## STAFF REPORT

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| **Agenda Item No:** | 7 | **Name:** | Erik Sund |
| **Proposed Ordinance No**.: | 2014-0031 | **Date:** | February 4, 2014 |

**SUBJECT:**

Proposed Ordinance 2014-0031 would revise the competitive procurement process for the County’s financial services contracts to incorporate socially responsible banking requirements into both the scoring process proposals and the contract requirements for vendors that are selected.

**BACKGROUND:**

*County financial services procurement*

The County maintains a contract with a commercial bank to provide a range of standard banking services on behalf of County agencies and nearly 100 special districts for which the County serves as treasurer. King County Code Chapter 4.14 requires that these services be procured through a competitive bidding process. The Director of the Finance and Business Operations Division (FBOD) is responsible for developing specifications for a Request for Proposals (RFP) and submitting it to the County Council at least once every 5 years. These specifications are subject to review and approval by the Council before FBOD may publish a request for proposals (RFP) and soliciting bids from interested banks.

The most recent RFP for banking services was issued in 2008 for a service contract running from 2009 through 2014. The RFP allowed for the award of contracts for separate banking and safekeeping services for County securities, which permitted applicants to bid for a contract to provide either or both services. The current annual value of banking services under this contract is approximately $700,000, of which $435,000 is for services provided to County agencies. The remaining $265,000 is for services provided to special districts and is paid by the districts.

Banking services purchased by the County from U.S. Bank under terms of the 2009-2014 contract include the maintenance of numerous accounts for various funds and agencies; the acceptance of deposits of cash and checks received by the County; the handling of automated payments to and by the County; and the processing of warrants. The requirements for the county’s banking services RFP for the contract period running from 2009 through 2014 included:

* The bank must be a federally or state of Washington chartered bank with branches located within King County.
* The bank must be in compliance with the Public Deposit Protection Act and able to support a deposit of $250 million by the County.
* The bank must be either “satisfactory” (the second highest grade) or “outstanding” (the highest grade) under the Community Reinvestment Act (CRA) rating system.

There were also additional requirements for the safekeeping services contract:

* The bank must maintain a Federal Reserve account to handle book-entry security transactions. The bank will be the trustee for securities purchased by the county.
* The bank must be able to safekeep securities in New York City either through their own facilities or a correspondent relationship with a New York Bank.
* The bank must dedicate a single individual solely to maintaining the County’s account.
* The bank must provide the county, on a daily basis, a valuation of all securities held in safekeeping.

*Socially responsible banking*

The Community Reinvestment Act (CRA), enacted by Congress in 1977, was intended to encourage financial institutions such as banks and credit unions to better meet the financial needs of the communities in which they operate. The CRA is part of a series of legislation, including the Fair Housing Act and the Equal Opportunity Credit Act, which was created in response to concerns about “redlining” and other lending practices which discriminated against individuals and communities on the basis of race, sex, income level or other personal characteristics

Under the CRA, the lending practices of depository institutions such as banks and credit unions are subject to periodic review by a variety of federal regulatory agencies to assess performance in helping to meet the credit needs of its community.

The CRA rating is determined by the applicable federal regulator which rates the banks’ involvement in the community. In the case of banks operating in multiple states, the supervisory agencies are required to separately evaluate an institution's CRA performance in each state and metropolitan statistical area (MSA) in which it has a branch in addition to providing an overall rating for the bank's performance.The CRA rating process typically occurs every three to five years for most banks. The three main test areas for the rating are:

* Lending practices – including a review of the bank’s loan portfolio to determine whether it is providing equal access to credit to borrowers of all income levels and businesses of all sizes.
* Investments - in community development organizations and related efforts.
* Other services – including consumer education programs and the maintenance of bank branches, and other financial services needed by the community.

The CRA evaluation process takes into account information about the institution (such as a bank’s assets and lending capacity), its community (including demographic and economic data), and the performance of peer institutions in the same area. A bank can receive an overall performance rating of “outstanding”, “satisfactory”, “needs to improve”, or “substantial noncompliance”.

The CRA was among the first pieces of legislation in this country that reflected the idea that financial institutions owe certain obligations to the communities in which they operate, not just a responsibility to investors and clients. Since its enactment, a number of local governments have adopted socially responsible banking ordinances in an attempt to expand on the concepts of the CRA. Social responsible banking ordinances have been implemented by other large municipalities across the country, including the cities of Seattle, Pittsburgh, Philadelphia, Los Angeles, Berkeley, and San Diego. These ordinances generally establish CRA performance thresholds (as opposed to merely reporting requirements) and other standards that banks must meet in order to be awarded contracts to provide services to the jurisdiction in question.

