STATEMENT OF PROCEEDINGS FOR THE

REGULAR MEETING OF THE BOARD OF SUPERVISORS

OF THE COUNTY OF LOS ANGELES HELD IN ROOM 381B

OF THE KENNETH HAHN HALL OF ADMINISTRATION

500 WEST TEMPLE STREET, LOS ANGELES, CALIFORNIA 90012

Tuesday, March 31, 2009

9:30 AM

55. Recommendation: Approve the Evaluation Methodology for Proposals Policy, establishing Informed Averaging as the County of Los Angeles evaluation methodology for competitive solicitations (Request for Proposals and Request for Statement of Qualifications) where proposals are evaluated and scored by a panel based on several factors, such as qualifications, experience, work plan, and price, effective 60 days after Board approval; authorize the Chief Executive Officer with the assistance of the Auditor-Controller, the Director of Internal Services, and County Counsel, to issue implementation guidelines to departments within 60 days; and take the following related actions: (Continued from meeting of 3-17-09)

Approve a revised Services Contract Solicitation Protest Policy to specify when a recommended proposal and corresponding evaluation documents in a solicitation are made available upon request to the public; and

Instruct the Auditor-Controller to update the County Fiscal Manual to: a) specify when the Proposition A contract cost analysis becomes a public document in a solicitation; and b) specify when an updated departmental Proposition A cost analysis is reviewed for Proposition A contracts amendments; and

Instruct the Director of Internal Services to update the Services Contract Manual to: a) include the Evaluation Methodology for Proposals; b) reflect the revised Services Contract Solicitation Protest Policy; c) specify when the Proposition A contract cost analysis becomes a public document in a solicitation; and d) specify when an updated departmental Proposition A cost analysis is reviewed for Proposition A contract amendments. (09-0502)

Tom Tindall, Director of Internal Services, William T Fujioka, Chief Executive Officer, and Martin Zimmerman, Assistant Chief Executive Officer, responded to questions posed by the Board.

Arnold Sachs and Paul Hayes addressed the Board.

After further discussion, Supervisor Ridley-Thomas made a motion, seconded by Supervisor Molina, to instruct the Chief Executive Officer and the Director of Public Social Services to take the following actions:

1. **Suspend the new solicitation process for Greater Avenues for Independence (GAIN) Case Management Services; and**

2. **Report back to the Board in two weeks on the feasibility of reevaluating the proposals submitted in response to the most recent Request for Proposals for GAIN Case Management Services using the new informed averaging methodology.**

Said motion failed to carry by the following vote:

Ayes: 2 - Supervisor Molina and Supervisor Ridley-Thomas

Noes: 3 - Supervisor Yaroslavsky, Supervisor Antonovich and Supervisor Knabe

Supervisor Knabe made a motion, seconded by Supervisor Yaroslavsky, to keep the Proposition A Analysis at the existing release date.

Said motion was duly carried by the following vote:

Ayes: 3 - Supervisor Yaroslavsky, Supervisor Antonovich and Supervisor Knabe

Noes: 2 - Supervisor Molina and Supervisor Ridley-Thomas

Supervisor Ridley-Thomas made a motion, seconded by Supervisor Yaroslavsky, unanimously carried, that no exceptions be made to the solicitation policy without obtaining Board approval.

Ayes: 5 - Supervisor Molina, Supervisor Ridley-Thomas, Supervisor Yaroslavsky, Supervisor Antonovich and Supervisor Knabe

Supervisor Knabe made a motion, seconded by Supervisor Yaroslavsky, that the Board adopt the Chief Executive Officer's recommendation as amended to:

1. **Keep the Proposition A Analysis at the existing release date; and**

2. **Make no exceptions to the solicitation policy without obtaining Board approval.**

Said motion was duly carried by the following vote:

Ayes: 5 - Supervisor Molina, Supervisor Ridley-Thomas, Supervisor Yaroslavsky, Supervisor Antonovich and Supervisor Knabe

Attachments:
Board Letter
Motion by Supervisor Ridley-Thomas
Report
Video Part I
Video Part II
Audio Part I
Audio Part II

The foregoing is a fair statement of the proceedings of the meeting held March 31, 2009, by the Board of Supervisors of the County of Los Angeles and ex officio the governing body of all other special assessment and taxing districts, agencies and authorities for which said Board so acts.

Sachi A. Hamai, Executive Officer

Executive Officer-Clerk
of the Board of Supervisors

By _____

Sachi A. Hamai
Executive Officer

County of Los Angeles
CHIEF EXECUTIVE OFFICE
Kenneth Hahn Hall of Administration
500 West Temple Street, Room 713, Los Angeles, California 90012
(213) 974-1101
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WILLIAM T FUJIOKA
Chief Executive Officer

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

55 MARCH 31, 2009

SACHI A. HAMAI
EXECUTIVE OFFICER

Board of Supervisors
GLORIA MOLINA
First District

MARK RIDLEY-THOMAS
Second District

ZEV YAROSLAVSKY
Third District

DON KNABE
Fourth District

MICHAEL D. ANTONOVICH
Fifth District

March 17, 2009

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

APPROVAL OF NEW AND REVISED CONTRACTING POLICIES AND PRACTICES (ALL DISTRICTS - 3 VOTES)

SUBJECT

This letter recommends approval of the "Informed Averaging" scoring methodology as the County standard for scoring and evaluating certain competitive solicitations, such as Request for Proposals (RFPs) and Request for Statement of Qualifications (RFSQs). This letter also recommends approval of the revised Services Contract Solicitation Protest Policy to reflect a change in when certain related documents are made available to the public. In addition, this letter proposes a revised practice regarding release of the Proposition A contract cost analysis, and a revised practice for reviewing updated departmental Proposition A contract amendments.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Approve the Evaluation Methodology for Proposals Policy (Attachment I), establishing Informed Averaging as the County of Los Angeles evaluation methodology for competitive solicitations (e.g., RFPs and RFSQs) where proposals are evaluated and scored by a panel based on several factors, such as qualifications, experience, work plan, and price, effective 60 days after Board approval, and instruct the Chief Executive Officer (CEO), with the assistance of the Auditor-Controller, the Director of Internal Services, and County Counsel, to issue implementation guidelines to departments within 60 days.

2. Approve the revised Services Contract Solicitation Protest Policy (Attachment II) to specify when a recommended proposer's proposal and corresponding evaluation documents in a solicitation are made available upon request to the public, with the

revised policy to be effective 60 days after Board approval. Also, instruct the CEO, with the assistance of the Auditor-Controller, the Director of Internal Services, and County Counsel, to issue implementation guidelines to departments within 60 days.

3. Direct the Auditor-Controller to update the County Fiscal Manual to: a) specify when the Proposition A contract cost analysis becomes a public document in a solicitation, and b) specify when an updated departmental Proposition A cost analysis is reviewed for Proposition A contracts amendments.

