
March 21, 2018

Item Name: Selection of Board's Independent Counsel for Administrative Appeals for 2018-2023

Program: Administration

Item Type: Action

Recommendation

Approve the suggested process for selecting the Board's independent counsel for administrative appeals.

Executive Summary

The Board President is seeking Board approval of a process to select the Board's independent counsel for administrative appeals by creating a subcommittee to interview the two finalists and award the contract to the winning firm.

Strategic Plan

This agenda item supports the 2017-2022 Strategic Plan, Reduce Complexity Goal to reduce complexity across the enterprise and the objective to streamline operations to gain efficiencies, improve productivity, and reduce costs.

Background

The Board retains independent counsel to advise it with respect to administrative appeals. For the last several years, the firm of Shah & Associates, A Professional Law Corporation, has served in that role. The Shah firm's five-year contract expires on May 31, 2018. Board Policy 92-04B-4 generally limits the duration of CalPERS contracts with vendors to five years. Accordingly, in November 2017, the CalPERS Legal Office, at the Board President's direction, solicited proposals to serve as independent counsel for the five-year period beginning June 1, 2018. A copy of the Solicitation is attached as Attachment 1.

CalPERS received two viable proposals, one from Chirag Shah of the Shah Firm and one from Christopher W. Waddell of Olson Hagel & Fishburn, LLP. (CalPERS also received two proposals that were not viable because the proposed lead attorneys have no experience in pension or health care matters or in advising public pension funds.) The Board President now proposes to create a four-member subcommittee of the Board to interview Messrs. Shah and Waddell, and to make the selection between their two proposals. The interviews would be conducted in a noticed, open session meeting that would be scheduled before the next Board meeting in April. The subcommittee would then make its selection in open session and advise the Board of the result.

Budget and Fiscal Impacts

The cost for these services will vary based on the proposed fees (or fees negotiated) and the services actually performed. The cost of this contract will be funded from existing budgeted resources.

Benefits and Risks

- The benefits of engaging independent counsel to advise the Board when adjudicating administrative appeals include the ability to secure independent legal advice and to help satisfy the due process guarantee of a fair tribunal in administrative agency adjudicative proceedings. Aside from the fees that will be incurred in engaging independent counsel, no risks of engaging counsel have been identified.
- The benefits of creating a subcommittee to select the independent counsel for administrative appeals are to streamline the selection process, ensure that the Board has a contract in place with independent counsel prior to the expiration of the current contract in May, and save time that would otherwise occupy part of a regular meeting of the Board.

Attachments

Attachment 1 – Solicitation 2017-8356 Search for Outside Independent Board Counsel

Matthew G. Jacobs

General Counsel

Marcie Frost

Chief Executive Officer