


ROSEVILLE
REQUEST FOR COUNCIL ACTION

Date: March 30, 2009
Item No.: 13.a

Department Approval

City Manager Approval

W. Malinen

Item Description: Discussion of Professional Services Contracts

1 **BACKGROUND**

2 At the January 12, 2009, Council meeting, the Council discussed the current Professional
3 Services Policy. There were questions about the current policy of limiting service to six
4 consecutive years.

5 Following the discussion, the Council rejected all bids for Civil Attorney and Prosecuting
6 Attorney services and extended the existing the current services through 2008 at the same terms
7 for those provided in 2008.

8 The Council did not make changes to the current policy.

9 **POLICY OBJECTIVE**

10 To have a policy concerning professional services contract that ensures the residents of Roseville
11 get the best representation for a competitive price

12 **FINANCIAL IMPACTS**

13 None

14 **REQUESTED COUNCIL ACTION**

15 Discuss the proposed professional services contract changes.

16

Prepared by: Bill Malinen, City Manager

Attachments: A: 2008 Staff Timeline to consider legal services contracts
B: 1/12/09 RCA and Proposed Professional Services Policy
C: 1/12/09 City Council Meeting Minutes
D: 2/28/09 email from Mike Hill
E: Professional Services Policy

2008 Timeline / Process
Consider Legal Services Contracts
Staff Guide

Dates		Action	Outcome
Projected	Actual		
July 08	July 08	Reviewed 1999, 2002 and 2005 Legal Services RFQ processes	<i>Confirmed the following process for 2008</i>
8/1/08	7/31/08	Survey two City Professional Groups (Communications & HR) Copy of Recent RFP/RFQ? Current Attorney(s)? Satisfied? Copy of Contracts?	<i>a. Communications Group Response: Red Wing</i> <i>b. HR Group Responses: New Hope & Apple Valley</i> <i>(low response thought to be a result of few RFQs done for legal services; civil and prosecuting attorneys seem to serve cities for long periods of time)</i>
8/01/08	8/08/08	Update Mailing List	<i>Updated Mailing list (Web and Phone) -obtained names of firms currently under contract with similar communities</i>
8/08/08	8/12/08	Update RFQ Update Cover Letter	<i>Updated RFQ and Cov Letter</i>
8/18	8/18/08	Council Review of Professional Services Policy	<i>Council Reviews Policy, Determines OK</i>
8/19	8/21/08	Mail RFP/RFQ – deadline for response: 9/17/08	<i>Actual date mailed: 8/21/08</i>
8/19/08	8/19- 8/26/08	Advertise	<i>Posted on our Web site; Advertised on LMNC Web; and Published in legal newspaper (8/26)</i>
9/12/08	9/12/08	Establish Rating Criteria	<i>Rating Criteria established Civil: Rating of 1-10 in 8 areas Prosecutor: Rating of 1-4 in 7 areas Rating of 1-5 in 8 areas</i>
9/12/08	9/12/08	Select Interview teams	<i>Interview Teams selected Civil: (7) Malinen; Bacon; Brokke; Gasaway; Miller; Paschke; & Schwartz, Prosecutor: (4) Sletner; Mathwig; Rosand; & Trudgeon</i>
9/12/08	9/12/08	Develop Interview Questions	<i>Interview Questions written, reviewed twice by Directors and finalized.</i>
9/17/08	9/17/08	Deadline	<i>Received: 4 RFQs for Civil Attorney 5 RFQs for Prosecuting Attorney</i>
9/19/08	9/17/08	Review & Rate Firms	<i>All firms deemed qualified to interview</i>

