



Expo

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Construction Authority


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DATE: JULY 6, 2006

TO: BOARD OF DIRECTORS

FROM: RICHARD D. THORPE 
CHIEF EXECUTIVE OFFICER

ACTION: DEFER LEGAL SERVICES CONTRACT HOURLY RATE INCREASES

RECOMMENDATION

At its June Board Meeting, the Board requested that this item be continued to the July Board Meeting. Staff recommends that the increase in hourly rates sought by Counsel be deferred until the October 5, 2006 Board Meeting.

SUMMARY

When the Board discussed this item at last month's meeting, some Board members voiced concern with awarding a 5% increase to the hourly rate before Counsel had worked for a full year with the Authority. Some Board members suggested that the increase be deferred until October, 2006, after Counsel had been working for the Authority for a full year and the request for an increase could be more fully assessed.

Staff discussed deferring the hourly rate increase until October, 2006 with Nancy Smith from Nossaman, Guthner, Knox & Elliott (Nossaman) and with Robert Pearman from Robinson & Pearman. Both agreed that the rate increase could be deferred; however, Nancy Smith indicated that she would not be able to serve as General Counsel to the Authority if the rate increase was not approved retroactive to July 1, 2006. She did indicate that she had several associates in her firm who would be able to act as General Counsel and provide design/build legal services at the current rate approved by the Authority.

If the request for an increase is deferred until October, 2006, the Nossaman firm would continue to provide General Counsel services through an associate (yet to

be determined). Robert Pearman would continue to serve as Deputy General Counsel for the Authority. The hourly rate increase request would then be considered by the Board in October, 2006.

DISCUSSION

When the Authority Board selected Nossaman as General Counsel last October, 2006, their proposal included a provision which called for yearly 5% rate increases starting in FY06-07. When the contract was awarded to Nossaman, the Board did not explicitly address this annual 5% rate increase. Counsel asked that the 5% rate increase be included in their Legal Services Contract with the Authority, but staff felt that any increases in hourly rates should be subject to authorization by the Authority Board.

The Robinson & Pearman proposal did not include an automatic rate increase, but did suggest that rates could increase by 5% annually, after consultation with the Authority. Since the Board never discussed an annual rate increase, nor took specific action on this aspect of their proposals, the Legal Services agreement between Nossaman and the Authority dictates that any rate increases are subject to Board approval on an annual basis. Since both firms requested a rate increase for FY06-07, staff brought this item forward for consideration at last month's Board meeting. The Board asked that this item be continued until this month.

Current Nossaman rates span from \$120/hour for a paralegal to \$350/hour for partners. Current rates for Robinson & Pearman range from \$95/hour for law clerks to \$275/hour for partners. If the rate increase was deferred, these rates would remain in effect through October, 2006. At that time, the Board would consider the rate increase after the firms had served a full year working for the Authority.

While Nancy Smith has informed the Authority that she cannot provide services at the discounted rate after July 1, 2006, if a rate increase is not approved, she did indicate that there are several lawyers who can provide both General Counsel and design/build services to the Authority at the current hourly rate. Furthermore, Robert Pearman has indicated that he can continue to provide Deputy General Counsel services to the Authority at his current rate until October, 2006. In October, 2006, the Board can consider the 5% increase after having the benefit of an entire year of service by both firms.

ALTERNATIVES

The Board can decide to award the 5% increase to both firms at this time effective July 1, 2006, and all roles and services would stay the same by both firms.

The Board can also decide to reissue an RFP for new General Counsel services with a more specific rate structure. This would take at least one month and would be brought back to the Board for selection and approval. It is unlikely that Nossaman and Robinson & Pearman would stay on board in the interim to provide legal services if the Board chose to go out to an RFP at this time.

The Board can hire an in-house attorney to provide General Counsel services or can explore the possibility of hiring County Counsel, the department that provides General Counsel services for Metro. However, again, it is unlikely that Nossaman and Robinson & Pearman would provide legal services to the Authority while such a search was conducted.

FINANCIAL IMPACT

The Authority included \$385,000 for legal services in the FY07 budget. Maintaining services at the current hourly rate until October, 2006, is included in the projected FY07 budget for legal services.

NEXT STEPS

If the Board defers the decision on the 5% hourly rate increase until October, 2006, the Authority staff will work with Nossaman and Robinson & Pearman to ensure that all legal services will be provided at the current rate structure. The Authority staff would return in October, 2006 for Board consideration of a 5% rate increase for both firms.

ATTACHMENT(S)

None