



Board Report 19-20

Date: June 18, 2019

To: Board of Deferred Compensation Administration (Board)

From: Staff

Subject: DCP Stable Value Fund and Core Menu Investment Management Services Requests for Proposal (RFPs)

Board Members

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Recommendation:

That the Board direct staff to draft revisions to the Stable Value Fund and DCP Core Menu Investment Management Services RFPs to include an evaluation process that is aligned with the Board's established mutual fund search process and to work with the City Attorney's Office and Office of Contract Compliance to identify all non-applicable provisions of the City's general contracting requirements for the investment of DCP funds.

Discussion:

A. Background

Following is a summary of the Board's actions to date regarding its 2018-19 investment manager search processes:

- At its **July 17, 2018** meeting, the Board considered a report from staff regarding upcoming investment manager searches for the DCP investment menu and a 2018-19 investment manager search plan.
- On **September 17, 2018**, the Investments Committee met to consider recommendations from staff and Mercer Investment Consulting (Mercer) with respect to fund search types and search criteria for each investment mandate.
- On **October 16, 2018**, the Board adopted recommendations from the Investments Committee with respect to fund search types and search criteria to be applied to each investment mandate.
- On **March 19, 2019**, the Board received and filed a report from staff providing an investment manager search update and indicating that staff would present a draft RFP for Stable Value Fund Investment Management Services for the Board's approval at its April 16, 2019 meeting.

- On **April 16, 2019**, the Board approved staff's proposed RFP for Stable Value Fund Investment Management Services. The Board further requested that staff return at the next meeting with a modified recommendation with respect to a proposed "Pledge Form Regarding Conflict-of-Interest, Confidentiality and Proposer Communications." Staff indicated that, inasmuch it would be presenting a draft RFP for DCP Core Menu Investment Management Services at the Board's May 21, 2019 meeting, the topic of the Pledge Form could be addressed at the May 2019 meeting as well.
- On **May 16, 2019**, the Board reviewed staff's proposed draft RFP for DCP Core Menu Investment Management Services and requested that staff review options for modifying the RFP requirements as they relate to the City's general contracting requirements.

B. Board Contracting Authority and Fiduciary Role

Staff consulted with the City Attorney's Office, including Board Counsel and Assistant City Attorney Curtis Kidder as well as Senior Assistant City Attorney Noreen Vincent, to review the Board's role and standing relative to the City's procurement rules and further to identify options for modifying the Board's investment management services RFPs to provide greater flexibility in the decision-making process in a manner more closely aligned with its established mutual fund search processes. For context, following is a brief summary of the Board's contracting authority and fiduciary role.

(1) Board Contracting Authority

The Board was created by the City Council and provided the powers and authorities, and tasked with the duties and obligations, as set forth in the Administrative Code (**Attachment A**). Among other things, the Board is responsible for:

- (i) Administration of the [DCP] (Section 4.1401(j))
- (ii) Preparing and adopting a Plan Document which together with the Administrative Code are the governing documents for the DCP (Section 4.1400)
- (iii) Having sole authority for the operation of the DCP in accordance with its terms and ruling on all questions arising out of the administration, interpretation, and application of the DCP (Section 4.1407(a))
- (iv) Selecting and contracting with organizations to assist with the administration of the DCP and providing DCP investment options and governing the contractors selected (Section 4.1407(b))
- (v) Paying administrative and operating costs from funds deposited in the DCP Trust Fund (Section 5.492)

The Board, then, has the authority to select and contract with contractors to provide various services and to govern the performance of the selected contractors. The Board's contracting authority is subject to the procurement requirements of, among other statutes and regulations, the City Charter and Administrative Code.

(2) Board Fiduciary Role

The Board's fiduciary duties are only briefly stated in the Administrative Code. Section 4.1404 states that a separate fund is to be created to hold all assets and income of the DCP and that such fund shall be held in trust for the exclusive benefit of DCP participants and for defraying reasonable expenses of administration of the DCP. The Board, as a trustee of the fund, has the general fiduciary duties of a trustee which typically include (i) acting solely in the best interest of participants and beneficiaries, (ii) acting with reasonable care, skill, and prudence, and (iii) acting prudently in the selection of investment options, trustees, and contractors. The Board also has a fiduciary duty to comply with all applicable laws and regulations, including the requirements of the City Charter and Administrative Code.

