

The Regents of the University of California

SPECIAL COMMITTEE ON REGENTS' PROCEDURES

January 18, 2007

The Special Committee on Regents' Procedures met on the above date at UCSF-Mission Bay Community Center, San Francisco.

Members present: Regents Dynes, Gould, Hopkinson, Johnson, Kozberg, Lansing, Marcus, and Parsky; Advisory member Oakley

In attendance: Regents Blum, Coombs, De La Peña, Garamendi, Ledesma, Moores, Preuss, Ruiz, Schilling, Schreiner, Varner, and Wachter, Regents-designate Allen, Brewer, and Bugay, Faculty Representative Brown, Acting Secretary Shaw, General Counsel Robinson, Chief Investment Officer Berggren, Provost Hume, Executive Vice President Darling, Vice Presidents Gomes, Hershman, and Sakaki, Chancellors Birgeneau, Bishop, Córdova, Drake, Fox, and Vanderhoef, Acting Chancellors Abrams and Blumenthal, and Recording Secretary Smith

The meeting convened at 10:45 a.m. with Committee Chair Marcus presiding.

1. APPROVAL OF MINUTES OF PREVIOUS MEETING

Upon motion duly made and seconded, the minutes of the meeting of November 16, 2006 were approved.

2. DATES OF REGENTS MEETINGS FOR 2008

The President recommended that the following dates of Regents meetings for 2008 be approved.

2008

January 16-17

March 19-20

May 14-15

July 16-17

September 17-18

November 19-20

The Committee was informed that these dates are the third Wednesday and Thursday of each month. Annual approval of the dates of Regents meetings is the responsibility of The Regents, while the President and the Chairman of the Board, in consultation with the Secretary and Chief of Staff to The Regents, are responsible for establishing the locations of Regents meetings. In accordance with recent practice and Regents'

discussions, two to three meetings will be held at a campus facility in San Francisco, two meetings at UCLA, and one to two meetings at other campuses. The meetings held on campuses will include campus presentations. This item seeks approval of the dates of Regents business meetings through November 2008.

Upon motion duly made and seconded, the Committee approved the President's recommendation and voted to present it to the Board.

3. **AMENDMENT OF THE POLICY ON THE OPERATION OF THE BOARD AND ITS COMMITTEES**

The President recommended that the Policy on the Operation of the Board and Its Committees be amended as shown below.

Addition shown by underscore

- A. All items shall, and background material and reports for presentation to The Regents, including those of the Secretary and Chief of Staff, General Counsel, Chief Investment Officer, Senior Vice President–Chief Compliance and Audit Officer, and individual Regents, should be submitted in advance of the meeting to the President of the University, who shall be responsible for the preparation of agendas, the advance consultation with Committee Chairmen and the Chairman of the Board, and for the coordination of all material for presentation to The Regents. The Committee Chair will approve the agenda for his or her Committee, with the provision that any Regent may request that an item be placed on the agenda. Any Regent may place an item on the agenda of the Committee of the Whole.
- B. The majority of the membership of a Standing Committee should serve more than one year to assure continuity.
- C. Concurrent and off-cycle Committee meetings are encouraged when scheduling permits.

It was recalled that the Bylaws were amended at the November 2006 meeting to change the title of Vice President – Chief Compliance and Audit Officer to Senior Vice President – Chief Compliance and Audit Officer and Secretary of The Regents to Secretary and Chief of Staff to The Regents. This amendment reflects those changes.

Upon motion duly made and seconded, the Committee approved the President's recommendation and voted to present it to the Board.

4. **PROPOSED REVISIONS TO REGENTS' POLICIES ON CAPITAL PROJECTS**

The President recommended that The Regents approves the revisions shown below to Regents' policies relating to capital projects.

It was recalled that a project to review existing Regents' policies was initiated in April 2004. After a thorough review and analysis of the majority of existing Regents' policies, a compendium with suggested actions to individual policies was presented to the Special Committee on Regents' Procedures at its meeting on September 21, 2005. The suggested actions were approved by the Special Committee and subsequently were approved by the Board on September 22, 2005.

Policies in certain subject areas (including capital projects) were not included in the compendium presented to the Special Committee in September 2005 because those policies were still under review. The Special Committee was informed that policies in these areas would be brought to the Board as proposals were completed. In particular, proposed changes to certain policies relating to capital projects were then under review pending the completion of the Transforming Capital Asset Utilization and Delivery Report. That Report is now completed and the proposed policy changes are consistent with its recommendations.

At this time, suggested revisions to the remaining Regents' policies pertaining to capital projects are ready for consideration by the Board.

