

## PRIVILEGED AND CONFIDENTIAL

**Date:** May 19, 2020

**To:** Lisa Morrison Butler  
Department of Family and Support Services, Commissioner

**From:** Baker McKenzie

**Re:** **Early Learning RFP Process Assessment**

### I. Overview and Summary

On October 25, 2019, the City of Chicago ("City") retained Baker McKenzie in a pro bono capacity, to undertake a limited review of the process employed by the City's Department of Family and Support Services ("DFSS") in 2018 and 2019 in connection with the City of Chicago's Request for Proposals ("RFP") for participation in the Chicago Early Learning ("CEL") program. Specifically, Baker McKenzie was asked to address whether DFSS had a structural process for the RFP and implemented that process objectively and without bias.

The RFP was the first Early Learning RFP to be issued by DFSS since 2012. In the intervening years, existing DFSS arrangements with providers had been renewed without the benefit of an RFP. The 2019 RFP represented an attempt by DFSS and the City to provide young children across the city with access to high quality early learning through a comprehensive citywide system of school and community-based early learning programs. As part of the RFP, DFSS sought to implement refreshed strategic goals not articulated in previous Early Learning RFPs issued by the Chicago Public Schools ("CPS") and DFSS, including: a) advancing kindergarten readiness; b) providing citywide coverage; c) improving quality standards; and d) maximizing funding streams. The RFP set forth a competitive process designed and managed by DFSS whereby DFSS received close to 250 funding proposals from over 150 delegated agencies ("Agencies"), 101 of which were awarded funding.

We conclude that the RFP set forth a process that was reasonably designed to generate the information needed by DFSS to choose appropriate Agencies in an impartial manner that would meet DFSS's objectives and the requirements of the State and Federal early learning grants administered by DFSS. We also find that DFSS adhered to the processes set forth in the RFP, and that in its implementation of the RFP, DFSS demonstrated a commitment to bring objectivity, impartiality and a level playing field to the RFP process.

The RFP process took place in the context of a variety of unique early learning policy considerations and market developments, including a) the decision by the City to adopt Universal Pre-K for 4 year-olds, b) evolving and often contradictory views regarding early education quality measures and standards

within the education profession generally and specifically among the Agencies, c) the consolidation of multiple different State and Federal funding sources into one RFP, and d) increased competition for limited early learning funding among Agencies generally. These factors contributed to an extensive and comprehensive RFP design and implementation process, which was new in material respects for both the DFSS early childhood staff and applicant Agencies. This new approach magnified communication and engagement challenges for DFSS staff throughout the process, with some participating Agencies expressing disappointment with the ultimate funding results and questioning the efficacy, design and/or fairness of the RFP process. While acknowledging the breadth and dimension of the Agency and community concerns and considering them carefully in the context described above, we remain well persuaded that DFSS designed and implemented a reasonable RFP process.

## **II. Scope of Baker McKenzie Review**

The DFSS Commissioner and the City asked Baker McKenzie to undertake a limited review of the RFP process and its implementation. Specifically, Baker McKenzie was requested to assess DFSS's RFP to consider whether DFSS had a process for the RFP and adhered to that process in its selection of provider Agencies. We were not asked to evaluate whether the process deployed appropriate criteria, nor whether DFSS appropriately judged any individual submission. We evaluated solely whether DFSS employed the process it said it would undertake.

In the course of our review, we examined: a) the RFP and related amendments; b) various internal documents provided to us by DFSS regarding the development and implementation of the RFP; and c) multiple other documents provided by community-based organizations participating in the RFP.

We interviewed seven (7) members of the City and DFSS staff involved in the preparation and implementation of the RFP, including the central individuals involved with its design and implementation. We also reached out to a representative sample of approximately twenty (20) provider applicants jointly selected by us with DFSS, which included legacy Agencies who continue to receive funding, legacy Agencies who have since been defunded, applicants who were newly granted funding and have not previously been delegated Agencies, and new applicants who were not granted funding. Some applicant organizations declined to meet with Baker McKenzie; in one situation, two uninvited organizations accompanied one of the invited interviewees. Interviews of the staff and applicants were lengthy, typically running for two to four hours. The interviewed Agencies provided many documents and materials, which we considered carefully in relation to this Report but did not share with DFSS. Similarly, comments from interviewees, including members of the City and DFSS staff, have been kept anonymous without attribution both throughout our undertaking and in this Report.

