

Purpose: To establish procedures for the procurement of professional services.

Authority: Act 15 of 1974, 53 P.S. §881.101 – §881.501, “Pennsylvania Municipal Retirement Law” (PMRL); the Commonwealth Procurement Code, 62 Pa.C.S. §101 – §4604 (“Procurement Code”); and Act 205 of 1984, the “Municipal Pension Plan Funding Standard and Recovery Act”, 53 P.S. §895.701-A - §895.707-A:

Policy: INTRODUCTION

The Pennsylvania Municipal Retirement Board (“Board”) is an independent administrative board of the Commonwealth of Pennsylvania charged with the administration of the retirement plans of municipalities participating in the Pennsylvania Municipal Retirement System (“System”). Members of the Board act as trustees of the Pennsylvania Municipal Retirement Fund (“Fund”) with exclusive control over the management of the Fund, including the authority to “contract for professional services, including but not limited to actuarial, investment and medical as it deems advisable.” 53 P.S. §881.104(2). The Board recognizes its duty to secure professional services to assist the Board in carrying out its duties and accomplish its objectives.

The Municipal Pension Plan Funding Standard and Recovery Act, as amended by the act of September 18, 2009 (P.L. 396, No. 44) (“Act 44”), requires each municipal pension system to develop procedures to select the most qualified person to enter into a professional services contract. The System is specifically identified as a “municipal pension system” subject to the requirements of Act 44 relating to the procurement of professional services. “Professional services contract” is defined in Act 44 as:

A contract to which the municipal pension system is a party that is:

- (1) for the purchase or provision of professional services, including investment services, legal services, real estate services and other consulting services; and
- (2) not subject to a requirement that the lowest bid be accepted.

53 P.S. §895.701-A. The Board is subject to the “Commonwealth Attorneys Act,” 71 P.S. §§732-101 – 732-506, in which the Board is identified as an “executive agency.” All legal services, including outside counsel, are provided in accordance with the Commonwealth Attorneys Act, and are not provided pursuant to a professional services contract as defined in Act 44.

The Board adopts this policy to set forth its procedures for the selection of the most qualified firm or individual to perform professional services.

#### PROCUREMENT PROCEDURES

##### —SUPPLIES, SERVICES, AND CONSTRUCTION

The System is identified under the Procurement Code as a “state-affiliated entity”, which is also included in the definition of a “Commonwealth agency.” 62 Pa.C.S. §103. The Procurement Code “applies to every expenditure of funds, other than the investment of funds, by Commonwealth agencies under any contract.” 62 Pa.C.S. §102(a). Section 301(d) of the Procurement Code states that state-affiliated agencies may

formulate their own procurement policy governing the procurement, management, control and disposal of supplies, services and construction and may act as their own purchasing agency for the procurement of supplies, services and construction, *but they are required to use the procedures provided in this part for such procurement.* (Emphasis added)

62 Pa.C.S. §301(d). Accordingly, the Board, as purchasing agent, shall follow the procedures set forth in the Procurement Code, including the policies, procedures and guidelines promulgated by the Department of General Services of the Commonwealth of Pennsylvania (“Department”) in conjunction with the requirements of Act 44 for the procurement of supplies, services and construction, including, but not limited to, consulting services, medical services, actuarial services, and auditing services as well as services and products related to information technology.

For those supplies, services and construction for which the Board does not act as its own purchasing agency, the Board shall utilize the Department as its purchasing agent. Information about the Department and its policies, procedures and forms can be found at <http://www.dgs.state.pa.us>.

—INVESTMENT SERVICES

The Board has the full power to “hold, purchase, sell, assign, transfer and dispose of any securities and investment” in the Fund subject to the standards imposed by law upon fiduciaries. In fulfilling its duties, the Board employs money management firms that generally act as investment advisors and managers for and on behalf of the Board, as limited by law, for the Fund assets allocated for investment.

The Procurement Code, however, specifically exempts its application to services related to the investment of funds. As a result, the Board authorizes its investment consultant to conduct a search on behalf of the Board for money management firms that meet the Board’s needs to effectuate its investment strategy.

The investment consultant shall advertise its search for money management firms in a timely and efficient manner. Such advertisements shall include, but not be limited to, the following:

- (1) The services that are the subject of the proposed contract.
- (2) Specifications relating to the services.
- (3) Procedures to compete for the contracts.
- (4) Request for Act 44 required disclosures of:
  - (a) whether the bidder is a current or former official or employee of the Board or System;
  - (b) whether the bidder is or has been a registered Federal or State lobbyist; and
  - (c) a description of the responsibilities of each individual who will provide services with regard to the contract;
- (5) A copy of the Board’s template contract.
- (6) The evaluation factors, including qualification, experience, expertise and compensation that will be utilized by the Board and the System.

The investment consultant and the Secretary of the Board shall be responsible for the initial review and weighting of the evaluation factors. The investment consultant and the Secretary shall select the three most qualified bidders based on the evaluation factors. The top three candidates will then be interviewed by the Board at its next regularly scheduled meeting. In the event that one of the top three candidates has an existing professional service contract with the Board for services requested in the RFP, then the Board may elect to waive the interview portion of the process. No bidder shall be presented to the Board if within the last year (1) the investment consultant or Secretary was a former employee of the bidder or (2) a former employee of the System or a member of the Board participates in the submission of a bid.

After interviewing the three most qualified bidders, the Board may select any of them or the Board may request that the next three most qualified bidders, as determined by the investment consultant and Secretary, be presented to the Board for interviews. If the Board is not sufficiently satisfied with the bidders presented, the Board shall either (1) direct the investment consultant to re-advertise, making any necessary revisions to the advertisement as the Board may direct or (2) cancel the solicitation for services.

Upon the award of the contract, the investment consultant and Secretary shall provide to the unsuccessful bidders who were interviewed by the Board a copy of the winning bidder's application, disclosure forms and a summary of the relevant evaluation factors considered by the Board. Such information shall also be posted on the System's website at least seven days prior to the execution of the contract for a period not to exceed thirty days subsequent to the execution of the contract.

Statement of Principle:

Act 44, addressing the hiring of professional services by a municipal pension system, requires each system to "develop procedures to select the most qualified person to enter into a professional services contract". 53 P.S. §895.701-A In the absence of legislative or judicial definition or interpretation of the quoted phrase, we understand the intended meaning of this provision to be as follows:

1. The provision distinguishes the hiring of professional services from other, non-professional service municipal contracting, which generally requires award to the lowest responsible bidder. The provision does not eliminate "lowest responsible" as a possible factor in the decision-making process; it simply broadens the decision-makers' discretion to allow for the consideration of other factors.

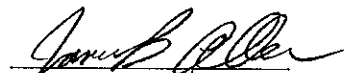
2. The procedures statutorily required of the hiring pension system are:
  - a. Timely and efficient advertising of the availability of the professional service contract;
  - b. Development of application and disclosure forms; and
  - c. Review of applicants' qualifications, experience, expertise, and proposed charges.
3. The statute does not preclude the hiring pension system from considering any factors the system sponsor may deem relevant; and it does not negate the system's reasonable judgment and discretion. With the addition of items (a) and (b) above, the provision is essentially a statutory codification of the sound procedures normally undertaken by most governmental entities when hiring professional services.

Effective

Date: This policy is to be implemented effective immediately.

Adoption

Date: Revised and re-adopted at the November 18, 2010 meeting of the Pennsylvania Municipal Retirement Board.

  
James B. Allen, Secretary