The policies are arranged below by the type of action proposed. First are those policies that are current, with or without editorial recommendations. Second are those policies that are recommended for rescission. Each policy is annotated to describe any proposed changes or the reason for suggesting that it be republished, with or without editing, or rescinded.

Numbers assigned to the following policies are for ease of reference only.

Policies that are Current or need editorial revisions:

(1) **Bonding Requirements for Construction Contracts**
Approved October 21, 1977

The President is authorized to set requirements for bid bonds or other forms of bid security, performance bonds, and payment bonds for construction contracts unless such requirements would be inconsistent with the requirements of a funding agency for a funded project or with mandatory requirements established by State law.

Recommendation: Current

(2) **Competitive Bidding**
Approved January 20, 1978

~~That The Regents reaffirm its policy that construction contracts be competitively bid, as to the extent required by law, and be awarded to the lowest responsible bidder or, on the refusal or failure of such bidder to execute a tendered contract, be awarded to the second lowest responsible bidder or, on that bidder's refusal or failure to execute a tendered contract, be awarded to the third lowest responsible bidder, unless it is determined that the acceptance of a responsible bid is not in the best interests of the University, in which case all bids shall be rejected.~~

Recommendation: Current as edited.

Discussion of the Policy on Competitive Bidding: The University adheres to California law, which addresses requirements regarding competitive bidding for construction contracts. The existing language is inconsistent with the requirements set forth in State law such as minimum thresholds and exigent circumstances. For example, State law does not generally require competitive bidding for construction projects under \$50,000 or in emergency situations where work or remedial measures are required immediately to protect the public health, safety, and welfare.

Policies that are proposed for rescission:

(3) **Irrevocable Bids**
Approved August 13, 1965

Any bid received by the University for erection, construction, alteration, repair, or improvement of any structure, building, road, or other improvement shall be irrevocable for a period of 60 days or such other period as the University in its bidding documents may establish, said period to commence at the date and time which is specified for the opening of bids, except that the President may consent to withdrawal during said period of a bid containing a demonstrated major excusable error.

Recommendation: Rescind.

Discussion of the Policy on Irrevocable Bids: The University adheres to California law, which addresses requirements regarding irrevocable bids. The policy is unnecessary because the President has established procedures that address the irrevocable bid period for individual projects.

(4) **Underground Parking Construction**

Approved November 21, 1980

That it be the policy of The Regents that underground parking shall be constructed only in unusual circumstances and in those circumstances with the specific approval of The Regents.

Recommendation: Rescind.

Discussion of the Policy on Underground Parking Construction: In general, the projected cost of constructing underground parking facilities will continue to exceed the President's delegated authority to approve the budget or the design for such projects. Currently, any project over \$10 million requires specific approval by The Regents with respect to both budget and design. Thus, this policy is no longer necessary. Since 1979, all projects with proposed underground parking have been reviewed by The Regents.

(5) **Temporary Buildings**

Approved March 17, 1961

It is the policy of The Regents that no temporary building on a University campus shall be removed or rehabilitated to extend its life after other space is provided to accommodate its occupants, without the express approval of the Committee on Grounds and Buildings.

The University's Building Program shall carry an addendum listing annually all proposed removals, re-use, or rehabilitation of any temporary building for that year, and, after approval of the Building Program by The Regents, no departures therefrom shall be made without approval by The Regents, with the understanding that before the rehabilitation of any such building, said rehabilitation will be referred to the Committee on Grounds and Buildings for approval.

Recommendation: Rescind.

Discussion of the Policy on Temporary Buildings: The first paragraph of this policy is covered by The Regents' *Policy on Approval of Design, Long Range Development Plans, and the Administration of the California Environmental Quality Act* and by *Standing Order 100.4(aa)*, which addresses the placement of buildings.

The Regents has the opportunity to review each new Long Range Development Plan and those which are substantially revised. In addition, The Regents is informed when a project costing over \$10 million is submitted for design review and approval if the project will remove, rehabilitate, or demolish a temporary building.

The second paragraph is unnecessary because The Regents has delegated authority to the President to choose the sites for building projects under \$10 million, and as stated above, projects with a total cost of over \$10 million require approval by The Regents.

(6) Inclusion Areas

Approved April 20, 1967; Section V added October 18, 1968

I. Statement of Purpose:

The Regents wishes to ensure the availability of land to each campus for certain University-oriented uses which contribute to the overall campus development, which are consistent with academic goals and policies, and which cannot be accommodated on University property without some special arrangement. Such activities are funded from non-State sources, and their locations would normally be in transitional areas between the campus and private community development. It is therefore highly desirable to locate and design these activities in a manner which creates an optimum campus community relationship. It is essential that the planning and development of the Inclusion Areas be carried out within the context of the campus Long Range Development Plan and any officially adopted Community Plan for the area contiguous to the campus.