C. Proposed Revisions to Stable Value Fund and Investment Management Services RFPs

As discussed at the Board's May 21, 2019 meeting, staff would return with recommendations related to modifying the DCP Core Menu Investment Management Services RFP to help address the concerns expressed at the meeting. In addition, following the meeting, staff and the Board Chairperson discussed the Stable Value Fund RFP, which was on the verge of being released. The Board Chairperson and staff agreed to postpone releasing the Stable Value Fund RFP at least until the Board's June meeting, since as an investment services procurement the same issues regarding evaluation process and the applicability of City contracting requirements apply and the Board might opt to restructure the Stable Value Fund RFP based on any changes it might implement for the DCP Core Menu Investment Management Services RFP.

In considering options for redesigning the RFP, staff's objective was to identify a process that allows for the broadest possible consideration of available fund offerings, best supports the Board's fiduciary role, and maintains consistency with the mutual fund search process, which has been well-established by the Board and successfully executed during the Board's previous round of investment manager searches. The essential structure of the mutual fund search process is as follows:

- The mutual fund search process involves a consultant-led review of the applicable universe of fund offerings within a particular investment mandate. The consultant applies screening criteria adopted by the Board to filter that universe to those funds that meet the Board's requirements.
- The consultant presents its search reports and analysis of viable funds including both quantitative and qualitative analysis of a range of evaluation factors including long-term performance, portfolio construction, investment team depth and stability, investment costs, and other factors.
- The Investments Committee engages with the consultant to better understand the evaluation factors and other objective and subjective considerations of the fund offerings, and typically may request additional data or analysis.
- After its review of all the information, the Investments Committee generates a recommendation to the full Board; the Board may then act on the Investments

Committee's recommendation or request additional information as part of making a final selection.

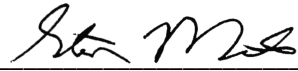
As a result of discussions with the City Attorney's Office, it appears that it is possible to design an RFP process that would largely mirror the mutual fund search process elements identified above. The redesigned investment management services RFPs, while identifying the evaluation criteria and selection methodology, would differ from the Board's procurements for other types of services by not being strictly bound to a numerical based evaluation system. Rather, the RFPs would be structured to identify a pool of highly qualified institutional providers with assessments of each of the evaluation criteria for each of the providers, a format and structure similar to the mutual fund search analysis and reports it considers. The Investments Committee and Board will have the opportunity to review and discuss the evaluation assessments before selecting the most qualified proposer.

In addition, staff and the City Attorney have reviewed on a preliminary basis the City's Standard Provisions and their general contracting and procurement requirements as they relate to investment services contracts specifically. A number of City programs have specific language which appears to exclude their applicability to the investment of trust funds and investment agreements, such as the Contractor Responsibility Ordinance, the Slavery Disclosure Ordinance, the First Source Hiring Ordinance, the Border Wall Contracting Ordinance, the NRA Disclosure Ordinance, and the Equal Benefits Ordinance.

Mr. Kidder has proposed a fuller review of the applicability of the full panoply of City programmatic requirements in relation to investment management services RFPs consistent with a review process the City Attorney's Office and Office of Contract Compliance conducted in regards to another procurement. The RFP would identify those City programmatic requirements that would be applicable to the proposers and selected provider. Staff can work with the City Attorney on this review pending the Board's direction.

It should be noted that the restructuring of both the DCP Core Menu Investment Management Services and Stable Value Fund RFPs will likely not be completed by the Board's July meeting. Although there are no mandatory deadlines with respect to the process for the DCP core bond and equity funds, a delay in the Stable Value Fund RFP could result in the necessity for extending the current contract with the incumbent in the event a different provider was selected. City Council approval would be required to approve that extension. However, staff finds that providing for consistency in investment manager searches represents a more compelling objective. Staff, therefore, recommends that the Board direct staff to draft revisions to the Stable Value Fund and DCP Core Menu Investment Management Services RFPs to include an evaluation process which is aligned with the Board's established mutual fund search process and to work with the City Attorney's Office and Office of Contract Compliance to identify all non-applicable provisions of the City's general contracting requirements for the investment of DCP funds.

Submitted by:



Steven Montagna