## **III. Summary of the RFP Process**

The DFSS RFP was founded on an RFP process approach that had been consistently implemented across all recent DFSS-led RFPs following a strategic shift in DFSS's RFP policy, which had been developed by DFSS several years ago with assistance from third parties such as the Harvard Government Lab. DFSS's approach to this RFP, like other recent DFSS-led RFPs, was to better identify

and more concretely define its goals regarding success—in this case pertaining to early childhood education—as well as to satisfy the City's RFP process. This shift, which involved more concretely identifying the desired outcomes and objectives as well as the criteria and selection factors that would lead to those objectives and outcomes, differed materially from the DFSS Early Learning RFP in 2012.

In August 2018, DFSS began the process of developing an RFP that would be issued in 2019 to choose Agency participants in the CEL program. During August through October, DFSS formalized an RFP development team, which worked closely with the Director of Strategic Planning to help DFSS formulate RFP goals and priorities and choose the strategies that would best capture the information needed for DFSS to select appropriate Agency providers.

As part of DFSS's process of developing a more strategic RFP, DFSS also reached out to its Executive Director / Program Director ("EDPD") group, which was comprised of representatives from legacy delegated Agencies. Prior to the development of the RFP, these EDPD meetings were held on a quarterly basis; beginning in the fall of 2018, these meetings were held twice a month. During these EDPD meetings, DFSS engaged the Agencies about their concerns, both with regard to the RFP process and to issues relating to fund allocation and selection criteria more generally. Given the significant changes DFSS anticipated for the RFP, DFSS sought to use these EDPD meetings to explain the new strategic goals underlying the RFP and to prepare the delegated Agencies for a materially different RFP application and selection process than had been employed in 2012.

A draft of the RFP was first submitted to the Director of Strategic Planning and Procurement Coordinator in late November. The RFP was finalized in March 2019 and subsequently sent to the Office of Budget and Management ("OBM"), the Office of Law, and the City Comptroller for review and approval.

The RFP application that resulted consisted of a 60-plus page document that reflected the complexities of DFSS's goals, as well as the fact that this was the first RFP to combine five different State and Federal funding streams, each of which had their own funding requirements and constraints, such as student-to-teacher ratios as well as classroom locations. This integration and consolidation of funding sources into one RFP ultimately contributed to the complexity and length of the RFP application.

DFSS released the RFP for applicants on April 2, 2019 through the City's online portal. The move to submission electronically was an important one and marked a divergence from the previous RFP in which submissions were made in person or in writing. All applications were due through the City's e-procurement system by noon on May 15, 2019. A number of webinars and conferences were held from March to May, both specifically on the RFP application and process, as well as more generally on CEL-related topics, such as operational budgets, CEL standards, and delegate/partner networking. These training sessions were held both in person and online, and offered applicants the opportunity to submit questions both in person and through email or phone. Responsibility for answering the questions raised was divided between the OBM and DFSS, with substantive questions regarding the RFP directed to DFSS and technical questions regarding the portal or electronic submission directed to OBM. Together,

DFSS and OBM answered over one hundred questions, which were released in omnibus Q&A documents to the applicants.

DFSS received 213 applications initially. After analysis and consultation regarding the applications, DFSS decided to release the RFP for a second round on June 25. Applicants were invited to demonstrate any additional capacity beyond information provided in the first RFP response. DFSS received 35 applications through the second round of the RFP.

DFSS engaged approximately 50 volunteer reviewers to read grant applications and score them; ultimately, some additional paid reviewers were retained to assist in ensuring for a timely scoring of all submissions. As is common practice for such RFPs, volunteer reviewers consisted of professors and largely graduate students with experience in early childhood education from five institutions of higher education, including Erickson Institute, National Louis University, Chapin Hall, Chicago City Colleges, and University of Illinois. DFSS provided readers with training on the RFP. Each application then was reviewed by two separate reviewers, with each reader providing a separate score. In cases where the scores differed by a significant amount between the two readers, a third reader was assigned to provide an additional score.