9/22/08	9/22/08	Invite Firms to Interview	Invited all Firms to interview
10/06/08	10/06/08	Interview Firms	<i>Interviewed all Firms</i>
10/06/08	10/06/08	Debrief and Rate Firms	<i>Debriefed and Rated Firms:</i>
			<p><i>5 Prosecuting; 4 Civil</i></p> <p><i>Prosecuting</i></p> <p style="text-align: right;"><i>(160 points possible)</i></p> <p><i>Hellmuth & Johnson 82.0</i></p> <p><i>Kelly & Lemmons 89.0</i></p> <p><i>MacMillan & Wallace 91.5</i></p> <p><i>Knaak & Kantrud 99.5</i></p> <p><i>Jensen Bell Converse& Erickson 148.0</i></p> <p><i>Civil:</i></p> <p style="text-align: right;"><i>(560 points possible)</i></p> <p><i>Kelly & Lemmons 249.0</i></p> <p><i>Knaak & Kantrud 360.5</i></p> <p><i>Jensen Bell Converse& Erickson 448.0</i></p> <p><i>Ratwik Roszak & Maloney 481.0</i></p>
10/13/08	10/10/08	Preliminary Info to Council	<p><i>Delivered RFQs to Council</i></p> <ul style="list-style-type: none"> <input type="checkbox"/> <i>City Manager Memo re: confidentiality of info</i> <input type="checkbox"/> <i>RFQ as mailed</i> <input type="checkbox"/> <i>Mailing list</i> <input type="checkbox"/> <i>Responses from all firms</i> <input type="checkbox"/> <i>This process</i>
10/20/08	10/20/08	City Manager Recommendation to Council	<i>Council requested more info</i>
10/27/08	11/24/08	Council Confirms Recommendation - failed	<i>Motion to approve failed.</i> <i>Council requested more info</i>
	12/04/08	Kelly & Lemmons withdraws proposal	<p><i>4 Prosecuting; 3 Civil</i></p> <p><i>Prosecuting</i></p> <p style="text-align: right;"><i>(160 points possible)</i></p> <p><i>Hellmuth & Johnson 82.0</i></p> <p><i>Kelly & Lemmons 89.0</i></p> <p><i>MacMillan & Wallace 91.5</i></p> <p><i>Knaak & Kantrud 99.5</i></p> <p><i>Jensen Bell Converse& Erickson 148.0</i></p> <p><i>Civil:</i></p> <p style="text-align: right;"><i>(560 points possible)</i></p> <p><i>Kelly & Lemmons 249.0</i></p> <p><i>Knaak & Kantrud 360.5</i></p> <p><i>Jensen Bell Converse& Erickson 448.0</i></p> <p><i>Ratwik Roszak & Maloney 481.0</i></p>
	1/07/09	Councilmember Johnson email Professional Services Policy Requested Council Action	<i>RCA to Council 1/12/09</i>
1/12/09		Council rejected all proposals and extended current legal agreements for 12 months.	<i>Letters to all that responded advising them of the council decision to reject all proposals and extend current contracts 12 months.</i>
1/27/09		Prepared extension agreement with same terms as 2008.	<i>Received signed extensions.</i>

ROSEVILLE
REQUEST FOR COUNCIL ACTION

Date: 1/12/09

Item No.: 13.a

Department Approval

City Manager Approval



Item Description: Discuss Professional Services Policy

BACKGROUND

Council has previously discussed the Professional Services Policy. Councilmember Johnson has requested a discussion on the policy and effect on current legal services agreements.

POLICY OBJECTIVE

Revisit policy for selecting and retaining professional services while balancing the best interests of the City.

BUDGET IMPLICATIONS

- 1) The current policy limits a firm from reappointment after providing services for two consecutive 3-year terms:
 - a. This could potentially keep the City from procuring the best contract, and
 - b. Upon yearly review, Council has the right to extend or not extend the contract based upon performance and existing relationship
- 2) It may be to the City's advantage to limit the contract term to one year to:
 - a. Allow more flexibility in the budget, and
 - b. Allow a more fluid approach to professional services contracts

REQUESTED COUNCIL ACTION

Motion to remove language from the Professional Services Policy that limits service to six consecutive years; and

Consider extending legal service contracts for one year (2009) at the same terms as 2008.

