

DEFERRED COMPENSATION PLAN BOARD REPORT 13-11

Date: March 19, 2013
To: Board of Deferred Compensation Administration
From: Board Counsel
Subject: Retention of Steptoe & Johnson LLP as Outside Tax Counsel

*Board of Deferred
Compensation Administration*
Eugene K. Canzano, Chairperson
John R. Mumma, Vice-Chairperson
Michael Amerian
Sangeeta Bhatia
Cliff Cannon
Tom Moutes
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Recommendation:

That the Board of Deferred Compensation Administration (a) approve the retention of Steptoe & Johnson LLP for the provision of tax and regulatory advice, and (b) recommend to the City Council that it approve the retention and authorize the Office of the City Attorney to negotiate and enter into a professional services agreement with the law firm.

Discussion:

The Board was briefed on the process to select and retain a law firm to provide advice and guidance on tax and regulatory matters at its August 21, 2012 meeting. The Board's Counsel, Assistant City Attorney Curtis S. Kidder, informed the Board that the Office of the City Attorney had previously issued a Request for Proposals (RFP) for tax services for the City's defined benefit retirement plans and that proposals were received from 8 law firms. Many of the law firm responses indicated that the firms were qualified to provide tax advice to IRC Section 457 plans and were providing tax counsel services to other deferred compensation plans. The City Attorney, therefore, offered to use the results of that RFP to select and retain outside tax counsel for the City's Deferred Compensation Plan.

The Board took action to direct Plan staff to participate in the selection and retention process. Staff informed the Board that its evaluation of the law firms would include (i) experience in providing tax advice to similarly situated defined compensation plans, (ii) depth of knowledge regarding IRC Section 457 and other relevant Federal laws and regulations, (iii) qualifications of the attorney(s) to provide legal services, (iv) hourly billable rates, (v) ability to effectively communicate technical/legal concepts and information, and (vi) ability to identify and effectively frame options. Staff also informed the Board that, upon the conclusion of the selection process, it would return to the Board with a recommendation for selection of one or more law firms for retention.

In December 2012, the Board Counsel sent letters to 8 law firms soliciting proposals for legal services to the Board and staff. The proposed scope of services stated therein identifies the provision of advice/guidance in 5 areas: (i) matters that may impact the tax-exempt status of the Plan, (ii) interpretation and application of various provisions of the IRC, including Sections 401, 409 and 457(b) and relevant California statutes, (iii) proposed amendments to the Los Angeles Administrative Code and Plan Document, (iv) fiduciary duties and obligations and Plan administration best practices, and (v) other legal matters that could impact the administration of the Plan.

Responses were received from 5 of the 8 law firms—(i) Best, Best & Krieger, (ii) Boutwell Fay, (iii) Ice Miller, (iv) Nossaman, and (v) Steptoe & Johnson. The responses were reviewed by BDCA's program director, Steven Montagna, the Board Counsel and Assistant City Attorney Anne Haley of the City Attorney's Outside Counsel Oversight Division. It was determined that three of the law firms—Best, Best & Krieger, Ice Miller and Steptoe & Johnson—were the best qualified to perform the desired scope of services.

In-person interviews were conducted on February 20, 2013. The interview panel consisted of Steven Montagna, Curtis S. Kidder and Anne Haley. The three law firms were represented primarily by partners who practice in the area of public employee benefits and were, for the most part, well qualified and well spoken.

Following the interviews, the panel concurred that Steptoe & Johnson (Steptoe) was the most qualified to provide the scope of services. Steptoe was represented by Mr. Donald Wellington, a partner with the firm with 20 years of experience in employee benefits. Mr. Wellington has a depth of knowledge regarding deferred compensation statutes and regulations—he worked at the Department of the Treasury for 4 years and assisted in the amendment of IRC Section 457(b) regarding the trust requirement for plans, participant loans and various compensation deferral issues. Mr. Wellington informed the panel that he continues to have good working relationships with certain Internal Revenue Service (IRS) staff, including auditors of deferred compensation plans.

The panel also noted that (i) Steptoe provides services to at least four deferred compensation plans, including the California Public Employees Retirement System (CalPERS), (ii) Steptoe has an office in downtown Los Angeles and Mr. Wellington is familiar with relevant areas of California law, (iii) Mr. Wellington has developed a training program on fiduciary duties and obligations and has trained a number of his deferred compensation clients, and (iv) Mr. Wellington possesses an LLM in tax from New York University School of Law.

Regarding billing, Steptoe agreed to a blended rate of \$450 per hour—a fixed rate to be charged by all attorneys providing services under the contract. Steptoe's hourly rate is similar to the rate offered by one of the other firms, but notably higher than the third firm. Mr. Wellington would be the lead attorney for the firm and he

stated that he would likely perform most of the work for the Plan. He also stated that Ellen Kohn, of counsel to the firm, Misty Leon, special counsel, and Yvonne Park, an associate, would also perform services as needed.

The retention of Steptoe must, pursuant to the requirements of the Charter, be approved by the City Council. The City Attorney's Office will then negotiate and enter into a professional service agreement with the firm. Requests for outside counsel services will be made through the Board Counsel and it is our understanding that routine requests will be made by Plan staff, while requests of a complex nature or which will require extensive legal services will be approved by the Board. Any advice provided by outside counsel will be reviewed by the Board Counsel prior to submission to the Board and staff. The Board Counsel and the City Attorney's Outside Counsel Oversight Division will monitor the performance of outside tax counsel and will review all invoices submitted for payment. Approved invoices will be submitted to the Plan for payment.

It should be noted that Steptoe represents a number of private clients who may have legal interests that are adverse to the City of Los Angeles. However, none of the matters is currently in litigation, is being handled by Mr. Wellington or other attorney whom may provide services to the Board or is an action involving the Board or the Plan. The Board's Counsel is aware of the conflict matters and none of them appears to be relevant to Steptoe's performance of the scope of services. The City Council will be requested to waive the actual or potential conflicts of interest.

Submitted by:

Curtis S. Kidder
Board Counsel, Assistant City Attorney