

CITY OF LOS ANGELES
BOARD OF DEFERRED COMPENSATION ADMINISTRATION

MINUTES
SPECIAL MEETING OF MAY 2, 2006 – 1:30 P.M.
200 N. SPRING STREET, ROOM 1060

Board Members:

Present:

Eugene K. Canzano
Richard Kraus
Bill Stein
Maggie Whelan

Staff:

Personnel: Maryanne Keehn, Personnel
Steven Montagna, Personnel
Fernando Campos, Personnel
Bryan Cowitz, Personnel
Richard Bobb, City Attorney

1. CALL TO ORDER

Maggie Whelan called the meeting to order at 1:30 p.m.

2. PUBLIC COMMENTS

None.

3. BOARD REPORT 06-17 REQUEST FOR PROPOSAL
FOR PLAN ADMINISTRATION

Ms. Whelan asked staff to provide an overview. Steven Montagna indicated that the Office of the City Attorney was recommending that the Board cancel its March 16, 2006 Request for Proposal for Plan Administration as a result of the fact that the Board's consultant, who had participated in drafting the RFP, was now working with a firm which had indicated its intent to submit a proposal. Mr. Montagna indicated that the City Attorney's concern was that this constituted an appearance of conflict of interest under State law.

Deputy City Attorney Harit Trivedi and Assistant City Attorney Theresa Stamus, both with the City Attorney's Office, were present to explain the City Attorney's

recommendation. Mr. Trivedi began by indicating that he wished to make clear that there was no suggestion of any impropriety having occurred, but that the concern was rather over the appearance of a conflict of interest under California Government Code Section 1090. He stated that Section 1090 has been broadly construed by the courts and has severe potential consequences in terms of voided contracts. He further stated that the law has been construed specifically to prohibit consultants from creating contracting opportunities for themselves.

With respect to the situation involving this RFP, he indicated that the City Attorney's concern was that Ms. Wendy Young-Carter's work in creating the RFP and subsequent employment with the firm of Citistreet, a firm having indicated its interest in bidding on the contract, created an apparent conflict of interest. He stated that it was important to identify how the process could be cleansed so the Board could proceed with its search. Ms. Whelan asked how the process could be cleansed. Mr. Trivedi indicated that if the Board canceled the current RFP and had the document reviewed by a non-conflicted party, essentially establishing a fresh development process, then the vendor search could be cleansed with respect to Section 1090.

Mr. Stein indicated his concern that because the Board and staff had gone through a very rigorous process and created a document with which the Board was very comfortable, he did not suspect the document would change significantly following a new review. Ms. Stamus replied that the key was that the Board create a genuinely fresh review process, even if the new document substantially resembled the old. Mr. Montagna asked whether, if another consultant from Mercer who had not been involved with the prior RFP development process reviewed the document and worked with staff to submit a revised RFP to the Board, this would be sufficient to address the Section 1090 concerns; Mr. Trivedi and Ms. Stamus indicated yes.

Mr. Stein asked if there was a distinction on this issue between a Mercer employee and Mercer as an organization. Mr. Trivedi indicated that the law attached to the employee, not the firm, and that the law did not allow a consultant to create a financial interest for him or herself in a consulting role and then seek to compete for the very opportunity that individual helped to create. He stated that the distinction was with whom a financial interest was created, and in this case the financial interest was created for Ms. Young-Carter by virtue of having participated in the RFP development process prior to employment with a firm competing in that process.

Mr. Canzano asked if Citistreet would be eligible to bid should the Board cancel the RFP. Mr. Trivedi indicated yes. Ms. Whelan asked what could be done to prevent this type of situation from recurring in the future. Mr. Trivedi and Ms. Stamus indicated that language could be inserted into RFPs and contracts with consultants to prohibit activities in conflict with Section 1090, and that City Attorney staff could work with Personnel Department staff to address this as soon as possible. Mr. Kraus asked what risks the Board was subject to if it proceeded with the current RFP, and Mr. Trivedi indicated that at least one vendor would be disqualified from bidding and it was quite possible that the process would face challenges from other vendors.

As a result, a motion was made by Bill Stein, seconded by Gene Canzano, canceling the March 16, 2006 Request for Proposal for Plan Administration, and directing staff to prepare a new Request for Proposal and bring it back to the Board for approval; the motion was unanimously adopted.

4. ADJOURNMENT

The meeting adjourned at 1:50 p.m.

* Minutes prepared by staff member Steven Montagna