**ANALYSIS:**

Proposed Ordinance No. 2014-0031 adds several requirements to the current procurement process for financial services in order to establish higher standards for socially responsible practices for any institution that provides banking services serving as the primary bank of the County. The ordinance would also provide for the monitoring and implementation of these requirements during the term of a banking services contract.

In order to be awarded a banking services contract by the County under this ordinance, a bank must hold a CRA rating of “outstanding”, the highest possible rating. Currently, no such requirement exists in the King County Code, although the most recent RFP for banking services established a minimum CRA rating of “satisfactory”, the second highest tier.

In addition, a new selection factor would be added to the procurement process. Any bank responding to the RFP is required to submit a Community Reinvestment Plan (CRP) that specifically addresses the bank’s activities within King County. The CRP must supplement information about the bank’s practices that are already required by federal regulators under the CRA. The CRP would focus on the bank’s performance over the most recent three years and include goals for the full term of the contract. Specific elements to be addressed in a CRP include:

* Lending practices – including mortgage lending with an emphasis on the needs of low- and moderate-income households; lending to nonprofit and for profit organizations that helps develop affordable housing and job opportunities for working families; and loans to small businesses, particularly in low-income and minority communities.
* Investments in the community –such as awarding grants to or purchasing tax credits from nonprofit organizations in order to improve affordable housing and employment opportunities.
* Services – including opening and maintaining bank branches in low- and moderate income communities; providing consumer education programs; providing technical assistance to small businesses; and otherwise delivering credit and banking services addressing the specific needs of low- and moderate-income communities, such as affordable check cashing and prepaid debit cards.

The evaluation of responses to future RFPs incorporate the respondents’ CRPs according to new scoring criteria established in County code and weighted as follows: 25% for the CRP; 40% for pricing; 25% for institutional qualifications and the overall quality of the response to the RFP; and 10% for the inclusion of small businesses as contractors and suppliers to the bank.

In order to facilitate oversight of a contract once it is awarded, the chosen bank is required to file an annual update to its CRP and brief the County’s Executive Finance Committee (EFC) on the progress made towards fulfilment of the goals contained in the plan. As a reminder, the EFC is representative of both branches of county government and is composed of the Chair of the County Council (who historically designates the Chair of the Budget & Fiscal Management Committee) the County Executive (who traditionally designates the County Administrative Officer) the Director of the Finance and Business Operations Division and the Director of the Office of Performance, Strategy and Budget.

Additionally, the Director of the Finance and Business Operations Division (FBOD) is required to monitor the bank and certify to the County Council annually that it has maintained its “outstanding” CRA rating and continues to work towards the commitments contained within the CRP.

In the event that a the County’s banking service provider fails to maintain its “outstanding” CRA rating for the geographic area including King County, the Director of FBOD must either terminate the bank’s contract with 180 days’ notice or, at the discretion of the Director, allow the bank to revise its CRP in order to address the deficiencies that resulted in the loss of the bank’s Outstanding rating. In any case, if the bank’s CRA rating is not restored to “outstanding” within two years of being downgraded, the Director must terminate the contract with 180 days’ notice.

If the bank breaches any other provision of the contract, the Director of FBOD must notify the bank of the breach and allow the bank 90 days to correct the problem. If the breach is not cured within 90 days, the contract must be terminated with 180 days’ notice. A second or third breach of contract must be handled in the same manner, with the addition of a financial penalty equal to 5 percent (for a second breach) or 10 percent (for a third breach) of the previous year’s banking fees under the contract. Termination of the contract is mandatory after a fourth breach of contract.

In recognition of the additional cost and effort involved in the revised RFP process, the maximum term for banking service contracts would be extended from 5 to 7 years.

**REASONABLENESS:**

Proposed Ordinance No. 2014-0031 codifies and expands on policies previously included in RFPs for banking services in order to promote socially responsible banking practices throughout King County. It recognizes that the practices and financial products of banks influence the financial stability, economic health and quality of life of King County’s residents and is directly aligned with King County’s Strategic Plan, including the equity and social justice initiative.

As such, adoption of this motion would constitute a reasonable business decision.

**INVITED:**

* Ken Guy, Director, Finance and Business Operations Division

**ATTACHMENTS:**

1. Ordinance 2014-0031