



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Julia H. Cooper

SUBJECT: SEE BELOW

DATE: March 7, 2019

Approved

D. D. SYL

Date

3/8/19

**SUBJECT: REPORT ON REQUEST FOR PROPOSAL FOR FINANCIAL SERVICES
(BANKING SERVICES) RFP 17-18-05 AND RELATED ACTIONS**

RECOMMENDATION

- a. Adopt a resolution authorizing the City Manager to take one of the following actions:
1. Reject all proposals for RFP 17-18-05, and
 - i. Issue a new RFP for banking services; **or**
 - ii. Explore the feasibility of an alternative delivery model for banking services and report back to the City Council prior to issuing a new RFP based on a new model on or before June 30, 2020, **or**
 2. As an alternative to rejecting all proposals for RFP 17-18-05, waive Wage Theft Prevention Council Policy 0-44 as applied to the procurement for and agreements to provide banking, lockbox, merchant card, and securities custodial services, issue a Notice of Intent to award to JPMorgan Chase Bank (San Francisco, CA) for general banking and lockbox services, and merchant card services, and proceed with the next steps in the procurement process.
- b. Adopt a resolution authorizing the City Manager to negotiate and execute amendments to extend the term of the current agreements with Wells Fargo for general banking and lockbox services, merchant card services, and securities custodial services through June 30, 2021 (to cover the period necessary to either issue a new RFP, or explore the feasibility of an alternative delivery model and transition services following a new RFP, or to allow sufficient time for implementation with JP Morgan Chase), subject to the appropriation of funds.

OUTCOME

Provide direction to the Administration with respect to options for general banking, lockbox, merchant card, and security custodial banking services for the City in light of wage theft issues identified with both Wells Fargo Bank and JPMorgan Chase, the two highest scoring firms in the City's most recent Request for Proposal (RFP) for banking and financial services.

BACKGROUND

Comprehensive banking services are critical to the financial operations of the City. Funds move in and out of the City every day and banking services are essential to process the movement of funds and to account for their values. Critical daily activities include investment wire settlements, debt payments, vendor payments, payroll transactions (including tax payments, benefit, and employee organization payments) for both active and retired City employees, and revenue collections from both cash deposits and electronic transfers from other agencies.

Banking services are tightly integrated to the financial working of the City with almost every City department impacted on a regular basis through some form of bank transaction. Monies are not received or disbursed without banking services and the City's financial systems do not work without integration with banking systems. Without such services, the City would be unable to function and support City operations.

RFP for Financial Services

In May 2018, the Finance Department issued a Request for Proposal (RFP 17-18-05) for Financial Services, consisting of four packages as described below.

Package A, General Banking and Lockbox Services includes electronic banking services, depository services, remote deposit services, cash vault services, online and IVR payment services, disbursement services, account reconciliation services, and check fraud services. Additionally, lockbox services are provided by banks, in which banks establish a post office box to receive payments on behalf of the City. The bank processes and deposits the payments to the City's account.

Package B, Merchant Card Services are required to run the City's credit card processing activities. This includes complete sales and credit drafts, data security, authorization procedures, submission and deposit of sales and credit card drafts, settlements, refunds/exchanges of credit, and compliance with credit card rules.

Package C, Bill Print Services are for the printing and mailing of bills for business tax and utility services to City residents and businesses

Package D, Securities Custodial Services are for safekeeping of the City's investment portfolios, settlement of investment transactions, collection of interest and principal paid on securities held on behalf of City, and delivery of cash or securities as directed by City. The City does not buy securities through the provider.

The City's current agreement with Wells Fargo for general banking and lockbox, merchant card services and securities custodial services ends on June 30, 2019. Kubra's agreement for bill print services for utility and business tax accounts also expires on June 30, 2019. The City received proposals from each of the following companies by the RFP submission deadline:

Package A, General Banking and Lockbox Services

- MUFG Union Bank (Walnut Creek, CA)
- U.S. Bank (Sacramento, CA)
- Wells Fargo Bank (San Francisco, CA)
- JPMorgan Chase Bank (San Francisco, CA)
- Bank of America (Charlotte, NC)

Package B, Merchant Card Services

- MUFG Union Bank (Walnut Creek, CA) with Worldplay, Inc (Symmes Township, OH)
- U.S. Bank (Sacramento, CA)
- Wells Fargo Merchant Services (Concord, CA)
- JPMorgan Chase Bank (San Francisco, CA)
- Bank of America (Charlotte, NC)
- Certified Payments LLC (Fort Worth, TX)
- Comerica Bank (San José, CA)
- First Data Merchant Services (Atlanta, GA)

Package C, Bill Print Services

- MUFG Union Bank (Walnut Creek, CA)

Package D, Securities Custodial Services

- MUFG Union Bank (Walnut Creek, CA)
- U.S. Bank (Sacramento, CA)
- Wells Fargo (Minneapolis, MN)

Each of the four packages was independently evaluated by three different evaluation teams (packages A and B were evaluated by the same team).

