

#### Agenda

- 1. Documentation Requirements
- 2. Required Actions for Proper Procurement (M.G.L. c. 32, § 23B)
- 3. Remember Your Other Fiduciary Responsibilities
- 4. PROSPER Screens
- 5. Form Samples

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# 1. DOCUMENTATION REQUIREMENTS

#### 1. Documentation Requirements

- Procurement File for every investment, legal, actuarial and accounting service contract.
- Chapter 176 of 2011 inserted Chapter 32, Section 23B(d), requiring a procurement process. This requirement applies to any contract as of February 16, 2012.
- The procurement process requires necessary documentation so that trustees can meet the standard of a prudent expert in taking all actions related to procurement as fiduciaries.
- All written procurement documents are to be retained by the retirement board for six years from final payment of the contract.

2. REQUIRED ACTIONS FOR PROPER PROCUREMENT

### 2. Required Actions For Proper Procurement (M.G.L. c. 32, § 23B)

- Content of notice posting
- Request For Proposal ("RFP") issuance
- Register of bids from opening of proposals
- Written initial evaluation of proposals
- Interviews
- Written determination of most advantageous proposal

- Actual written contract with mandatory terms and conditions
- PERAC acknowledgement
- Awarded service contracts
- Vendor and retirement board member certification forms
- Disclosures by investment vendors
- Placement Agent Statement
- Penalties for violations

#### **Content of Notice Posting**

- Notice must contain the terms and deadline for RFP bid period.
- Type of service must be on the notice.
- Evidence of minimum two week posting in a publication of interest to those who may respond:
  - Legal services in Lawyers Weekly
  - Investment, accounting and actuarial services in Pensions and Investments
  - Newspapers of general circulation
  - PERAC and retirement board websites
  - Other types of advertisements deemed appropriate by a retirement board.
- Notice in a publication established by the Massachusetts Secretary of State for the advertisement of such procurements, i.e. Central Register and Goods & Services Bulletin.

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#### Request for Proposal ("RFP") Issuance

- Specific date, location and time for receipt of advertised proposal.
- Include description of service purchase desired.
- Evaluation criteria for the basis of the contract award.
- All contractual terms and conditions.
- Notice that retirement board has right to cancel or reject in whole or part any or all proposals in the best interest of the retirement system.
  - · The retirement board shall state in writing the reason for a cancellation or rejection.

#### Register of Bids From Opening of Proposals

- Not required to be a public meeting but the signature of a witness or witnesses are needed. At least one witness is required to be at the opening of sealed bids.
- Written notice of any submitted modifications or revisions to filed bids.
- A register of all proposals received must be documented.
- The place, time and date proposals are opened must be documented.
- A written affidavit should be used to document the requirements for the opening of bids.

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#### Written Initial Evaluation of Proposals

- Each proposal to be rated in written format based solely on the criteria established in RFP.
- Such written ratings should be based on some rating criteria using the standards:
  - Highly Advantageous
  - Advantageous
  - Not Advantageous
  - Or Not Acceptable (A composite or total points for each bid should be stated.)
- If such evaluation is done by consultant, each submission of review with each retirement board member should take place and be documented.
- Evaluation must be completed prior to interviewing process.
- No sub-committees.

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#### Interviews

- Following the initial evaluation, the retirement board must determine which applicants should be interviewed by the entire retirement board (no sub-committees).
- Number of applicants to be interviewed dependent on two factors:
  - Rankings
  - Number of Applicants
- Time to negotiate price, discuss track record, specific concerns.

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#### Written Determination of Most **Advantageous Proposal**

- Based on price and evaluation criteria set forth in the RFP.
- Award is to be made in writing within the time specified in the RFP.
  - An extension of up to 45 days may be granted upon mutual agreement of retirement board and offeror.
- Award may be conditioned on negotiated items.
- If negotiations result in a decision not to award contract to "Most Advantageous", the retirement board may negotiate with the "next Most Advantageous" vendor and should document the need for such further negotiations.
- Investment service RFP to also include certain mandatory terms and conditions.

#### **Actual Written Contract With Mandatory Terms** and Conditions For Investment Service Providers

- Statement that vendor is a fiduciary of such fund.
- Statement that vendor is not to be indemnified by the retirement system.
- Vendor to submit disclosure forms to PERAC and retirement board detailing compensation for services.
- Disclosure by vendor to PERAC of any conflict of interest.
- Investment Service Provider terms required by Placement Agent Policy.