Prepared by: Bill Malinen
Attachments: A: Proposed Professional Services Policy

Background

The City of Roseville retains outside professional services in the areas of:

- Legal (Prosecution, Civil, Economic Development, and Bond Counsel)
- Appraisal
- Planning and Landscape Design
- Audit
- Engineering, Architectural, and Environmental

Agreements for the above services have been through contracts either for specific projects or services, or a given period of time. For legal services, written agreements are completed annually.

Purpose

It is desirable to ~~amend the current~~ maintain consistent methods of selecting and retaining consulting services to:

- Consolidate significant professional service policies into one uniform policy
- Provide Citywide consistency in the procedure of selecting and retaining professional services
- Ensure public confidence in process integrity by limiting the amount of time professional services are provided
- Ensure a fresh perspective and new approach to professional services
- Ensure a regular, consistent fiscal review of professional services

Policy

It is the policy of the City to employ a consistent practice for selecting and retaining professional services. Contracts for professional services shall be for no more than three (3) years, and include a review process. ~~Consulting firms shall be engaged for a period of not more than two (2) consecutive three (3) year periods. After six (6) years, they shall not be allowed to renew consulting services for a period of three (3) years.~~ If deemed in the City's best interests, the City Manager may continue professional services for longer than six (6) years. If the need arises, the City Manager may solicit proposals and select firms for special projects or services. Contracts will be reviewed on a case by case basis.

Selection of all firms shall be approved by the City Council.

Consulting firms:

- Shall commit to the principles of the Professional Code of Ethics for their profession and the City of Roseville Code of Ethics for Public Officials
- May contact only designated Roseville City staff
- Will not represent any individual or corporation involved in litigation against the City of Roseville

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Procedure

1. The City Manager or designated staff will invite firms to submit proposals for providing professional services to the City of Roseville. The proposals shall include the following:

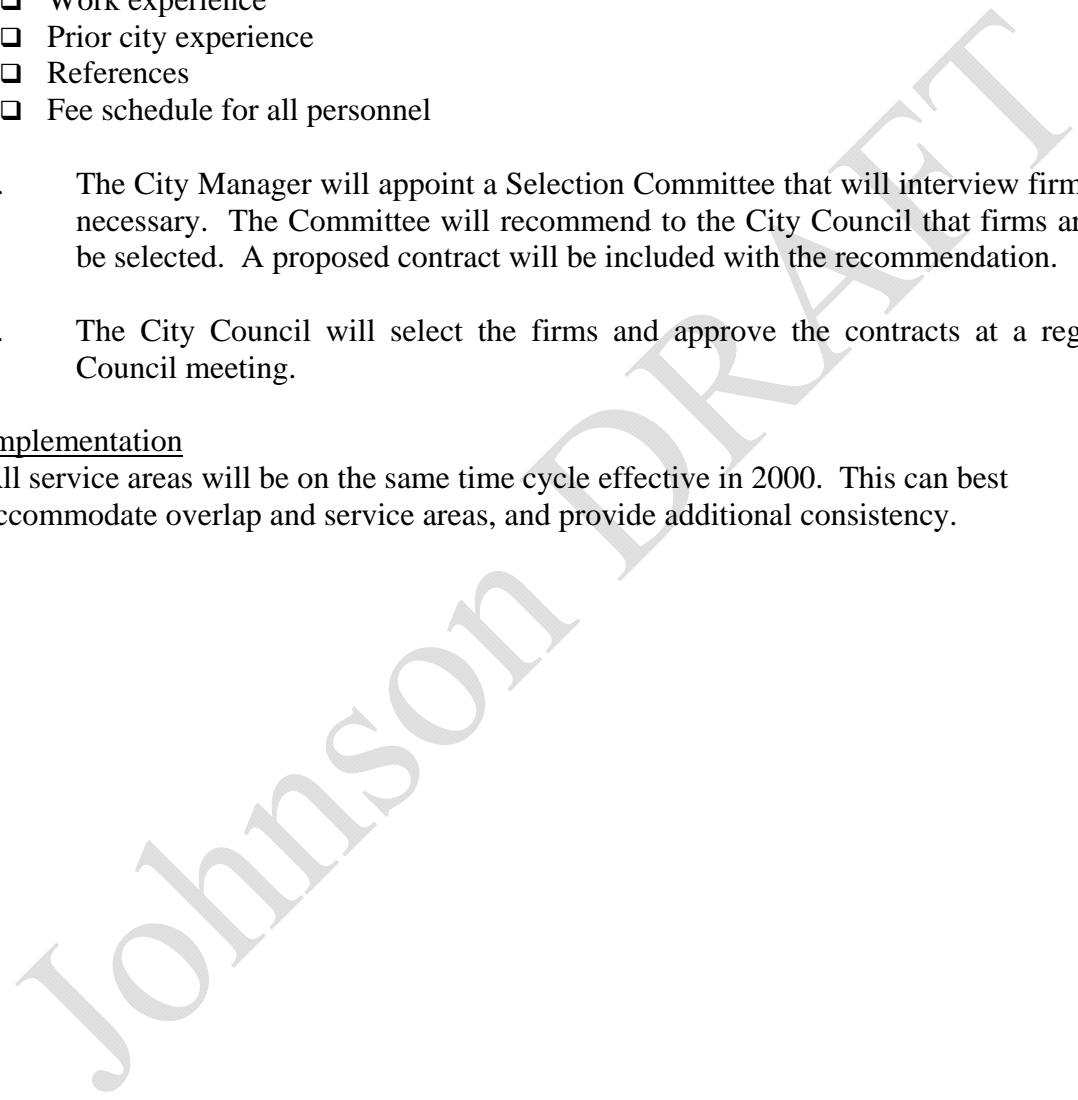
- Description of firm
- Technical qualifications
- Work experience
- Prior city experience
- References
- Fee schedule for all personnel

