

AGENDA ITEM

116 MAR

DATE: February 23, 2012

TO: Members, Board of Trustees
Members, Operations Committee

FROM: Peggy Van Horn, CFO
Dina Goldman, Office of General Counsel

SUBJECT: Contract Policy Amendment

EXECUTIVE SUMMARY

This item¹ would amend the Board policy requiring Board authorization of specified contracts that exceed \$75,000. The current policy appears in the Board of Trustee's Policy Manual ("Board Book") at Tab 17, Article 3, Section 2. The proposed amendment would retain the Board's approval of these expenditures exceeding \$75,000 but move the timing of its approval of the expenditure to the adoption of the annual budget that will include a detailed description of all anticipated projects.

BACKGROUND

The Board's policy on approval of specified contracts that exceed \$75,000 was adopted in March of 2010. The policy requires Board approval of contracts for consulting services, capital expenditures, or technology purchases which exceed \$75,000. The text of the full policy, which appears at Tab 17, Article 3, Section 2 of the Board Book, is as follows:

Section 2 Authority

No contracts for consulting services, capital equipment, or technology purchases exceeding \$75,000 may be entered into, by or on behalf of the State Bar unless authorized by the Board of Governors. Any future amendments to a contract originally below the \$75,000 threshold that will

¹ This item was presented to the Board Committee on Planning, Program Development, and Budget at their regular meeting in February 2012. (See Board Item FEB 141 and PPDB Item III.A.) It was continued to this month's meeting of PPDB. To accommodate the schedule of outside counsel in the closed session, the Chair of PPDB has graciously agreed to move the item to the agenda of the Board Committee on Operations.

result in bringing the total contracted amount to this level will also require Board approval.

Exempted are those contracts associated with the normal operations of the Bar including but not limited to site agreements, Admissions consultants, IOLTA and Equal Access grant distributions, and other routine contracted services exceeding \$75,000.

Also exempted are cases of emergency where a purchase is necessary for the immediate preservation of the public health, welfare or safety, or protection of State Bar employees and property, provided the details justifying the emergency contract and other supporting documentation be reported to the Board at its next scheduled meeting.

(Source: Board of Governors' Resolution, July 1981, June 2000, March 2010.)

The intent of the author of the March 2010 policy change was to address Board concerns that large consultant contracts were being awarded without the knowledge of the Board. Prior to the policy change, the Board approved State Bar expenditures through its approval of the State Bar's entire budget rather than review or approval of individual expenditures. Approval of individual contracts within budgeted authority was delegated by the Board to staff. The problem with this approach was a lack of transparency to the Board since no detailed information regarding anticipated consulting contracts was presented in the budget.

ISSUE

Board review of individual contracts can result in conflict issues if Board members have financial interests in the contracts they are considering. Potential conflicts could arise either under Business and Professions Code section 6036 or Government Code section 1090. Section 6036 prohibits Board members from participating in decisions in which they have a financial interest. Government Code section 1090 is more restrictive. It specifically prohibits state officers and employees from being financially interested in any contract made by them in their official capacity or by any governing body or board of which they are members. While recusal of the conflicted Board member is a sufficient remedy under section 6036, section 1090 prohibits a board from even considering a contract in which one of its members has a financial interest. Thus, under the existing policy, in the event one or more Board members had a financial conflict, the Board would be unable to consider and the Bar would be unable to enter into a contract that had been through the entire procurement process and was ready for approval.

DISCUSSION

In order to allow the Board to continue to review and approve expenditures for specified projects without implicating conflicts laws, staff recommends that the Board amend its policy to approve these expenditures at the annual budget adoption, rather than after a contract has been bid and negotiated with a specific vendor. Staff would still be

required to demonstrate to the Board during the budget adoption process that the anticipated expenditure is reasonable and necessary, and a detailed listing of anticipated projects would be specified in the budget document. Staff recommends the following amendments to the existing policy.

Section 2 Authority

~~[Delete text begins]No contracts[Delete text end]~~[Insert text begins]Any project[Insert text ends] for consulting services, capital equipment, or technology purchases [Insert text begins]with anticipated expenditures[Insert text ends] exceeding \$75,000 ~~[Delete text begins]may be entered into, by or on behalf of the State Bar unless authorized[Delete text end]~~[Insert text begins]must be specifically identified in the annual budget process and approved[Insert text ends] by the Board of ~~[Delete text begins]Governors. Any future amendments to a contract originally below the \$75,000 threshold that will result in bringing the total contracted amount to this level will also require Board approval[Delete text end]~~[Insert text begins]Trustees.[Insert text ends].

Exempted are ~~[Delete text begins]those contracts[Delete text end]~~[Insert text begins]expenditures[Insert text ends] associated with the normal operations of the Bar including but not limited to site agreements, Admissions consultants, IOLTA and Equal Access grant distributions, and other routine ~~[Delete text begins]contracted [Delete text end]~~services exceeding \$75,000.

Also exempted are cases of emergency where a purchase is necessary for the immediate preservation of the public health, welfare or safety, or protection of State Bar employees and property, provided the details justifying the emergency contract and other supporting documentation be reported to the Board at its next scheduled meeting.

FISCAL / PERSONNEL IMPACT:

None.

BOARD BOOK IMPACT:

Tab 17, Article 3, Section 2.

RECOMMENDATION

Staff recommends that the Board adopt amendments to the contracting authority process as outlined above.

PROPOSED BOARD COMMITTEE RESOLUTION:

Should the Operations Committee agree with the above recommendation, the following resolution would be appropriate:

RESOLVED, that the Operations Committee recommends that the Board adopt the recommended amendments to the contract authority process that appears in the Board Book at Tab 17, Article 3, Section 2.

PROPOSED BOARD OF TRUSTEES RESOLUTION:

Should the Board concur with the Operations Committee's recommendation, the following resolution would be in order:

RESOLVED, that upon the recommendation of the Operations Committee, the Board hereby adopts the recommended amendment to the contract authority process that appears in the Board Book at Tab 17, Article 3, Section 2.