



Finance and Administration Committee

Agenda Item 3e

November 15, 2022

Item Name: Extension of Contract for Board's Independent Counsel for Administrative Hearings

Program: Administration

Item Type: Action Consent

Recommendation

Extend the incumbent's contract for an additional five-year term.

Executive Summary

The Board President is seeking the Board's approval to extend the contract for the Board's independent counsel for administrative hearings for an additional five years.

Background

The Board retains independent counsel to advise it with respect to administrative hearings. For the last 11 years, Chirag Shah, Esq. and his firm have served in that role. (In 2022, the name of Mr. Shah's firm changed from Shah & Associates to Haney & Shah LLP.) The Shah firm's current five-year contract expires on May 31, 2023. Board Policy 92-04B-4 generally limits the duration of CalPERS contracts for goods and services to five years.

The last time the Board solicited proposals to serve as independent counsel, in 2018, it received only two viable proposals, one of which was from Mr. Shah. (The Board also received two proposals that were not viable because the proposed lead attorneys had no experience in pension or health care matters or in advising public pension funds.) The Board then created a subcommittee to interview the two proposers and to select the winner. The subcommittee strongly preferred the Shah firm, which was selected.

Analysis

With the authority to extend the contract duration residing with the Board, the Board President is now proposing to extend the Shah firm's contract for another five years on the same terms and the same, moderately increasing, fee schedule rather than going through the selection process anew. A new solicitation is unlikely to attract any viable proposals, while the contract extension provides for the retention of continued quality independent legal counsel to support the Board in fulfilling its fiduciary duties.

Budget and Fiscal Impacts

The existing contract, which runs through May 31, 2023, compensates Mr. Shah's firm on the following schedule:

- For advising on each proposed decision and petition for reconsideration, 2.5 hours at Mr. Shah's hourly rate.
- For 2018 and 2019, Mr. Shah's hourly rate was \$285; this increased by approximately 3% for 2020 and 2021 to \$294, and by another 3% for 2022 and 2023 to \$303.
- For advising on each full Board hearing, a fixed rate of \$10,500 for 2018 and 2019, \$10,815 for 2020 and 2021, and \$11,139 for 2022 and 2023.

The renewed contract would compensate Mr. Shah's firm on the following schedule:

- For advising on each proposed decision and petition for reconsideration, 2.5 hours at Mr. Shah's hourly rate.
- For 2023, Mr. Shah's hourly rate would remain at \$303; it would then increase to \$325 for 2024 and 2025, to \$335 for 2026 and 2027, and to \$345 for 2028.¹
- For advising on each full Board hearing, the fixed rate would remain at \$11,139 for 2023 and then increase to \$11,200 for 2024 and 2025, \$11,536 for 2026 and 2027, and \$11,882 for 2028. Like the existing contract, the new contract would not compensate Mr. Shah for travel time.

The cost of these services will be funded from existing budgeted resources.

Benefits and Risks

The benefits of extending the Shah firm's contract would be securing Mr. Shah's continued services at reasonable rates and avoiding the administrative time and expense of soliciting new proposals to perform these services, a process that is unlikely to yield viable or preferable vendors. The risk of proceeding in this fashion is the loss of a potential opportunity to contract with a new vendor.

Attachments

Attachment 1 – Resolution No. 92-04B-4

Matthew G. Jacobs
General Counsel

Marcie Frost
Chief Executive Officer

¹ These rates reflect the Shah firm's discounted rates for government and nonprofit entities. Mr. Shah's regular rate is currently \$425.