Final funding decisions were made by a review committee comprised of four senior DFSS Early Learning staff members, including the DFSS Deputy Commissioner of Children Services. The review committee analyzed the scores and evaluations submitted by the readers for all the applications. Applicants were ranked by scores received and those not meeting the minimum scoring threshold were not eligible to receive funding. It is our understanding that the DFSS review committee did not receive any input from the Mayor's office or any other City agency in the award decisions, and the ranking and evaluation of the applicants was based solely on the Review Committee's consideration of the written submissions and the readers' assessments. Additionally, the DFSS review committee did not factor in any personal experience it may have had with any applicant based on prior working relationships with CPS or DFSS. Readers and the review committee only evaluated information provided by the applicant in its written submission regarding its past achievements or its ability to provide quality education on a going-forward basis. This approach reflected DFSS's decision not to advantage or give undue weight to legacy providers who have a long-standing relationship with CPS or DFSS in the 2019 RFP process.

Once the applicants were ranked, the review committee then allocated funding among those organizations above the threshold based on a "blending and braiding" process that ensured that no Agency program would be solely funded through one funding stream. DFSS prioritized agencies that could demonstrate a comprehensive early learning program strategy that would require multiple funding streams and further, among similarly ranked applicants, gave preference (e.g. more slots) to organizations that could serve target, high-risk populations and communities. Ultimately, DFSS awarded approximately \$188 million in relation to the Phase 1 RFP and approximately \$5 million to the Phase 2 RFP applicants.

Thereafter, each applicant who submitted an application under the RFP was contacted, both by phone and in written communication, with a description of the resulting allocation or denial. DFSS also

uploaded a list for public access, breaking down the Agencies that received funding and the accompanying allocation amounts. DFSS offered an in-person post-determination meeting with any applicant who requested additional discussion; in those meetings, DFSS provided a general evaluation of the applicant's submission and addressed the overall approach taken by DFSS in arriving at its funding determinations, but did not provide any numerical scores or quantitative information about how any particular applicant was "ranked" or "weighted."

#### **IV. Overall Findings Regarding the RFP Process**

##### **A. RFP process was reasonably designed.**

Based on our interviews with DFSS staff and the Agency representatives with whom we met and our review of the RFP documentation and related correspondence, we believe that the RFP defined an appropriate process designed to generate the information needed by DFSS to impartially choose qualified Agencies that would meet DFSS's objectives and the requirements of the State and Federal early learning grants. As part of their efforts to do so, the DFSS staff exhibited a willingness to consult with outside professionals to improve the RFP, including working with the Harvard Government Lab, and an openness to funding new and different community-based organizations outside of legacy Agencies as a means of achieving those strategic goals. DFSS communicated its strategic goals, provided evaluation and selection criteria to prospective applicants, and offered many avenues both in person and online for prospective applicants to ask questions about the process and the application.

##### **B. DFSS adhered to the process set out in the RFP.**

We conclude that DFSS followed the methodology set forth in the RFP and such methodology and process was generally appropriate for the task set out by DFSS. DFSS Early Learning staff and a number of independent outside readers were engaged to review submissions. After a thorough review of the applications and the evaluations provided by the outside readers, DFSS Early Learning senior management was directly engaged in and made or oversaw all final funding determinations. DFSS also took great pains to inform and educate Agencies in how the RFP process would work and generally responded promptly and thoroughly to inquiries and questions from participants to prepare them to respond to the RFP.

##### **C. DFSS demonstrated a commitment to bring objectivity, impartiality and a level playing field to the RFP process.**

We also found the DFSS staff involved in the RFP to be dedicated, hard-working, and committed to meeting the challenge of improving the early learning offerings available to Chicago children. Those individuals demonstrated a keen desire to achieve the progressive and thoughtful strategic goals of the 2019 RFP. Throughout the process, including as to the determinations, the DFSS staff demonstrated a commitment to objectivity and impartiality, and we did not identify evidence of favoritism or bias in the development or implementation of the RFP.