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| ETF_logo_large STATE OF WISCONSIN **Department of Employee Trust Funds** David A. Stella SECRETARY  801 W Badger Road  PO Box 7931  Madison WI 53707-7931  1-877-533-5020 (toll free)  Fax (608) 267-4549  http://etf.wi.gov |  |  |

### CORRESPONDENCE MEMORANDUM

CONFIDENTIAL

Until contract is executed

**DATE:**   **March 13, 2009**

**TO:**   **Bob Conlin, Deputy Secretary**

**FROM:**  **Jon Kranz**

**Mary Alice McGreevy**

**SUBJECT:**  **Federal Tax Counsel Evaluation Committee Report (ETI 0009)**

**Recommendation**

The federal tax counsel evaluation committee recommends issuing the Department’s intent to award a contract to Ice Miller, LLP pending successful negotiation of a contract to provide federal tax counsel services to the Department of Employee Trust Funds.

The RFP evaluation committee has determined that this vendor is the most competent and able to provide the services requested by the Department.

Staff from the Office of Budget and Trust Finance (OBTF) served as advisors and observers through the entire procurement process. OBTF staff are confident that all procurement protocols and procedures were followed.

A description of the bid process and additional detail regarding this recommendation is provided below.

**Background and bid process**

In accordance with the Employee Trust Fund Board’s (Board) delegation of authority (September 19, 2008), the Department released a request for proposals (RFP) for federal tax counsel services for the Department on January 22, 2009.

The RFP was announced through several means: VendorNet, the state’s procurement system; a posting on the National Association of Public Pension Attorneys listserv; and a posting on the Department’s internet site. Firms that are known to practice in employee benefits, including several based in Wisconsin, were given a courtesy notification that the RFP had been released.

Questions from prospective bidders were due February 6, 2009, and answers to those questions were posted on the extranet site on February 9, 2009.

Proposals were due in the Department’s offices by 3:00 p.m. on February 12, 2009. Twelve vendors submitted proposals by the deadline. No proposals were received after the stated deadline.

The vendors who submitted proposals under the RFP were, in no particular order:

1. Kutak Rock LLP
2. Tucker Ellis & West LLP
3. Reed Smith LLP
4. Whiteford, Taylor & Preston LLP
5. Krieg DeVault LLP
6. Groom Law Group, Chartered
7. K & L Gates LLP
8. Morgan Lewis & Bockius LLP
9. Reinhart Boerner Van Deuren, s.c.
10. Strasburger & Price LLP
11. Ice Miller, LLP
12. Calhoun Law Group, P.C.

**Proposal evaluation and scoring process**

The rating committee had three members who evaluated each of the proposals received. Two of the members of the committee were ETF employees, the third was an ETF Board member. The pricing proposals were in separate envelopes that remained sealed until after the evaluations were completed and compiled.

On February 13, 2009, evaluators were provided instructions and copies of the proposals that each evaluator was to score. Evaluators were briefed on appropriate procedures and guidelines. Each evaluator was asked to report potential conflicts of interest. Based on the information provided by the evaluators, the Department determined that there were no reportable conflicts of interest. The evaluators were given until February 25, 2009, to individually score the proposals, and then met on that date to discuss the results and develop recommendations.

**Scores and recommendation**

Twelve firms submitted proposals for this RFP. All firms met the minimum “pass/fail” requirements of the RFP.

Based on the initial evaluator scores, the Committee determined that three of the proposals were far superior to the other nine, and Ice Miller’s proposal was the unequivocal leader of the three. As such, these three were deemed finalists and no additional consideration was given to the non-finalists.

Committee members thoroughly discussed the proposals submitted by the finalists and the final non-cost point totals are summarized below. The maximum number of points that could be awarded was 273 (91 points per evaluator X 3 evaluators).

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| Ice Miller | Groom | Reinhart |
| 241.3 | 201.5 | 178.1 |

The consensus of the Committee was that Ice Miller’s proposal was considerably better than the other two finalists and the firm should be awarded the contract pending successful negotiation of a contract. The group felt that although Reinhart scored decently, if selected as the vendor, the firm would be focused on “learning on the job” as their proposal highlighted the firm’s experience working on the investment side of public retirement plans. With respect to the Groom Law Group, although they scored very highly, the group felt that their focus was significantly on the investment side of public retirement plans as well.

After the Committee completed their work, the cost proposals of the finalists were opened. The remaining cost proposals remain sealed. One vendor provided a second cost proposal after the due date. As per Department policy, this communication remains sealed. None of the finalists provided the first year fixed cost component as requested in the RFP. This piece of information was to be used to assign the cost points. Since none of the finalist provided this information, no cost points were assigned.

Overall, the group felt that Ice Miller presented the best combination of knowledge, breadth and depth of experience, availability and willingness to work with the Department to maintain the qualified tax status of the WRS and also to work with other plans the Department administers.

**References**

Mary Alice McGreevy contacted references provided by each of the finalist vendors. These contacts elicited no red flags about any of the finalist vendors. The references’ responses to the questions regarding the work provided by each firm bore out the findings of the rating committee. Without exception, the references highly recommended Ice Miller for work with a large, complicated defined benefit plan. The references said that the firm was resourceful, responsive, and knowledgeable, their work was timely and thorough and “outstanding” in the area of providing tax counsel for qualification, benefits and plan issues.

The other top finalists also were also praised by their references, and the responses reflected what the rating committee had independently determined about the other finalists: that the Groom Law Group was very good, but smaller, and that Reinhart was quite focused on investment and fiduciary compliance work and not plan qualification.

**Contract Negotiations**

In negotiating the contract, it will be important for the Department to establish the parameters of hours and work performed by the vendor. These should include specific priorities for the first contract year; how work will be assigned to the vendor; timelines for the completion of the work assigned; and a more firm estimate of the total costs for the first year of the contract.

Contract negotiations can begin upon your concurrence with this recommendation. An initial on-site meeting with the lead partner and key ETF staff is strongly encouraged. In addition, we suggest that a contract negotiating team be created consisting of David Nispel, Jon Kranz, and Mary Alice McGreevy The charge of this team will be to negotiate the first year price, firm up the details of the work to be performed, and establish other details of the contract.