4. Direct the Director of Internal Services to update the Services Contract Manual to: a) include the Evaluation Methodology for Proposals, b) reflect the revised Services Contract Solicitation Protest Policy, c) specify when the Proposition A contract cost analysis becomes a public document in a solicitation, and d) specify when an updated departmental Proposition A cost analysis is reviewed for Proposition A contracts amendments.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

On November 25, 2008, your Board:

1. Directed the CEO and all County departments that henceforward it shall be County policy in all contracting matters that:

   - There will be no discarding, shredding or other destruction of scoring sheets, notes, documents, or any other evaluation materials created and utilized to form the basis for recommendations in a competitive bidding process. The County shall retain these materials for review and inspection, as necessary, for RFPs currently in progress that do not make reference to a scoring process;
   - The use of consensus-only scoring shall be immediately suspended for all future solicitations, as well as for all solicitations currently in progress that do not make reference to a scoring process and for which the evaluation is not already in process, until the Board of Supervisors directs otherwise; and
   - In the event a department makes substantive changes to the Statement of Work and/or dollar amounts identified in the RFP, a new Proposition A analysis shall be conducted;

2. Instructed the Director of Internal Services, County Counsel, and Auditor-Controller (Auditor) to:

   - Jointly undertake a comprehensive review of contracting policies and practices in other jurisdictions, giving particular attention to the relative merits of the consensus vs. averaging scoring method; and

- Return to the Board within 60 days with findings and recommendations to develop a new, consistent, and uniformly applied contracting policy for the County to adopt as the "best practice," provided that such policy incorporates provisions permanently prohibiting the destruction, and requiring the retention, of all scoring and evaluation materials;

3. Instructed County Counsel to report back to the Board in 60 days on:

   - Whether or not the Proposition A analysis can be released once the RFP closes; and
   - Recommendations on establishing guidelines for an additional review of Proposition A contracts when departments are making substantive amendments, asking for additional compensation or expanding the scope of the work; and

4. Instructed the CEO to report back in one week on how many RFPs were issued prior to November 21, 2008 that reference a scoring process, including the number and purpose.

On December 2, 2008, on motion of Supervisor Knabe, your Board instructed the CEO, in conjunction with the Director of Internal Services, County Counsel, and other affected departments, to review Board Policy No. 5.055 - Services Contract Solicitation Protest (Protest Policy) and make recommendations for changes to the Protest Policy, including: (1) consideration of applying the Protest Policy to all service contract solicitations, including solicitation for franchise agreements, and (2) consideration of allowing the public time to review all proposals and for filing of protests prior to the contract recommendation being presented to your Board.

With regard to the November 25, 2008 Board order, memoranda to your Board from the CEO of December 10, 2008, January 14, 2009, and February 2, 2009 have addressed items 1 and 4 above.

In response to your Board's remaining referenced instructions from November 25, 2008 and December 2, 2008, this Office along with the aforementioned departments, convened a workgroup to conduct appropriate research and analysis and develop resulting recommendations. As further discussed below and detailed in the attachments to this Board letter, we have developed recommendations pertaining to:

- A Board policy establishing a uniform County methodology for evaluating competitive solicitations where proposals are evaluated and scored by a panel based on several factors, such as, qualifications, experience, work plan and price, e.g., RFPs and RFSQs;
- A revision to the Services Contract Solicitation Protest Policy establishing the stage at which a recommended proposer's proposal and corresponding evaluation documents are made available to the public; and

- Established practices regarding the stage at which Proposition A contract cost analyses are made available to the public, and the criteria for Auditor's review of updated departmental Proposition A contracts amendments.

Implementation of Strategic Plan Goals

The recommended Board actions are consistent with the Strategic Plan Goal of Operational Effectiveness as they will maximize effectiveness in the County's processes in the delivery of timely customer service.

FISCAL IMPACT/FINANCING

There is no direct fiscal impact related to these recommendations. However, as further discussed below and in the attachments, the recommended Board actions may result in increased workload and associated resource constraints, both within the departments conducting solicitations and the departments coordinating, staffing, and advising County Review Panels. Also, as further discussed below and in the attachments, some actions may impact the County's ability to negotiate the most favorable contract terms.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Evaluation Scoring Methodology

Attachment III provides the "Report on Best Practices for Evaluation Scoring Methodology in Requests for Proposals and Requests for Statements of Qualifications and Document Retention." As detailed in the report:

- The Best Practices survey did not identify a single best practice employed by the other jurisdictions surveyed and found that many other jurisdictions employ different evaluation methodologies at the discretion of the contracting department;
- While the consensus scoring methodology offers the benefit of a group discussion that can address errors, misunderstandings, or inexperience among evaluators, it can mask the individual, unique perspectives of evaluators; and
- While the averaging scoring methodology provides the benefit of independence and mathematical objectivity, very high or low scores by different individual evaluators can skew overall results.

Based on the above, we are recommending your Board approve the policy described in Attachment I, which establishes "Informed Averaging" as the uniform County methodology for competitive solicitations, where proposals are evaluated and scored by a panel based on several factors, such as, qualifications, experience, work plan and price, e.g. RFPs and RFSQs. Informed Averaging is a hybrid of the consensus scoring method and averaging scoring method. Under this methodology, evaluators score proposals individually, then meet as a group to discuss. Following the group discussion, evaluators individually determine if they wish to change any scoring based on the discussion (documenting the basis for any changes on their

individual evaluation worksheet). The individual scores are then compiled onto a final evaluation worksheet and averaged. This approach preserves the virtues of the averaging scoring methodology, such as independence and autonomy, as well as the value of group discussions where errors, misunderstandings, or lack of proposal evaluation experience can be addressed. This process is described in more detail in Attachment III.

Please note that we are also recommending an exemption to the Informed Averaging method in the event a department believes the methodology is ineffective or inappropriate for a specific solicitation or the department is mandated by their funding sources to utilize an alternative scoring method. In either scenario, the department must provide written notice to your Board, with a copy to the CEO, at least two weeks prior to commencing with the intended solicitation, referencing the specifics of the proposed methodology.

Also, as part of the Informed Averaging method, departments shall retain both the individual evaluation worksheets and the final evaluation worksheet signed by each evaluator consistent with the Countywide Record Retention Schedule (when approved by your Board) for contracts.

Revised Services Contract Solicitation Protest Policy

Attachment IV is the "Report on the Revised Services Contract Solicitation Protest Policy." The Protest Policy provides an avenue for bidders and proposers with respect to Board-approved services contracts to request review of: (1) a department's solicitation requirements, (2) a department's disqualification of a proposer, and (3) a department's proposed contractor selection. Your Board's December 2, 2008 order concerns the third category of review, namely the department's proposed contractor selection. Currently, at the proposed contractor selection level of review, the non-selected proposer's arguments are limited to arguments with respect to its proposal and the recommended proposer's proposal is not considered.

Under the current practice, proposals and corresponding evaluation documents are available for release in response to California Public Records Act requests when the department's recommendation for contract award appears on your Board's printed agenda (i.e., 2:00 p.m., the Wednesday prior to the Board meeting at which the recommendation for contract award will be considered). This practice is supported by the California Supreme Court's decision in *Michaelis, Montanari & Johnson v. Superior Court*, (2006) 38 Cal.4th 1065, in recognizing that delaying the point at which proposals and corresponding evaluation documents are made public protects the public interest in negotiating the most favorable contract for the County and its taxpayers.

In response to your Board's directive, we have developed a revised structure pertaining to release of proposals and the corresponding evaluation documents in solicitations. Specifically, we are recommending that, absent extraordinary circumstances, the recommended proposers' proposal and corresponding evaluation documents be made available to the public at the

Proposed Contractor Selection Review stage (and subsequent County Review Panel stage), after the contracting department has completed contract negotiations and has obtained a letter from an authorized officer of the recommended proposer that the negotiated contract is a firm offer of the recommended proposer, which shall not be revoked by the recommended proposer pending the department's completion of the Protest Policy process and Board approval. This process is discussed in greater detail in Attachment IV.

