CITY COUNCIL AGENDA REPORT

MEETING DATE: **SEPTEMBER 7, 2004** **ITEM NUMBER:**

SUBJECT: **ORGANIZATION REVIEW/COST-BENEFIT ANALYSIS OF THE CITY ATTORNEY'S OFFICE**

DATE: **AUGUST 25, 2004**

FROM: **CONTRACT REVIEW COMMITTEE**

PRESENTATION BY: **MARC R. PUCKETT, DIRECTOR OF FINANCE**

FOR FURTHER INFORMATION CONTACT: **MARC R. PUCKETT (714) 754-5243**

RECOMMENDED ACTION:

1. Review options to provide legal services.
2. Provide direction to staff regarding preferred option and implementation plan.

BACKGROUND:

At the February 2, 2004, City Council meeting, staff presented an organizational review of the City Attorney's Office to City Council for consideration. The organizational review was prepared by Management Partners, Inc. (MPI). Management Partners was retained by City Council in September, 2003, to conduct an organizational review and cost/benefit analysis of the City Attorney's Office (CAO), and to provide recommendations on how legal services could be provided to Costa Mesa in the most effective and efficient manner for City Council and all operating departments.

After much discussion of the study, Council expressed an interest in reviewing proposals from outside legal firms, as well as a proposal from the City Attorney's Office. Council directed staff to prepare an RFP for contract legal services, to solicit proposals from qualified law firms, and to appoint two Councilmembers to work with staff to evaluate the proposals submitted and make recommendations to City Council. Mayor Monahan and Councilmember Cowan were designated to work with staff on this effort. The designated Councilmembers had noted that existing policy for performing similar reviews of "contracting city services" could be utilized for the purposes of this process.

Pursuant to Council Policy 100-6, a review process was established to review service delivery and establish an organizational analysis process that includes consideration of contracting for services, and departmental reorganization and/or consolidation. This policy creates a process by which City services are evaluated and compared to those similar services performed in the private sector to determine how the service delivery may be performed at its optimum effectiveness and efficiency. A Contracting Committee was created to facilitate the review process.

Ten firms responded to the RFP. The Contracting Committee utilized an RFP rating process that included reviewing the following major areas of interest in the proposals:

1. Elements of the cost proposal – what services would be included in retainer and what services would be billed separately.
2. Number of attorneys on staff and specialized legal services provided by the firm.
3. Number of governmental clients – public sector experience of firm and proposed principal contacts.
4. Office location – availability and lead-time required for scheduling meetings and/or exchange of documents.
5. Overall responsiveness to the Request for Proposal.

The purpose of the rating process was to reduce the list of respondents to a "manageable" number of firms to participate in interviews. This number had been loosely identified as between two to four firms. The rating results provided a sound basis to make the determination of which firms should participate in the interview process. Each of the components of the ratings process had a different perceived value and could have been used exclusively or collectively to make the determination of which firms should continue as part of the interview process based upon which of the criteria were deemed most important to the Committee.

The Committee chose to interview three firms: Woodruff, Spradlin & Smart; Stradling, Yocca Carlson & Rauth; and Jones & Mayer. Interviews were scheduled with the principals of the law firms and key staff members that would be assigned to the engagement if the firm were to receive a contract from the City. Each interview was one and one-half hours long using an informal question and answer format. Interview panelists from the Committee included Mayor Monahan, Councilmember Cowan and Steve Hayman, Assistant City Manager. City Manager Allan Roeder participated as well by means of checking the references of those firms interviewed.

Through the process of evaluating the proposals and conducting the interviews, a clear consensus was reached that all firms interviewed could adequately perform the function of providing legal services to the City and the City Council. The interview process did result in a recommended hierarchy of law firms to consider, should the City Council decide to contract for this service. The recommended firms would be, in order: Jones & Mayer; Woodruff, Spradlin & Smart; and Stradling, Yocca, Carlson & Rauth. Once the City Council determines the appropriate direction to take relative to providing legal services, the City Council is requested to direct staff in the selection of a law firm to negotiate further with. This request is only necessary in the event that the City Council chooses to outsource the City Attorney's Office.

In the event the City Council goes in this direction, the following options remain: direct the City Manager to negotiate with the top rated firm, conduct interviews by the entire City Council of the top three firms, or conduct interviews by the entire City Council from among any and all of the firms submitting proposals.

ALTERNATIVES CONSIDERED

The Contracting Committee also met with current staff of the City Attorney's Office to discuss the "contracting in" proposal to be prepared by staff in the City Attorney's Office. The City Attorney's Office was requested to provide a written evaluation of service delivery options for services provided by the City Attorney's Office to Council and other departments.

