



Department of Planning & Community & Economic Development

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TO: Mayor Soglin
Common Council

FR: Department of Planning & Community & Economic Development staff

RE: Land Banking RFP Process Report

DT: May 8, 2012

Overview

This memo:

1. Discusses the pros and cons of potential RFP processes used by the city for a variety of purposes
2. Provides an overview of the RFP process used in selection of developers for the former Don Miller parcels acquired by the city with Land-banking funds
3. Recommends an alternative approach to future RFPs

RFP Processes Employed by City

There are essentially two processes commonly employed in evaluating alternative proposals:

- **Staff team** – Staff teams evaluate proposals and introduce a recommendation to Common Council for public debate and consideration. This process is routinely used to procure services from vendors. Such teams are not typically subject to open meetings considerations.
- **Ad Hoc/Standing Committee** – A formal act by the Council or Mayor creates a committee to evaluate proposals. This process was recently used to choose a purchaser for the Collins House. Such committees are typically subject to the open meetings law.

Each approach has pros and cons.

	<u>Pros</u>	<u>Cons</u>
Staff Team	Preserves negotiating leverage Shelters analysis from advocacy	Less initial transparency Public input must be sought later
Ad Hoc Committee	Fully transparent Public have input early	May weaken negotiating leverage Opens process to lobbying/politics

Discussion

The reason that procurement is typically done with a closed process is that the city can negotiate more favorable terms during discussions if it maintains more information and leverage than is available to vendors. For example, if you are asking vendors to provide a low bid (or in the case of land-banking, a high bid), it is in the city's interest to prevent competing vendors from knowing the bids of their rivals. Once bids are made public, the city's ability to negotiate a price better than the best bid is diminished.

For example, if vendor A knows how rivals B and C have bid, vendor A will base a revised bid on their rivals' opening bids and may even seek ways to collude to prevent bids from dropping to true bottom lines.

This process will tend to produce superior results if proposals are similar and can be evaluated on the same metrics (price per square foot, number of square feet developed, parking ratio requirements, etc.). This process also allows for a professional evaluation to be made prior to opening deliberations to political influences. The strengths of the procurement-style process, however, are also its weaknesses. It necessarily precludes public participation until the best offers are negotiated with bidders and assessed for their merits.

The Don Miller RFP Process

The resolution authorizing the purchase of Don Miller properties authorized either a direct sale or an RFP process. The staff team chose to issue an RFP. At the time, without the benefit of having disposed of properties purchased with land-banking funds, the staff team was concerned about two things:

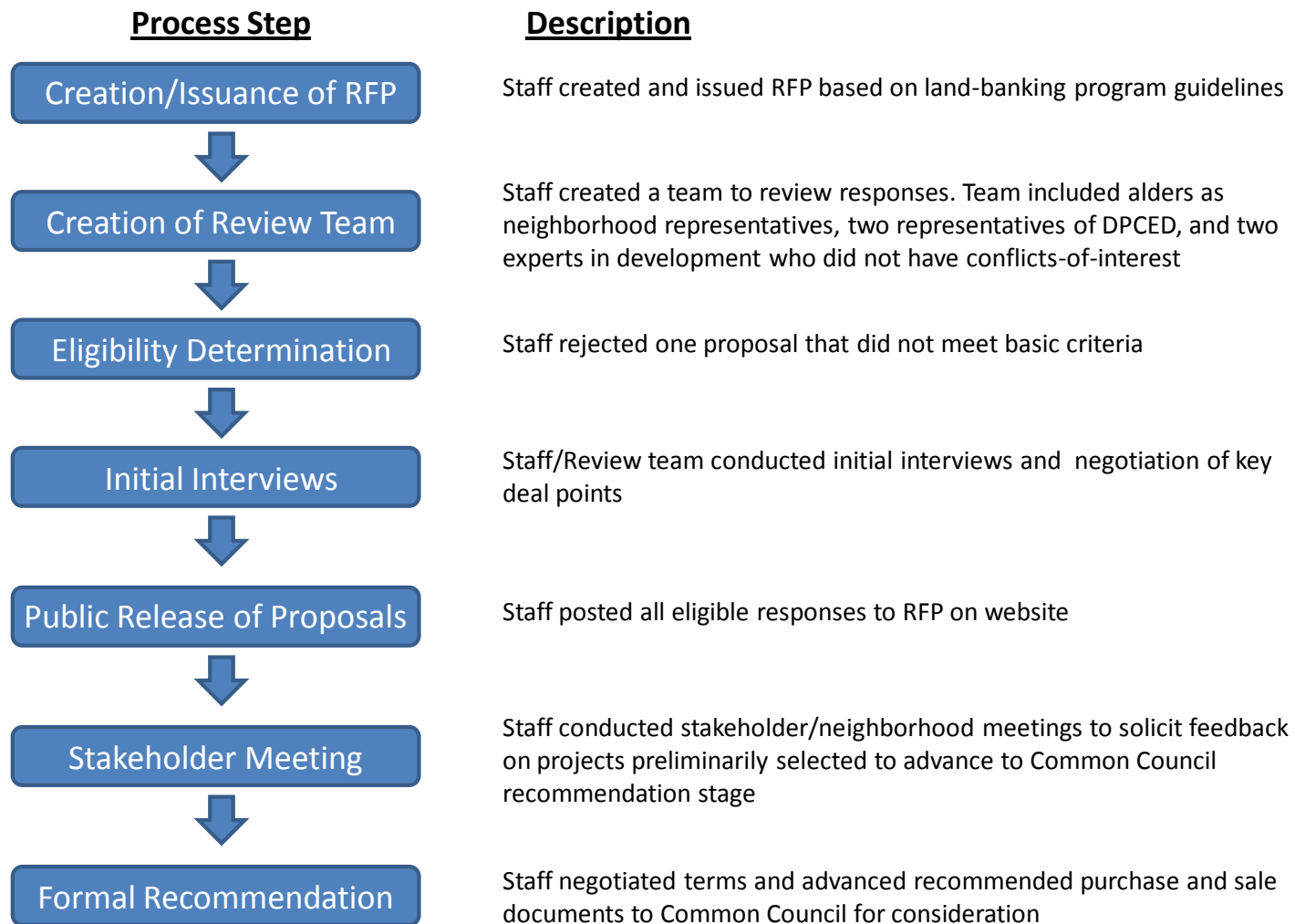
1. Negotiating the best possible development terms including maximizing economic/community impact and maximizing price
2. Avoiding pressure to select attractive, but economically unfeasible proposals

