



MIKE FEUER  
CITY ATTORNEY

REPORT NO. R 1 3 - 0 2 2 8  
AUG 0 6 2013

**REPORT RE:**

**RETENTION OF OUTSIDE COUNSEL STEPTOE & JOHNSON  
TO ASSIST THE OFFICE OF THE CITY ATTORNEY  
IN PROVIDING DEFERRED COMPENSATION PLAN ADVICE**

The Honorable City Council  
of the City of Los Angeles  
City Hall, Room 395  
200 North Spring Street  
Los Angeles, CA 90012

Honorable Members:

This report requests your approval of a contract with the law firm of Steptoe & Johnson to assist the Office of the City Attorney in providing advice to the City of Los Angeles Deferred Compensation Plan and the Employee Benefits Division of the Office of Personnel in regards to federal tax and regulatory matters. Payment of legal fees under the agreement will be made from fees collected from Plan participants, and not from the General Fund.

Discussion

The Office of the City Attorney, in consultation with the Board of Deferred Compensation Administration (BDCA), determined that there is a need for outside counsel assistance to provide advice and guidance on the complexities of the Internal Revenue Code (IRC) and related regulatory matters. Pursuant to Los Angeles Administrative Code Section 4.1400 and following, the BDCA administers the Deferred Compensation Plan, authorized under Internal Revenue Code Section 457, as a supplementary retirement savings plan. The Plan has over \$3.7 billion in assets and 40,000 participants.

Several of the law firms that responded to a recent City Attorney Request for Proposals (RFP) for tax advice for the City's defined benefit retirement plans indicated that they were also qualified to provide tax advice to deferred compensation plans and were providing tax counsel services to a number of State and local deferred compensation plans. The City Attorney, therefore, offered to use the results of that RFP to recruit and retain outside tax counsel to assist in providing advice to the City's Deferred Compensation Plan.

In December 2012, the City Attorney sent letters to eight law firms soliciting proposals for legal services relative to the BDCA and Personnel staff. The proposed scope of services stated therein identified the provision of advice/guidance in five areas: (i) matters that may impact the tax-exempt qualified 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 five of the eight law firms and were reviewed by the BDCA's program director, Steven Montagna; Assistant City Attorney Curtis S. Kidder; and the manager of the City Attorney's Outside Counsel Oversight Division, Assistant City Attorney Anne Haley. Evaluation factors of the law firms included: (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 billing rates; (v) ability to effectively communicate technical/legal concepts and information; and (vi) ability to identify and effectively frame options. 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 with each of the law firms 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 four 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.

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. Those clients are (i) DIRECTV and DISH Network; (ii) Lamar Advertising Company; (iii) Southern California Edison, Sempra Energy and Pinnacle West; and (iv) BNSF Railway. None of the matters is currently in litigation, is being handled by Mr. Wellington or other attorney who may provide services to the Board, or is an action involving the Board or the Plan. If any of these matters present a potential conflict in the future, a detailed request for waiver will be provided.

#### Recommendation

This Office recommends that the City Council approve a contract with Steptoe & Johnson, LLP, to assist the City Attorney in the provision of tax and regulatory advice to the Board of Deferred Compensation Administration and the Office of Personnel, in an initial amount of \$10,000.00 funded out of the reserve fund of fees collected from Plan participants for administrative purposes such as this.

If you have any questions regarding this matter, please contact the undersigned at (213) 978-7009. A member of this Office will be present when you consider this matter to answer any questions you may have.

Very truly yours,

MICHAEL N. FEUER, City Attorney

By  (PBE)

ANNE HALEY  
Assistant City Attorney

AH:pj