



Board Report 24-18

Date: April 16, 2024

To: Board of Deferred Compensation Administration

From: Staff

Subject: Retention of Outside Fiduciary Law Counsel

Board of Deferred Compensation Administration

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Recommendation:

That the Board consider and approve the recommendations to: (a) receive and file the following information regarding the process for the selection and retention of outside counsel for the provision of fiduciary advice, and (b) direct Staff to participate in the selection process being managed by the Office of the City Attorney (Office) and return to the Board with a recommendation for further action.

Discussion:

The Board's Counsel, Deputy City Attorney Charles Hong (DCA Hong), recently informed Staff that the Office issued a Request for Proposal (RFP) for fiduciary law counsel services, amongst other services, for the City's defined benefit retirement plans (Retirement Plans). Proposals from the RFP are expected to be received on April 19, 2024, unless otherwise extended. DCA Hong further informed staff that this RFP may be leveraged to identify law firms who may be qualified to provide fiduciary law advice to the Board with respect to the administration of the City's Deferred Compensation Plan (Plan). With fiduciary law issues being a matter of importance to the Board in the administration of the Plan, the availability of outside fiduciary law counsel services for the Board and Plan would provide an additional resource to supplement existing fiduciary advisory resources.

The Office has invited staff to participate with the DCA Hong and in conjunction with others in the Office in the selection process, which may include, but not limited to, the review of the RFP responses, oral interviews and consideration of recommendations from other deferred compensation plans that use outside fiduciary law counsel. Staff's evaluation focus will include, among other items:

- Experience in providing fiduciary law advice to similarly situated deferred compensation plans
- Depth of knowledge regarding IRC Section 457 and other relevant Federal and State laws and regulations, and court rulings with respect to fiduciary law

- Qualifications of the attorney(s) to provide legal services
- Hourly billable rates
- Ability to effectively communicate technical/legal concepts and information
- Ability to identify and effectively frame options

Upon the conclusion of the review and selection process, Staff will return to the Board with a recommendation regarding the selection of one or more law firms. Although the Board will not technically select the vendor, the Board has a significant interest in the firm(s) selected since it, the Plan, and staff will be the recipient of the legal advice provided and will pay the costs thereof. The Board's recommendation will be submitted to the Office for its consideration in the selection/retention process for outside tax counsel. In the event this RFP process does not solicit the type of law firms that can provide the needed fiduciary law counsel services for the Board or the Plan, Staff and DCA Hong (or other Board Counsel) will consider the opportunity to issue a separate request for proposal.

The outside fiduciary law counsel contract would, pursuant to the requirements of the City Charter, be between the Office and the selected law firm(s). The costs of outside fiduciary legal services would be billed to the Plan. However, requests for outside fiduciary law counsel services will be made through DCA Hong (or other Board counsel) and any advice provided will be reviewed by DCA Hong (or other Board Counsel) prior to submission to Staff and/or the Board. DCA Hong (or other Board counsel) and the Office's Outside Counsel Oversight Division will monitor the performance of the services and review all invoices submitted for payment.

Staff therefore recommends that the Board consider the receipt and filing of the above information provided regarding the process for the selection/retention of outside fiduciary law counsel and direct staff to participate in that process and return to the Board with a recommendation for further action regarding the selection/retention of one or more law firms.

Submitted by: Esther Chang, Defined Contribution Plan Manager