II. If a campus desires to establish one or more inclusion areas, the campus shall set forth in its Long Range Development Plan to be approved by The Regents:

- A. The geographical boundaries of the campus and campus proper.
- B. The geographical boundaries of the inclusion area or areas.
- C. A statement and geographical delineation of land uses by categories of University-oriented uses in the inclusion areas which may include but are not limited to, the following:
 1. Public uses such as streets, schools, playgrounds, police and fire stations.
 2. Non-profit uses such as organized student living groups, international centers, cultural and religious facilities.
 3. Commercial and residential uses oriented to the University community.
- D. A statement that the plan for the inclusion areas is consistent with existing environs or campus-community master plans.

III. It is the general policy of The Regents to prefer lease arrangements rather than outright sale, in order where possible to retain title to land for greatest long-range flexibility.

Any sale of land in an inclusion area shall be subject to approval by The Regents. Any lease of land in an approved inclusion area may be executed as provided in the Standing Orders.

Any lease of land beyond the limits specified in the Standing Orders shall be subject to approval by The Regents.

Notwithstanding the above delegations of approval for leases, however, the President shall submit for the approval of The Regents any lease on a parcel which is so located that access to it from outside the campus would require passage through campus property other than the inclusion areas in which the parcel is located.

- IV. It is the policy of The Regents that approval will be given to a proposed sale or lease of inclusion area property only if the following conditions are met:
- A. The lessee or purchaser is financially responsible.
 - B. The University shall have architectural and site development control over the premises.
 - C. The lessee or purchaser shall bear its share of any and all costs of construction and maintenance of improvements on the premises, and any and all utility and other operating expenses, and any and all taxes and assessments levied with respect to the occupation of the premises.
 - D. The University shall not be responsible for the physical security of any improvements on the land, and the lessee or purchaser shall indemnify the University for any loss in any manner arising from the use of the leased or purchased premises.
 - E. The rental or sales price shall be no less than the fair market value consistent with the restrictions on the use of the premises, unless it is determined by The Regents that a particular use is of such significant educational or cultural value as to warrant University support in the form of reduced price or rent.
 - F. Without written authorization by the University, the purchaser or lessee shall not use the name of the University of California or other names or descriptions which would imply or suggest endorsement by or affiliation with the University of California.
 - G. The lessee or purchaser shall maintain buildings and grounds in a condition acceptable to the University.
 - H. The lease or deed shall provide for the reversion of the property to the University in the event the specific use is changed without approval of the University.

- I. Upon termination of the lease or upon reversion of the premises to the University, the lessee or purchaser must at its own expense remove such improvements as the University at that time may direct, and must transfer ownership, without cost, to the University of improvements remaining on the premises. With the exception of improvements which are transferred to University ownership, the lessee or purchaser must restore the premises to the original condition without cost to the University.
- V. It is the policy of The Regents that contracts for student commercial services of the type customarily provided on University of California campuses, as determined by the President, do not come under the above-stated policy governing inclusion areas, provided that all of the following conditions are met:
 - A. The services are confined to University students and staff and are not for the general public.
 - B. Private enterprise is not involved in purchasing or leasing campus land, other than leasing rooms in University facilities to be used for providing commercial services to University students and staff.
 - C. The contract does not involve construction of a building or other capital improvement on the campus by a private enterprise.

Recommendation: Rescind.

Discussion of the Policy on Inclusion Areas: The concept of "inclusion areas" is generally not used any more as a mechanism to control campus land use. Only one campus currently has an inclusion area. For that campus, UC Irvine, the Inclusion Area designation is part of the deed restriction. Planning for University development is already addressed by The Regents' *Policy on Approval of Design, Long Range Development Plans, and the Administration of the California Environmental Quality Act*.

- (7) **Appointment of Architects**
Committee on Grounds and Buildings (Executive Session); Approved July 15, 1965

Architectural appointment for University campus construction shall not be limited to California residents.

Recommendation: Rescind.

Discussion of the Policy on Appointment of Architects: California law addresses the process for competitive selection of architects. Any

architectural firm may compete for a project, regardless of the architects' residence. Since this policy's enactment, the President has established detailed procedures to implement competitive selection of architects.

