posting a Questions and Answers Document on OCERS website by the date stated in the RFP Calendar. OCERS reserves the right to modify this schedule at any time.

### RFP CALENDAR

Deliverable	Date	Time
Release of RFP	July 29th, 2019	5:00 pm (Pacific Time)
RFP Questions Deadline	August 5th, 2019	5:00 pm (Pacific Time)
RFP Answers Posted to Website	August 9th, 2019	5:00 pm (Pacific Time)
RFP Submission Deadline	August 23rd, 2019	5:00 pm (Pacific Time)
OCERS Review of RFP Submissions	August 26 <sup>th</sup> through September 13th 2019	
Notification of Finalists	September 16th, 2019	
Finalists interviews	Week of September 30th, 2019	
Contract Award Notifications	TBD	

## Section 10: Addenda

OCERS may modify this RFP prior to the date fixed for submission by posting, mailing, emailing or faxing an addendum to the respondents known to be interested in submitting a proposal. If any respondent determines that an addendum unnecessarily restricts its ability to bid, it must notify OCERS in writing no later than three days before the deadline for submitting bids. Failure of a respondent to receive or acknowledge receipt of any addendum shall not relieve the respondent of the responsibility for complying with the terms thereof.

## Section 11: Notice Regarding the California Public Records Act and the Brown Act

All proposals submitted in response to this RFP will become the exclusive property of OCERS. Proposals will not be returned to the respondent and will be subject to public disclosure pursuant to the California Public Records Act (California Government Code Sections 6250 *et. seq.*, the "Act") at such time as a recommendation for award of a contract has been announced. The Act provides generally that all records relating to a public agency's business are open to public inspection and copying, unless specifically exempted under one of several exemptions set forth in the Act.

If a respondent believes that any portion of its proposal is exempt from public disclosure under the Act, such portion must be marked "TRADE SECRET," "CONFIDENTIAL," or "PROPRIETARY." OCERS will not publicly disclose any portions so designated, provided that such designation is, in OCERS' reasonable discretion, in accordance with applicable law. Proposals marked in their entirety as "TRADE SECRET," "CONFIDENTIAL," or "PROPRIETARY" will not be honored, and OCERS will not deny public disclosure of all or any portion of proposals so marked. By submitting a proposal with specifically selected portions marked "TRADE SECRET," "CONFIDENTIAL," or

“PROPRIETARY” respondent represents that it has a good faith belief that such material is exempt from disclosure under the Act, and respondent agrees to reimburse OCERS for, and to indemnify, defend and hold harmless OCERS, its officers, fiduciaries, employees and agents from and against: (a) any and all claims, damages, losses, liabilities, suits, judgments, fines, penalties, costs and expenses including, without limitation, attorneys’ fees, expenses and court costs of any nature whatsoever (collectively, “Claims”) arising from or relating to OCERS’ non-disclosure of any such designated portions of respondent’s proposal; and (b) any and all Claims arising from or relating to OCERS’ public disclosure of any such designated portions of respondent’s proposal if OCERS reasonably determines disclosure is deemed required by law, or if disclosure is ordered by a court of competent jurisdiction.

In addition to the foregoing, OCERS Board of Retirement and committee meetings are subject to California open meeting requirements set forth in the Ralph M. Brown Act (Gov. Code §§ 54950-54962) (the “Brown Act”). Respondent’s proposal and/or contract (if the respondent is selected) may be presented or discussed at a public meeting of the OCERS Board of Retirement (or at a Board committee meeting). Among other things, that means that, regardless of whether respondent marks portions of its proposal as “TRADE SECRET,” “CONFIDENTIAL,” or “PROPRIETARY,” that information may be discussed or presented at a meeting that is open to the public under the Brown Act.

## **Section 12: Engagement Agreement**

The selected consultant(s) will be required to execute an Agreement for Reprographic & Document Management Services substantially in the form attached hereto as Attachment 1.

## **Section 13: General Conditions**

This RFP is not an offer to contract. Acceptance of a proposal neither commits OCERS to award a contract to any respondent even if all requirements stated in this RFP are met, nor does it limit OCERS’ right to negotiate the terms of an engagement agreement in OCERS’ best interest, including requirement of terms not mentioned in this RFP. OCERS reserves the right to contract with a respondent for reasons other than lowest price.

