

Deferred Compensation Plan BOARD REPORT 10-12

Date: May 6, 2010
To: Board of Deferred Compensation Administration
From: Staff
Subject: Investment Manager Procurement

*Board of Deferred
Compensation Administration
Eugene, Canzano, Chairperson
Richard Kraus, Vice- Chairperson
Sangeeta Bhatia
Cliff Cannon
Sally Choi
John R. Mumma
Michael Perez
Maggie Whelan*

Recommendation:

That the Board of Deferred Compensation Administration place in abeyance its directive of April 20, 2010, directing the Board Chairperson to issue correspondence to the City Attorney's Office regarding a proposed revised procurement process, until such time as staff is able to complete further review and report back.

Discussion:

At the Board's April 20, 2010 meeting, the Board approved draft correspondence from the Board to the City Attorney requesting a response to staff positions and questions outlined in Board Report 10-06. The Board further authorized the Board Chairperson to sign/release the correspondence.

Subsequent to that meeting and before the correspondence was issued, staff met with Senior Assistant City Attorney Noreen Vincent and Deputy City Attorney Anita Parys to further review the issues presented in the letter. As a result of that conversation, Ms. Vincent and Ms. Parys indicated that a procurement process consistent with the proposal developed by staff would be acceptable under the City's procurement rules, albeit with a modification/clarification regarding the process applying to institutional fund providers. Given this information, staff contacted the Board Chairperson to request permission to not issue the correspondence until the matter could be returned to the Board for further review. The Board Chairperson agreed.

Staff's originally proposed investment manager procurement policy, as modified by the Board at its 04/20/10 meeting, was described as follows:

1. **Plan staff and consultant draft proposed selection criteria** for a given investment category.
2. **Board** considers, potentially modifies, and then **adopts selection criteria**.
3. **Staff and consultant issue a Request for Proposal/Request for Information in the form of a public notice** informing interested vendors that any products they offer meeting the search criteria will be considered; that a response is not required assuming their fund

data is already maintained on the consultant's database, which in most instances will be the case; and that if their fund data is not on the consultant's database they are eligible to provide that data, without limitation, to the consultant to ensure that their product will be considered if it meets the Board's criteria.

4. The Request for Proposal/Request for Information as described above would indicate that **vendors are not required to demonstrate compliance with the City's Standard Provisions until and unless a contract is required/executed.**
5. **Consultant and staff conduct an investment manager search of all potential products against consultant provider database**, applying the search criteria as set forth by the Board and ensuring that all providers within the database or who have otherwise requested consideration are evaluated; additionally, all documents associated with the evaluation, rating, and ranking of candidate products would be fully transparent public documents and available for review by interested parties.
6. **Consultant and staff prepare a list of top-scoring firms**, the number of which would be determined on a case-by-case basis (as dictated by the Board) taking into consideration factors such as the investment mandate and size of the potential provider pool.
7. The Board **considers the finalists.**
8. The **Board chooses a fund.**
9. If the chosen fund is a **mutual fund**, the Plan Administrator is directed to **activate this option on its trading platform.**
10. If the chosen product is an **institutional fund** requiring a direct contract between the Board and vendor, **the vendor will be required to execute a contract with the Board and meet all of the City's general and specific contracting requirements** applicable to the Board – if it is not able to do so, the search will be brought back to the Board to make another selection.

The City Attorney indicated that this proposed process was acceptable with the proviso that institutional fund providers responding to the Request for Proposal would need to comply with all of the applicable documentary/procedural requirements typically required in a Request for Proposal. This means, for example, that if certain general contracting documents are required (e.g. Non-Collusion Affidavit, Los Angeles Residence Information, City of Los Angeles Contract History, etc.) or a certain process needs to be executed (as in Minority/Women-Owned Business Outreach) then this must occur as part of the procurement process as it would in other search processes.

Staff is presently working with the City Attorney's Office to establish more definitively which documents or processes would be required to be submitted by a potential vendor prior to an RFP response deadline. Certain exemptions to these requirements have already been established (e.g. the Living Wage Ordinance does not apply to any of the Plan's investment contracts) and it may be possible to pursue exemptions for certain other requirements (e.g. Minority/Women Owned Business Outreach).

Importantly, the City Attorney agreed that mutual funds would not have to demonstrate compliance with general contracting requirements given that the Board would not be entering into contracts with mutual fund providers. In addition, the City Attorney agreed that vendors would not need to submit specific fund data to the Plan in the form of a response to an RFP questionnaire, but could provide that directly to the Plan consultant through the consultant's open database.

Given this, the proposed policy outlined previously would be modified as follows: item #4 would be modified to read:

4. ***The Request for Proposal/Request for Information as described above would indicate that mutual fund providers are not required to demonstrate compliance with the City's applicable general contracting/procurement requirements, while institutional fund providers are required to demonstrate compliance with those requirements.***

Pending a more detailed review of the general documents/process requirements institutional product respondents would be subject to, staff believes the proposed policy as modified should meet the Board's objective to design a fair and transparent procurement process leading to best-of-class providers, considering the broadest possible pool of investment managers, and which meets the Board's fiduciary obligations to act in the best interests of Plan participants. Staff therefore recommends that the Board act to place in abeyance its directive of April 20, 2010, directing the Board Chairperson to issue correspondence to the City Attorney's Office regarding a proposed revised procurement process, until such time as staff is able to complete further review and report back.

Submitted by: _____
Steven Montagna

Approved by: _____
Alejandrina Basquez