

Deferred Compensation Plan BOARD REPORT 12-15

Date: February 8, 2012
To: Board of Deferred Compensation Administration
From: Staff
Subject: Requests for Proposal and Investment Menu Implementation

*Board of Deferred
Compensation Administration
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Recommendation:

That the Board of Deferred Compensation Administration request guidance from the Office of the City Attorney regarding the applicability of the City's Business Inclusion Program (BIP) to the City's procurements for investment-related services.

Discussion:

Requests for Proposal - The Board has approved and authorized release of two Requests for Proposal: one for Investment Management Services, and a second for Custodial Services. The RFPs have been pending release as staff has been attempting to address issues which have arisen in connection with the City's Business Inclusion Program (BIP).

The Business Inclusion Program (BIP) creates targets for participation by Minority-owned Business Enterprises (MBEs), Woman-owned Business Enterprises (WBEs), Small Business Enterprises (SBEs), Emerging Business Enterprises (EBEs), Disabled Veteran-Business Enterprises (DVBEs), and all Other Business Enterprises (OBEs) in the performance of City contracts. Citywide targets for participation are indicated as follows:

MBE Participation:	18 %
WBE Participation:	4%
SBE Participation:	25%
EBE Participation:	8%
DVBE Participation:	3%

As part of encouraging participation in contracts by these firm types, BIP requires that bidders complete an outreach process for potential subcontracting opportunities as a condition of responsiveness to an RFP. Conducting the outreach process is required even in instances where few if any subcontracting opportunities may have been identified.

Demonstration of compliance must be completed through the City's www.labavn.com website. In the Consulting Services RFP, there was vendor confusion over BIP requirements, some of which did not become clear until after the RFP submission deadline (which could have placed consideration of their proposals at risk). Although these issues were resolved favorably, the process illuminated potential pitfalls for vendors in meeting these requirements.

Staff is concerned about the impact of BIP on the Board's two RFPs. Specifically, staff is concerned that otherwise strong candidates might fail BIP due to confusion over its complexity, or simply elect not to respond to the RFP because of BIP requirements. This is especially concerning because

- (a) The specialized nature of the services being requested in both RFPs do not lend themselves to subcontracting;
- (b) The disqualification of firms for failing to comply with an outreach process creates a potential conflict with the Board's fiduciary responsibilities to Plan participants to select the most capable providers; and
- (c) In particular with the Investment Management Services RFP, the potential volume of impacted vendors could be large, and in the worst case might necessitate canceling the RFP if the Board determines that a large group of otherwise well-qualified firms were excluded from consideration.

Staff is aware that both the Los Angeles City Employees' Retirement System and Los Angeles Fire/Police Pensions have excluded investment services bidders from BIP compliance in the past. According to counsel for these two systems, the exclusion was based on an interpretation of their fiduciary obligations as provided for under California law and City Charter provisions. It is unclear whether the Board's fiduciary obligations for the Deferred Compensation Plan would create a similar exclusion.

Given the potential impact of applying BIP to these RFPs, staff recommends that the Board request guidance from Board counsel regarding the question of whether investment-related services should be exempt from BIP, and that a response be provided from Board counsel by the Board's March 20, 2012 meeting.

Hartford Capital Appreciation Fund Update – The City's relationship manager with Hartford, Eric Weber, has indicated that Hartford is in the process of finalizing a contract with Schwab to open up the City's current share class of the Hartford Capital Appreciation Fund in the Schwab Self-Directed Brokerage Option (SDBO). Mr. Weber indicated that the agreement should be finalized, and the fund made available, by early March 2012.

Implementation Calendar – The implementation calendar normally provided in these reports has been omitted pending resolution over how the Board wishes to proceed with respect to the BIP issue. Since implementation of the final group of investment menu changes is contingent upon completing the procurement process and selecting new managers, target dates and deadlines cannot be established until a firm RFP issuance date has been identified. The BIP issue does not impact the timing of the group of investment changes scheduled for April 20, 2012.

Submitted by: _____
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