Failure to comply with the requirements of this RFP may subject the proposal to disqualification. Publication of this RFP does not limit OCERS’ right to negotiate for the services described in this RFP. If deemed by OCERS to be in its best interests, OCERS may negotiate for the services described in this RFP with a party that did not submit a proposal. OCERS reserves the right to choose to not enter into an agreement with any of the respondents to this RFP.

## **Section 14: Reservations by OCERS**

In addition to the other provisions of this RFP, OCERS reserves the right to:

1. Cancel this RFP, in whole or in part, at any time.
2. Make such investigation as it deems necessary to determine the respondent’s ability to furnish the required services, and the respondent agrees to furnish all such information for this purpose as OCERS may request.
3. Reject the proposal of any respondent who is not currently in a position to perform the contract, or who has previously failed to perform similar contracts properly, or in a timely manner, or for any other reason in OCERS’ sole discretion.
4. Waive irregularities, to negotiate in any manner necessary to best serve the public interest, and to make a whole award, multiple awards, a partial award, or no award.



5. Award a contract, if at all, to the entity that OCERS believes in its sole discretion will provide the best match to the requirements of the RFP and the service needs of OCERS, which may not be the proposal offering the lowest fees.
6. Reject any or all proposals submitted in response to this RFP.
7. The information that a respondent submits in response to this RFP become the exclusive property of OCERS. OCERS will not return any proposal or reimburse proposal preparation or submission expenses.

## Section 15: Non-Discrimination Requirement

By submitting a proposal, the respondent represents that it and its subsidiaries do not and will not discriminate against any employee or applicant for employment on the basis of race, religion, sex, color, national origin, sexual orientation, ancestry, marital status, physical condition, pregnancy or pregnancy-related conditions, political affiliations or opinion, age, or medical condition.

## Section 16: Where to Submit Proposals

Proposals shall be submitted prior to the deadline stated in the RFP Calendar as follows:

Electronically in Microsoft Word or Adobe Acrobat PDF format to: [jdoezie@ocers.org](mailto:jdoezie@ocers.org)

**Optionally**, two hard copies can be submitted to:

Orange County Employees Retirement System  
Attention: **Jim Doezie**, Contracts, Risk & Performance Administrator  
2223 E. Wellington Ave., Suite 100  
Santa Ana, CA 92701

# Attachment 1: Master Agreement



## MASTER AGREEMENT

This Contract Agreement is made and entered into as of [REDACTED] ("Effective Date") by and between **Orange County Employees Retirement System ("OCERS")**, with a principal place of business at 2223 E. Wellington Avenue, Santa Ana, CA 92701, and [REDACTED] ("**Contractor**"), a [REDACTED] (LLC, sole proprietor, corporation, etc.) organization, with a principal place of business at [REDACTED]. OCERS and Contractor are referred to individually as "**Party**" and collectively as the "**Parties**." This Contract Agreement and all other documents pertaining to this document are collectively referred to as this "**Agreement**."

1. This Agreement is comprised of this document and the following Attachments, which are attached hereto and incorporated by reference into this Contract:

Attachment A – Scope of Services

Attachment B – Payment/Compensation

2. **Term of Contract:** This Agreement shall commence upon the Effective Date and will continue for 36 months from that date, unless otherwise terminated. This Agreement may be renewed for a maximum of three additional 12 month periods.
3. **Termination:** In addition to any other remedies or rights it may have by law, both Parties have the right to immediately terminate this Agreement without penalty for cause, or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any material breach of contract, any misrepresentation or fraud. Exercise by a party of its right to terminate the Agreement shall relieve OCERS of all further obligations, except those which expressly survive termination.
4. **Termination Transition:** Upon termination, OCERS agrees to pay the Contractor for all undisputed services performed prior to termination which meet the requirements of the Agreement, provided, however, that such compensation combined with previously paid compensation shall not exceed the total compensation set forth in the Agreement. Upon termination or other expiration of this Agreement, each party shall promptly return to the other party all papers, materials, and other properties of the other held by each for purposes of performance of the Agreement.

5. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Agreement shall be a material breach of this Agreement. In such event OCERS may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Agreement:
- a) Terminate the Agreement immediately, pursuant to the “Termination” clause;
  - b) Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Agreement within which to cure the breach;
  - c) Discontinue payment to the Contractor for and during the period in which the Contractor is in breach; and
  - d) Offset against any monies billed by the Contractor but yet unpaid by the OCERS those monies disallowed pursuant to the above.
  - e) Make payment to the Contractor for any monies owed for undisputed services already rendered.
6. **Consent to Breach Not Waiver:** No term or provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
7. **Warranty:** Contractor expressly warrants that any goods covered by this Agreement are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor’s part to indemnify, defend and hold OCERS and its indemnities as identified in paragraph 28 below, and as more fully described in paragraph 28, harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by OCERS by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.
8. **News/Information Release:** The Contractor agrees that it will not issue any news releases in connection with either the award of this Agreement or any subsequent amendment of or effort under this Agreement without first obtaining review and written approval of said news releases from the OCERS through the OCERS’s Project Manager. In addition, the Contractor agrees it will not use the OCERS’ logo, name or branding for any advertisements or endorsements, electronic or otherwise, without the prior written approval of OCERS.
9. **Notices:** Unless otherwise provided in this Agreement, notices under the Agreement must be in writing and delivered by courier, overnight carrier, or by certified mail, return receipt requested, to the persons whose name and business address appear below or to such other address as may hereafter be furnished in writing to the other Party.

**If to OCERS:**

Orange County Employees Retirement System  
2223 E. Wellington Avenue, Suite 100  
Santa Ana, CA 92701  
Attention: Jim Doezie  
e-mail: [jdoezie@ocers.org](mailto:jdoezie@ocers.org)

**If to Contractor:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

e-mail: \_\_\_\_\_

10. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax. To the extent required by Contractor to demonstrate that OCERS is entitled to an exemption from any taxes, duty, or similar charge, OCERS shall provide to Contractor a valid exemption certificate (in a form reasonably acceptable to Customer). Contractor will give effect to any valid exemption certificate provided in accordance with the foregoing sentence to the extent it applies to any service billed by Contractor to OCERS.

11. **Assignment and Change of Ownership:** The nature and character of Contractor is material to OCERS decision to enter into this Agreement. Therefore, neither the performance of this Agreement nor any portion thereof may be assigned by Contractor without the express written consent of OCERS, in its sole and absolute discretion, and such consent shall not be unreasonably withheld. Any attempt by Contractor to assign the performance or any portion thereof of this Agreement without the express written consent of OCERS shall be invalid and shall constitute a breach of this Agreement. Upon a permitted assignment, the terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties.

Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, and the OCERS agrees to an assignment of the Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Agreement and complete them to the satisfaction of the OCERS. OCERS reserves the right to immediately terminate the Agreement in the event the OCERS determines that the assignee is not qualified or is otherwise unacceptable to the OCERS for the provision of services under the Agreement.

12. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religion, creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, economic or governmentally subsidized status, or military and veteran status of any person of such persons.

13. **Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of OCERS. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through OCERS.

14. **Performance Warranty:** Contractor shall warrant all work under this Contract, taking necessary steps and precautions to perform the work to OCERS's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of OCERS required in its governmental capacity, in connection with performance of the work. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors.
15. **Insurance Requirements:** Contractor will carry insurance coverage for the following types and minimum amounts noted below. Contractor will provide applicable Certificate(s) of Insurance to OCERS prior to the commencement of work and name OCERS, OCER's officers, officials, employees, and volunteers as additional insured.
- Commercial General Liability of no less than \$1 Million per occurrence or claim, with a \$2 Million aggregate.
  - Automobile Liability of no less than \$1 Million per accident for bodily injury and property damage, with a \$2 Million aggregate.
  - Workers' Compensation in the statutorily requirement amounts per accident for bodily injury or disease.
  - Professional Liability (Errors & Omissions) insurance appropriate to the Contractor's profession, with limit no less than \$1 Million per occurrence or claim, with a \$2 Million aggregate (where required).
16. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Agreement caused by any act of God, war, civil disorder, nuclear war, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to OCERS within two (2) business days of the start of the delay and Contractor avails himself of any available remedies.
17. **Confidentiality:** Contractor agrees to maintain the confidentiality of all OCERS and OCERS-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.