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#### PERAC's Acknowledgement

- Upon determination of the Most Advantageous Proposal, the retirement board must submit all RFP required documents.
- PERAC acknowledges the receipt of the RFP documents.
- It is the responsibility of each retirement board to assure that all investments are made in a prudent and responsible manner consistent with the retirement board's fiduciary responsibility and in accordance with the statutory changes made by Chapter 176 of the Acts of 2011.
- In providing the acknowledgement, PERAC does not pass judgment on the fiduciary propriety of an allocation, investment or investment manager.

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#### **Awarded Service Contracts**

- No contract is valid without PERAC acknowledgement.
- Each awarded contract must be executed in writing.
- No payment for service rendered prior to execution of the contract.
- No contract shall exceed a term of seven years, including any renewal, extension or option.
- Exceptions to the seven year term are any limited investment partnership or trust.

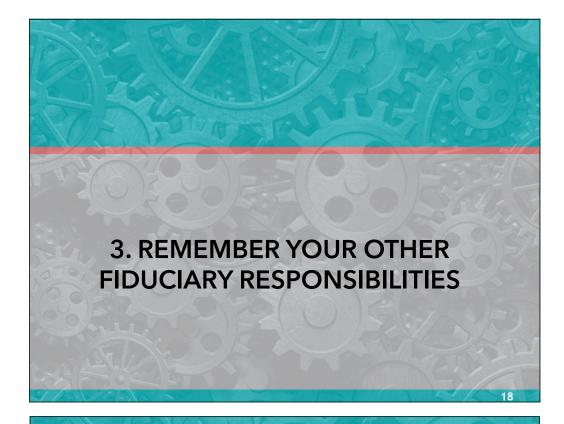
#### Vendor and Retirement Board Member **Certification Forms**

- Any person submitting a RFP for a service contract must certify in writing, under the penalties of perjury, that the proposals were submitted in "good faith" and without collusion or fraud.
- Same requirement for each retirement board member to certify that proposals are submitted in "good faith" and without collusion or fraud.
- The retirement board member files annual forms agreeing to abide by the state conflict of interest law and attests that he or she has no relationship with any vendor doing business with any retirement board.

#### **Penalties for Violations**

- Any contract made in violation of M.G.L. c. 32, 23B is not a valid contract.
- Conspiring to cause a contract to be in violation warrants up to a \$2,000 fine for each violation.
- In addition, such violator will be liable for double damages to the retirement board.

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## 3. Remember Your Other Fiduciary Responsibilities

It is important to note that, although this law requires the retirement board to adhere to that specific process in obtaining the enumerated services detailed in Section 23B, 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.

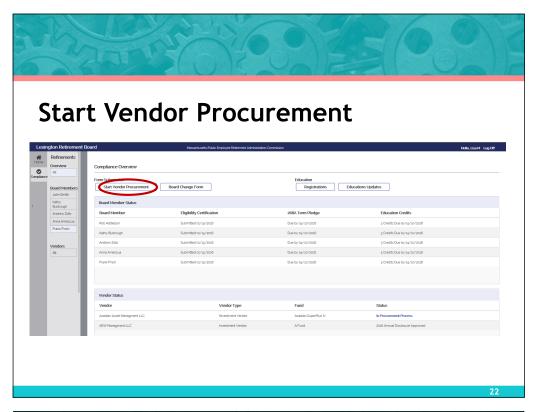
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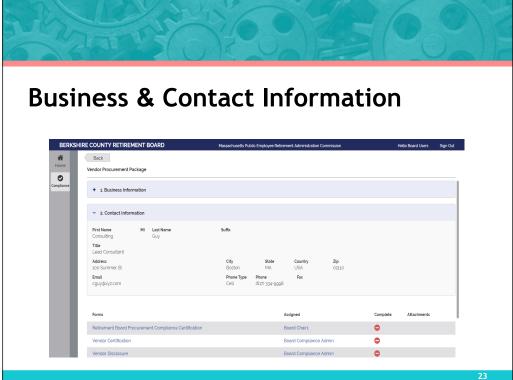
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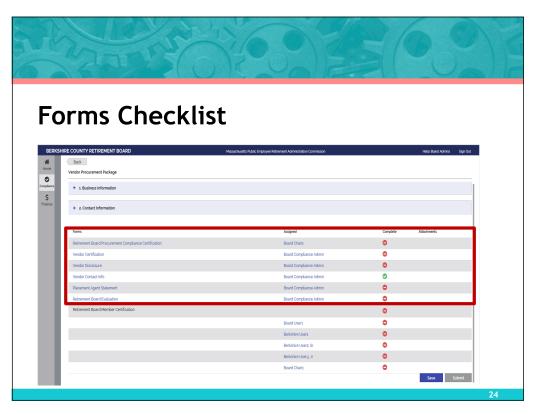


