



STATE OF CONNECTICUT

# RETIREMENT SECURITY BOARD

CO-CHAIRS: STATE COMPTROLLER KEVIN LEMBO & STATE TREASURER DENISE NAPIER

## Staff Report to CRSB

### Re: Exchange with CA and OR: Shared Legal Counsel

September 3, 2014 CRSB Meeting

#### **Tentative Authority of CRSB to Jointly Procure Legal Counsel with CA:**

The Office of the Comptroller (OSC) has statutory authority to enter into Personal Service Agreements (PSAs), with guidance from the Office of Policy and Management (OPM). The CRSB has explicit permission to contract for legal services in its enacting legislation P.A. 14-217 § 181(i).<sup>1</sup> In order to procure a vendor in a competitive and transparent manner, the OSC must issue a Request for a Proposal (RFP). The Connecticut State Department of Education set an example this year for joint RFPs when they developed an RFP (14SDE0018) with New Hampshire and Vermont dated June 6, 2014 to procure a vendor that would agree to service all three states. The states worked together to develop common language. The RFP had specific language requesting the vendor to send a proposal to each of the three states as separate contracts, but that the proposal had to be the same for all three states. They allowed a small appendix to the RFP for any additional services one of the states may need that differed from the other states and allowed the vendor to respond with a similar appendix to each state addressing that state's particular needs. They received approval from OPM and are about to announce the agency head's approval of the contract award.

Therefore, if a) each state sends out their own respective RFP to enter into their own respective contract with the vendor, b) each state's RFP contains the same language for services, c) each state's RFP specifically requires the vendor to service all participating states but to enter into separate contracts with each state, and d) the RFP conditions payment by each state to the vendor on the particular services provided to each respective state, then the "joint" RFP should satisfy Connecticut's procurement standards.

---

<sup>1</sup> The Department of Administrative Services (DAS) has authority to be the contracting arm for state agencies. Under C.G.S. 4a-53, DAS has the authority to join with federal agencies or other state governments in a cooperative purchasing plan when it would serve the best interests of the state. DAS does not however participate in procurement of legal services because of the language in C.G.S. 3-125 directing that "[a]ll legal services required by such officers and boards in matters relating to their official duties shall be performed by the Attorney General or under his direction." Following this provision, DAS directs any requests for legal services to the Attorney General's office. However, the CRSB has explicit permission to contract for legal services in its creation statute P.A. 14-217 § 181(i).



Exchange with Grant Boyken (CA):

We sent an e-mail to Mr. Boyken initially just to obtain CA's RFP for legal services to compare CA's legal needs with our own in studying the issue of joint legal services. In responding with the RFP, Mr. Boyken stated that his legal office had determined that due to the differences, albeit small, in our statutes, we would likely need to request separate opinions from the IRS and Department of Labor. And allowing a CA contractor to do work for another state would be prohibited as a gift of state funds. He stated that the only workable solution for CA would be for the CRSB to provide CA with a no-strings-attached donation, which he knew would likely be prohibited by CT law.

In response, we described to him the model detailed above as another option, since both states would have separate contracts with the contractor, allowing for separate opinions and not requiring any gifts of funds. Mr. Boyken then responded that he did not believe it was a workable option because the CA Board wants a law firm recommended at their upcoming meeting in September. He also stated that since the RFP rules in each state are different with regard to what goes into an RFP and the selection process, the model would be unworkable. In addition, CA's statute specifically requires the legal study be on the feasibility of CA's particular statute, so we would not be able to draft a common RFP even if we have the same or similar issues. He ended stating that they can share their results with us however.

Exchange with Jan Nordlund (OR):

Upon reviewing Oregon's draft recommendations, we saw that the Task Force wanted to pursue obtaining an advisory opinion from the Department of Labor on ERISA applicability as one of its next steps. So we contacted Jan Nordlund, one of the contacts for the Oregon Retirement Savings Task Force. She stated that although they would like to pursue that step, they currently do not have any contracting authority. Therefore, the Task Force will likely not be able to take any additional steps until they receive authorization to do so during the next legislative session, which starts in February 2015. We responded that our timelines likely conflicted, but agreed to remain in contact.