

Deferred Compensation Plan BOARD REPORT 11-10

Date: February 8, 2011
To: Board of Deferred Compensation Administration
From: Staff
Subject: Third-Party-Administrator Contract Extension

Board of Deferred
Compensation Administration
Eugene C. Canzano, Chairperson
Richard Kraus, Vice-Chairperson
Sangeeta Bhatia
Cliff Cannon
Tom Moutes
John R. Mumma
Michael Perez
Robert Schoonover
Maggie Whelan

Recommendation:

That the Board of Deferred Compensation Administration direct staff to draft a report from the Board to City Council requesting authority to extend the contract with Great-West Retirement Services for third-party-administrative services for the period 2012 to 2016.

Background:

At the December 21, 2010 meeting of the Board of Deferred Compensation Administration, the Board adopted a motion to accept proposed terms for a five-year extension of the contract with Great-West Retirement Services to provide third-party-administration of the City's Plan. At that meeting, the Board's Counsel, Curtis S. Kidder, indicated that Administrative Code Section 4.1407 appears to provide the Board with the authority to execute the contract extension without City Council approval. However, he cautioned that Section 4.1407 seems to be inconsistent with Administrative Code Section 10.5, which imposes a 3-year cap on such contracts without City Council approval, and that he needed additional time to review the matter.

Specifically, Administrative Code Section 4.1407 (i) states as follows:

"The Board is hereby authorized to approve, and the chair of the Board is hereby authorized to execute, amendments to contracts with Plan administrators when the amendments result in no new costs to either the City or to any participants in the Plan."

Administrative Code Section 10.5 provides that boards and officers of the City are prohibited from entering into contracts exceeding a term of three years unless approved by City Council. Mr. Kidder stated that he was performing research regarding the adoption of Section 4.1407(i), but that he had been unable to locate a 1994 report and other documentation which might provide more background regarding the City Council's intentions. Mr. Kidder has subsequently reported to staff that he has not located any additional documents and that, having considered available information as well as the Plan's historical practice with respect to contracting, he cannot, at this time, advise that Section 4.1407(i) provides clear authority to extend the Great-West contract without first obtaining Council approval.

By way of background, in December 1993 the City Council created a special Task Force to review the Deferred Compensation Plan and make recommendations for improvements. Staff

member Steven Montagna was present at some Task Force meetings even though the Personnel Department did not administer the program at the time. The Task Force generated a number of recommendations, including transferring administration of the Plan from the City Treasurer to the Personnel Department, changing the Plan governance to change what was then an Advisory Committee into a Board, adding a retired Board representative, etc. that were adopted in 1995. Section 4.1407(i) was also added by the City Council in 1995.

Mr. Montagna's general recollection is that Section 4.1407(i) resulted from the unique contracting history of the Plan. From its inception in 1983 the program utilized two administrative services contracts with the same two providers (Great Western Bank, subsequently acquired by Washington Mutual Bank, and Hartford Life Insurance). The City Council approved these contracts and any resulting amendments. The Plan's investment options were established in the contracts, meaning that each time the Advisory Committee recommended a change to the investment menu one or both of the contracts was amended by the City Council. Staff recalls that the Task Force recommended that Section 4.1407(i) be adopted so that these types of relatively minor contracting changes, which did not impact administrative costs paid by participants, would not need to be processed through the City Council. However, contract term extensions continued to be sent to and approved by Council.

In 1998 the City Council approved an ordinance which removed its contracting authority for Plan services and provided that authority to the Board. However, the Board has always observed the City's contracting rules with respect to the length of a given contract, and has gone to Council to request authority for the extension of contracts beyond the terms set forth in Section 10.5 of the Administrative Code. As examples, the Board has not only gone to Council to request approval for contract terms greater than three years, it also processed a request through the Council to amend the Administrative Code to allow for five-year contracts for investment management services contracts without Council approval. The Council granted this request, but specifically rejected a Board request to allow for five-year contracts for third-party-administrative services contracts absent Council approval. This history suggests Council's expectations and intentions relative to the length of the third-party-administrative services contract.

Given the Board Counsel's advice on this matter, staff recommends the Board seek Council approval of the third-party administrator contract. In staff's view, any ambiguity regarding Council's intent in this area should be definitively resolved before the Board proceeds to extend a third-party administrator contract without Council authority (perhaps by, at some point in the future, requesting independent authority to establish the length of all Plan contracts). Staff therefore recommends that the Board direct staff to draft a report to come from the Board to City Council requesting authority to extend the contract with Great-West Retirement Services for third-party-administrative services for 5 years.

Submitted by: _____
Steven Montagna

Approved by: _____
Alejandrina Basquez