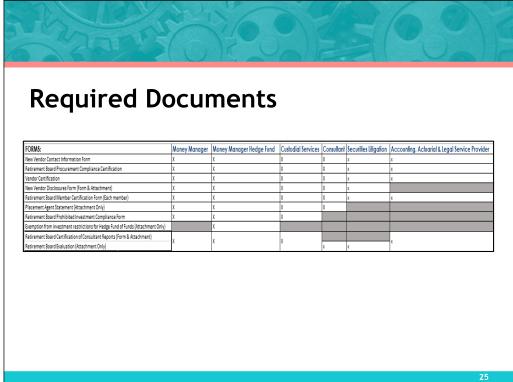
#### **PROSPER Screen List**

- Start Vendor Procurement
- Business and Contact information
- Forms Checklist
  - Required Documents
- Board Member Signatures
- Submit Procurement
- Procurement Acknowledged
- Procurement Under Review
- Procurement Status

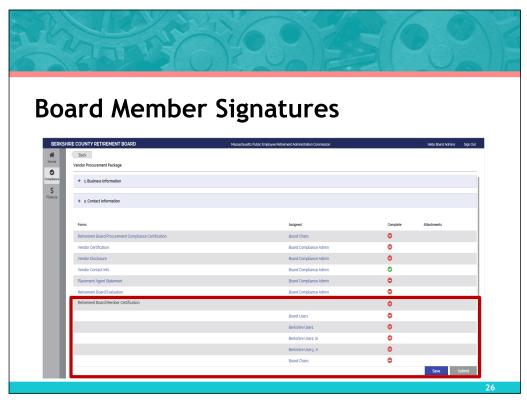


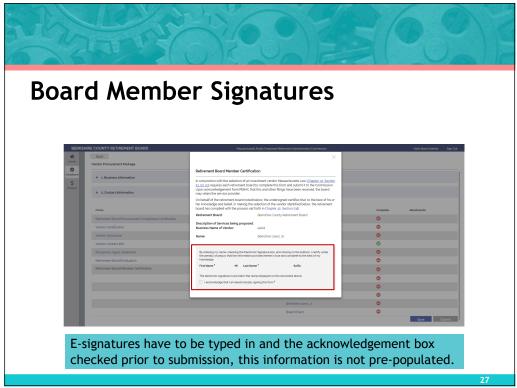


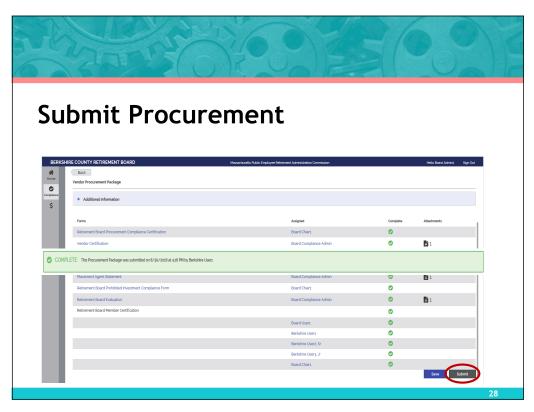


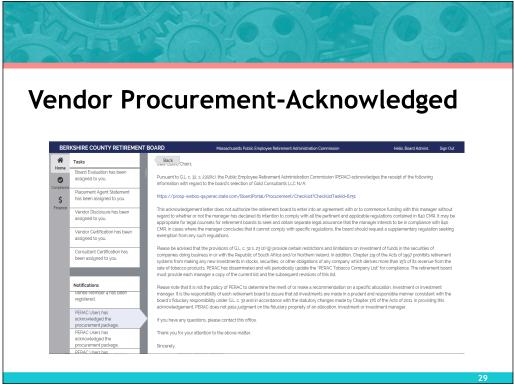


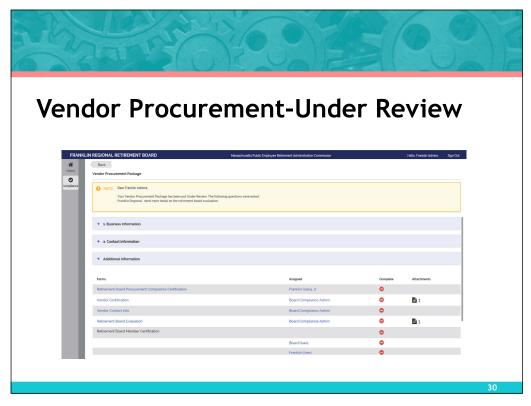
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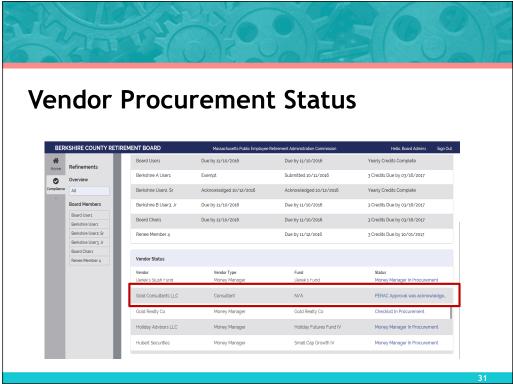


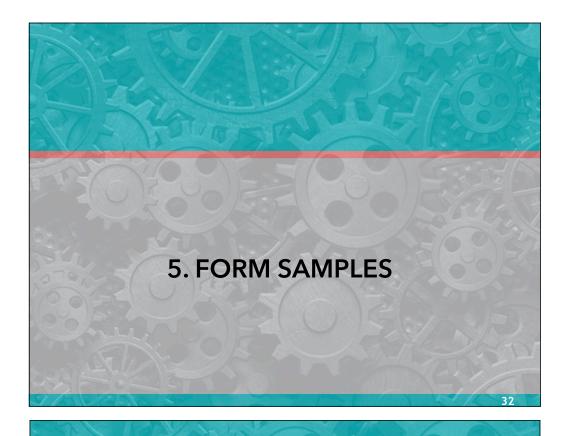










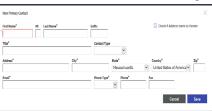


#### **Vendor Contact Information**

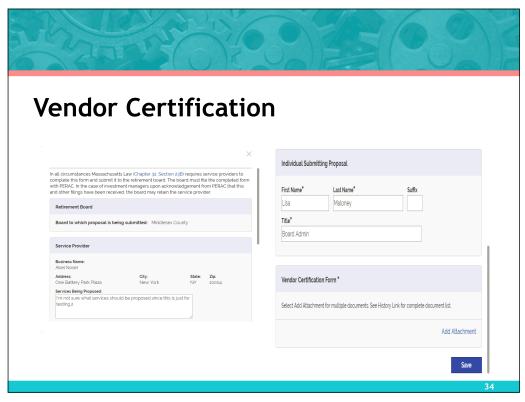
- Existing Relationship