(8) Consulting Architects

Approved June 17, 1966

1. That the use of a consulting architect for each campus be continued.
2. That the role of the consulting architect be that of a professional advisor and that his advisory services be provided at the campus level.
3. That all possible means be employed to establish a close working relationship between the consulting architect, the Chancellor and his staff and the various executive architects performing work on that particular campus.
4. That the eligibility of a consulting architect for executive commissions on the same campus generally be limited to one active project at any one time through approval of the preliminary plan stage.
5. That with respect to
 - a. those projects requiring design approval by the Committee on Grounds and Buildings, and
 - b. general campus plans or major modifications thereto requiring Regents' approval, the policy shall be for the consulting architect to make the presentation, with the understanding that in some cases the executive architect may be invited to be present; in all cases, however, the invitation for attendance and presentation to be with the approval of the President or his designee.
6. That a new type of contract with the consulting architect be written to include both a retainer fee for definable and recurrent needs for service and a per diem hourly rate for special assignments, non-recurrent in nature. Although the requirements of each campus will be reviewed separately, the underlying principle in all cases will be that the consulting architect be adequately reimbursed for his consulting services without reference to executive work, in accordance with his professional stature and in scale with his service to the campus.

Recommendation: Rescind.

Discussion of the Policy on Consulting Architects: The provisions of this 1966 policy are now obsolete. Campuses were at one time advised on

design matters by Consulting Architects. Since that era, campus construction activities have increased in size, scope, and complexity, and campuses have instituted design review boards or individual reviewers, pursuant to the 1985 Presidential Policy on Independent Design and Cost Review which in effect has superseded this policy. Today, only a single campus retains a Consulting Architect.

(9) Faculty as Consulting Architects and Consulting Landscape Architects
Approved September 22, 1967

It is the policy of The Regents that members of the University faculty are not eligible to serve as Consulting Architects or Consulting Landscape Architects for University campuses.

Recommendation: Rescind.

Discussion of the Policy on Faculty as Consulting Architects and Consulting Landscape Architects: This policy is a companion to the Regents' *Policy on Consulting Architects*, noted immediately above, and it is recommended that it be rescinded together with the policy noted above.

(10) Liquidated Damages for Construction Contracts
Approved May 18, 1973

The Regents reaffirms its policy that University construction contracts contain a provision stipulating when the work shall be completed and providing that for each day of unexcused delay in completion the contractor shall pay to The Regents as liquidated damages for loss of use a specified sum of money to be deducted from any payments due to or to become due to the contractor, said stipulation to be inserted in every contract for a project estimated to cost \$10,000 or more.

Recommendation: Rescind

Discussion of the Policy on Liquidated Damages for Construction Contracts: Since this policy was enacted in 1973, it has become increasingly important that the President have the flexibility to modify the dollar threshold for this requirement and, in the case of unique construction projects, to include a provision for actual damages rather than liquidated damages.

The President has developed a policy to govern use of liquidated damages that establishes a process by which a campus or facility may obtain an exception for a unique project.

Committee Chair Marcus noted that this item was technical and complex. General Counsel Robinson confirmed that the recommendations were consistent, represented good policy, and were legally appropriate.

Upon motion duly made and seconded, the Committee approved the President's recommendation and voted to present it to the Board.

5. **ESTABLISHMENT OF PERMANENT POSITIONS OF STAFF ADVISORS TO THE REGENTS**

The President recommended that the positions of Staff Advisor to The Regents and Staff Advisor-Designate to The Regents (collectively referred to as Staff Advisors) be made permanent.

Approval of this recommendation will allow the selection of the new Staff Advisor-Designate for 2007-08 (who will serve as Staff Advisor in 2008-09) to proceed in a timely manner. The newly selected Staff Advisor-Designate would begin participation with the Board's committees in July 2007.

It was recalled that in January 2005, The Regents approved a two-year Staff Advisor pilot program to begin in July 2005 in which two individual staff and/or non-Senate academic employees would be selected for Staff Advisor positions to participate in open sessions of certain committees of the Board. The Staff Advisors bring the voice and perspective of staff and non-Senate academic employees to deliberations on relevant matters that come before their assigned Committees and The Regents.

The current Staff Advisor and Staff Advisor-Designate participate with The Regents on the Committee on Finance and the Committee on Educational Policy. Future committee assignments for the Staff Advisors may vary and will be determined by the President in consultation with the Chairman of the Board and the Chairs of the Committees involved.

Because of the timing requirements for the selection and orientation of the next Staff Advisor-Designate, The Regents is being asked to approve the permanence of the program at this time, prior to the completion of the two-year pilot, to allow the selection process to begin immediately. In the event of approval, the current Staff Advisor-Designate would serve as Staff Advisor for the coming year, 2007-08. A new Staff Advisor-Designate would then be selected each year to serve a two-year term – the first year as Staff Advisor-Designate and the second year as Staff Advisor.