The City Attorney's Office staff prepared a report (copy attached) that was based on the recommendations contained in the Management Partners, Inc. review, primarily, that the City Attorney's Office function be retained as an internal service department providing legal services to City Council and other departments.

Based upon the recommendations contained in the MPI Review, the City Attorney's Office developed three separate proposals for Council to consider for improving the operation and budgetary impacts of the CAO. They all involve a version of filling the City Attorney position, hiring a full-time litigator, and filling the vacant Legal Secretary position. Each of the three variations presents a different plan for retaining a modified in-house CAO that can be compared to using a contract City Attorney.

The attached report outlines in detail how the three alternatives for the City Attorney's Office would be implemented. As indicated by CAO staff, the overriding intent of the three proposals was to underscore the flexibility in how the services could be provided by existing staff and CAO staff's willingness to implement recommendations forthcoming from this process.

FISCAL REVIEW

While it is difficult to make an "apples to apples" comparison of fees charged by the outside attorneys versus in-house staff, there are a number of observations that may be made relevant to this discussion. Most significantly, if the City were to employ outside legal Counsel, the attorneys would bill the City for work "on demand" with an extremely limited number of "in-house" hours when compared to our current staffing model.

Per the attached calculation of the CAO's productive hourly rate, at full staff the blended Attorney hourly rate would be only $86.73 per hour of service. Based on current staffing, the blended Attorney hourly rate is only $77.10 for 5,400 productive hours. The blended hourly rate for all CAO staff including paralegal staff is $71.09 per hour and the paralegal hourly rate is $35.77, less than half the contract paralegal rate proposed.

These rates compare favorably when compared to the proposed hourly rates of the three firms interviewed. Each of the three firms proposed rates is outlined below:

Jones and Mayer	$160.00	blended hourly rate for all attorneys and includes mileage and word processing costs
Woodruff, Spradlin and Smart	$170.00	blended hourly rate for all attorneys and includes mileage and word processing costs (also proposed 10% reduction first two years contract to help ease effects of State budget impacts on City)
Stradling, Yocca, Carlson, & Rauth	$8,000/month retainer for 40 hours of legal services ($200/hour). Additional legal services billed at $200/hour. Specialized legal services billed at rate set forth based upon attorney performing work (ranging from $200/hour to $325/hour). All costs for copies, word processing and travel would be billed separately each month.	

Based on current staffing levels, the CAO provides attorney services at a blended rate of $77.10 per hour totaling 5,400 hours at an annual cost of $416,340. By contrast, 5,400 hours of attorney services would cost the City $864,000 from Jones and Mayer, $918,000 from Woodruff, Spradlin and $1,080,000 from Stradling, Yocca. The proposed cost from each of the three contract law firms is more than double the cost for in-house Counsel if the same number of productive hours is required to perform the same legal services.

If the legal services are contracted out, it is anticipated that there will be a reduction in the number of hours of legal services billed to the City since attorneys will not be attending many of the meetings now attended by in-house legal staff. Further, there may be time efficiencies in how the service is provided by outside Counsel based on the number of legal staff available to draw from and their experience and familiarity with the legal matters presented.

LEGAL REVIEW

There is no legal review required for this item. However, the Costa Mesa City Employee Association, which represents some current employees of the CAO, had representatives that served as members of the Contracting Committee. The Costa Mesa City Employee Association (CMCEA) has formally requested to "Meet and Confer" on the "impacts" to their membership, of contracting out this service. Article 19 of the Memorandum of Understanding with CMCEA addresses this subject.

CONCLUSION

Council had expressed an interest in reviewing proposals from outside legal firms, as well as a proposal from the City Attorney's Office to "contract-in" legal services. Staff has received proposals from outside legal firms and the City Attorney's Office to "contract-in" legal services. These proposals are herewith provided to Council for consideration and review of the options for the provision of legal services. Staff is requesting that Council provide direction regarding the options presented.

Marc R. Puckett Director of Finance	Steven E. Hayman Assistant City Manager
Howard Perkins Acting Administrative Services Director	Agnes Walker Budget and Research Officer

Attachments:

1. Proposal from CAO staff for "Contracting-In" Legal Services
2. Schedule of CAO Productive Hourly Rate calculation
3. February 2, 2004 City Council Meeting Staff Report - including MPI Study
4. Memorandum From Acting City Attorney Regarding MPI Report
5. Letter from CMCEA
6. Article 19 of MOU Between CMCEA and City