RFP Process for Package A and Package B

The proposals for Package A and Package B were evaluated by a five-member team with representatives from the departments of Finance, Parks, Recreation and Neighborhood Services, and Fire. Proposals were evaluated for experience, technical response, implementation plan, and corporate social responsibility. Finance-Purchasing reviewed and assigned points for the local and small business preference as well as scoring for cost. The written proposal scores for each Package is provided in Appendix A.

The two highest scoring proposers for each package, JPMorgan Chase and Wells Fargo, were invited to make oral presentations in order for the evaluators to ask questions and for proposers to make clarifications to their written proposals. Both proposers were subsequently invited to submit a Best and Final Offer and provide additional clarifications.

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The final scores were as follows:

Package A -- General Banking and Lockbox Services

Evaluation Criteria	Max Points	JPMorgan	Wells Fargo
Experience & Qualifications	25.0	20.8	22.5
Technical Response	25.0	18.2	19.7
Implementation Plan	15.0	11.4	12.0
Social Responsibility	5.0	3.5	2.5
Fee Structure (Cost)	18.0	18.0	16.1
Responsive Proposals for 2+ Packages	2.0	2.0	2.0
Local Business Preference	5.0	5.0	5.0
Small Business Preference	5.0	0.0	0.0
TOTAL	100.0	78.9	79.8

Package B -- Merchant Card Services

Evaluation Criteria	Max Points	JPMorgan	Wells Fargo
Experience & Qualifications	25.0	18.0	22.0
Technical Response	25.0	19.5	20.5
Implementation Plan	15.0	9.2	12.2
Fee Structure (Cost)	18.0	12.7	18.0
Social Responsibility	5.0	3.5	2.5
Responsive Proposals for 2+ Packages	2.0	2.0	2.0
Local Business Preference	5.0	5.0	5.0
Small Business Preference	5.0	0.0	0.0
TOTAL	100.0	69.9	82.2

The highest ranked proposer for Package A and Package B was Wells Fargo. The evaluation team also agreed that JPMorgan was a viable alternative for the City as the second ranked proposer to both packages.

RFP Process for Package C

Package C was evaluated by a three-member evaluation team with representatives from the departments of Finance and Environmental Services. After reviewing the one proposal received by Union Bank, the evaluation team concluded that it was not a responsible proposal. Staff's recommendation was to reject all proposals and issue a new RFP for bill print services at a later date. Staff plans to return to Council by June 2019 to extend the current agreement with Kubra to allow sufficient time to complete a new RFP and implement with a new vendor, if necessary.

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RFP Process for Package D

A three-person evaluation team with representatives from the Finance Department evaluated Package D, Securities Custodial Services. Proposals were evaluated for experience, technical response, implementation plan, corporate social responsibility. Finance-Purchasing reviewed and assigned points for the local and small business preference as well as scoring for cost. Wells Fargo was the highest scoring proposer for Package D. The evaluation team agreed that neither US Bank or MUFG Union Bank's proposals scored high enough for the City to consider them as viable alternatives. The final scores were as follows:

Evaluation Criteria	Max Points	MUFG Union Bank	U.S. Bank	Wells Fargo
Experience	25.0	16.0	16.3	16.3
Technical	25.0	17.4	18.5	21.4
Implementation Plan	15.0	10.4	10.2	10.9
Fee Structure (Cost)	18.0	3.6	1.4	18.0
Social Responsibility	5.0	4.5	3.8	2.3
Responsive Proposals for 2+ Packages	2.0	2.0	2.0	2.0
Local Business Preference	5.0	0.0	5.0	5.0
Small Business Preference	5.0	0.0	0.0	0.0
Total Points	100.0	53.9	57.2	75.9

City Council Policy 0-44: Wage Theft Prevention

The City adopted the Wage Theft Prevention Policy (0-44) in 2016 which required that all potential proposers to disclose whether it had been found, by a court or final administrative action of an investigatory government agency, to have violated federal, state, or local wage and hour laws within the past five years.¹ The Policy states that if a company had more than one (1) violation in the past five (5) years, the company was disqualified. Under the Policy, staff may only exercise discretion to disqualify if the company has had only one (1) violation in the past five (5) years.

