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JULY 28, 2014

AGENDA ITEM 03  
ACTION ITEM

CALIFORNIA SECURE CHOICE RETIREMENT SAVINGS INVESTMENT BOARD

*Legal Services Request for Proposals (RFP) No. CSCRSIB02-14*

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***Presenter***

Grant Boyken

***Recommendation***

California Secure Choice staff recommends the Board rescind the RFP and begin a new solicitation that allows us to ask additional questions of the five law firms that submitted proposals and to receive proposals from law firms that expressed interest in the RFP, but felt they did not have sufficient time to prepare a proposal.

***Background***

At its May 27, 2014 meeting, the Board approved the release of an RFP for legal services. Secure Choice staff posted the RFP on the Board's website on June 2, 2014, and sent it via e-mail to attorneys at 30 law firms whose experience and expertise appeared to be a good match for the legal services we need. In addition, Secure Choice staff placed a classified advertisement for the RFP with Pensions & Investments (P&I) magazine. The advertisement ran in print, online and directly to subscribers of P&I's daily email newsletter for much of June.

The deadline for submitting proposals was June 27, 2014. We received five proposals. Of the five, staff determined only the proposal submitted by Fox Rothschild, LLP was responsive to the RFP, including minimum qualifications. Secure Choice staff determined Fox Rothschild's proposal would have scored sufficient points to warrant a recommendation that the Board make a notice of intent to award the contract to Fox Rothschild. The total cost proposal was \$242,300.

The other four were determined to not be responsive to the RFP because of one or more of the following reasons:

- The cost proposals didn't conform to the RFPs requirements for a fixed cost estimate based on hourly rates for each personnel.
- Proposals lacked information to demonstrate the firm meets the minimum qualifications specified in the RFP.

- The proposed work plan does not completely address the required services as specified in the RFP.

The day before the June 27 deadline, Secure Choice staff sent an e-mail to the same list of attorneys to whom we sent the RFP on June 2<sup>nd</sup>. We asked firms not submitting proposals to provide us with a brief explanation as to why they chose not to submit a proposal. We received a total of ten responses summarized below:

- Two firms claimed to never have received the RFP, but indicated interest in submitting proposals, and requested to be notified if we extended the deadline.
- Two firms said they would have submitted a proposal, but the RFP deadline provided insufficient time. One said they would need two months to complete a proposal.
- One firm declined because they didn't meet the requirement that the firm have an office in California.
- Another firm declined because they felt there was too much uncertainty to determine a fixed price as the RFP required, and also because of concerns that "the program might be considered too burdensome by companies with no retirement plans, many of which are our clients."
- One firm explained that while they have the depth and experience nationally to serve our needs, their California offices do not have the expertise needed for this work.
- One firm responded by indicating the work was simply not a good fit with their experience and expertise.
- One firm said they would like to submit a proposal and would be a good candidate because of their employee benefit and ERISA expertise, but thought their chances of winning were limited because they are not a small business and because their lead employee benefits attorneys are not located in their California office.
- One firm declined because they felt "there are too many federal law impediments to the success of the program." They believe "the most practical path forward would be for the State of California to work with Congress to enact legislation that would provide a practical framework removing impediments to the proposed multiple employer design." They also believe the Board's "goals are laudable" and wish us the best.

### *Next Steps*

Due to the limited number of proposals received and the fact that only one proposal was responsive, Secure Choice staff is providing several options for the Board to consider. We initially chose to use a formal RFP for this procurement because we felt the importance of the legal work to the overall success of the program, the potential cost of the contract, and stakeholder interest in this procurement made it important to conduct a transparent and competitive bidding process. Because state procurement rules do allow the Board to contract for legal services without a competitive bidding process, we have some flexibility in terms of how we proceed. Several options are outlined below.

Option 1 – Award the contract to law firm with the only responsive proposal

Pros: Fox Rothschild submitted a strong proposal that meets the RFP requirements and includes a clear work plan. Awarding the contract to Fox Rothschild would avoid delays associated with the other options.

Cons: Because the other four proposals were not responsive, Fox Rothschild is the Board's only choice. It is generally preferable to be able to choose among several proposals.

Option 2 – Rescind the RFP and select a law firm from among those that had submitted a proposal

Under this option, the RFP would be rescinded and Secure Choice staff would contact the five law firms that submitted proposals and obtain more information, particularly in areas where the proposals were lacking, and allow one or two weeks for them to address our concerns. A recommendation would be made to the Board at its August or September meeting.

Pros: This may result in a larger pool from which to select. This option may result in less of a delay than option #3.

Cons: This option doesn't have the potential to yield as many qualified firms as option #3.

Option 3 – Rescind the RFP and select a law firm from a broader pool

As with option #2, the RFP would be rescinded and Secure Choice staff would follow up with the five law firms that had submitted a proposal, but would contact other law firms for their qualifications, particularly those that responded to our inquiry indicating they would have submitted proposals if they had more time. The RFP allowed almost one month for law firms to submit proposals. If we expand the amount of time for law firms to respond, Secure Choice staff would return to the Board with a recommendation ***no earlier than October, 2014.***

Pros: This option has the potential to result in the largest pool of qualified law firms from which to select.

Cons: This option would create a significantly greater delay contracting with a law firm than the other options, and would delay the release of the RFP for the market analysis and feasibility study.