

Competitive Process

MACRS

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Chapter 176 of the Acts of 2011

- Under Chapter 32, Section 23(3) board members, as fiduciaries, must meet the standard of a prudent expert in taking all actions related to procurement and contracting.
- A competitive process which meets that fiduciary duty must be followed in all instances.

Applicability (1)

- The specific provisions of Section 23B of Chapter 32 apply to all contracts and procurements for
 - investment,
 - actuarial,
 - legal,
 - and accounting services.

Applicability (2)

- There are additional provisions relative to the procurement of services from an “investment service provider”. These would include, but are not limited to:
 - managers,
 - partnerships,
 - trusts,
 - custodians,
 - consultants,
 - proxy services,
 - securities litigation services,
 - and services related to the financial information (cash books, pooled fund statements, Annual Statements) retirement boards must file with PERAC.

Procurement File & Records Retention

- Under paragraph (d) of Section 23B of Chapter 32, a retirement board must “maintain a file on each contract” which retains “all written documents required by this section.”
- In addition, these documents “...be retained by the retirement board for at least *6 years* from the date of final payment under the contract.”

Request for Proposals (RFP)

- The RFP must include, among other items set forth in paragraph (g) of Section 23B, the following:
 - (1) The time and date for receipt of proposals, the address of the office to which the proposals are to be delivered and the maximum time for proposal acceptance by the retirement board;
 - (2) The purchase description and all evaluation criteria that may be utilized; and,
 - (3) All contractual terms and conditions.

Initial Evaluation (1)

- The initial evaluation of the responses to the RFP is the responsibility of the retirement board. However, with respect to investment management services, the investment consultant may conduct the initial evaluation. That evaluation must be in writing and based solely on the criteria set forth in the RFP.
- Each proposal is to be rated as
 - highly advantageous,
 - advantageous,
 - not advantageous or
 - unacceptable based on the evaluation criteria
- The retirement board or investment consultant, if applicable, must state the reasons for the rating.

Initial Evaluation (2)

- Each proposal is to be assigned a composite rating and the retirement board or investment consultant, if applicable, must state the reasons for the rating.
- In the event that the initial evaluation is conducted by the investment consultant, the consultant must review evaluations of all the proposals with the retirement board and provide each member with the initial evaluation of each proposal.

Decision

- The retirement board shall determine the most advantageous proposal from a responsible and responsive offeror taking into consideration:
 - price and
 - the evaluation criteria.
- An award may be conditioned on “...successful negotiation of the revisions specified in the evaluation...” Any omission of a revision so specified must be explained in writing.

Negotiation

- The retirement board or its duly designated agent, subject to the approval of the retirement board, may negotiate all terms of the contract not deemed mandatory or non-negotiable.
- If, after negotiation, the retirement board determines that it is in the best interest of the retirement system not to award the contract to that vendor, it may determine the proposal which is next most advantageous from a responsible and responsive vendor and may negotiate terms of the contract with that vendor.

Disclosures

- On or before January 1 of each year and as part of the RFP process all contractors or prospective contractors must file annual disclosures with the retirement board and PERAC.
- Vendors participating in an RFP process, must submit these disclosures as part of that process in addition to the regular annual filing.

Cancellation/Rejection

- The retirement board may cancel an RFP or reject in whole or in part any and all proposals if it determines that cancellation or rejection serves the best interests of the retirement system. The reason(s) for the cancellation must be stated by the retirement board in writing.

Vendor/Board Forms

- Proposals submitted to a retirement board must include a Vendor Certification Form by which vendors certify that the proposal “has been made and submitted in good faith and without collusion or fraud with any other person.”
- In addition, each retirement board member must certify to PERAC “that, to the best of the member’s knowledge and belief, this proposal has been made and submitted in good faith and without collusion or fraud with any person.”

Retirement Board Member Certification

With respect to this procurement, **each** retirement board member shall certify in writing as follows:

The undersigned certifies under the pains and penalties of perjury that, to the best of his/her knowledge and belief, this proposal has been made and submitted in good faith and without collusion or fraud with any person. As used in this certification, the word “person” shall mean a natural person, business, partnership, corporation, union, committee, club or other organization, entity or group of individuals.

Name of Retirement Board

Vendor Certification

A person submitting a proposal for the procurement or disposal of services to a retirement board shall certify in writing on the proposal as follows:

The undersigned certifies under the pains and penalties of perjury that this proposal has been made and submitted in good faith and without collusion or fraud with any person. As used in this certification, the word “person” shall mean a natural person, business, partnership, corporation, union, committee, club or other organization, entity or group of individuals.

Name of Retirement Board to Which Proposal is Being Submitted

Term

- No contract may be awarded for a term exceeding five years (including any renewal, extension or option), however, a retirement board may participate in a limited partnership, trust or other entity with a term for a longer period “...as part of an investment of system assets.”
- It should be noted that, although the vendor selected for the performance of a discrete task such as the completion of an actuarial valuation must be chosen in accordance with the provisions of Section 23B, the contract related to that task generally will not contain a term that would run afoul of the five year rule.

Written Contracts

- All contracts must be in writing and no payment may be made for a service rendered prior to execution of a contract.

Penalties

- A contract made in violation of these provisions is not valid and the retirement board may not make any payments under such a contract.
- Any person conspiring to cause a contract to be solicited or awarded in violation of these provisions will pay to the retirement board not more than \$2,000 for each violation.
- In addition, such a person will pay the retirement board double the amount of damages sustained by the retirement board as a result of the violation.