

DEFERRED COMPENSATION PLAN BOARD REPORT 12-44

Date: August 21, 2012
To: Board of Deferred Compensation Administration
From: Staff
Subject: Retention of Outside Tax Counsel

Members

Eugene K. Canzano, Chairperson
John R. Mumma, Vice-Chairperson
Michael Amerian
Sangeeta Bhatia
Cliff Cannon
Tom Moutes
William Raggio
Robert Schoonover
Margaret Whelan

Recommendation:

That the Board of Deferred Compensation Administration (a) receive and file the following information regarding the process for the selection and retention of outside legal counsel for the provision of tax advice, and (b) direct staff to participate in the selection process and return to the Board with a recommendation for further action.

Discussion:

The Board's Counsel, Assistant City Attorney Curtis S. Kidder, recently informed staff that the Office of the City Attorney had previously issued a Request for Proposal (RFP) for tax counsel services for the City's defined benefit retirement plans and that proposals from 8 law firms were received. The City Attorney's Office is in the process of negotiating contracts with three of the firms to provide tax counsel services.

Mr. Kidder further informed staff that he has reviewed the RFP responses and that many of the law firms note that they are qualified to provide tax advice regarding IRC Section 457 plans and provide tax counsel services to other deferred compensation plans. The City Attorney's Office, therefore, offered to use the results of the retirement plans' tax counsel RFP to select and retain outside tax counsel for the City's Deferred Compensation Plan. The outside counsel contract(s) would, pursuant to the requirements of the City Charter, be between the City Attorney's Office and the selected law firm(s). The Board would approve any proposed use of outside legal services before those services are incurred. The costs of outside legal services would be billed to the Deferred Compensation Plan.

The City Attorney's Office has requested that staff participate with the Board's Counsel and staff from the City Attorney's Outside Counsel Oversight Division in the selection process, which will include further review of the RFP responses, oral interviews and consideration of recommendations from other deferred compensation plans that use outside tax counsel. Staff's evaluation focus will include, among other items:

- Experience in providing tax advice to similarly situated deferred compensation plans
- Depth of knowledge regarding IRC Section 457 and other relevant Federal laws and regulations
- Qualifications of the attorney(s) to provide legal services
- Hourly billable rates
- Ability to effectively communicate technical/legal concepts and information
- Ability to identify and effectively frame options

Upon the conclusion of the selection process, staff will return to the Board with a recommendation regarding the selection of one or more law firms. Although the Board will not technically select the vendor, the Board has a significant interest in the firm(s) selected since it and staff will be the recipient of the legal advice provided and will pay the costs thereof. The Board's recommendation will be submitted to the City Attorney's Office for its consideration in the selection/retention process for outside tax counsel.

Requests for outside tax counsel services will be made through the Board's Counsel and any advice provided will be reviewed by the Board's Counsel prior to submission to staff and the Board. The Board's Counsel and the City Attorney's Outside Counsel Oversight Division will monitor the performance of outside tax counsel and review all invoices submitted for payment.

Staff therefore recommends that the Board receive and file the above information provided regarding the process for the selection/retention of outside tax counsel and direct staff to participate in that process and return to the Board with a recommendation for further action regarding the selection/retention of one or more law firms.

Submitted by: _____
Steven Montagna

Approved by: _____
Alejandrina Basquez