When the Wage Theft Prevention Policy was first considered by the City Council for adoption, staff recommended that the decision to disqualify a proposer be discretionary and based on an evaluation of factors including:

1. the amount of the judgment or final administrative decision;
2. the number of prior violations;
3. the number of employees impacted by the prior violation;
4. whether the judgment or final administrative decision has been fully satisfied;
5. the size of the company and history of compliance with wage and hour laws;

¹ Resolution No. 77755: <http://www.sanjoseca.gov/DocumentCenter/View/62047>

6. the impact to the City; and
7. other factors that may be appropriate.

During Council discussion, wage theft judgments were thought to be uncommon and Council was concerned that such discretion would cause additional work on staff and invite unforeseen problems with companies who disclosed wage theft issues during the solicitation process. Council ultimately adopted a final Policy without the additional discretionary authority.

Wage Theft Disclosures in the Banking Services RFP

In response to the City's RFP, JPMorgan disclosed on their proposal certification form that, while they had no final court judgment or administrative action in its commercial banking line, they had 20 wage and hour judgments involving its other lines of business, all of which have been paid and satisfied. A subsequent review of the judgments indicated the disputes stemmed from disagreements over how commissions were distributed for mortgage loans by its former employees, or employees not being paid their last paycheck on their final date of employment with the company. Award amounts ranged from \$253 to \$38,254.

Wells Fargo did not disclose that it had any wage and hour violations but a preliminary independent inquiry confirmed Wells Fargo also had final judgments of a similar nature to ones disclosed by JPMorgan, primarily stemming from its retail banking business.² In response to further inquiry, Wells Fargo disagreed that any of the claims constituted wage theft. While they disagreed any payments were due, Wells Fargo indicated they had satisfied all California Department of Labor orders.

During the course of the RFP, the City also received an anonymous question from one of the prospective proposers if the City could grant a waiver of the Policy. The question and the City's response was as follows:

Proposer Question 153: *If a Bidder has more than one judgment for wage and hour violations within the past five (5) years, can the City grant a waiver from the requirements of Resolution #77755 and consider the bidder's proposal?*

City's Response: *This is in reference to Attachment E, the Proposal Certification Form. See Addendum #3 for which updates the referenced resolution number to the correct number.*

The City is unable to grant a waiver before an evaluation is completed.

In order to be considered, a potential proposer must submit a proposal. The City will disqualify the proposer, if applicable. If disqualified, the proposer could exercise its right to protest pursuant to Section 15 of the General RFP Document.

² The California Labor Commission revealed 10 orders against Wells Fargo ranging in award from \$840 to \$116,536. The 2 orders against JPMorgan had been previously disclosed as part of their response.

Only City Council has the authority to waive or not waive Resolution #77755 based on the totality of the circumstance.

Overall Summary

Due to the likelihood that the applicability of the Wage Theft Prevention Policy would determine the viability of the RFP process, the issue of disqualification was tabled to allow the evaluation team to consider each proposal on its merits. The final scores from the evaluation teams indicate that Wells Fargo is the highest ranked proposer for Package A, B, and D. JPMorgan is the second-highest ranked for Package A and B. There were no responsible proposers for Package C.

ANALYSIS

Proposers who qualify to respond to this RFP are largely from the banking industry, where wage theft is a challenge and a well-publicized issue³. Many banks operate numerous retail branches across the country, whereby disputes over wages or commissions have occurred. In this instance, Wells Fargo employs approximately 258,700 employees and operates 5,800 retail banking branches, while JPMorgan employs over 191,000 employees and operates approximately 5,100 branches.

It is highly unlikely that the City will find a bank with the institutional resources needed to provide the level of banking services required by the City and not have similar levels of wage theft challenges. Many of the other respondents to the RFP are cited in the Good Jobs First report and had wage theft violations⁴.

In addition, by state law, banks providing services to local agencies must be sufficiently collateralized to cover its deposits and balances; many smaller banking institutions are unlikely to have the sufficient collateralization to cover the City's deposits.

Preliminary Exploration of Service Delivery Alternatives

One of the recommendation options presented to the City Council in this staff report is to explore the feasibility of an alternative delivery model for banking services and to report back to Council by June 2020. Staff is aware of two California cities which have explored alternative models. A summary of the City of Berkeley experience is provided below and the City of Los Angeles is still in the RFP process over a year after the release of their RFP. Currently, staff has not identified an alternative service models for banking services.

