

Deferred Compensation Plan BOARD REPORT 13-01

Date: February 11, 2013
To: Board of Deferred Compensation Administration
From: Staff
Subject: Plan Requests for Proposal & Process for Demonstrating Compliance with the City's General Contracting Requirements

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Compensation Administration
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Recommendation:

That Board of Deferred Compensation Administration approve proposed changes to future Requests for Proposal issued by the Board which would (a) expand where possible allowing respondents to defer submission of certain required contracting forms and documents to the contract execution date; and (b) pre-submit where possible other general contracting requirements documents for the purpose of identifying oversights in those documents such that proposers can correct them in advance of an RFP due date.

Discussion:

The Board, under the City's Administrative Code, is the contracting authority for the City's Deferred Compensation Plan. As such, the Board is responsible for the terms and conditions of its procurements as reflected in Requests for Proposal (RFPs) for Plan services, consistent with the City's general procurement requirements.

Staff is recommending that the Board approve modifying the provisions of future RFPs, including most immediately two pending RFPs, one for Custodial Management Services and the other for Investment Management Services. These RFPs have been pending release as staff has worked to refine a process for addressing the conditions under which potential respondents will be asked to comply with the City's general contracting requirements.

As indicated at prior Board meetings, staff has been attempting to refine the Board's RFPs to better meet the Board's and staff's central fiduciary responsibility of achieving outcomes which are in the best interests of Plan participants while still complying with the City's general contracting requirements.

In order to achieve that outcome, staff has developed a proposal to minimize the opportunity for potential respondents to be excluded from consideration based on oversights in completing a City general contracting RFP response (particularly when those errors result from misunderstandings of City requirements). Although disqualifications based on those oversights are appropriate under current procedures, those procedures

might be improved upon in order to better support the goal of achieving outcomes in the best interests of Plan participants.

As a result, staff is recommending procedural changes that would:

- (a) Defer submission, where appropriate, of any general contracting documents which are permitted by ordinance to be submitted prior to or at the time of contract execution rather than an RFP response due date; and
- (b) Provide, where feasible, a process by which proposers could pre-submit certain general contracting documents for review prior to an RFP due date such that oversights could be identified in advance of that final due date.

The goal of these changes is promote compliance with the City’s requirements and ensure that the widest array of vendors have the greatest opportunity to satisfy those requirements so that their service proposals can be considered. This enhances process participation and best serves the Board’s goal to select the most qualified provider.

Background on Current Process – For the purpose of this report, the term “general contracting requirements” refers to those rules and policies adopted by the Los Angeles City Council which service providers must comply with in order to be qualified for an award of City contracts. Demonstrating compliance takes the form of accurately completing and submitting certain documents and certifications, or participating in certain required exercises or online reporting.

Notwithstanding certain exceptions or exclusions, the following is a list of those City required contract forms, documents and exercises that an RFP respondent must typically complete in an RFP process:

1	Non-Collusion Affidavit
2	Los Angeles Residence Information
3	City of Los Angeles Contract History
4	Equal Employment Practices/Affirmative Action
5	Equal Benefits Ordinance Compliance
6	Slavery Disclosure Certification
7	Service Contract Worker Retention Ordinance and Living Wage Ordinance Compliance
8	Contractor Responsibility Ordinance Compliance
9	Municipal Lobbying Ordinance Compliance
10	Local Business Preference Certification
11	Business Inclusion Program Outreach
12	First Source Hiring Ordinance
13	Contractor Bidder and Campaign Contribution Fundraising Restrictions

In the past, RFPs have been structured within a model in which respondents have a single opportunity (upon an RFP due date) to demonstrate compliance with applicable general contracting requirements. If a vendor fails to demonstrate compliance in a manner that City staff determines to be “responsive” to the City’s general contracting requirements, the vendor’s entire service proposal is rejected and cannot be further evaluated.

Some typical situations which result in a determination of “non-responsiveness” (all of which have been experienced by Employee Benefits Division staff in prior Division RFPs) include the following:

- (1) A vendor may inadvertently omit submission of certain required documents due to communications breakdowns resulting from different divisions within a vendor’s organization being responsible for addressing various City provisions.
- (2) An entire set of general contracting documents may be accidentally left out of an RFP response as a result of, for example, a clerical error in packaging a proposal.
- (3) The reporting rules for certain processes (e.g. Business Inclusion Outreach) may be misunderstood by vendors such that critical deadlines are missed.