Please note that, while your Board's December 2, 2008 motion requests recommendations regarding release of all proposals in time for review during the Protest Policy process, our recommendation is to limit release to the recommended proposer's proposal. We believe limiting the release in this fashion will provide a non-selected proposer with sufficient information to make its claims under the Protest Policy, as it provides the appropriate benchmark (i.e., the recommended proposer's proposal) to demonstrate that, but for the error, the non-selected proposer should have been rated the lowest cost, responsive and responsible bidder, or ranked the highest rated proposer. To release any more information at this stage would exacerbate some of the identified risks of the proposed revised structure (identified and discussed in Attachment IV), with little added benefit to non-selected proposers.

Proposition A Cost Analysis

Attachment V is the "Report on Proposition A Cost Analysis and Guidelines." Chapter 2.121 of the County Code, or "Proposition A," permits the County to contract out for services that are or could be performed by County employees, and do not fall within one of the enumerated exceptions to Proposition A, if contracting out for the services is more economical or, in the case of physician services, more feasible. In order to determine whether contracting out for services is more economical, a department prepares a Proposition A cost analysis. A more detailed discussion of the cost analysis process is provided in Attachment V.

We currently treat the Proposition A cost analysis just as the proposals and corresponding evaluation documents are treated for purposes of determining when the cost analysis must be released under the California Public Records Act. Accordingly, under current practice, the Proposition A cost analysis is available for release in response to California Public Records Act requests when contract negotiations are complete and the department's recommendation for contract award appears on your Board's printed agenda (i.e., 2:00 p.m., the Wednesday prior to the Board meeting at which the recommendation for contract award will be considered).

With respect to the Proposition A cost analysis specifically, the business rationale for withholding it from release until the date identified above is that it sets forth in great detail what it would cost the County to provide subject services in-house. Making this information available to the vendor community prior to completing contract negotiations may impair the County's ability to negotiate the best price for the subject services. We recognize that releasing the study at this point may serve the public interest in providing a greater amount of time for the public to review

the analysis and raise concerns with it. However, there is an inherent risk that, as solicitations are cancelled and reinitiated, putting the study in the hands of the vendor community at this early stage risks that vendors will have the opportunity to structure their bids to limit the County's ability to obtain the best price for the subject services.

Another date mitigates this risk, while still serving the public interest of providing additional time to review the Proposition A cost analysis and raise concerns with it. The date is the same point in time we are recommending that the recommended proposer's proposal and corresponding evaluation documents be released, should your Board determine to adopt the revised Protest Policy (Attachment II). Therefore, absent extraordinary circumstances, we are recommending release of the Proposition A cost analysis after the department has selected a recommended contractor, completed contract negotiations, and obtained a letter from an authorized officer of the recommended contractor that the negotiated contract is a firm offer of the recommended contractor, which shall not be revoked by the recommended contractor pending the department's completion of the review process under the Protest Policy and Board approval.

Proposition A Guidelines

Attachment V also includes a detailed discussion on the Auditor's review of Proposition A cost analyses, including when contracts are amended to expand the scope of work. From the approval of Proposition A in 1978 to approximately 1997, the Auditor reviewed all Proposition A cost analyses. Over time, departments have become more adept at preparing them. Thus, in 1997, the Auditor limited its review to contracts with an estimated annual contract cost of $1 million or more. In response to recent Board concern over contract amendments that increased the contract cost to $1 million or more a year without additional review of the Proposition A cost analysis, the Audit Committee approved the policy outlined above to ensure reviews of cost analyses for amendments that increased the annual contract cost to $1 million or more. Based upon information provided by the Office of Affirmative Action Compliance to the Auditor, this action will result in the Auditor's review of approximately 18 percent of all Proposition A contracts, which constitute approximately 79 percent of the total dollar amount of Proposition A contracts.

Based on our analysis, we recommend the following revision:

> *If the Auditor previously reviewed the Proposition A cost analysis for a specific contract (either because annual cost under the original contract was $1 million or more, or because an amendment increased the annual contract cost to that level), the Auditor shall review the department's updated Study and Comparison for any amendment that will increase the aggregate contract cost by more than 10 percent, but not less than $500,000.*

In addition, the Auditor will: (1) review a sample of Proposition A contracts with an annual contract cost of less than $1 million to ensure that departments are completing the Proposition A cost analyses properly, and (2) continue to review Proposition A cost analyses for contracts, contract renewals and contract amendments under $1 million a year when requested by your Board or by the department.

These practices and guidelines are discussed in greater detail in Attachment V.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

The proposed recommendations will provide County departments with clear and consistent practices relating to proposal evaluations, Protest Policy procedures, and procedures for sharing Proposition A cost analyses and conducting updated Proposition A contracts amendments.

Respectfully submitted,

WILLIAM T FUJIOKA
Chief Executive Officer

WTF:ES:MKZ
FC:VLA:pg

Attachments (5)

c: All Department Heads

Los Angeles County
BOARD OF SUPERVISORS POLICY MANUAL

Policy No.	Title	Effective Date
0.000	Evaluation Methodology for Proposals	00/00/00

PURPOSE

Establishes Informed Averaging as the best practice method for scoring and evaluating competitive solicitations where proposals are evaluated and scored by a panel based on several factors, which may include qualifications, experience, and price, e.g., Requests for Proposals (RFPs) and Request for Statement of Qualifications (RFSQs). Ensures the retention of all appropriate scoring and evaluation materials.

REFERENCE

November 25, 2008, Board Order 39A

March 17, 2009 Board Letter from Chief Executive Officer, (hyperlink to Board Minute Order)

May ___, 2009 Implementation Guidelines for Evaluation Methodology for Proposals Policy

POLICY

Each department shall comply with the Evaluation Methodology for Proposals Policy to ensure a consistent process for the evaluation of proposals. This applies to competitive solicitations (e.g., RFPs and RFSQs) where proposals are evaluated and scored by a panel based on several factors, such as qualifications, experience, work plan, and price.

The Informed Averaging method, as shall be further described in the Evaluation Methodology for Proposals Implementation Guidelines issued hereunder, requires that evaluators independently review and score each proposal using the rating factors included in the individual evaluation worksheet. Evaluators then meet as a group to discuss, and following such discussion, then individually determine if they wish to change any scoring based on the discussion. The basis for any changes in an individual evaluator's score shall be documented in the individual evaluation worksheet. All individual evaluators' scores shall be compiled in a final evaluation worksheet and are averaged to complete the evaluation process. All evaluator written notes must be included on the individual evaluation worksheets and/or the final evaluation worksheet.

Departments shall retain the individual evaluation worksheets and the final evaluation scoring worksheet signed by each evaluator (Evaluation Documents) consistent with the Countywide Record Retention Schedule for contracts as approved by the Board of Supervisors. There will be no discarding, shredding, or other destruction of Evaluation Documents pending the expiration of the applicable retention period per the retention schedule referenced above. All evaluator written notes must be included on the individual evaluation worksheets and/or the final evaluation worksheet.

The Chief Executive Office, in consultation with Auditor-Controller, Internal Services Department, and County Counsel, will issue Implementation Guidelines that are consistent with this Evaluation Methodology for Proposals Policy. The Internal Services Department, County Counsel, and the Auditor-Controller shall provide training to all County departments on the Implementation Guidelines. The Internal Services Department shall incorporate the Evaluation Methodology for Proposals Policy and Implementation Guidelines into the Services Contracting Manual.