2. The City Manager will appoint a Selection Committee that will interview firms, if necessary. The Committee will recommend to the City Council that firms are to be selected. A proposed contract will be included with the recommendation.

3. The City Council will select the firms and approve the contracts at a regular Council meeting.

Implementation

All service areas will be on the same time cycle effective in 2000. This can best accommodate overlap and service areas, and provide additional consistency.



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Monday, January 12, 2009
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13. Business Items – Presentations/Discussions

a. Discuss Professional Services Policy

City Manager Malinen briefly discussed the Request for Council Action dated January 12, 2009 as initiated by the request of Councilmember Johnson for discussion of the policy and the effect on current legal services agreements.

Councilmember Johnson indicated that his rationale for this discussion was the six year sunset provision that could prohibit us from providing a best case scenario for the public; and opined that he would also like an annual review built into the policy to facilitate ongoing dialogue on performance.

Mayor Klausing clarified that there were two different and potential motions or actions for the City Council to consider.

Public Comment

John Kysylyczyn, 3083 N Victoria Street

Mr. Kysylyczyn questioned the future bid process; negotiating lower rates with current providers; and, commented on the professional services policy.

Councilmember Ihlan opined, on the issue of whether to extend the existing legal services contracts, she was under the impression that the City Council continued in the middle of that discussion of proposals from the end of last year, with the Council having requested additional information from staff related to the City Manager's recommendation. Councilmember Ihlan questioned if this item had been noticed as a future discussion item for tonight's agenda; and offered her willingness to have further discussions on the policy itself, but not taking action on appointment of a new City Attorney and/or Prosecuting Attorney at tonight's meeting.

City Manager Malinen advised that staff was not in receipt of any letter of resignation from the City's incumbent legal firms at this time; and was confident that cost savings could be negotiated with either or both of those firms following City Council ratification of his recommendation to retain the incumbents.

City Manager Malinen advised that he had suggested a process for annual review of legal services in previous discussions, and suggested incorporating that into policy revisions.

City Manager Malinen advised that staff had put together the Request for Council Action based on Councilmember Johnson's discussion requests and staff's perceived intent of those discussion points.