Other factors related to general contracting requirements can contribute to limiting the pool of RFP respondents. For example, a vendor may self-select out of a procurement due to a misunderstanding of the requirements of a policy. In addition, although the City generally offers “pre-bid conferences” in order to acquaint potential respondents with the City’s various requirements, often vendors will send representatives who do not end up actually working on the compliance efforts. Those representatives are then in the position of translating for their respective organizations the City’s complex array of requirements. Misinterpretations and miscommunications can then occur.

The Personnel Department’s Employee Benefits Division issued an assortment of RFPs in 2012 for employee benefit program services (health, dental, etc.). In several of these RFPs (the health and dental RFPs in particular) large and established providers in the field were disqualified from consideration as a result of failing to comply with the City’s general contracting requirements, including not fulfilling requirements of the City’s Business Inclusion Program.

In addition, following are several examples from the Deferred Compensation Plan in which minimal responses were received to an RFP. Although in most instances staff did not contact non-respondents or has not retained information from that time period, confusion or concern over general contracting requirements can be assumed to be at least one factor impacting responsiveness:

- In January 2009 the Plan released a Request for Proposal for FDIC-Insured Savings Products; only one firm responded.
- In August 2008 the Plan released a Request for Proposal for a Russell 2000 Index Fund and Mid-Cap Index Fund; only two firms responded on the Russell 2000 Index Fund; the Board determined that an insufficient number of responses had been received on the Mid-Cap Index Fund and it canceled that search and, with City Attorney approval, bypassed the RFP process and chose a vendor through a consultant review process.
- In June 2008 the Plan released a Request for Proposal for Plan consulting services; only two firms submitted responses.

The forms and related policy descriptions for the City’s General Contracting requirements are approximately 200 pages. This does not include the pages of the services portion of

the RFP, which typically ranges between an additional 50-200 pages, depending on the length of the services questionnaire.

With up to 400 pages of verbage to be reviewed, analyzed and addressed within a matter of weeks, submission compliance errors and self-selections out of participating in a process can occur. In staff's view, this is less the result of some vendors disregarding the City's requirements as simply being overwhelmed by them.

Proposed New Process – To help mitigate this situation, staff is recommending implementation of a process recognizing the challenges for vendors in responding to the City's general contracting requirements and providing greater opportunities for successfully demonstrating compliance. This process would have the following essential features:

- All vendors may be permitted to defer submission, where feasible, certain general contracting documents to the time of contract execution rather than an RFP response due date.
- All vendors would be provided, where feasible, with the opportunity to pre-submit certain general contracting documents for review prior to an RFP due date; City staff would review those documents for compliance; if an error or omission was identified, a vendor would be notified and then have time to make a correction prior to the final RFP due date. All vendors would be subject to the same deadlines.
- For those documents eligible for pre-submission, vendors would not be required to pre-submit them, but would be advised of the benefits of doing so; vendors not choosing to avail themselves of the pre-submission option would not be provided with any additional opportunity to correct errors in their general contracting requirement submissions.
- This "pre-submission" feature would not extend to the services portion of a proposal (i.e. vendors could not "pre-submit" their responses to the services portion of an RFP and then revise them later), and the requirements associated with responding to the services portion would not be altered in any way.
- The "pre-submission" process and deadlines will be publicized in the RFP document.

Staff has reviewed the proposed revisions to the procurement process with the Board's Counsel who advised that (i) the deferral of submission of certain contract forms and documents is authorized under the City ordinances imposing the contract requirements, and (ii) the pre-submittal of contract forms and documents is not inconsistent with the City's procurement requirements as long as certain procedural safeguards are followed and incorporated into the process.

Upon adoption of the staff recommendation, staff would work together with Board counsel to incorporate the details of this proposed policy into the pending RFPs for Custodial Services and Investment Management Services. Since this approach is new, and since the potential respondent pool for the Custodial Services RFP is much smaller (perhaps 4-6)

than that for Investment Management Services (perhaps dozens), staff's intent would be to release the Custodial Services RFP first and stagger release of the Investment Management RFP to provide an opportunity to evaluate the new process for further refinement.

Staff will analyze the results of the new process and report back to the Board. At that point, if the Board deems the results to be unsuccessful, the Board would not be precluded from either returning to the prior process or directing staff to consider alternate approaches.

Submitted by _____
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Approved by: _____
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