

## Section 1.0 GUIDANCE FOR BOARD MEMBERS

### 1.1 CONFLICT GOVERNANCE POLICY

*Adopted: December 10, 2004; Revised: February 25, 2014; September 11, 2018; June 9, 2020*

In the interest of maintaining the integrity of the LACERS and affirmatively embracing best practices that would be perceived as representing the highest fiduciary standards of conduct and thus enhance public trust of the Board's decision-making process, the Board, in addition to its established Ethics Policy, adopts this Conflict Governance Policy to promote confidence in their governance and oversight of the management of the System.

Mindful of their fiduciary obligation to discharge their duties solely in the interest of the participants of the System and for the exclusive purpose of providing benefits to the participants of LACERS, the Board is committed to pursuing a course of conduct that insures full compliance with all applicable laws, transparency in the actions taken, and recognition that even appearances of bias may reflect negatively upon the System.

#### I. Required Disclosure

The Board is cognizant of the complex nature of the statutory laws regarding financial conflicts of interest.

- Government Code Section 1090, a broadly drafted conflict of interest statute, prohibits public officers and employees from being financially interested in any City contract that the officer or employee is involved in making. Section 1090 is concerned with financial interests that could prevent officers or employees from exercising absolute loyalty and undivided allegiance in furthering the best interests of LACERS. Any participation in the process by which the contract is developed, negotiated or approved, including making a recommendation on the contract, is a violation of Government Code Section 1090 if the officer or employee has a financial interest in the decision. Also, if a commissioner has a financial interest in a contract, the commission of which he or she is a member may not act on the matter. However, there are some interests defined by the Government Code as "remote interests" which would disqualify the commissioner but not the entire commission.
- Government Code Section 87100 et. seq., the Political Reform Act, prohibits a City officer or employee from making, participating in making or attempting to use his or her official position to influence any governmental decision in which he or she has a "disqualifying economic interest" within the meaning of the Act. The Act defines a "disqualifying economic interest" by first determining whether there exists an economic interest, as defined in the Act, whether it is reasonably foreseeable that the decision will have a material financial effect on the economic interest, and whether the decision will affect that economic interest in a way that is distinguishable from its effect on the public generally or a significant segment of the public. The Act defines an economic interest broadly to include the officer's or employee's finances, those of members of his or her immediate family, investments in a business, interests in real property, sources of income or gifts, and management positions in businesses.
- In addition to State conflicts of interest laws, the City Charter contains its own conflict of interest provision. The standard for disqualification under the Charter is whether it is "not in the public interest" for the officer or employee to act in a particular matter, contract, sale,

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or transaction. (City Charter Section 222). It is “not in the public interest” for an officer or employee to act on a matter if that person believes that he or she cannot act impartially or if the public might reasonably reach that conclusion. To be disqualified under this standard, you do not need to have a conflict of interest within the meaning of State law; simply having any relation to the matter, even if financial interests are not involved, can be cause for recusal.

Recognizing the complexity of the provisions of State law governing conflicts of interest (Government Code Sections 1090 and 87100, *et seq.*) and City Charter Section 222, the Board desires to act with the highest levels of integrity and transparency, always keeping the duty of loyalty to the System’s members and beneficiaries in the forefront of their actions. The Board embraces the obligation of each trustee to fully disclose at the earliest opportunity all potential conflicts for a determination by the City Attorney as to the course of action required under the law.

The Board recognizes that there may be instances where a relationship between a trustee and potential responder to a Request for Proposal (RFP) or Request for Qualifications (RFQ) is such that he or she could not act objectively or where the facts are such that there may be a perception that the trustee could not act objectively. Additionally, the Board recognizes that there may be instances wherein a trustee has a personal or special relationship with a person or entity appearing before the Board that may give the appearance of possible bias.

At a minimum, any matter that reasonably could be expected to interfere or be perceived to be interfering with a trustee’s obligation to discharge their duties with respect to the System in the interest of, and for the exclusive purpose of, providing benefits to participants and their beneficiaries, requires disclosure. Members of the Board are expected to act prudently and reasonably in providing the necessary information to the Office of the City Attorney for a determination of the course of action required under both State law and the City Charter.

## II. Policy Requirements

- A. To prevent even the appearance of bias, all RFPs or RFQs issued by the Board, or recommendations from consultants, shall contain the requirement that all respondents affirmatively provide information regarding any personal or business relationship with any Member of the Board or administrative staff of LACERS. All RFPs or RFQs, and due diligence reviews, will also require the disclosure by the respondents of any payments for placement services to any person, firm, or entity with respect to that contracting opportunity.
- B. The Department’s Ethical Contract Compliance Policy prohibits discussion of upcoming contracts or the contract process by any individual, firm, or entity that is identified as a potential respondent to a contracting opportunity with any Member of the Board or with Department staff or consultants, except communications allowed through the RFP process. The Ethical Contract Compliance Policy requires proposer disclosure of any communications with Members of the Board, staff, or consultants; as well as any gifts given to these parties.

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- C. In the event that the City Attorney opines that any commissioner is disqualified from acting on a matter under the provisions of State law or the Charter, the Commissioner who is recused shall publicly state the reason for their recusal and shall not participate in, or seek to influence in any manner, the matter before the Board. In addition, the Board may disqualify from consideration the proposer or responding entity with whom the financial or other relationship exists, but only to the extent that is consistent with the Board's fiduciary duty to LACERS, and to the participants and beneficiaries of the System.

**Potential City Attorney Conflicts of Interest**

From time to time, pursuant to the City Attorney's professional and ethical obligations under California Law, including Rule 3-310 of the California Rules of Professional Conduct, the City Attorney may determine that it would be prudent for it to avoid representation of the Board in a particular matter. In those situations, the City Attorney shall make a conflict determination, specifying the basis for and the scope of that conflict, and notify the Board of that determination.

- A. In the event the City Attorney believes a conflict exists, the Board, by a majority vote, shall select a law firm to serve as independent conflict counsel in the matter identified by the City Attorney's Office. Such independent conflict counsel shall be selected from those firms currently under a three-year contract with the City Attorney's Office for fiduciary law services who have the requisite professional expertise to handle the matter. As the Board shall select as conflict counsel a law firm currently under contract with the City Attorney's Office for Fiduciary law services, no additional consent from the City Attorney shall be required.

Once conflict counsel is engaged, all communications with and legal opinions from such independent conflict counsel will be handled as confidential attorney-client privileged communications between the Board and its independent conflict counsel. Only the Board may waive this privilege, by a majority vote.

- B. In the event the City Attorney does not believe a conflict exists, then the Board President and the General Manager may meet with the City Attorney to discuss the circumstances and reasoning of the Board's perceived conflict. After meeting with the City Attorney, if the City Attorney still does not believe a conflict exists, the Board may request the City Attorney to seek an opinion from outside fiduciary counsel regarding the perceived conflict. The outside counsel opinion may only be publicly released by a majority vote of the Board and the written consent of the City Attorney.