

AGENDA REPORT

Resolution: Authorization to Establish Fiscal Year 2015-16 Outside Counsel and Consultant Retention Agreements with Selected Law Firms and Consultants and Related Actions. **(Port Attorney)**

MEETING DATE: 6/25/2015

AMOUNT: \$3,844,500 (Fiscal Year 2015-16)
Choose an item.

PARTIES INVOLVED: Various Law Firms and Consultants,
(See Appendix A)

SUBMITTED BY: Danny Wan, Port Attorney

APPROVED BY: Danny Wan, Port Attorney

ACTION TYPE: Resolution

EXECUTIVE SUMMARY

This action would authorize the Port Attorney to retain the outside counsel and consulting firms listed in Appendix A for the amounts listed for each consultant, for Fiscal Year 2015-16 in an initial total amount of \$3,844,500, subject to adjustments under Port Attorney's contracting authority.

BACKGROUND

Pursuant to the Board's By-Laws and Administrative Rules, the Board has assigned to the Port Attorney the authority to retain special legal counsel, legal experts and other consultants to provide legal services for the Port.

Over the years, the Port Attorney has retained special legal counsel and consultants under the Board-approved contracting authority of \$150,000 without Board review. Where the proposed retention exceeded the Port Attorney's contracting authority, the Port Attorney sought and obtained approval from the Board to retain counsel and consultants.

Because the expenditure for specialized legal counsel and services is a function of the amount, nature and intensity of legal claims, litigation and regulatory action occurring

each fiscal year, the actual expenditure can vary widely from year to year and can be quite different from the budgeted amounts.

The actual spending on outside legal services has the lowest in the first full fiscal year of the current Port Attorney's tenure than in the previous 6 fiscal years. During Fiscal Year 13-14, the total outside legal services spending was \$4,208,271. The following compares this to the previous 6 fiscal years (outside legal service spending from all budget items):

• FY14-15 (7/14 – 1/15):	\$1,249,980
• FY13-14 (1 st full FY of Current Port Attorney's Tenure)	\$4,208,271
• FY12-13	\$4,670,566
• FY11-12	\$5,137,568
• FY10-11	\$7,400,587
• FY09-10	\$6,481,975
• FY08-09	\$8,834,231
• FY07-08	\$9,814,966

ANALYSIS

This resolution authorizes the Port Attorney to enter into professional services contracts with the legal consultants listed in Appendix A for the amounts indicated for each consultant. During the fiscal year, events may occur that require additional legal service providers or the increase to the maximum contract amount estimated in the annual report. In such instances, the Port Attorney will request additional Board authority, if any such new contract or additional contract amount exceeds the Port Attorney's contracting authority. Those additional contracting amounts below the contracting authority will be reported to the Board in the next fiscal year report.

While there is certainly the need to hire large law firms with national and international reputation and diverse resources, many smaller and local firms can perform much of the work just as well, if not better, at lower prices. Therefore, it is the Port Attorney's goal to retain as many small and local firms as possible that have the capacity to do quality work, especially in the areas of municipal/government law, real estate, environment, contracting, and regulatory compliance

BUDGET & STAFFING

This expense was planned and is covered in the authorized FY15-16 Budget. There is no additional budget impact.

MARITIME AVIATION PROJECT LABOR AGREEMENT (MAPLA)

These contracts are for professional services that do not include construction testing and inspection. Therefore, the provisions of the Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA) do not apply to this work.

STRATEGIC PLAN

The action described herein would help the Port achieve the following goals and objectives in the Port's Strategic Plan

<http://www.portofoakland.com/pdf/about/strategicPlan2011-2015.pdf>

- Goal A: Create sustainable economic growth for the Port and beyond.

LIVING WAGE

Living wage requirements, in accordance with the Port's Rules and Regulations for the Implementation and Enforcement of the Port of Oakland Living Wage Requirements (the "Living Wage Regulations"), do not apply to this agreement as the service provider does not employ 21 or more employees working on Port-related work. However, the service provider will be required to certify that should living wage obligations become applicable, the service provider shall comply with the Living Wage Regulations.

ENVIRONMENTAL

The proposal to award outside counsel/consultant agreements for FY2015-16, and to re-allocate amounts if necessary, was reviewed in accordance with the requirements of the California Environmental Quality Act (CEQA), and the Port CEQA Guidelines. General policy and procedure making are not projects under CEQA. Furthermore, the general rule in Section 15061(b) (3) of the CEQA Guidelines states that CEQA applies only to activities that have a potential for causing a significant effect on the environment. It can be seen with certainty that there is no possibility that authorizing the outside counsel/consultant agreements or reallocating amounts will result in a physical change in the environment; therefore, those actions are not subject to CEQA.

GENERAL PLAN

This action does not change the use of any existing facility, make alterations to an existing facility, or create a new facility; therefore, a General Plan conformity determination pursuant to Section 727 of the City of Oakland Charter is not required.

OWNER-CONTROLLED INSURANCE PROGRAM (OCIP)/ PROFESSIONAL LIABILITY INSURANCE PROGRAM (PLIP)

This action is not subject to the Port's Owner Controlled Insurance Program (OCIP) or Professional Liability Insurance Program (PLIP) as it is not a capital improvement construction project or design project supporting such construction.

OPTIONS

- 1) Authorize the Port Attorney to enter into outside counsel and consultant agreements to obtain special legal services with all of the firms listed in Appendix A for the amounts listed for each consultant, in the initial total amount of \$3,844,500 and subject to adjustments under the Port Attorney's contracting authority.
- 2) Authorize the Port Attorney to enter into outside counsel and consultant agreements to obtain special legal services with some, but not all of the firms listed in Attachment, for an amount to be determined by the Board.
- 3) Do not authorize the requested action.

RECOMMENDATION

It is recommended that the Board adopt a resolution authorizing the Port Attorney to enter into outside counsel/consultant agreements to obtain special legal services from the firms/companies listed in Appendix A to the Resolution in the amounts listed for each consultant for the initial total amount of \$3,844,500, and to waive formal competitive bidding. It is further recommended that the Board find and determine that executing retention or other agreements with the firms/companies listed in Appendix A will constitute agreements for obtaining professional, technical and specialized services that are temporary in nature and that it is in the best interest of the Port to secure such services. The contract amounts may be adjusted during the fiscal year by the Port Attorney for amounts under his contracting authority or by further action of the Board.