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DEFERRED COMPENSATION PLAN BOARD REPORT 06-05



Date: February 9, 2006

To: Board of Deferred Compensation Administration

From: Staff

Subject: Marketing Cessation

Recommendation:

That the Board of Deferred Compensation Administration receive and file the following information regarding market cessation rules with reference to the Board's upcoming Request for Proposal for Plan Administration.

Discussion:

At the Board's January 17, 2006 meeting staff was requested to conduct research regarding marketing cessation policies and develop a proposal for Board consideration in connection with its upcoming Request for Proposal for Plan Administration. In particular, staff was requested to review a policy being drafted by the Los Angeles City Employees Retirement System (LACERS).

Staff contacted LACERS and obtained their draft policy, which LACERS indicated was not ready for public consumption. However, LACERS staff indicated that the policy under development was based on a policy previously adopted by the Fire and Police Pension System (Pensions). Staff contacted Pensions and obtained their policy (attached), but was informed by their staff that this policy was currently under review and might be modified.

Staff then forwarded the policies along to the Board's counsel, Deputy City Attorney Richard Bobb. Mr. Bobb consulted with Assistant City Attorney Noreen Vincent as well as Deputy City Attorney Lonnie Eldridge. Following that consultation, Mr. Bobb indicated to staff that it was the opinion of the City Attorney's Office that recently enacted L.A. Municipal Code Section 49.5.17 already addressed the fundamental objectives of any marketing cessation policy the Board might adopt. The relevant portion of that Section (the full Section is attached to this report) states:

No member of a Board or Commission shall participate in or otherwise be involved in the development, review, evaluation, negotiation and recommendation process of bids,

proposals or any other submittals or requests for the award of a contract, contract amendment, or change order involving that Board, Commission, Office or Department.

The City Attorney's Office advises that this language is sufficiently broad to prohibit individual Board members from meeting or otherwise discussing privately with any proposer, or lobbyist for a proposer, the RFP, the selection process, or the merits of a proposal or of a proposer. The City Attorney further indicated that Board members should be aware violation of this prohibition would be a misdemeanor. While this law prohibits members of a Board from privately meeting with proposers or their lobbyists, it does not preclude members of a Board from discussing, evaluating or choosing proposals in an open and publicly-noticed meeting of the Board.

In light of this, it is the position of staff and the City Attorney that a separate "marketing cessation policy" is unnecessary. City Attorney staff will be on hand to provide further information regarding these rules and how they affect the Board.

Submitted by: _____
Steven Montagna

Approved by: _____
Maryanne Keehn