³ Search results for keywords "wage theft bank":

<https://www.google.com/search?q=wage+theft+bank&oq=wage+theft+bank&aqs=chrome..69i57j35i39.2488j1j7&sourceid=chrome&ie=UTF-8>

⁴ https://www.goodjobsfirst.org/sites/default/files/docs/pdfs/wagetheft_report_revised.pdf

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Undertaking such an assessment is expected to require considerable work effort from staff. A redeployment of time and resources would be required to explore alternative models, which would likely increase the backlog of City strategic procurement activities.

City of Berkeley -- In 2012⁵, the City of Berkeley invited banks, credit unions and community development financial institutions (CDFI) in its banking services RFP and included “*protection of public funds (collateralization of public deposits)*” as an evaluation criteria. Ultimately, it was unable to identify a qualified non-large bank provider; only larger banks submitted proposals and the City of Berkeley awarded an agreement to Wells Fargo. The City of San José’s banking services solicitation also included the collateralization requirement in its most recent May 2018 RFP; 165 companies viewed the solicitation, including regional and smaller banks who did not submit proposals.

In 2017, the City of Berkeley formed a task force to explore alternative models. Since that time, the task force has been exploring strategies to “unbundle” its financial services with a new target implementation date of 2020. The task force planned to separately bid out armored car services, merchant card services, procurement card, and banking services into different solicitations but it has encountered its own unique challenges in finding qualified bidders for its armored car services. As of February 2019, Berkeley has not reissued the solicitation nor has it issued the rest of their planned procurements. By comparison, the City of San José already currently utilizes separate procurements and agreements for these services.

City of Los Angeles -- In January 2018, the City of Los Angeles released an RFP that focused only on general banking services. The City of Los Angeles’ RFP seeks to unbundle its over eight-hundred (800) Wells Fargo banking accounts into smaller agreements. As of February 2019, the RFP is still in the evaluation phase.

Waiver of Council Policy 0-44, Potential Disqualification under the Process Integrity Policy, and Notice of Intended Award

It is recommended that both JPMorgan and Wells Fargo be disqualified as proposers for having orders that exceed the Policy threshold. It is also recommended that Wells Fargo be disqualified for failing to disclose a material fact during the evaluation process under Resolution 77135, “*Procurement and Contract Process Integrity and Conflict of Interest*”, Section 7. Wells Fargo did not disclose on its proposal certification any wage and hour orders. In response to follow-up inquiry, Wells Fargo did provide general disclosures that are typically included in their proposals however these disclosures were not specific to wage and hour orders or judgments. However, if the Council does not direct the rejection of all proposals, staff recommends the award of Package A and B to JP Morgan Chase.

⁵ May 7, 2013 Memo from the City of Berkeley:

https://www.cityofberkeley.info/uploadedFiles/Rent_Stabilization_Board/Level_3_-_

[General/7.a.8._Council%20item_Wells%20Fargo%20Bank%20for%20Banking%20Svc..pdf](https://www.cityofberkeley.info/uploadedFiles/Rent_Stabilization_Board/Level_3_-_General/7.a.8._Council%20item_Wells%20Fargo%20Bank%20for%20Banking%20Svc..pdf)

A notice of intended award could be issued to JPMorgan if the City Council waives the Wage Theft Prevention Council Policy 0-44 for this procurement.

City Council Could Reject All Proposals and Waive Council Policy 0-44

If the City Council elects to reject all proposals, the City Council could waive or modify the Policy for any subsequent RFPs for banking, lockbox, merchant card, securities custodial or related services. Without a waiver or modification of the current Policy it is highly unlikely that a new RFP will produce a different result for the reasons stated above.

Also, under the Policy, failure to disclose wage theft violations or wage theft violations that occur *during the course of an agreement* may also be the basis for contract termination. If the City Council rejects all proposals, staff recommends a waiver of the Policy to allow extension of the current agreements with Wells Fargo to provide the time needed to issue a new RFP.

ALTERNATIVE

The City Council has discretion to award to Wells Fargo Bank notwithstanding the Procurement and Contract Process Integrity and Conflict of Interest Policy (Resolution 77135, Section 7), and may direct the City Manager to negotiate and execute agreements with Wells Fargo Bank (San Francisco, CA) for general banking and lockbox services, Wells Fargo Merchant Services (Concord, CA) for merchant card services, and Wells Fargo (Minneapolis, MN) for securities custodial services as the highest scored proposer for Packages A, B, and D.

EVALUATION AND FOLLOW-UP

If the City Council directs staff to issue a notice of intended award to JPMorgan, staff plans to return to Council by June 2019 for authority to negotiate and execute the necessary agreements with JPMorgan.

