



Agenda Item 11

November 20, 2013

ITEM NAME: Extension of Contract and Approval of Solicitation for Board Fiduciary Counsel

PROGRAM: Board of Administration

ITEM TYPE: Action

RECOMMENDATION

Approve recommendation to (1) extend the term of the contracts for the Board's two external fiduciary counsel for one year, and (2) issue a solicitation for the Board's external fiduciary counsel.

EXECUTIVE SUMMARY

In 2010, the Legal Office issued a solicitation for the Board's external fiduciary counsel. After interviews with the Board, two firms were selected and contracts were awarded to Reed Smith, LLP and Reinhart Boerner Van Deuren s.c. The initial terms of the contracts commenced on January 1, 2011, and expire on December 31, 2013. Both contracts provide that they may be extended for up to two successive one-year periods.

STRATEGIC PLAN

This item is not a specific product of either the Strategic or Annual Plans. The selection and evaluation of Board consultants is a power reserved to the Board of Administration.

BACKGROUND

The Board has the authority to select external fiduciary counsel. Historically, fiduciary counsel has advised the Board and staff, as requested, on a variety of issues that impact fiduciary responsibility and liability. These issues have focused on the relationship between article XVI, section 17, of the California Constitution and other bodies of law, as well as the application of common law trust principles to specific fact situations. Counsel has also participated in providing the Board and staff with periodic fiduciary training.

Contracts for legal services are exempt from the competitive bidding requirements of the Public Contracts Code. Notwithstanding this exemption, CalPERS has historically issued a solicitation for outside counsel. Where the solicitation is for fiduciary counsel, the Board interviews and selects the firms. The Board last interviewed candidates for external fiduciary counsel in November 2010. After

interviews with the Board, two firms were selected and contracts were awarded to Reed Smith, LLP and Reinhart Boerner Van Deuren s.c.

The current contracts expire on December 31, 2013. The terms of both contracts may be extended for up to two successive one-year periods. Staff recommends extending the terms of both contracts for a one-year period, and recommends issuing a solicitation in the first half of 2014 for a new pool of external fiduciary counsel. Candidates will be presented to the Board for interviews in the second half of 2014.

ANALYSIS

Staff recommends extending the term of the current fiduciary counsel contracts for a period of one year, which will result in a total term of four years for each contract. This one-year extension is permitted by the provisions of the existing contracts, and will give staff time to issue a solicitation for a new pool of fiduciary counsel in the first half of 2014, and give the Board time to interview qualified candidates in the second half of 2014.

BUDGET AND FISCAL IMPACTS

If approved, a solicitation will be issued in the first half of 2014 and the Board will interview and award contracts in the second half of 2014. The cost of these services will be determined based on the fee proposals submitted by the selected firms and billed on a negotiated hourly rate.

BENEFITS/RISKS

The benefits of the recommendation include continued representation of the Board by qualified firms under the existing contracts, as permitted by the terms of the existing contracts, while affording staff and the Board a reasonable and adequate period of time to solicit for and select a pool of new fiduciary counsel. The risk of the recommendation is that the selection of a new pool is delayed by one year.

The risk of not extending the term of the existing contracts is that the contracts will expire on December 31, 2013, and there is not enough time to issue a solicitation and for the Board to interview and select a new pool of firms before December 31, 2013.

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