RESPONSIBLE DEPARTMENTS

Chief Executive Office

Internal Services Department

County Counsel

Auditor-Controller

DATE ISSUED/SUNSET DATE

Issue Date: XXXXXX, 2009 **Sunset Date: XXXX, 2013**

Los Angeles County BOARD OF SUPERVISORS POLICY MANUAL

Policy No.	Title	Effective Date
5.055	Services Contract Solicitation Protest	05/06/04

PURPOSE

Establishes a process to allow proposers to seek review of a solicitation for a Board-approved service contract and have it considered by the County.

REFERENCE

March 30, 2004 Board Letter continued to and approved at the April 6, 2004 Board Meeting, Board Order 18 with attachment entitled: "Services Contract Solicitation Protest Policy"

June 3, 2004, Memo from Internal Services Director on Update on the "Services Contracting Manual"

December 2, 2008 Board Order 38

March 17, 2009 Board Letter from Chief Executive Officer, (hyperlink to Board Minute Order)

May __, 2009 Implementation Guidelines for Services Contract Solicitation Protest Policy

POLICY

Each department shall comply with this Services Contract Solicitation Protest Policy and the Implementation Guidelines issued hereunder so as to allow a proposer to seek review of a solicitation of a Board-approved service contract. As used in this Policy, a "proposer" is defined as any person or entity that actually submits a bid, proposal or other response to a services contract solicitation conducted by any department or agency whose governing Board is the Los Angeles County Board of Supervisors. "Proposer" also includes any person or entity that can demonstrate that it would have submitted a bid, proposal or other response to such a solicitation, but for a requirement or provision in the solicitation document that created an unfair disadvantage for the proposer. As used in this Policy, "proposal" includes a bid, proposal, or other response to a services contract solicitation.

The Implementation Guidelines issued under this Policy shall include standard language to be used in solicitation documents to notify the proposers of the department's protocol for reviewing services contract solicitations. All County departments should include the language in all Board-

awarded services contract solicitation documents.

A review may be granted if the request for a review is submitted timely and the following criteria are met:

1. The firm/person requesting review is a proposer; and
2. The proposer requesting the review alleges in appropriate detail, with factual reasons, the appropriate ground for review as set forth below:

    - For a review of solicitation requirements, the request must be assert that either (a) application of the minimum requirements, evaluation criteria and/or business requirements unfairly disadvantages the proposer or (b) due to unclear instructions, the process may result in the County not receiving the best possible responses from the proposers.

    - For a review of a disqualified proposal, the request must assert the department made an error in disqualifying the proposal.

    - For review of a department's proposed contractor selection or to request review by the County Review Panel, the request for review must assert that but for one of the following, the proposer would have been the lowest cost, responsive and responsible bidder or ranked the highest rated proposer and was not selected for contract award recommendation:

        - The department materially failed to follow procedures specified in its solicitation document; or

        - The department made identifiable mathematical or other errors in evaluating proposals, resulting in the proposal receiving an incorrect score and not being selected as the recommended contractor; or

        - A member of the Evaluation Committee demonstrated bias in the conduct of the evaluation; or

        - Another basis for review as provided by state or federal law.

For all phases of review, the scope of review shall be limited to the issues presented in the request for review. For the County Review Panel, the scope of review may additionally include issues discovered by the proposer during the review of the department's proposed contractor selection, but only if the proposer includes such discovered issues in the proposer's request for a County Review Panel. No other new or additional issues may be brought forward in the County Review Panel.

Departments will make the recommended proposer's proposal and corresponding detailed evaluation documents available for release in accordance with the Implementation Guidelines issued under this Policy.

The Chief Executive Office, in consultation with County Counsel, Internal Services Department and Auditor-Controller, will issue Implementation Guidelines that are consistent with this Services Contract Solicitation Protest Policy. The Chief Executive Office and County Counsel

shall provide training to all County departments on the Implementation Guidelines. The Internal Services Department shall incorporate the Services Contract Solicitation Protest Policy, Implementation Guidelines and the solicitation language in the Services Contracting Manual.

RESPONSIBLE DEPARTMENT

Chief Executive Officer
Internal Services
Auditor-Controller
County Counsel

DATE ISSUED/SUNSET DATE

Issue Date: May 6, 2004
Reissue Date: _____ __, 2009

Sunset Date: May 6, 2008
Sunset Review Date: _____ __, 2013

REPORT ON BEST PRACTICES FOR EVALUATION SCORING METHODOLOGY IN REQUESTS FOR PROPOSALS AND REQUESTS FOR STATEMENT OF QUALIFICATIONS, AND DOCUMENT RETENTION

This report is in response to the Board's instruction of November 25, 2008 directing the Internal Services Department (ISD), County Counsel, and Auditor-Controller to:

- Jointly undertake a comprehensive review of contracting policies and practices in other jurisdictions, giving particular attention to the relative merits of the use of consensus vs. averaging scoring method; and

- Return to the Board with findings and recommendations to develop a new, consistent and uniformly applied contracting policy for the County to adopt as the "best practice," provided that such policy incorporate provisions permanently prohibiting the destruction, and requiring the retention, of all scoring and evaluation material.

Review of Other Jurisdictions

ISD surveyed government procurement executives and managers throughout California to identify current policies and procedures for evaluating and scoring competitive procurements. The survey revealed no single preferred scoring method. The survey results are included at the conclusion of this Report.

Relative Merits of Consensus vs. Individual (Averaging) RFP Scoring Methods

Consensus Scoring

As the name implies, consensus scoring is the product of evaluation group consent to a single score for each proposal.

Consensus scoring generally requires evaluation team members to independently score proposals, albeit tentatively, based on their subject matter expertise. Following individual review, consensus discussions address the merits or weaknesses of the proposals. This operates to correct mistakes or misconceptions that may have occurred in the initial (individual) evaluation phase. Similarly, the discussions can identify bias.

A facilitator is present during evaluation team meetings and discussions to ensure the integrity of the evaluation process. The facilitator does not score the proposals, and does not otherwise participate unless there is the risk of a deviation from the evaluation instructions. For example, if an evaluator attempted to dominate the discussions and unduly influence the recommendation, the facilitator would step in to remedy the situation.

The consensus scoring method requires that all evaluators agree to a single score, thus masking individual evaluation variations and preferences. In general, retained documentation from this scoring method includes the final scoring document and justification narrative based on the evaluators' notes and comments.

Individual/Averaging

The hallmark of individual scoring is independence and mathematical objectivity. Each evaluator independently reviews and scores the proposals. To rank the proposals, individual scores are then mathematically combined, either by aggregation or averaging. As such, this methodology is sometimes also known as averaging.

Individual scoring reduces the impact of evaluator bias insofar as a single evaluator cannot influence the entire evaluation team by lobbying for a particular position. However, an evaluator could give a preferred proposal an inordinately high score, and all others low scores. This could occur due to personal bias, or because the evaluator misread or misunderstood a proposal, thus resulting in an inaccurate or unfair proposal evaluation. Regardless of the reason, inordinately high or low scores can skew the overall results.

Evaluation documents and notes created in support of the individual scoring method are retained and available for review.

