



MEMORANDUM

EUGENE WATER & ELECTRIC BOARD

Rely on us.

TO: Commissioners Mital, Simpson, Helgeson, Manning and Brown
FROM: Sue Fahey, Finance Manager; Sarah Gorsegner, Purchasing Manager
DATE: December 28, 2015
SUBJECT: 2016 Board Appointed Consultants and Retained Professionals Ratification
OBJECTIVE: Board Action–Ratification of Board Appointed Consultants & Retained Professionals

Issue

At the first Board meeting of the year, the Board appoints and ratifies certain professional consultants which are retained by the Board.

Background

EWEB contracts with a group of consultants who are defined as being appointed or retained by the Board. The selection of these consultants is based on their technical knowledge, areas of expertise, and their historical knowledge and perspective of EWEB and its work. The key attribute of each of these consultants is their independent advisory responsibility to the Board; a responsibility to provide professional direction and assessments to the Board, as determined by the consultant, without regard to staff's position or interpretation. These are long-term relationships that remain in effect through a Board adopted exemption from the requirements of Oregon Public Contracting law [EWEB Rule 6-0130: Board Appointed Consultants and Retained Professionals].

Although these contracts are exempt from public contracting law and do not require a competitive process, the General Manager directed staff to competitively solicit these contracts to be sure that EWEB is receiving the most competitive and best value in these areas. In late 2012 through 2015, staff issued solicitations and awarded new contracts for:

- General Counsel – Luvaas Cobb
- Financial Advisor – Piper Jaffray
- Independent Actuary – Kenney Consulting
- Trustee Services – US Bank Global Corporate Trust Services
- Real Estate Consultant – ECO Northwest
- Real Estate Broker Services – Evans, Elder & Brown; Windemere Real Estate
- HR Counsel – Harrang, Long, Gary and Rudnick
- Special Counsel and Power Risk Counsel-Cable Huston Benedict Haagensen & Lloyd
- Special Counsel and Power Risk Counsel Trading & Power Operations - Law Offices of Jeremy Weinstein

Contracts are within the initial 5 year term of service.

The following contracts are scheduled to be competitively solicited in 2016.

- Independent Auditor/Certified Public Accountant– Due to issues currently being worked with the Auditors and the ongoing work being performed by Moss Adams, the Finance Department recommends retaining Moss Adams for the next few years. The current contract will expire in 2016, and is expected to be re-solicited then.
- Bond Counsel- Due to bond issuances currently in process with Mersereau & Shannon, Finance recommends retaining Mersereau & Shannon for bond counsel services until after the current issuances are complete in mid-summer 2016. The current contract will expire in 2016, and will be re-solicited then.

Management recommends continuing retained professional services by Murphy & Buchal for special legal counsel for the BPA Rate Case.

Each of these consultants' work continually supports and helps direct EWEB's business and policy decisions. All retained attorneys have an obligation to protect EWEB (and its Governing Body) and to independently advise the Board, if required, on legal matters. EWEB Bond Resolutions require certain actions by some of these independent consultants when issuing new bonds. EWEB's bond counsel, financial advisor, and independent auditor are appointed to act on behalf of the Governing Body to independently assess the utility's performance in these areas.

A survey is distributed annually to staff who utilizes these contracts to assess the performance of the consultants. Management has no objection to ratification of any of these consultants.

A very brief overview of each consultant is provided herein:

RETAINED PROFESSIONALS – ATTORNEYS

Contract Information

1. Luvaas, Cobb, Law – Eric DeFreest: General Counsel

Tenure: Contract solicited and awarded in 2013

Contract Information: In 2012, a solicitation was issued and a new contract was established with Luvaas, Cobb, Law for General Counsel Services in Jan, 2013.

Annual Expenditures (to date):

2015	2014	2013	2012	2011
\$149,601	\$163,500	\$251,114	\$106,147	\$177,665

Luvaas Cobb, through Eric DeFreest maintains an historical perspective and a broad range of expertise in municipal utility legal matters which continue to be very valuable to the utility. Eric DeFreest and other attorneys from the firm are quick to respond to staff inquiries. They continue to maintain an excellent relationship with staff and consistently provide sound legal advice.

Recommendation: Ratify as General Counsel for 2016

2. Cable Huston Benedict Haagensen & Lloyd: Special Counsel

Tenure: Retained in the early 1980s

Contract Information: This contract was competitively solicited in 2014.

Annual Expenditures (to date):

2015	2014	2013	2012	2011
\$548,511	\$302,922	\$356,964	\$401,860	\$445,146

Cable Huston Benedict Haagensen & Lloyd is recognized as a preeminent law firm in the state dealing with energy issues. In 2015, \$190,000 has been spent with this firm for Leaburg Dam roll gate failure legal counsel. Their work on many utility projects is considered to be invaluable as they have considerable technical expertise. Staff greatly values their work on environmental, generation and power contract issues.

Recommendation: Ratify as Special Counsel for 2016

3. Law Offices of Jeremy Weinstein - Special Counsel, Power Operations

Tenure: Retained in 2014

Contract information: It was competitively solicited in 2014. Services have been limited over the past year.

Annual Expenditures (to date):

2015	2014			
\$5,775	\$ 0			

Recommendation: Ratify as Special Counsel for 2016

4. Murphy & Buchal LLP: Special Counsel (BPA Rate Review)

Tenure: Retained in 2010

Contract Information: Contractor provides special counsel for the BPA Rate Review.