This procurement may have been the first instance wage theft disclosures impacted procurement. The report by Good Jobs First claims many of the Fortune 500 companies have experienced more than one (1) wage theft violation, and many of these companies have current agreements with the City. Wage theft also affects small and local businesses as well. Under the Wage Theft Prevention Policy staff must disqualify the company if the company discloses more than one violation in the past five years even when the wage theft occurs by mistake or is for a relatively small dollar amount, or is disputed by the company. Upcoming procurements in which wage theft issues may arise include janitorial services, security services, and various technology service contracts.

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PUBLIC OUTREACH

This memorandum will be posted on the City's website for the March 19, 2019 City Council meeting.

COORDINATION

This memorandum has been coordinated with the Department of Public Works' Office of Equality Assurance and the City Attorney's Office.

COMMISSION RECOMMENDATION/INPUT

There is no commission recommendation or input associated with this action.

CEQA

Not a project, Public Project Number PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

/s/

JULIA H. COOPER

Director of Finance

For questions, please contact Jennifer Cheng, Deputy Director of Finance, at (408) 535-7059.

Attachments

**Appendix A
Evaluation Scores**

PACKAGE A, GENERAL BANKING & LOCKBOX SERVICES SCORING

Written proposal scores

Evaluation Criteria	Max Points	Bank of America	JP Morgan	MUFG Union Bank	U.S. Bank	Wells Fargo
Experience & Qualifications	25.0	15.8	21.7	19.2	16.3	22.5
Technical Response	25.0	17.0	19.2	17.2	16.0	20.0
Implementation Plan	15.0	10.8	12.0	9.9	10.2	12.9
Social Responsibility	5.0	3.5	3.5	4.0	3.0	2.0
Fee Structure (Cost)	18.0	13.0	13.5	12.2	8.1	18.0
Responsive Proposals for 2+ Packages	2.0	2.0	2.0	2.0	2.0	2.0
Local Business Preference	5.0	5.0	5.0	0.0	5.0	5.0
Small Business Preference	5.0	0.0	0.0	0.0	0.0	0.0
TOTAL	100.0	67.1	76.9	64.5	60.6	82.4

Final Scores

Evaluation Criteria	Max Points	JP Morgan	Wells Fargo
Experience & Qualifications	25.0	20.8	22.5
Technical Response	25.0	18.2	19.7
Implementation Plan	15.0	11.4	12.0
Social Responsibility	5.0	3.5	2.5
Fee Structure (Cost)	18.0	18.0	16.1
Responsive Proposals for 2+ Packages	2.0	2.0	2.0
Local Business Preference	5.0	5.0	5.0
Small Business Preference	5.0	0.0	0.0
TOTAL	100.0	78.9	79.8

PACKAGE B, MERCHANT CARD SERVICES SCORING

Written Proposal Scores

RFP Criteria	Max Points	Bank of America	Certified Payments (First American)	Comerica Bank	First Data Merchant Services (Santander)	JPMorgan	U.S. Bank (Elavon)	Worldpay/ Union Bank	Wells Fargo
Experience & Qualifications	25.0	6.5	17.0	17.5	17.5	18.5	19.5	16.0	22.0
Technical Response	25.0	16.4	14.1	17.0	17.7	20.0	15.5	15.9	20.0
Implementation Plan	15.0	9.6	7.1	8.4	9.9	9.6	9.2	8.1	12.2
Social Responsibility	5.0	3.0	2.5	3.5	3.0	3.5	3.0	3.0	2.5
Fee Structure (Cost)	18.0	7.4	0.2	14.6	6.3	13.5	14.3	7.7	18.0
Responsive Proposals for 2+ Packages	2.0	2.0	0.0	0.0	0.0	2.0	2.0	2.0	2.0
Local Business Preference	5.0	5.0	0.0	5.0	0.0	5.0	5.0	0.0	5.0
Small Business Preference	5.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	100.0	49.9	40.9	66.0	54.4	72.1	68.5	52.7	81.7

Final Scores

Evaluation Criteria	Max Points	JP Morgan	Wells Fargo
Experience & Qualifications	25.0	18.0	22.0
Technical Response	25.0	19.5	20.5
Implementation Plan	15.0	9.2	12.2
Fee Structure (Cost)	18.0	12.7	18.0
Social Responsibility	5.0	3.5	2.5
Responsive Proposals for 2+ Packages	2.0	2.0	2.0
Local Business Preference	5.0	5.0	5.0
Small Business Preference	5.0	0.0	0.0
TOTAL	100.0	69.9	82.2