Recommendation – A New Scoring Method – Informed Averaging

The substantive goal of County procurements is to obtain goods and services that are the best value for the County. Two procedural principles support this goal:

- Objectivity and Fairness: The evaluation process must be fair and objective, so that the County may accurately assess and select the best proposal for best value.

- Transparency and Documentation: The evaluation process must be adequately documented so that its objectivity and fairness may be readily affirmed upon review. Anticipated reviewers would include the executive staff from the procuring department, the Board of Supervisors, any aggrieved proposers, the press, and the general public.

The recommended contract scoring method, which we have labeled "Informed Averaging" scoring, is a blended method, taking advantage of the positive aspects of both consensus and individual scoring methods. We think this blended method best supports the substantive goal County procurements, as well as the procedural principles. As referenced above, consensus scoring offers the benefit of an informed discussion among evaluators, where errors, oversights or inexperience among some evaluators can be addressed. Averaging offers independence, strengthening the individual input of each evaluator, and the objectivity of a mathematical calculation.

In summary, this new method would entail the following and would apply to competitive solicitations (e.g., RFPs and RFSQs) where proposals are evaluated and scored by a panel based on several factors, such as qualifications, experience, work plan, and price.

Following an initial instructional meeting, individuals on the evaluation team review solicitation documents and independently score each contractor's proposal before convening in a group. Each individual evaluator will record his or her score with respect to each rating factor on an individual evaluation worksheet, together with all notes supporting his or her score.

The evaluation team will then meet to discuss the scores assigned to each rating factor, and explain their justifications for each score. A facilitator will be present during all evaluation team meetings and discussions to ensure the integrity of the evaluation process. As in the consensus method, the facilitator does not score the proposals, and does not otherwise participate. The facilitator will ensure that any one evaluator cannot unduly influence the recommendation.

Based on, and after, the group discussion, individuals independently determine if they wish to adjust their scores. The individual evaluator will document the rationale for any adjusted scores on his or her individual evaluation worksheet. This may result in more similar scores among the evaluation team, but the process does not require "consensus" by all members of the evaluation team and allows for documented variations among evaluation team members.

At the conclusion, the evaluation team's final individual scores will be documented on a final evaluation worksheet and mathematically averaged to achieve a final score and proposal ranking. All evaluation documents will be retained as part of the public record. Evaluation documents are defined as each evaluator's individual evaluation worksheet, which includes any notes of the individual evaluator, and the final evaluation worksheet.

For those departments that can justify the need to employ a different evaluation methodology (e.g., requirements from a funding source or other business justification), the proposed policy will include an exception procedure. Specifically, a department wishing to use a different evaluation methodology for a solicitation must provide written notice to the Board, with a copy to the Chief Executive Officer, at least two weeks prior to commencing with the intended solicitation, referencing the specifics of the proposed methodology.

The resulting recommendations to approve these policies are included in the Board letter transmitting this report.

JURISDICTIONAL RESEARCH RESULTS

Contracting Policies and Practices in Other Jurisdictions

California Agencies

ISD contacted government procurement executives and managers throughout California to identify current practices and policies for evaluating and scoring competitive procurements in the RFP process. Responses were received from the State of California's Department of General Services (DGS), nine California counties and eleven local municipalities/public agencies, as follows:

- State of California, DGS
- San Diego County
- San Bernardino County
- Orange County
- Sonoma County
- City of Los Angeles
- City of Torrance
- City of Santa Ana
- Alameda County
- Riverside County
- Ventura County
- Sacramento County
- City and County of San Francisco
- City of Anaheim
- City of Pasadena
- City of Montebello

Department of Water and Power (DWP)
Metropolitan Transit Authority (MTA)
City of Arcadia
Los Angeles World Airports
City of Beverly Hills

Contracting Authority and Organizational Structures of Responding Agencies

The State's Department of General Services has a centralized procurement division that contracts for goods and services on behalf of the State. However, service contracting is also delegated to individual State departments.

The responding California counties are structured similarly to Los Angeles County, and operate under the same governing contracting laws and statutes. These counties employ a Purchasing Agent for commodity purchases and service contracting up to a specific statutory dollar threshold, with service contracts that require board approval decentralized and delegated to the respective County departments.

Responding cities and local public agencies also report split contracting authority with a central procurement organization for commodity purchases, but with service contracting decentralized to individual city departments or user organizational units.

Contracting Policies and Practices in Responding Agencies

Only two of the twenty-one responding agencies report having a formal written contracting policy that governs how proposal are to be evaluated and scored in the RFP process (the State's DGS and San Diego County).

Agencies such as Alameda County, San Francisco, the MTA, DWP, and the City of Los Angeles have written guidelines similar to the County's Service Contracting Manual, which provides instructional contracting procedures and processes for departments or organizational units.

The remaining agencies primarily use evaluator instructions, conflict of interest forms, and/or the respective RFPs to delineate their criteria and process for evaluating and scoring proposals.

Evaluation and Scoring Methodologies Used

The State's DGS uses consensus scoring as the standard evaluation method. Three of the nine responding California counties use both consensus and individual scoring at the discretion of the individual county departments, which is similar to current Los Angeles County practice. Three counties use consensus scoring as their adopted standard. The remaining three counties use an individual method.

The responding local municipalities and public agencies also vary in their selected methodology. Four of eleven use an individual method. Four use consensus and individual. Three use consensus only.

Discarding Evaluation Documentation

None of the responding jurisdictions stated that they have a policy of discarding evaluation documentation.

REPORT ON THE REVISED SERVICES CONTRACT SOLICITATION PROTEST POLICY

Introduction

On December 2, 2008, on motion of Supervisor Knabe, the Board instructed the Chief Executive Officer, in conjunction with the Director of Internal Services, County Counsel, and other affected departments, to review Board Policy No. 5.055 - Services Contract Solicitation Protest (Protest Policy) and make recommendations for changes to the Protest Policy, including (1) consideration of applying the Protest Policy to all service contract solicitations, including solicitation for franchise agreements, and (2) consideration of allowing the public time to review all proposals and for filing of protests prior to the contract recommendation being presented to the Board.

Since the Board's December 2, 2008 order, we have determined that the Protest Policy applies to solicitations for franchise agreements, as it applies to solicitations for Board-approved services contracts. We have additionally confirmed that the Protest Policy was provided for in the Request for Proposals for Exclusive Franchise Agreement for the Area of Hacienda Heights – 2008-FA201, issued by the Department of Public Works on May 8, 2008, which gave rise to the Board's December 2, 2008 order. Therefore, we have limited our review of the Protest Policy and the recommendations made with respect thereto to allowing the public time to review proposals during the protest process.

Current Protest Process

In its current form, the Protest Policy provides an avenue for bidders and proposers (proposers), with respect to Board-approved services contracts, to request review of (1) a department's solicitation requirements, (2) a department's disqualification of a proposer, and (3) a department's proposed contractor selection. The Board's December 2, 2008 order concerns the third category of review, namely the department's proposed contractor selection. There are three levels of review provided for under that category of review: Debriefing; Proposed Contractor Selection Review; and County Review Panel.

After the department selects a recommended contractor, the department notifies the remaining proposers that they were not selected and offers each non-selected proposer the opportunity to request a Debriefing. For each non-selected proposer requesting one, a Debriefing is held in person at the department level between the non-selected proposer and the departmental staff who conducted the solicitation. The purpose of the Debriefing is to compare the non-selected proposer's response to the solicitation document using the evaluation document. Currently, the Debriefing only involves the non-selected proposer's proposal and does not involve a discussion of the recommended proposer's proposal. However, the non-selected proposer may be informed of its relative ranking, i.e. points received compared to other proposals.