Councilmember Pust advised that she was cognizant of two different issues: that of extending legal service contracts for a year, recognizing some advantages in reviewing the current RFP process that provided only four bidders; and another issue in a broader review of the exiting policy. Councilmember Pust opined that she had concerns in making a decision on the two incumbent service providers without allowing the other bidders similar opportunities. Councilmember Pust recognized that both incumbent firms, when asked, had offered to keep their rates level for 2009; and suggested that the other providers needed to be provided fair consideration as well.

Councilmember Pust advised that she had consistently noted that there was no reason for language that incumbent firms couldn't rebid after six years; acknowledged that the overall policy may need review and revision; and noted that the City Council was always obligated to get the best deal for the City in any situations, even if that indicated retaining the same provider. Councilmember Pust suggested several changes to the existing policy, including striking language stating that only designated City staff could be contacted; and striking language regarding submitting RFP's if firms had already served the City for six years.

Councilmember Roe acknowledged those revisions, and noted that he had several others as well if that was part of tonight's discussion. Councilmember Roe questioned the contract period and/or annual fiscal review; noted that the current pol-

icy applied to a whole range of professional service contracts, and care needed to be given that those be considered in the discussion; and that the current policy had numerous inconsistencies that needed to be addressed.

Councilmember Roe spoke in support of a best value for legal services, based on review and performance criteria versus achievement, and suggested that the discussion include: 1) What purpose are we trying to achieve? and 2) How to implement those purposes.

Councilmember Johnson noted the need to review language proposed to be stricken under the purpose statement to provide for an annual review of professional services.

Further discussion included terms of current legal contracts having expired at the end of 2008; and fairness to all firms having bid.

Mayor Klausing opined that negotiating with current providers on a one year extension was appropriate.

Councilmember Ihlan, on the issue of extending contracts, opined that it was completely inappropriate to take that action tonight without additional information available and further review of the other proposals.

Councilmember Ihlan, on the issue of policy, noted that the Council had repeatedly stated their desire to achieve the best deal for the City; and opined that to do so required vigorous competition in the open market. Councilmember Ihlan questioned perceptions in the legal community and reasons for so few bids being received for legal services, or not wanting to bid against incumbents due to perceptions of entrenched relationships or insider arrangements and politicized decisions. Councilmember Ihlan further opined that by opening bids for other firms, and limiting years of service, it allowed for market competition and ensured public confidence through a competitive, open market system, and provided fresh perspectives. Councilmember Ihlan spoke in support of revised policy language that incumbents could rebid after a one year hiatus.

Councilmember Pust advised that she could support a one year extension with current legal providers, if she were assured that the process was fair to other bidders; thus her recommendation that action not be taken at tonight's meeting to allow all bidders equal opportunity, but recognizing that the best deal for the City is not always based on price, but also quality and expertise of the services provided. Councilmember Pust shared concerns that enough providers were not bidding, suggesting that this indicated the current process and policy needed to be reviewed; however, she also recognized that government clients were served by a subset of attorneys willing to do this less profitable work.

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Mayor Klausing suggested that the Council extend current legal services for one year, allowing additional time for review of the existing policy language and further discussions during that time. Mayor Klausing opined that Councilmembers had received the packet materials allowing for sufficient review time of this agenda item, and allowing them to make an informed decision.

Councilmember Pust reiterated her opinion that the City was bound by statutorily-defined competitive bidding, allowing the same opportunity for all bidders; and questioned if the City was opening themselves up for process arguments from other bidders by extending the incumbents' contracts at tonight's meeting.

Mayor Klausing agreed to disagree, opining that this was not the case for the lowest bidder, but acting on the City Manager's recommendation.

Councilmember Roe opined the need for a less arbitrary way to achieve the objectives beyond the original policy language and six year limitation. Councilmember Roe noted that the City had the right to reject all bids; extend the current contracts for a year; and start from scratch going forward following further policy discussion.

Klausing moved, Roe seconded, rejecting all bids for City Civil Attorney and Prosecuting Attorney services; and extension of current incumbent services for an additional one year period through 2009 at the same terms as those provided in 2008.

Councilmember Ihlan requested that the City Council have access to all proposals before considering such action; opining that this would determine how she would argue the motion.

