

840 CMR 26.00: CONSULTANTS

Section

- 26.01: Application for Approval by the Public Employee Retirement Administration Commission
- 26.02: Determination of Qualifications of Consultant; Review of Application
- 26.03: Rating of Qualifications for Consultants
- 26.04: Approval by Commission
- 26.05: Change of Consultant
- 26.06: Revocation of Approval by the Commission

840 CMR 26.00 is the standard rule for the retention of a consultant promulgated by the pursuant to M.G.L. c. 7, § 50 and M.G.L. c. 32, §§ 21 and 23. Except as may otherwise be provided by the Commission, or by supplementary rules of a particular retirement board approved by the Commission pursuant to 840 CMR 14.02, or by statute, 840 CMR 26.00 is the standard rule for the approval of a consultant.

26.01: Retention of a Consultant

- (1) Any board which employs a consultant must apply for approval of the consultant from the Commission by filing an application for approval on Form 25 with the Commission. Such application shall take place with respect to consultants employed as of the effective date of 840 CMR 26.00, prior to the board executing a contract extension, renewal or new contract or six months after the effective date of 840 CMR 26.00, whichever is earlier.
- (2) Any such consultant must be registered as an investment adviser pursuant to the Investment Advisers Act of 1940 (15 U.S.C. 80b - 1 *et seq.*).
- (3) Any such consultant must be deemed a qualified consultant by the Commission prior to providing services to the board.
- (4) Boards shall use the following process in selecting consultants:
  - (a) Boards shall establish specifications and criteria for selection including:
    1. whether a full-line consulting firm will be employed or whether a limited-line firm will be employed;
    2. the type of firm to be selected (a firm offering a wide range of products or services or a firm specializing in the consulting area);
    3. the experience of the consulting firm's personnel;
    4. an initial determination as to whether the existing consultant will be retained automatically;
    5. the range of fees that are considered tolerable; and
    6. the consultant's experience in policy restrictions including South Africa and Northern Ireland and tobacco.
  - (b) A written contract shall be executed stating all terms and conditions of employment including, but not limited to, an itemized list of services to be provided, term of employment, fees and termination provisions. No contract shall contain a provision which requires the indemnification of the consultant by the retirement board. A copy of every contract shall be retained by the board and be subject to audit by the Commission.
- (5) Fee schedules shall not be based on a percentage of assets but shall be based on a fixed dollar amount based on services provided.
- (6) A consultant shall inform the and the board of any arrangements, oral or in writing, for compensation or other benefit received or expected to be received by the consultant or a related person from others in connection with the consultant's services to the board.
- (7) A consultant shall disclose to the Commission and the board any compensation paid or expected to be paid, directly or indirectly, by the consultant or a related person to others for referring the services of the consultant to the board.

## 840 CMR: PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION

### 26.01: continued

(8) A consultant shall disclose to the Commission and the board in writing any conflict of interest the consultant may have which could reasonably be expected to impair the consultant's ability to render unbiased and objective advice.

(9) All consultants shall submit Form ADV Part II of the Uniform Application for Investment Adviser Registration to the board and to the Commission.

### 26.02: Determination of Qualifications of Consultant; Review of Application

(1) Consultant. The Commission shall determine, for every application for approval, whether the board has a consultant registered as an investment adviser pursuant to the Investment Advisers Act of 1940 (15 U.S.C. 80b - 1 *et seq.*) as required by 840 CMR 26.01(2).

(2) Review of Application. If the Commission determines that the board has a consultant as required by 840 CMR 26.01(2), the Commission shall review the selection process of the consultant, review the information contained in the application for approval, and review the professional qualifications of the consultant in accordance with 840 CMR 26.03.

### 26.03: Rating of Qualifications for Consultants

In rating qualifications for consultants the Commission shall develop and disseminate objective criteria uniformly to be applied in an equitable fashion. These criteria shall include, but not be limited to, the professional qualifications of the consultant, public and private pension accounts as of the year preceding the year of application, staffing of consulting organization, consulting organization, and reporting and client servicing.

### 26.04: Qualified Consultant

(1) Qualified Consultant. Consultants assigned 70% or more of the total applicable points pursuant to the criteria developed in accordance with 840 CMR 25.03 shall be deemed qualified.

(2) The Commission shall also consider other factors, including but not limited to, any regulatory action, litigation, or legal proceedings involving the consultant in the past five years and any other matters relating to the qualifications of the consultant and shall determine whether any such matters warrant denial of an approval. The Commission shall notify the board and the consultant of the reasons for any such denial of approval. The Commission may withhold approval of a consultant if it is in the best interests of the retirement system.

(3) Starting January 1, 1999, on or before the fifth anniversary of the hiring of a consultant and every fifth year thereafter, the retirement board shall request authorization from the Commission to continue to retain said consultant. The Commission shall re-evaluate said consultant in accordance with the provisions of 840 CMR 26.03 and determine if continued approval is warranted pursuant to 840 CMR 26.04.

### 26.05: Change of Consultant

Any board granted approval to retain a consultant that terminates its consultant shall notify the Commission within ten days. Termination of an approved consultant voids the approval granted to the board pursuant to 840 CMR 26.04(1).

### 26.06: Revocation of Qualification by the Commission

(1) If the Commission has reason to believe that a board granted approval to retain a consultant pursuant to 840 CMR 26.04(1), or the investments of any such board, do not comply with the requirements of M.G.L. c. 32, § 23(2), or with the requirements of 840 CMR 16.00 through 26.00, the Commission may require the board to show cause why the qualification of the consultant should not be revoked. If the board fails to establish that its investments do so comply, the Commission may revoke the qualification of the consultant.

840 CMR: PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION

26.06: continued

(2) If the Commission determines that an action of a consultant, including but not limited to, involvement in any regulatory action, litigation or legal proceedings, change in principals or senior professionals, or ability to perform significantly impairs or changes the consultant's ability to perform, the Commission may require the board to show cause why the qualification should not be revoked. If the board fails to establish that the consultant is capable of discharging its duties, the Commission may revoke the qualification.

REGULATORY AUTHORITY

840 CMR 25.00: M.G.L. c. 7, § 50; c. 32, §§ 21 and 23.