The next step of review available to each non-selected proposer that has had a Debriefing is the Proposed Contractor Selection Review, which is also conducted at the department level. At the Debriefing, the department notifies the non-selected proposer of the manner and timeframe in

which it may request a Proposed Contractor Selection Review. The Proposed Contractor Selection Review will be granted if timely requested and the non-selected proposer asserts that it should have been rated as the lowest cost, responsive and responsible bidder or ranked the highest rated proposer and was not selected for contract award recommendation because of any of the following:

1. The department materially failed to follow procedures specified in its solicitation document; or
2. The department made identifiable mathematical or other errors in evaluating proposals, resulting in the proposal receiving an incorrect score and not being selected as the recommended contractor; or
3. A member of the Evaluation Committee demonstrated bias in the conduct of the evaluation; or
4. Another basis for review as provided by State or Federal law.

The request for a Proposed Contractor Selection Review is submitted by the non-selected proposer, and is responded to by the department, in writing. Currently, at this level of review, the non-selected proposer's arguments are limited to arguments with respect to its proposal and the recommended proposer's proposal is not considered.

The final step of review available to each non-selected proposer that has had a Proposed Contractor Selection Review is the County Review Panel. The County Review Panel is a three-person panel selected by the Chief Executive Office from a pool of candidates with County contracting experience. The County Review Panel for any given solicitation shall include individuals from departments other than the department administering the solicitation, and such individuals shall not have participated in the solicitation.

In its response to the Proposed Contractor Selection Review, the department notifies the non-selected proposer of the manner and timeframe in which the non-selected proposer must request a County Review Panel. The request for a County Review Panel will be granted if timely requested and if the non-selected proposer asserts that it should have been rated the lowest cost, responsive and responsible bidder or ranked the highest rated proposer and was not selected for contract award recommendation because of (1) any of the grounds raised in the non-selected proposer's request for a Proposed Contractor Selection Review and/or (2) any new grounds raised in the non-selected proposer's request for a County Review Panel, provided the new grounds were discovered during the Proposed Contractor Selection Review process. No other new or additional issues may be brought to the County Review Panel.

The County Review Panel is a public meeting, with representatives from the department and from the non-selected proposer making presentations to the County Review Panel. Currently, at this level of review, the non-selected proposer's arguments are limited to arguments with respect to its proposal and the recommended proposer's proposal is not considered.

Current Practice Regarding Release of Proposals and Evaluation Documents

Consideration of releasing proposals and evaluation documents to non-selected proposers in connection with review under the Protest Policy requires a discussion of the current practice regarding release of such documents in response to requests made under the California Public Records Act. It is a business decision whether to release proposals and evaluation documents at any point in the solicitation process, but we believe an informed decision warrants a discussion of the current practice as well as the justification for it.

Under the current practice, proposals are available for release in response to California Public Records Act requests when the department's recommendation for contract award appears on the Board's printed agenda (i.e., 2:00 p.m., the Wednesday prior to the Board meeting at which the recommendation for contract award will be considered). Specific portions of a proposal that are justifiably designated as proprietary and/or confidential by the proposer are not released.

The release date for evaluation documents depends on whether they are the more detailed evaluation documents or whether they are general compilations of points that merely rank proposals. More detailed evaluation documents are available for release in response to California Public Records Act requests as of the date on which proposals are available for release. In contrast, because general compilations of points do not detail the relative strengths and weaknesses of proposals, such general compilations are available for release pursuant to California Public Records Act requests once evaluations are complete (generally signified by the department's selection of a contractor and notification of the remaining proposers that they were not selected).

One caveat to the current practice that should be noted is that if a non-selected proposer requests a County Review Panel, then California Government Code §54957.5, subd. (a) requires that such proposer's proposal, together with all other documents presented to the County Review Panel, be released upon request without delay.

Justification for Current Practice Regarding Release of Proposals and Evaluation Documents

California Government Code §6255, or the "balancing test," is the provision under which a government agency evaluates whether it can withhold disclosure of its records, absent another statutory exception. The balancing test requires a government agency to review requests on a case-by-case basis and allows the government agency to withhold a record when the government agency can demonstrate that "the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." CAL. GOV'T CODE §6255.

In *Michaelis, Montanari & Johnson v. Superior Court*, (2006) 38 Cal.4th 1065, the California Supreme Court, using the balancing test, held that a government agency may withhold proposals until the conclusion of the government agency's negotiation process. Although the court refused to identify a specific date, it upheld the practice of the City of Los Angeles in that case, which was to withhold the proposals until the contract award appeared on the awarding authority's published agenda.

The reasoning cited by the *Michaelis* Court for so holding was, in summary, that a government agency had a significant interest in being able to negotiate the most favorable contract on behalf of itself and its taxpayers and that releasing proposals before negotiations are complete may jeopardize the government agency's ability to do so by allowing the recommended proposer to use information obtained from other proposals to negotiate better contract terms. The *Michaelis* Court recognized the other public interest in maintaining transparency with respect to government selection processes. The *Michaelis* Court felt, however, that this public interest would be adequately served so long as there was sufficient time after negotiations are complete, but prior to contract award, for the proposers to review other proposals.

We have relied on the reasoning of the *Michaelis* Court to support the current practice, including the logical extension of it to more detailed proposal evaluation documents. As solicitations may be canceled and reinitiated, we have identified the date on which the department's recommendation for contract award appears on the Board's printed agenda as the date on which contract negotiations have concluded. The view, supported by the *Michaelis* decision, has been that non-selected proposers and other members of the public have sufficient time between the agenda print date and the subsequent Board meeting to review these documents and to appear at the Board meeting with any issues. Should the Board believe that any issue raised has merit, the Board may continue the item to a future meeting while the issue is investigated. Although the opportunity for review under the Protest Policy will have passed, non-selected proposers always have legal remedies available to them, whether or not they participated in the Protest Policy process.

Structure for Proposed Revised Practice

We have devised the following structure for review under the Protest Policy in order to be responsive to the Board's December 2, 2008 order. The major revised components are in **bold.** The revised Protest Policy is attached to this report as Attachment II. If adopted by the Board, the Chief Executive Office, in consultation with County Counsel, Internal Services Department and the Auditor-Controller, will issue Implementation Guidelines that are consistent with the following summary of the proposed revised structure:

1. The department receives and evaluates proposals, selects recommended proposer.
2. The department notifies recommended proposer and commences contract negotiations with recommended proposer.
3. The department additionally notifies the other proposers that they were not selected and that they may request a debriefing within the timeframe specified in the notification.
4. The department conducts debriefings in accordance with current practice.
5. The department informs non-selected proposers at their respective debriefings that, once the department has completed contract negotiations with the recommended proposer, each non-selected proposer that timely submits a notice of intent to request a Proposed Contractor Selection Review (PCSR Notice), will be provided an opportunity to request a Proposed Contractor Selection Review. The department will give each non-selected proposer a copy of the PCSR Notice and instructions for submitting the same, including the submission deadline.
6. **Upon completion of contract negotiations with recommended proposer, the department obtains a letter from an authorized officer of the recommended proposer that the negotiated contract is a firm offer of the recommended proposer, which shall not be revoked by the recommended proposer pending the department's completion of the Protest Policy process and Board approval. Absent extraordinary circumstances, upon receipt of this letter, the department will release the recommended proposer's proposal and corresponding detailed evaluation document only, with any justifiable portions of the proposal redacted, in response to California Public Records Act requests, including those made by non-selected proposers.**
7. Following receipt of the letter described in Item 6 above, the department provides written instructions for requesting a Proposed Contractor Selection Review, including the submission deadline, to all non-selected proposers that have timely submitted PCSR Notices.