City Manager Malinen provided copies of the original proposals and related materials for Councilmember Ihlan's review.

Recess

Mayor Klausing recessed the meeting at 8:21 p.m. and reconvened at 8:34 p.m.

Councilmember Ihlan, following her review of the proposals, spoke against the motion; and for the record, provided her summary of each firm's bid, and her perception of the performance of the incumbents. Councilmember Ihlan opined that the City Council had not given careful consideration to opportunities to save money, even with the current economic and budgetary concerns, and needed to seriously consider such savings in the competitive marketplace. Councilmember Ihlan further opined her concerns with performance of the attorney firms, specifically the Civil attorney, and more specifically to their advise on various Twin Lakes redevelopment issues, and subsequent court decisions contrary to that advice. Councilmember Ihlan opined that, by the City being sued by their own residents on Twin Lakes issues, as well as the Acorn Road situation, with the Court

deciding in favor of the residents, it indicated that the City Council was not doing their jobs, nor that their civil attorney was providing prudent and accurate legal advice. Councilmember Ihlan noted that the Council majority, exclusive of her lack of support, had concurred with that legal advice to the detriment of the community itself; in addition to subsequent majority agreement for financial settlements, costing the City's taxpayers additional monies.

Councilmember Ihlan spoke in opposition to any motion to extend contracts, specific to the City's civil attorney, opining that it did not serve the public or City's interest to extend this contract.

City Manager Malinen briefly reviewed the process for City ratification of the City Manager's recommendations for legal services; and spoke in support of the City Council's action extending the contract, based on the process to-date, and allowing for reconsideration and revision of the current policy. City Manager Malinen opined that, from staff's perspective and review of proposals, they were satisfied with the incumbent firms. City Manager Malinen further opined that, while lawsuits and appeals were not something anyone wanted to go through, at the end of the day, everyone from a staff perspective felt comfortable with the level of services received by the City.

Following further City Council discussion, and confirming receipt of applicable waivers from each firm to discuss data deemed private under the Data Practices Act, it was majority City Council consensus that all bids received, in their entirety, be made part of these minutes for public review and information.

Further discussion included costs quoted and/or reduced for 2009; quality analysis of existing bids; and analysis of performance included in the process.

Mayor Klausing spoke in support of the motion; opining that the legal advice provided to a client doesn't guarantee final results; and performance of the City's civil attorney was not determined by a standard that their advice was always upheld 100% by the court system.

Mayor Klausing reiterated past observations among Councilmembers that each individual did indeed take their jobs and the best interest of the community into consideration with each of their decisions, but that it was unrealistic that each member be in total agreement with all decisions. Mayor Klausing reiterated that if a Councilmember reached a different conclusion than their colleagues, that didn't mean they took their responsibility less seriously.

Councilmember Pust advised that her analysis would have lead to her support of the incumbent firms; however, noted that she would be voting against the motion, due to her concerns regarding the process itself.

Roll Call

Ayes: Roe; Johnson; and Klausung.

Nays: Ihlán and Pust.

Motion carried.

From: Bill Malinen
Sent: Thursday, March 26, 2009 2:48 PM
To: Margaret Driscoll
Subject: FW: Professional Services Policies

Please include this in the Council packet for their information.

-----Original Message-----

From: Mike Hill [mailto:mdhill23@comcast.net]
Sent: Saturday, February 28, 2009 11:54 AM
To: Bill Malinen
Cc: Douglas Root
Subject: Professional Services Policies

We understand the Development and Bond Council legal services are now handled on an Ad Hoc basis rather than by contract. We feel the policies should be changed to reflect this.

We understand written agreements are no longer done annually, and again we think the policies should be changed to reflect this.

We recommend eliminating the wording "After (6) years, they shall not be allowed to renew consulting services for a period of three (3) years". We feel the provision in the policies stating "Selection of all firms shall be approved by the City Council" gives the City Administrator and City Council authorization to handle the contracts.

Mike Hill
Roseville Citizens League

Professional Services Policy

Background

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