Board of Administration

Agenda Item 8c

November 19, 2025

Item Name: Board Fiduciary Counsel RFP

Program: Board Governance

Item Type: Action

Recommendation

Approve the scope of services, selection process, and estimated timeline for the Request for Proposal (RFP) for the Board's Fiduciary Counsel.

Executive Summary

This agenda item seeks approval for the scope of services, competitive selection process, and estimated timeline for the Request for Proposal (RFP) for the Board's Fiduciary Counsel. Upon Board approval, team members will initiate the RFP process and work with the Board President as needed to complete each aspect of the process.

Strategic Plan

This agenda item supports the pension sustainability goal to strengthen the long-term sustainability of the pension fund.

Background

CalPERS' History of Retaining Fiduciary Counsel

The Board has reserved the power to select CalPERS' external fiduciary counsel since at least 1990. Historically, fiduciary counsel has advised the Board and leadership on a variety of issues involving fiduciary liability and responsibility. These issues have focused on the Board's and leadership's fiduciary duty to CalPERS members and issues involving the application of California Constitution article XVI, section 17 (as amended by Proposition 162) and other trust law principles to various situations. CalPERS' external fiduciary counsel responds to requests for legal opinions and advice from the Board and leadership, directed through CalPERS' General Counsel. CalPERS pays outside fiduciary counsel for actual work performed, in arrears.

Historically, CalPERS has retained either one or two firms as fiduciary counsel. On occasion and when circumstances have required more specialized advice (such as investment-related fiduciary advice), CalPERS has retained other firms on an ad hoc basis. In 2020, the Board opted to have a pool of firms to serve in this role.

Selection Process

In the last selection process, CalPERS released a solicitation in December 2020. Ten firms responded with proposals. In April 2021, two Board members (former Board President Jones and former Vice President Taylor) met with the Legal Office team to review and evaluate the proposals. The most significant factors considered were the firm's breadth of experience and expertise (including California-specific experience and expertise) in advising public pension plans on fiduciary issues; the credentials, experience, and expertise of the firms' proposed lead attorneys; and the reasonableness of the firms' proposed rates given their expertise.

As a result of that review, in June 2021, the team recommended that the Board approve three firms for inclusion in an external fiduciary counsel pool, subject to successful contract negotiation. The current firms' contracts run through October 2026.

Legal Services Contracts are Exempt from Competitive Bidding

Contracts for legal services are handled differently from other CalPERS contracts because they are exempt from competitive bidding requirements under California law. Despite this exemption, CalPERS has historically issued solicitations requesting proposals from potential candidates to encourage competition among firms, to obtain competitive pricing of legal services, and to create a diverse pool of providers.

Analysis

Based on the last selection process, the following provides the process for the selection and use of fiduciary counsel for the upcoming contract term:

<u>Multiple Firms to Participate in a Fiduciary Pool</u>

Select multiple firms responsive to the RFP to participate in a pool of fiduciary counsel. This is the model that the Board approved in 2020, moving from its previous reliance on a single firm for fiduciary advice. Under this process, CalPERS would be able to continue selecting between the firms in the pool on any given fiduciary issue.

This process has served CalPERS' needs by providing immediate availability of counsel in the event one or more of the firms in the pool has a conflict on a particular issue. This process also provides more immediate access to firms with specific expertise on particular fiduciary issues.

Upon Board approval of the attached scope of services and selection process for this RFP, CalPERS team members will begin implementing the estimated schedule of events as follows:

Process	**Timeframe**
RFP Release Date	January 2026
Evaluation of Proposals and Selection of Finalists	April 2026
Approval of Finalist Firms	May 2026
Anticipated Contract Execution	August 2026

Budget and Fiscal Impacts

Costs associated with a new pool of fiduciary contracts will be determined based on the fees proposed in the selected vendors' proposals. These costs will be funded through the annual budgeting process.

Benefits and Risks

When CalPERS needs specific expertise to fulfill its responsibilities, it is permitted – and sometimes required – to consult with experts in the field. Fiduciary legal representation is a specialized area of the law that can be difficult to replicate internally. Because firms that concentrate in this area represent multiple public pension plans, they can provide a broader and more diverse perspective. In addition, they provide an independent opinion on fiduciary matters that can be particularly helpful on controversial issues.

Without fiduciary counsel under contract, CalPERS would lack access to independent legal advice and counsel on issues of fiduciary liability and responsibility.

Attachments

Attachment 1 – Proposed Services to be Performed

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Renee Salazar
Interim General Counsel

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Marcie Frost
Chief Executive Officer