8. Requests for **Proposed Contractor Selection Reviews** are granted in accordance with current practice. However, whereas a non-selected proposer was originally limited to arguments with respect to its proposal, **the non-selected proposer will now be permitted to include arguments regarding the recommended proposer**.
9. The department responds to each request for a Proposed Contractor Selection Review and informs each non-selected proposer in the response that the non-selected proposer may request a County Review Panel in the manner and within the timeframe specified in respective response.
10. Requests for **County Review Panels** are granted in accordance with current practice. However, whereas a non-selected proposer was originally limited to arguments with respect to its proposal, **the non-selected proposer will now be permitted to include arguments regarding the recommended proposer**.
11. The caveat dictated by California Government Code §54957.5, subd. (a), remains with respect to the proposed revised structure: if a non-selected proposer requests a County Review Panel, then such proposer's proposal, with any justifiable portions of the proposal redacted, together with all other documents presented to the County Review Panel, will be released upon request without delay.
12. Once all County Review Panels have been held and all reports have been issued, the department files recommendation for contract award on Board's agenda. When the agenda is printed, the remaining proposals and corresponding detailed evaluation documents, with any justifiable portions of the proposals redacted, will be available to the public.

Please note that while the Board's December 2, 2008 motion asks for recommendations regarding release of all proposals in time for review during the Protest Policy process, our recommendation is to limit release to the recommended proposer's proposal. We believe limiting the release in this fashion will provide a non-selected proposer with sufficient information to make its claims under the Protest Policy, as it provides the appropriate benchmark (i.e., the recommended proposer's proposal) to demonstrate that, but for the error, the non-selected proposer should have been rated the lowest cost, responsive and responsible bidder or ranked the highest rated proposer. To release any more information at this stage would exacerbate the risks of the proposed revised structure described below, with little added benefit to non-selected proposers.

If the revised Protest Policy attached to this report as Attachment II is adopted by the Board, (1) the Chief Executive Office, in consultation with County Counsel, Internal Services Department and the Auditor-Controller, will issue Implementation Guidelines that are consistent with the revised Protest Policy, (2) the Chief Executive Office and County Counsel will develop a separate training for department contracting personnel on the revised Protest Policy and Implementation Guidelines, (3) the Internal Services Department, in consultation with County Counsel, will update the Services Contracting Manual to reflect the revised Protest Policy and issued Implementation Guidelines, and (4) the Internal Services Department and County Counsel will incorporate a summarized portion of that training into the 2-day "Orientation to Basic Principles of County Contracting" course, which is offered several times per year.

Risks of Proposed Revised Practice

We believe that there are a number of risks associated with changing the current practice as outlined in the prior section of this report. We outline these risks to fully inform the Board's decision. The Board may, however, make the business decision that the public interest in non-selected proposers having the opportunity to review the recommended proposal and

corresponding detailed evaluation documents during Protest Policy process outweighs these risks and that the proposed revised structure adequately protects the County's ability to negotiate the most favorable contract on behalf of itself and its taxpayers.

One risk associated with the proposed revised structure is that it will add time to the contracting process. Currently, contract negotiations and the Protest Policy process are conducted concurrently. Under the proposed revised structure, in order to mitigate the risk of releasing the recommended proposal to the County's negotiating power and to the County's ability to receive the best proposals, contract negotiations have to be completed before the Proposed Contractor Selection Review and County Review Panel process starts. Departments certainly need to plan accordingly, but we believe that the Board also has to be aware that contract extensions of existing contracts may be necessary to account for added time.

Another risk associated with the proposed revised structure is that it will require additional County resources, both within the departments conducting solicitations and the departments coordinating, staffing and advising County Review Panels. With respect to the departments conducting solicitations, allowing review of the recommended proposer's proposal and corresponding detailed evaluation documents in connection with the Protest Policy process will likely lead to more California Public Records Act requests for those documents. In many solicitations responding to these requests may not be an issue (e.g., because we only receive two or three proposals). In our more complicated solicitations (e.g., block grant funded and information technology solicitations), however, it may be a time-consuming process, as we sometimes receive tens to hundreds of proposals and individual proposals may be hundreds to thousands of pages long.

With respect to departments coordinating, staffing and advising County Review Panels, allowing non-selected proposers to make arguments in their requests for Proposed Contractor Selection Reviews and County Review Panels with respect to the recommended proposer is expected to increase not only the number of requests, but also the number of arguments included in the requests. This, in turn, will increase not only the time it takes departments to respond to requests for Proposed Contractor Selection Reviews and County Review Panels, but it will also increase the time spent by the Chief Executive Office coordinating County Review Panels and the time spent by County Counsel advising the County Review Panels. Finally, the County Review Panels are staffed by County personnel from departments other than the department conducting the solicitation, who have full-time duties in addition to the time spent on County Review Panels. Under the existing practice, the Chief Executive Office often has difficulty staffing County Review Panels. We expect the difficulty only to increase under the proposed revised structure.

An additional risk associated with the proposed revised structure is that it may decrease County's ability to negotiate the most favorable contract. Training departments to negotiate the contract prior to commencing the Proposed Contractor Selection Review and County Review Panel process, as is proposed under the revised structure, mitigates the risk from the perspective of negotiating with the recommended proposer. If, however, the department has to commence negotiations with the second highest rated proposer or has to reinitiate the solicitation altogether (e.g., if the County Review Panel finds a sufficiently material error), the recommended proposer's proposal will already be available to other non-selected proposers and the vendor community at large.

REPORT ON PROPOSITION A COST ANALYSIS AND GUIDELINES

On November 25, 2008, on motion of Supervisor Yaroslavsky, the Board of Supervisors (Board) instructed County Counsel to report back to the Board on (1) whether the Proposition A cost analysis can be released once the Request for Proposal (RFP) closes and (2) recommendations for establishing guidelines for an additional review of Proposition A when departments amend Proposition A contracts to expand the scope of work. This report includes County Counsel's report back on these two items.

Summary of Proposition A

Chapter 2.121 of the Los Angeles County Code, or "Proposition A," permits the County to contract out for services that are or could be performed by County employees, and do not fall within one of the enumerated exceptions to Proposition A, if contracting out for the services is more economical or, in the case of physician services, more feasible. In order to determine whether contracting out for services is more economical, a department prepares a Proposition A cost analysis, as described in further sections of this report.

Whether or Not the Proposition A Analysis Can Be Released Once the RFP Closes

The Proposition A Cost Analysis

The Proposition A cost analysis consists of two parts: (1) the study of County estimated avoidable costs and (2) the comparison of the County estimated avoidable costs to the costs of contracting out. The study of County estimated avoidable costs (Study) is prepared by the department and identifies the costs that would be incurred if the services the department proposes contracting out (specified services") were performed by County employees. Avoidable costs generally include employee salaries and benefits, services, supplies, and equipment costs that are directly associated with County's performance of the specified services, but do not include indirect and overhead costs because indirect/overhead costs generally are not affected by most contracts.