The parties acknowledge and agree that certain information designated by either OCERS or Contractor shall be deemed "Confidential Information." Confidential Information excludes information that: (i) is or becomes generally available to the public through no wrongful act of the recipient; (ii) is received from a third party with the right to supply it; or (iii) is independently developed by the recipient. Upon written request, the recipient will return the Confidential Information to the discloser and shall not retain any copies of such Confidential Information. Confidential Information may be used by the recipient only in connection with its performance under this Agreement. Confidential Information may not be disclosed except to those employees or contractors of the recipient with a need to know and who agree to hold the information in confidence or if a party is legally compelled. If the recipient is legally compelled to disclose Confidential Information, the recipient shall provide the discloser with notice of such requirement prior to disclosure (if permissible) so that the discloser may seek any appropriate remedy.

Contractor understands and agrees that OCERS, as a public pension fund, is subject to the California Public Records Act, Cal. Gov't Code § 6250 *et. seq.* ("CPRA") and may be requested to include

Contractor's delivered work product as part of a response to a public records request. This Agreement shall constitute notice that any work product provided to OCERS may be released to the public pursuant to a CPRA request and shall release OCERS from any liability or damages related to such disclosure. Should Contractor believe that certain work product is protected by trade secret or other applicable laws, Contractor shall designate it as Confidential Information and provide OCERS the applicable exception to disclosure under the CPRA. In the event that any action is taken against OCERS for failure to disclose information deemed by Contractor to be protected, Contractor shall indemnify and defend OCERS, its employees and Board members from all liability arising out of the failure to disclose, including but not limited to, all attorneys' fees OCERS is required to pay for its own defense and any attorneys' fee award to a requesting party who prevails in the action. This indemnity shall supersede any limitation of liability or any other indemnification provision in this Agreement or in any statement of work executed by the parties. Nothing herein shall prejudice Contractor's right to challenge a determination that disclosure is required through appropriate means, including but not limited to a "reverse-CPRA action," *see Marken v. Santa Monica-Malibu Unified School Dist.*, 202 Cal. App. 4th 1250 (2012)

18. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Agreement shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"). Contractor acknowledges that OCERS is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraphs 21-22 below. Contractor agrees that it shall defend, indemnify and hold OCERS and OCERS INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to Contractor's failure to comply with any applicable law.
19. **EDD Independent Contractor Reporting Requirements:** Effective January 1, 2001, OCERS is required to file in accordance with subdivision (a) of Section 6041A of the Internal Revenue Code for services received from a "service provider" to whom the OCERS pays \$600 or more or with whom the OCERS enters into a contract for \$600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations.

The term "service provider" is defined in California Unemployment Insurance Code Section 1088.8, subparagraph B.2 as "an individual who is not an employee of the service recipient for California purposes and who received compensation or executes a contract for services performed for that service recipient within or without the state." The term is further defined by the California Employment Development Department to refer specifically to independent Contractors. An independent Contractor is defined as "an individual who is not an employee of the ... government entity for California purposes and who receives compensation or executes a contract for services performed for that ... government entity either in or outside of California."

The reporting requirement does not apply to corporations, general partnerships, limited liability partnerships, and limited liability companies.

Additional information on this reporting requirement can be found at the California Employment Development Department web site located at [http://www.edd.ca.gov/Employer\\_Services.htm](http://www.edd.ca.gov/Employer_Services.htm)

20. **Civil Rights:** Contractor attests that services provided shall be in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, as amended, Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975 as amended; Title II of the Americans with



Disabilities Act of 1990, the Unruh Civil Rights Act, Cal. Civ. Code § 51; the California Fair Employment and Housing Act, Cal. Civ. Code §§ 12940 *et seq.*, and other applicable State and federal laws and regulations prohibiting discrimination on the basis of race, religion, creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, economic or governmentally subsidized status, or military and veteran status.