Recognizing the limitations of using only an internal team, staff incorporated avenues for neighborhood and public input. Staff also sought out additional development expertise from individuals who did not have potential conflicts of interest. This resulted in staff creating the so-called "Selection Committee" comprised of Steve Cover and Natalie Erdman from the Department of Planning & Community & Economic Development, Ed Clarke from the Economic Development Committee, Tom Landgraf a developer and UW Real Estate Instructor, Alder Bridget Maniaci, Alder Marsha Rummel, and Alder Satya Rhodes Conway. The role of this team was to help vet the proposals and advise on negotiations with applicants to generate the best possible option for the city. This team developed recommendations as to what proposers should be selected and staff then advanced recommended Purchase and Sale Agreements to the Common Council for deliberation and debate.

In addition, to gather additional public input prior to advancing any recommendations to the Common Council, the various proposals were posted on the city's website and staff held stakeholder meetings to present tentative recommendations and solicit feedback from the public.

The following chart shows the process schematically:

Don Miller RFP – Original Process Map



Discussion

The process selected was criticized for not immediately releasing the proposals, not conducting meetings open to the public, and not including public input earlier in the process. This process was unique in that it was the first time the city disposed of a land-bank property and because this aspect of the development process (the negotiation of terms of a Purchase and Sale Agreement) typically happens in private between private-sector parties. From this experience, we have learned that the public viewed this transaction as a land-use decision and not simply a real-estate negotiation.

The staff had good intentions in including elected officials as representatives of the neighborhood's voice. However, the inclusion of team members beyond staff blurred the lines between the processes available to the city. A recent memo from the City Attorney's Office notes that the use of the label "Selection Committee" created further confusion. The label and non-staff committee members led some to view the informal, staff-created team through the prism of other official city committees.

We recognize the importance of both negotiating the best deal and the importance of having early input from public stakeholders.

In the future, we would recommend the following process:

1. Council passes resolution accepting this report, creating a formal ad hoc committee (“Committee”), and authorizing an RFP to be released
2. RFP is drafted by staff, reviewed and approved by the Committee, and then released
3. RFP is drafted to elicit proposals that address:
 - a. Compatibility with existing plans and neighborhood input
 - b. Recovery of city costs
 - c. Economic feasibility and benefits
 - d. Community and neighborhood benefits
 - e. Project readiness
 - f. Developer team experience
 - g. Developer financial capacity
4. In drafting the RFP, staff and the Committee should consider directing proposers to separately submit certain information (such as proposed land price) in sealed envelopes for consideration after evaluation of other factors
5. Conduct an initial staff review of submitted proposals for completeness and compliance with the RFP
6. Release proposals to the public, media, etc.
7. Convene the Committee to:
 - a. Hear presentations from proposers
 - b. Allow initial public comment on proposals
 - c. Conduct preliminary discussions (with option to enter closed session if determined necessary by the Committee)
8. Allow time for neighborhood discussions and staff analysis
9. Staff draft a report analyzing and evaluating proposals and making a recommendation on a proposal(s) as appropriate
10. Committee reconvenes to:
 - a. Receive staff presentation of report and recommendation(s)
 - b. Allow additional public comment
 - c. Discuss and evaluate proposals (with option to enter closed session if determined necessary by the Committee)
 - d. Vote on recommendations to make to Common Council
11. Dissolve the Committee

This process will mitigate concerns about openness, transparency, and neighborhood involvement. It will have drawbacks. Proposers will understand rival proposals and benefit from that knowledge during negotiation. The city can reserve the right to ask for “best and final” offers. These offers, however, will be generated with full knowledge of the competition. It will also be important to design the RFP to ensure that the proposers are forced to address the feasibility and readiness of their projects so that the committee process does not become a beauty contest.