Under the second part of the Proposition A cost analysis, the department compares the County estimated avoidable costs determined under the Study to the recommended proposer's contract cost plus the department's anticipated incremental costs to monitor the recommended proposer's performance under the contract (Comparison). In summary, if the calculation of County estimated avoidable costs exceeds the recommended proposer's contract cost plus the department's anticipated incremental monitoring costs, then it is cost effective under Proposition A to contract out for the specified services and the services therefore may be contracted out.

Current Practice Regarding Release of Proposition A Cost Analysis

Consideration of releasing the Proposition A cost analysis when the RFP closes requires a discussion of the current practice regarding release of such analysis under the California Public Records Act. As discussed below, it is a business decision whether to release the cost analysis at any point in the solicitation process, but we believe an informed decision warrants a discussion of the current practice as well as the justification for it.

The Proposition A cost analysis, including both the Study and the Comparison, is treated just as the proposal and detailed evaluation documents are treated for purposes of determining when it must be released under the California Public Records Act. Accordingly, under current practice

the cost analysis is available for release in response to California Public Records Act requests when contract negotiations are complete. In other words, the cost analysis is available for release when the department's recommendation for contract award appears on the Board's printed agenda.

We rely on the same legal support in determining the date by which the Proposition A cost analysis must be released, as we do for proposals and detailed evaluation documents, which is the California Supreme Court's decision in *Michaelis, Montanari & Johnson v. Superior Court*, (2006) 38 Cal.4th 1065. We additionally believe the same business reasoning justifies the County withholding the Proposition A cost analysis until such date as justifies the County withholding proposals and detailed evaluation documents, namely to protect the public interest in negotiating the most favorable contract for the County and its taxpayers. With respect to the Proposition A cost analysis, it specifically, sets forth in great detail what it would cost the County to provide subject services in-house. Making this information available to the vendor community prior to completing contract negotiations may impair the County's ability to negotiate the best price for the subject services.

Structure for Proposed Revised Practice

There is no legal impediment to the Board choosing to release the Proposition A cost analysis as early as when it is finalized, which we understand to be after all of the following have occurred: (1) a recommended proposer has been identified; (2) the estimated staffing that the department used in the Study has been compared to the recommended proposer's proposed staffing plan and any significant differences have been accounted for; and (3) if required, the Auditor-Controller has completed its review of the Proposition A cost analysis.

Releasing the Proposition A cost analysis at this point may serve the public interest in providing a greater amount of time for the public to review the analysis and raise concerns with it. However, as solicitations are cancelled and reinitiated for many reasons, putting the Proposition A cost analysis in the hands of the vendor community at this early stage (i.e., prior to commencing contract negotiations with the recommended proposer) poses the risk that vendors will be able to use the analysis to structure their bids, thus limiting the County's ability to obtain the best price for the subject services.

We believe another date mitigates this risk, while adequately serving the public interest of providing an additional time to review the Proposition A cost analysis and raise concerns with it. The date is the same point in time we are recommending that the recommended proposer's proposal and corresponding detailed evaluation documents be released, should the Board determine to change the current practice in that regard (see Attachment IV). Specifically, absent extraordinary circumstances, we proposed that the Proposition A cost analysis be made available to the public after the department has selected a recommended contractor, completed contract negotiations and obtained a letter from an authorized officer of the recommended contractor that the negotiated contract is a firm offer of the recommended contractor, which shall not be revoked by the recommended contractor pending the department's completion the review process under Board Policy #5.055 - Services Contract Solicitation Protest Policy.

Please note that releasing the Proposition A cost analysis at the recommended date does have the risk that if, as a result of the protest process under Board Policy #5.055 - Services Contract Solicitation Protest Policy or otherwise, a department commences negotiations with another proposer or cancels the RFP altogether, then the proposer or vendor community at large will have access to the analysis and may use it to obtain more favorable contract terms.

If the Board determines to release the Proposition A cost analysis at the recommended date, the Internal Services Department, in consultation with County Counsel and the Auditor-Controller, will update the Services Contract Manual to reflect that determination.

Recommendation for Establishing Guidelines for Additional Review of Proposition A When the Departments are Amending Proposition A Contracts to Expand the Scope of Work

The Board also requested recommendations for establishing guidelines for additional review of Proposition A when a department amends a Proposition A contract to expand the scope of work. The Board's November 25, 2008 order itself does not specify the aspects of Proposition A which should be subject to additional review. Because the discussion surrounding the Board's November 25, 2008 order centered on the Proposition A cost analyses, our recommendations focus on providing additional review of such analyses.

Current Practice

Under current practice, the Auditor-Controller (A-C) reviews the Proposition A cost analysis for all proposed new contracts, contract renewals and contract amendments that will result in a contract with an estimated annual contract cost of $1 million or more. We understand that the A-C's review is intended to validate the department's estimated avoidable costs, which includes ensuring that the department used the correct employee salaries and benefit rates, and that the department used reasonable costs for services, supplies and equipment. The A-C also reviews the RFP's statement of work to ensure that the Study includes all appropriate costs for the same level of service that is required from proposers.

Additionally under current practice, for all contracts requiring the A-C's review as specified above, once a recommended proposer is selected, the A-C compares the department's estimated staffing to the recommended proposer's proposed staffing plan to identify and account for significant differences. The A-C also reviews the department's Comparison and draft letter to the Board recommending contract award for the specified services. The Auditor-Controller's review of the Comparison must be completed prior to filing the recommendation for contract award with the Board.

From the approval of Proposition A in 1978 to approximately 1997, the A-C reviewed all Proposition A cost analyses. Over time, however, with the development of procedures and training for departments on the preparation of these cost analyses, we understand that departments have become more adept at preparing them. Thus, in 1997, the A-C limited its review to contracts with an estimated annual contract cost of $1 million or more. In response to recent Board concern over contract amendments that increased the contract cost to $1 million or more a year without additional review of the Proposition A cost analysis, the Audit Committee approved the policy outlined above to ensure reviews of cost analyses for amendments that increased the annual contract cost to $1 million or more. Based upon information provided by the Office of Affirmative Action Compliance to the A-C, we understand that in practice, this results in the A-C's review of approximately 18 percent of all Proposition A contracts, which constitutes approximately 79 percent of the total dollar amount of Proposition A contracts.

Structure For Proposed Revised Practice

We think that the current structure lends itself to providing additional review of the Proposition A cost analysis when a department is amending a contract to expand the scope of work, with the following recommended revision:

> If the A-C previously reviewed the Proposition A cost analysis for a specific contract (either because annual cost under the original contract was $1 million or more, or because an amendment increased the annual contract cost to that level), the A-C shall review the department's updated Study and Comparison for any amendment that will increase the aggregate contract cost by more than 10 percent, but not less than $500,000.

As we understand the Board is concerned with changes in the scope of Proposition A contracts, the A-C has indicated that the A-C will (1) review a sample of Proposition A contracts with an annual contract cost of less than $1 million to ensure that departments are completing the Proposition A cost analyses properly, and (2) continue to review Proposition A cost analyses for contracts, contract renewals and contract amendments under $1 million a year when requested by the Board or by the department.

If the Board approves of these recommendations, the Auditor-Controller will update the Fiscal Manual accordingly.