

Retirement Board Procurement File

Chapter 176, Acts of 2011 Requirements

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Procurement File for Each Investment, Legal, Actuarial and Accounting Service Contract

- Chapter 176 of 2011 inserted a new section in Chapter 32, Section 23B(d), requiring such a file with certain documentation.
- Essentially, this file is to contain the necessary documentation so that as fiduciaries, the Board can prove it has met the standard of a prudent expert in taking all actions related to procurement and contracting.
- All written documents required by new Section 23B are to be included in the file.
- File to be maintained for six years by the board from final payment of contract.

Section 23B Required Documents

- Notice posting
- RFP issued
- Register of bids from opening of proposals
- Written initial evaluation of proposals
- Written determination of most advantageous proposal
- Annual disclosure by contractor
- Vendor and board member certification forms
- Actual written contract

Content of Notice Posting

- Notice must contain the term and deadline for RFP bid period.
- Type of service
- Evidence of minimum two week posting in a publication of interest to those who may respond: legal services in Lawyers Weekly, investment services in P&I, etc. Other types of advertisements deemed appropriate by Board.

Request for Proposal, RFP Document

- Specific date 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 Board has right to cancel or reject in whole or part any or all proposals in the best interest of the retirement system.

Opening of Bids

- A written affidavit documenting the time and date which coincides with time specified in RFP.
- Not required to be a public meeting but signature of the 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.

Retirement Board Initial Evaluation

- 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 board member should take place and be documented.

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 board and offeror.
- Award may be conditioned on negotiated items.
- If negotiations result in a decision not to award contract to “most advantageous”, the 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.

Mandatory Terms and Conditions for Investment Service Contracts

- Statement that contractor is a fiduciary of such fund.
- Statement that contractor is not indemnified by the Board.
- Contractor to submit annual form to Commission and Board detailing compensation for services.
- Disclosure by contractor to the Commission of any conflict of interest.
- Investment Manager terms required by Placement Agent Policy.

Disclosures by All Contractors

- To be filed by January 1st of each year to Board and Commission.
- Include all compensation paid to a contractor or a related person by others in connection with the service provided to the Board or other client.
- Include all compensation paid by the contractor to others in relation to services provided to the Board.
- Any conflict of interest that contractor may have.

Vendor and 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 Board members to certify that proposals are submitted in “good faith” and without collusion or fraud.

Awarded Service Contracts

- Each awarded contract must be filed in writing.
- No payment for service rendered prior to execution of the contract.
- No contract shall exceed a term of five years, including any renewal, extension or option.
- Exceptions to the term limit are any limited investment partnership, trust or other customary long-term arrangement.

Penalties for Violations

- Any contract made in violation of Section 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 Board.

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."