Annual Expenditures (to date):

2015	2014	2013	2012	2011
\$55,888	\$57,727	\$31,018	\$54,880	\$160,230

Murphy & Buchal have represented major participants in every general power and every contested transmission rate case of BPA since 1984. Murphy & Buchal will assist in analyzing legal positions and preparing testimony in the BPA rate case.

Recommendation: Ratify as Special Counsel for 2016

5. Harrang, Long, Gary and Rudnick: Human Resources Counsel

Tenure: Retained in 1992

Contract Information: This contract was competitively solicited in 2014.

Annual Expenditures (to date):

2015	2014	2013	2012	2011
\$96,177	\$96,817	\$167,246	\$104,625	\$ 89,584

Harrang, Long, Gary and Rudnick has a long history of providing legal services related on HR issues to EWEB. This firm is very knowledgeable about EWEB's HR policies and related issues.

Recommendation: Ratify as Human Resources Counsel for 2016

6. Mersereau & Shannon: Bond Counsel

Tenure: Retained in 2009

Contract Information: Management recommends retainage for one additional year during the Water Utility bond issuance, after the completion of the bond issuance a solicitation will be issued for ongoing bond counsel services.

Annual Expenditures (to date):

2015	2014	2013	2012	2011
\$0	\$ 0	\$0	\$85,000	\$230,000

In late 2009 staff solicited these services and selected Mersereau and Shannon to be EWEB's Bond Counsel. Mersereau and Shannon has had a long history with EWEB, is extremely knowledgeable, experienced, and responsive to EWEB requests in a timely manner.

Recommendation: Ratify as Bond Counsel for 2016, with the intent that a solicitation for bond counsel services will be complete mid-year 2016 after the issuance of the water department bond.

BOARD APPOINTED CONSULTANTS:

7. Black & Veatch: Independent and Consulting Engineers

Tenure: Retained in 1991.

Contract Information: The contract was solicited in 2012.

Annual Expenditures (to date):

2015	2014	2013	2012	2011
\$0	\$0	\$0	\$8,000	\$15,000

Black & Veatch is considered to have demonstrated excellent technical knowledge and expertise in performance of its engineering work. Staff has very high confidence in this consultant's expertise and greatly appreciates their timely response even when given very short notice. Black and Veatch was awarded a \$6,000,000 contract for consulting services on the Carmen Smith Power House refurbishment project at the November 3, 2015 Board meeting. Over the next five years they will be providing Independent and Consulting Engineering services in addition to the project specific contract work recently awarded.

Recommendation: Ratify as Independent and Consulting Engineers for 2016

8. Kenney Consulting: Independent Actuaries

Tenure: Retained over 20 years ago

Contract Information: This contract was competitively solicited in 2013.

Annual Expenditures (to date):

2015	2014	2013	2012	2011
\$28,000	\$7,000	\$0	\$33,500	\$20,000

The Independent Actuaries’ scope of work includes medical benefits, supplemental retirement plan evaluations, and PERS issues – all important and very visible issues for the utility. Staff continues to have confidence in Kenney Consulting’s ability to meet EWEB needs. Kenny Consulting is recognized as having a broad range of available expertise and knowledge of pension reporting requirements.

Recommendation: Ratify as Independent Actuaries for 2016

9. Moss Adams: Independent Auditor and Certified Public Accountant

Tenure: Since 2005

Contract Information: In 2011 a new contract was negotiated for a potential five year term. This contract will be re-solicited in 2016.

Annual Expenditures (to date):

2015	2014	2013	2012	2011
\$147,020	\$105,987	\$105,250	\$114,521	\$128,727

We are generally satisfied with Moss Adams’ performance as Independent Auditor and with their vast knowledge of utility auditing issues. This is Moss Adams’ ninth audit cycle as EWEB’s Independent Auditor and Certified Public Accountant.

Recommendation: Ratify as Independent Auditor and Certified Public Accountant for 2016

10. Piper Jaffray: Financial Advisor

Tenure: Retained in 2013

Contract Information: This contract was solicited in late 2012 and awarded in Jan 2013 for a potential 5 year term.

Annual Expenditures to Date:

2015	2014	2013		
\$6,866	\$0	\$5,532		

The quality of the performance of the financial adviser consultant is often based on their experience with electric and water utilities, rating agency presentations, access to trading floor and current pricing experience. Piper Jaffray has demonstrated that they possess these qualifications and experience.

Recommendation: Ratify as Financial Advisor for 2016

Discussion

EWEB’s Board has adopted Contracting Rule 6-0130 that exempts Board Appointed Consultants and Retained Professionals from the requirements of Oregon Public Contracting law, and has appointed independent consultants and retained professionals as advisors to the utility’s Governing Body. These consultants’ historical perspective and in-depth knowledge of the utility and its operations makes their expertise and advice extremely valuable and beneficial to EWEB.

Each year Management asks the Board to ratify the consultants to continue their work in the coming year. Management has confidence in the high quality of work, demonstrated technical knowledge and expertise, and high satisfaction with the services received.

Recommendation

Management recommends ratification of the Board Appointed Consultants and Retained Professionals for 2016.

Requested Board Action

Management requests ratification of the Board Appointed Consultants and Retained Professionals for 2016 as recommended above.