

MACRS

Procurement Process For Accounting, Actuarial, Legal & Investment Services

Chapter 176, Acts of 2011 Requirements



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MACRS 2017 FALL CONFERENCE

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.

Section 23B Required Actions For Proper Procurement

- Notice posting
- RFP issuance
- Register of bids from opening of proposals
- Written initial evaluation of proposals
- Written determination of most advantageous proposal
- Annual disclosures by contractor (investment services only)
- Vendor and Retirement Board member certification forms
- Actual written contract

NOTES:

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, and other types of advertisements deemed appropriate by Retirement Board.
- Notice in a publication established by the 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 Document

- 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.

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NOTES:

Opening of Bids

- 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.
- 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.

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:
 - 1) highly advantageous
 - 2) advantageous
 - 3) not advantageous
 - 4) 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 completed prior to interviewing process.
- No sub-committees

NOTES:

Interviews

- Following the initial evaluation, the Retirement Board must determine which applicants should be interviewed by the entire Retirement Board (no-subcommittees).
- 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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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.

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NOTES:

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 retirement system.
- Contractor to submit disclosure forms to Commission and Retirement Board detailing compensation for services.
- Disclosure by contractor to the Commission of any conflict of interest.
- Investment Service Provider terms required by Placement Agent Policy.

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PROSPER & PERAC's Acknowledgement

- Upon determination of the Most Advantageous Proposal, the Retirement Board must submit all RFP documents required by G.L. c. 32, §23(B) through PROSPER.
- Pursuant to G.L. c. 32, § 23(2)(c), the Public Employee Retirement Administration Commission ("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 under G.L. c. 32 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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NOTES:

Disclosures by All Contractors

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

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

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NOTES:

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 five years, including any renewal, extension or option.
- Exceptions to the term limit are any limited investment partnership or trust.

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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 Retirement Board.

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NOTES:

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."

NOTES:

COMMONWEALTH OF MASSACHUSETTS

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