



Agenda Item 10

August 20, 2014

ITEM NAME: Selection of Fiduciary Counsel Firms for Interviews

PROGRAM: Board of Administration

ITEM TYPE: Action

RECOMMENDATION

Based on staff's evaluation of the proposals received in response to CalPERS' solicitation for external Fiduciary Counsel and staff's interviews of five of the ten law firms that responded, staff recommends the Board interview (i) Klausner Kaufman Jensen & Levinson and (ii) ReedSmith LLP at the September 2014 Board of Administration meeting.

EXECUTIVE SUMMARY

The purposes of this item are (i) to provide information about the law firms that submitted proposals in response to CalPERS' Fiduciary Counsel solicitation, and (ii) for the Board to select the law firms it will interview for this contract. Staff recommends the Board conduct these interviews and award the contract or contracts at its September 2014 meeting.

STRATEGIC PLAN

This agenda item supports Goals A and B of the 2012-2017 Strategic Plan in seeking to improve long-term pension and health benefit sustainability, and in cultivating a high-performing, risk-intelligent and innovating organization.

BACKGROUND

External fiduciary counsel is called upon to provide advice and recommendations on the Board's and staff's fiduciary duty to CalPERS members and issues involving the application of California Constitution article XVI, section 17, the 1992 amendment of article XVI, section 17 by voter initiative (Proposition 162), and other trust law principles to various situations. CalPERS' outside fiduciary counsel respond to opinion requests and requests for advice from the CalPERS Board and staff, directed through CalPERS' General Counsel. In-house counsel provide technical assistance, serve as liaison to CalPERS' staff, and monitor outside counsel for billing practices and responsiveness to the client's needs. CalPERS pays outside counsel for actual work performed, in arrears, subject to annual contract maximums.

Two law firms are currently under contract as outside fiduciary counsel: ReedSmith LLP and Reinhart Boerner Van Deuren S.C. These contracts will expire on December 31, 2014.

Contracts for legal services are exempt from competitive bidding requirements under California law. Despite this exemption, CalPERS has historically issued solicitations for outside counsel contracts to encourage competition among firms, to obtain competitive pricing of legal services and to create a diverse pool of providers. Pursuant to the terms of CalPERS' standard solicitations for legal services, selections are based on evaluation of written proposals and interviews, with no formal scoring of the proposals.

In keeping with this practice, CalPERS issued a solicitation in March 2014 (Solicitation) requesting proposals from law firms to provide legal advice to the Board on questions of fiduciary duty. A copy of the Solicitation is attached as Attachment 1. Ten firms submitted proposals, which CalPERS staff evaluated. Based on that evaluation, staff decided to interview five of the firms. A panel consisting of CalPERS' Chief Executive Officer, Chief Financial Officer, General Counsel, Deputy General Counsel and Senior Investment Officer for Real Estate participated in all five interviews during the month of July.

ANALYSIS

The Solicitation provided that CalPERS staff would evaluate the proposals received and conduct interviews of semi-finalists if staff deemed them necessary. The Solicitation also provided that finalists would be interviewed by the Board in September or October 2014. Due to the number of proposals submitted, staff interviews were considered necessary and were held in July 2014. Based on staff's evaluation of the proposals, staff determined that the panel would interview five of the ten firms that submitted proposals. A summary of each of the five firms based on their proposals and website information, including their proposed fees, is provided in Attachment 2. This information is drawn primarily from the firms' own proposals and/or marketing materials.

After the interviews, the panel evaluated the five firms based on their proposals, the interviews, and reference checks. The panel considered each firm's breadth, depth and longevity of experience providing fiduciary advice to public pension funds; the firm's style and approach to providing fiduciary counsel services; the firm's willingness to attend board meetings and review agenda materials in advance of those board meetings; the firm's enthusiasm and commitment to board and staff training and whether it would charge for that training; the firm's proposed hourly rates; and the evaluative comments received from the firm's other public pension fund clients. Based on these considerations together, the panel's consensus is to recommend that the Board interview the top two candidates, Klausner Kaufman Jensen & Levinson and ReedSmith LLP at the Board's September meeting. If the Board wishes to interview a third firm, staff recommends the Board interview Reinhart Boerner Van Dueren S.C.

The Board's interviews of the finalists will give it a chance to meet the finalists personally and to ask questions directly. As mentioned above, because contracts for legal services are exempt from competitive bidding requirements, its selection of the firm(s) to be awarded contract(s) does not need to be based on a formal scoring procedure. In accordance with the Solicitation, the Board will not assign scores to the firms following the Board interviews. Instead, the Board will rank the firms based on the interviews and all other information about the firms and determine the firm or firms to which it will award contracts.

BUDGET AND FISCAL IMPACTS

The cost for these services will vary based on the volume of the services performed and the rates ultimately negotiated.

BENEFITS/RISKS

The benefits of engaging outside fiduciary counsel include obtaining legal advice from one or more firms that specialize in this area of law. Aside from the fees that will be incurred in engaging outside counsel, no risks of engaging outside fiduciary counsel have been identified.

The risk of not engaging outside fiduciary counsel is that the Board and staff may not have the benefit of highly specialized expertise in connection with the primary duty of the Board and staff – their fiduciary duty to members.

ATTACHMENTS

- Attachment 1 – Solicitation Letter
- Attachment 2 – Summary of Proposals

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