County of Los Angeles
CHIEF ADMINISTRATIVE OFFICE
713 KENNETH HAHN HALL OF ADMINISTRATION • LOS ANGELES, CALIFORNIA 90012
(213) 974-1101
http://cao.co.la.ca.us

DAVID E. JANSSEN
Chief Administrative Officer

Board of Supervisors
GLORIA MOLINA
First District

YVONNE B. BURKE
Second District

ZEV YAROSLAVSKY
Third District

DON KNABE
Fourth District

MICHAEL D. ANTONOVICH
Fifth District

October 25, 2005

To: Supervisor Gloria Molina, Chair
Supervisor Yvonne B. Burke
Supervisor Zev Yaroslavsky
Supervisor Don Knabe
Supervisor Michael D. Antonovich

From: David E. Janssen
Chief Administrative Officer

REQUEST FOR PROPOSALS (RFP) NEGOTIATING AUTHORITY

On September 13, 2005, your Board directed this office to examine and report back on how widespread the practice of renegotiating with one bidder during the Request for Proposals (RFP) process is within the County and what authority department heads have in this regard. This memorandum provides your Board with our response on both of these issues.

Current Practice

Negotiations are a customary component of the RFP process and are normally conducted with the highest ranked proposer. Unlike an Invitation for Bids process, where lowest price is the key factor, the RFP process rates proposers on a variety of factors, including cost, but also experience, work plan, references, etc. Given this, negotiations with proposers often result in improved contracts. Negotiations may be as simple as clarifying the next steps in awarding a contract and obtaining the proposer's signature on the contract, or may involve detailed negotiation sessions between the County and the proposer to seek agreement on various revisions. The majority of departments contacted by this office regarding this matter indicated that the practice of negotiating or renegotiation with one bidder during the RFP process is commonplace in their respective RFP processes.

The Countywide Contracting Service Manual, utilized by departments as the model document for procurement activities, includes language that addresses this practice. Specifically, Section 3.1 Selection Process, states that *"After a prospective Contractor has been selected, the County and the prospective Contractor(s) will negotiate a Contract for submission to the Board of Supervisors for its consideration and possible approval. If a satisfactory Contract cannot be negotiated, the County may, at its sole discretion, begin contract negotiations with the next qualified Proposer who submitted a*

proposal, as determined by the County. The recommendation to award a Contract will not bind the Board of Supervisors to award a Contract to the prospective Contractor."

As indicated in the Department of Beaches and Harbors (DBH) negotiation process, which brought this practice to your Board's attention, the RFP clearly stated that *"The Director reserves his right to condition his recommendation of the selected Proposal on changes being made in the Proposal. If the Director elects to negotiate such changes, the negotiations will be conducted with the Proposer whose Proposal is first selected. In the event an agreement is not reached with the first selected Proposer, negotiations may be conducted with any other Proposer the Director in his sole discretion selects."* Therefore, DBH did not circumvent the RFP process by entering into negotiations with the highest ranked proposer.

It is important to note that in the cited DBH RFP negotiation process, the Director's negotiations resulted in a more cost-effective final recommended contract.

Department Head Authority

County Code 2.06.130 Department heads – Additional duties provides a broad listing of the duties delegated to department heads by your Board. Included in these duties are the following provisions:

A. Formulation and Implementation of Department Policy. To formulate departmental policy, direct its implementation and evaluate work accomplished; and

D. Implementation of Private Sector Contracting. To create, maintain and implement a program to contract for county services where it is feasible, legal and cost effective.

These provisions provide department heads with the broad authority necessary to implement policies and procedures, under your Board's direction, such as the negotiation of contracts with selected vendors to ensure that the County's best interests are being met while maintaining the integrity of procurement processes.

If you have questions regarding this issue, please contact me, or your staff may contact Vincent Amerson of this Office at (213) 974-1168, or at vamerson@cao.co.la.ca.us.

DEJ:MKZ
VLA:ib

c: All Department Heads