  - Contact information will pre-populate for any existing relationship prior to the forms checklist being created.

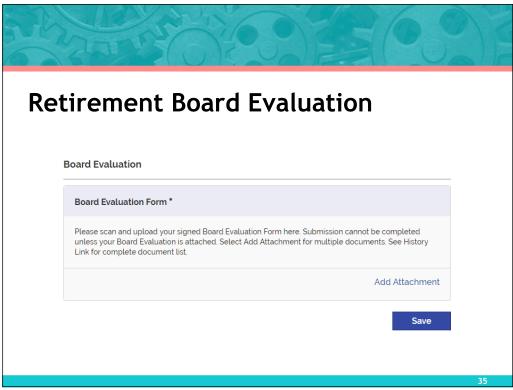
#### New Relationship

• The administrator will be prompted to fill out the contact information prior to the forms checklist being created.



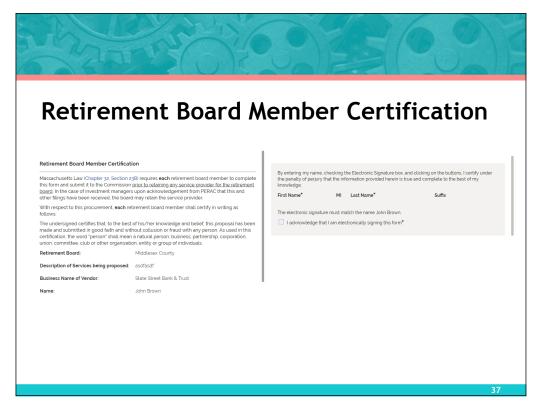
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The electronic signature must match the name Thomas F Gibson, Esq. 



#### Conclusion

- Progress since Chapter 176 of the Acts of 2011 enacted:
  - The establishment of an explicit open and competitive procurement process to be followed by boards when soliciting investment, actuarial, legal or accounting services.
  - 373 Procurements Acknowledged by PERAC in 2019.

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#### **Questions?**





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