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REPORT NO. 318-0364
NOV 30 2018

REPORT RE:

**RETENTION OF OUTSIDE COUNSEL
ICE MILLER AND REED SMITH 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
200 North Spring Street
Los Angeles, CA 90012

Honorable Members:

This report requests your approval of contracts with the law firms of Ice Miller and Reed Smith to assist the Office of the City Attorney in providing advice to the City of Los Angeles Deferred Compensation Plan (Plan) and the Employee Benefits Division of the Office of Personnel (EBD) in regards to federal tax and regulatory matters. Payment of legal fees under the agreements will be made from fees collected from Plan participants, and not from the General Fund.

NEED FOR COUNSEL AND SCOPE OF WORK

In August 2013, the Council approved the Office of the City Attorney's retention of the Steptoe & Johnson law firm to provide tax and regulatory advice to the Plan and EBD. The City Attorney entered into a three-year agreement with the law firm in October 2013 (Contract No. 123044). In June 2016, the Council approved the extension of the contract for two additional years through August 2018.

The City Attorney, in consultation with the Board of Deferred Compensation Administration (BDCA), has determined that there is a continuing 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 Plan, authorized under IRC Section 457, as a supplementary retirement savings plan. The Plan has over \$6.0 billion in assets and 46,000 participants.

The scope of services for the retained law firms is for advice and guidance on (i) matters that may impact the tax-exempt status of the Plan, (ii) the application of various provisions of the IRC, including Sections 401, 409A and 457(b) and applicable California statutes, (iii) review of and proposed amendments to the Los Angeles Administrative Code and Plan Document, (iv) fiduciary obligations and best practices, and (v) other legal matters that could impact the Plan.

COMPETITIVE SELECTION AND INTERVIEW PROCESS

On September 5, 2018, the City Attorney sent letters to 6 law firms soliciting proposals for tax and regulatory services to the BDCA. The 6 law firms included 4 that had responded to the Request for Proposals (RFP) issued by the City Attorney for the City's three defined benefit retirement plans for tax and IRS regulatory advice and guidance; the other two law firms had responded to the City Attorney's previous recruitment for outside counsel for the BDCA in 2012. The Office received proposals from 4 of the 6 law firms—(i) Best, Best & Kreiger (BBK), (ii) Ice Miller, (iii) Kutak Rock, and (iv) Reed Smith. The two law firms that did not submit responses were Boutwell Fay and Nossaman. Review of the responses indicated that the 4 law firms were all qualified to provide the scope of services.

In-person interviews were conducted with the four responders. The interview panel consisted of Steven Montagna—the Plan's manager, Matthew Vong—EBD staff, Deputy City Attorney Charles Hong and Assistant City Attorney/Board Counsel Curtis S. Kidder.

Following the interviews, the panel concurred that Ice Miller and Reed Smith were the most qualified to provide advice and guidance regarding the scope of services. Ice Miller is based in Indianapolis, Indiana, has a nation-wide practice and has attorneys well qualified to provide advice and guidance on deferred compensation issues. The law firm's particular strengths are (i) the firm works for a number of large public entity deferred compensation plans, including the City of New York plan, (ii) the firm has provided advice/guidance on issues relevant to the City's plan, such as a deemed IRA program and plan document compliance, (iii) the firm has a level of proficiency in obtaining favorable private letter rulings from the IRS on IRC Section 457(b) matters, (iv) the firm has also been retained to provide services to the City's three defined benefit retirement plans.

Reed Smith's attorneys provide tax and regulatory advice to other large deferred compensation plans, including the California Public Employees Retirement System (CalPERS), are licensed to practice law in the State of California and are located in the firm's downtown Los Angeles office. Don Wellington (who formerly represented the BDCA in this area as a part of the Steptoe firm) has broad knowledge and expertise regarding deferred compensation statutes and regulations due, in part, to his prior service with the Department of the Treasury and work on amendments to IRC Section 457(b). Mr. Wellington has maintained his relationship with IRS staff members and is able to obtain unofficial guidance on the interpretation of IRC Section 457(b) and issues affecting deferred compensation plans. Mr. Wellington has a LLM in tax from New York University School of Law and been practicing in the field for over 25 years. The law firm has also been selected for retention for the City's three defined benefit retirement plans.

RECOMMENDATION

This Office recommends that the City Council approve contracts with Ice Miller and Reed Smith to assist the City Attorney in the provision of tax and regulatory advice and guidance to the Plan, BDCA and EBD in a total initial amount for both contracts of \$30,000.00, to be funded out of the reserve fund of fees collected from Plan participants for administrative purposes such as set forth in the scope of services.

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


ANNE HALEY
Assistant City Attorney