The 2005-06 Staff Advisors were Mr. Dave Miller and Mr. David Bell. For 2006-07, at the recommendation of the President, Mr. Miller continued to serve as Staff Advisor, and Ms. Lynda Brewer was selected to serve as Staff Advisor-

Designate. Both Mr. Miller and Ms. Brewer jointly serve on the Committee on Finance and the Committee on Educational Policy.

Accomplishments of the Staff Advisor Program

During the first 18 months as a pilot program, the Staff Advisors and the program itself demonstrated value to The Regents, the administration, and to employees in at least the following ways:

- The program enables the University to benefit from the unique perspectives of staff on relevant issues that come before the appropriate committees and the Board. These perspectives ultimately compliment those offered by the Regents and Faculty Representatives.
- The administration benefits by learning more about employee concerns through the Staff Advisors. The program continues to enhance meaningful communications between University leadership and staff and non-Senate academic employees.
- The program provides recognition for staff as an important part of the UC community and validates the contributions of staff to the success of the University.
- Employees now are able to receive information and feedback from Regents meetings and explanations of Regents' decisions directly from the Staff Advisors. This serves as an additional communication vehicle to employees that not only has credibility but helps to clarify and support Regents' actions that employees may be concerned about.

The selection process for Staff Advisors and evaluation criteria under which the pilot program's effectiveness was discussed in July 2006 are shown below.

The Selection Process for Staff Advisors to the Regents

The selection process for each new Staff Advisor must begin in January in order to have sufficient time for distribution of the call for nominations, selection of the finalist, and orientation – all before the beginning of the new Staff Advisor's term in July of that year. The Staff Advisor will serve a two-year term, the first year as Staff Advisor-Designate and the second year as Staff Advisor.

The process for selecting future Staff Advisors is the same process that was followed to select the 2006-07 Staff Advisor-Designate. The process includes the following stages:

January

- Employees will self nominate in response to broad systemwide notice.
- Distribution will be done via email and following local procedures for distribution to employees without computer access.
- The notice will also be sent to unions and employee advisory groups.
- Information will be provided on the role and time commitment of the Staff Advisors and the screening and selection process.
- Information and the application will be available on the Staff Advisor website (<http://www.universityofcalifornia.edu/regents/staffadv.html>) and also in hard copy at central offices at each location.
- The application process will be open for 30 days.

February

- The Office of the President will perform a review to ensure eligibility and qualifications of the applicants, including appointment and service requirements, completeness of application, and appropriate supervisor approvals.

March-April

- The Screening Committee will select five semifinalists (and one alternate).
- References and appropriate members of senior management at each semifinalist's location will be contacted for comments on their qualifications.
- The five semifinalists will be interviewed by the Selection Committee, which will choose three finalists.

April-May

- The three finalists will be interviewed by the President or his designee.
- The final selection of the new Staff Advisor-Designate will be made by the President, in consultation with the Chairman of the Board.

July

- The selected Staff Advisor-Designate will begin participation with the designated committee(s).

Criteria to Evaluate the Effectiveness of the Staff Advisor Pilot Program

The two-year pilot program was approved with the understanding that the program's effectiveness and value would be reviewed at the conclusion of the first year.

Criteria used for this evaluation, as presented to The Regents in July 2006, included the following considerations:

- One of the program's goals was to enhance two-way communication between the Regents and UC staff and non-Senate academic employees. It

is believed that this was accomplished, not only through formal Regents' proceedings but also through additional contacts between the Staff Advisors and Regents and leadership within the Office of the President.

- It is also felt that the program achieved its other main goal to increase recognition of staff and non-Senate academic employees by allowing the voice and perspective of the Staff Advisors to be heard by the Regents.
- It is further believed that the Regents' decision-making process was enhanced by virtue of the Staff Advisors' meaningful participation in Committee discussions. Even in areas beyond the Committees on which the Staff Advisors participated, it is felt that the Regents benefited from hearing the staff perspective on a variety of issues and concerns among employees.

President Dynes commented that he is a strong proponent of this program and is delighted with its results. This program adds a large fraction of the University family to this table, and the Staff Advisors have responded in the most intelligent and positive way.

Chairman Marcus noted that previously he was skeptical about the program, but that he now fully supports it.

Upon motion duly made and seconded, the Committee approved the President's recommendation and voted to present it to the Board.

The meeting adjourned at 10:46 a.m.

Attest:

Acting Secretary