21. **Equal Employment Opportunity:** The Contractor shall comply with U.S. Executive Order 11246 entitled, “Equal Employment Opportunity” as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR, Part 60) and applicable state of California regulations as may now exist or be amended in the future. The Contractor shall not discriminate against any employee or applicant for employment on the basis of race, religion, creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, economic or governmentally subsidized status, or military and veteran status.

Regarding handicapped persons, the Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to provide equal opportunity to handicapped persons in employment or in advancement in employment or otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicaps in all employment practices such as the following: employment, upgrading, promotions, transfers, recruitments, advertising, layoffs, terminations, rate of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to comply with the provisions of Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, pertaining to prohibition of discrimination against qualified handicapped persons in all programs and/or activities as detailed in regulations signed by the Secretary of the Department of Health and Human Services effective June 3, 1977, and found in the Federal Register, Volume 42, No. 68 dated May 4, 1977, as may now exist or be amended in the future.

Regarding Americans with disabilities, Contractor agrees to comply with applicable provisions of Title 1 of the Americans with Disabilities Act enacted in 1990 as may now exist or be amended in the future.

22. **Entire Agreement:** This Agreement contains the entire Agreement between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on OCERS unless authorized by OCERS in writing.
23. **Precedence:** The Agreement documents consist of this Agreement and its exhibits and attachments. In the event of a conflict between or among the Agreement documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then the exhibits and attachments.
24. **Amendments:** No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties, including a signature that is electronically transmitted by the party electronic transmission and acknowledgement from the persons set forth above in Section 10 (“Notice”); no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and

no exceptions, alternatives, substitutes or revisions are valid or binding on OCERS unless authorized by OCERS in writing.

25. **Severability:** If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
26. **Governing Law and Venue:** This Agreement has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding California Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for adjudication to another county.
27. **Interpretation:** This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party had been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Agreement by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purpose of the parties and this Contract.
28. **Indemnification:** The parties agrees to indemnify, defend, and hold each other (including its officers, employees, officials, employees, agents, and in the case of OCERS, its Board Members) harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by the other party pursuant to this Contract. In the event that defense of an action is tendered to and accepted by Contractor, counsel employed by Contractor for that action shall first be approved by OCERS. If judgment is entered against either party by a court of competent jurisdiction because of the concurrent active negligence of the other party, the parties agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.



IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date following their respective signatures.

**ORANGE COUNTY EMPLOYEES  
RETIREMENT SYSTEM**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**ORANGE COUNTY EMPLOYEES  
RETIREMENT SYSTEM**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**CONTRACTOR**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

## Attachment A

### Scope of Work

TBD based on RFP Response

#### **Additional Scope of Work Conditions:**

- A. **Delivery:** Time of delivery of goods or services is of the essence in this Contract. OCERS reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or descriptions or services that do not conform to the prescribed statement of work. Acceptance of any part of the order for goods shall not bind OCERS to accept future shipments nor deprive it of the right to return goods already accepted at Contractor's expense. Over shipments and under shipments of goods shall be only as agreed to in writing by OCERS. Delivery shall not be deemed to be complete until all goods or services have actually been received and accepted in writing by OCERS.
  - B. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in this contract, it shall indemnify, defend and hold OCERS and its officers, employees, agents, and Board Members harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, costs and expenses but not including attorney's fees.
  - C. **Changes:** Contractor shall make no changes in the work or perform any additional work without the OCERS's specific written approval.
  - D. **Freight:** Prior to the OCERS's express acceptance of delivery of products. Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract. **Contractor's Project Manager and Key Personnel:** Contractor shall appoint a Project Manager to direct the Contractor's efforts in fulfilling Contractor's obligations under this Contract. This Project Manager shall be subject to approval by the OCERS and shall not be changed without the written consent of the OCERS's Project Manager, which consent shall not be unreasonably withheld. The Contractor's Project Manager shall be assigned to this project for the duration of the Agreement and shall diligently pursue all work and services to meet the project time lines. The OCERS's Project Manager shall have the right to require the removal and replacement of the Contractor's Project Manager from providing services to the OCERS under this Contract. The OCERS's Project manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within five (5) business days after written notice by the OCERS's Project Manager. The OCERS's Project Manager shall review and approve the appointment of the replacement for the Contractor's Project Manager. The OCERS is not required to provide any additional information, reason or rationale in the event it The OCERS is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor's Project Manager from providing further services under the Contract.
29. **Data – Title To:** All materials, documents, data or information obtained from the OCERS data files or any OCERS medium furnished to the Contractor in the performance of this Agreement will at all times remain the property of the OCERS. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Agreement without the express written consent of the OCERS. All materials, documents, data or information, including copies, must be returned to the OCERS at the end of this Contract.

Attachment B  
Payment/Compensation  
TBD based on RFP Response

1. **Compensation:** This is a firm-fixed fee Agreement between the OCERS and Contractor for as set forth in Attachment A, "Scope of Work. The Contractor agrees to accept the specified compensation as set forth in this Agreement as full payment for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder. The Contractor shall only be compensated as set forth herein for work performed in accordance with the Scope of Work. **OCERS shall have no obligation to pay any sum in excess of the fixed rates specified herein unless authorized by OCERS in writing. Fees and Charges:** OCERS will pay the following fees in accordance with the provisions of this Contract. Payment shall be as follows:
2. **Price Increase/Decreases:** No price increases will be permitted during the first period of the price agreement. The OCERS requires documented proof of cost increases on Contracts prior to any price adjustment. A minimum of 30-days advance notice in writing is required to secure such adjustment. No retroactive price adjustments will be considered. All price decreases will automatically be extended to the OCERS of Orange. The OCERS may enforce, negotiate, or cancel escalating price Contracts or take any other action it deems appropriate, as it sees fit. The net dollar amount of profit will remain firm during the period of the Contract. Adjustments increasing the Contractor's profit will not be allowed.
3. **Firm Discount and Pricing Structure:** Contractor guarantees that prices quoted are equal to or less than prices quoted to any other local, State or Federal government entity for services of equal or lesser scope. Contractor agrees that no price increases shall be passed along to the OCERS during the term of this Agreement not otherwise specified and provided for within this Contract.
4. **Payment Terms – Payment in Arrears:** Invoices are to be submitted in arrears to the user agency/department to the ship-to address, unless otherwise directed in this Contract. Vendor shall reference Contract number on invoice. Payment will be net 30 days after receipt of an invoice in a format acceptable to the OCERS of Orange and verified and approved by the agency/department and subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with the Contractor.

Billing shall cover services and/or goods not previously invoiced. The Contractor shall reimburse the OCERS for any monies paid to the Contractor for goods or services not provided or when goods or services do not meet the Agreement requirements.

Payments made by the OCERS shall not preclude the right of the OCERS from thereafter disputing any items or services involved or billed under this Agreement and shall not be construed as acceptance of any part of the goods or services.

5. **Taxpayer ID Number:** The Contractor shall include its taxpayer ID number on all invoices submitted to the OCERS for payment to ensure compliance with IRS requirements and to expedite payment processing.
6. **Payment – Invoicing Instructions:** The Contractor will provide an invoice on the Contractor's letterhead for goods delivered and/or services rendered. In the case of goods, the Contractor will leave an invoice with each delivery. Each invoice will have a number and will include the following information:

- a. Contractor's name and address
- b. Contractor's remittance address, if different from 1 above
- c. Contractor's Taxpayer ID Number
- d. Name of OCERS Agency/Department
- e. Delivery/service address
- f. Master Agreement (MA) or Purchase Order (PO) number
- g. Agency/Department's Account Number
- h. Date of invoice
- i. Product/service description, quantity, and prices
- j. Sales tax, if applicable
- k. Freight/delivery charges, if applicable
- l. Total

Invoice and support documentation are to be forwarded to:

Orange County Employees Retirement System  
2223 E. Wellington Avenue, Suite 100  
Santa Ana, CA 92701  
Attention: Accounts Payable  
Email: [Accountspayable@ocers.org](mailto:Accountspayable@ocers.org)