

AGENDA

COMMITTEE ON FINANCE

Meeting: 1:30 p.m., Tuesday, May 12, 1998
Auditorium

Joan Otomo-Corgel, Chair
Stanley T. Wang, Vice Chair
Roland E. Arnall
William D. Campbell
Jim Considine
Harold Goldwhite
Laurence K. Gould, Jr.
James H. Gray
William Hauck
Eric C. Mitchell
Ali C. Razi
Anthony M. Vitti

Consent Items

Approval of Minutes of Meeting of March 17, 1998

Discussion Items

1. Status Report on the 1998/99 Support Budget, *Information*
2. Approval for the Issuance of the California State University Housing System Revenue Bonds, Sonoma State University Student Housing, *Action*
3. Approval for the Issuance of the California State University Housing System Revenue Bonds, California State University, Chico Student Housing, *Action*
4. 1998/99 Lottery Revenue Budget, *Action*
5. Proposed Revision of Title 5 Regulations on Minority, Women, and Disabled Veteran Owned Business Participation in CSU Contracts, *Action*

**MINUTES OF MEETING OF
COMMITTEE ON FINANCE**

**Trustees of The California State University
Glenn S. Dumke Conference Center
400 Golden Shore
Long Beach, California**

March 17, 1998

Members Present

Joan Otomo-Corgel, Chair
Stanley T. Wang, Vice Chair
Jim Considine
Martha C. Fallgatter, Chairman of the Board, ex officio
Bernard Goldstein
Laurence K. Gould, Jr.
James H. Gray
William Hauck
Eric C. Mitchell
Ali C. Razi
Charles B. Reed, Chancellor, ex officio
Anthony M. Vitti

Members Absent

Roland E. Arnall
William D. Campbell

Other Trustees Present

Robert G. Foster
Maridel Moulton
Ralph R. Pesqueira
Michael D. Stennis

Chancellor's Office Staff

June M. Cooper, Senior Vice Chancellor and Interim Chief of Staff
Charles W. Lindahl, Interim Senior Vice Chancellor, Academic Affairs
Richard P. West, Senior Vice Chancellor, Business and Finance
Douglas X. Patiño, Vice Chancellor, University Advancement
Christine Helwick, General Counsel
Samuel A. Strafaci, Interim Senior Director, Human Resources

Presidential Liaisons

Ruben Armiñana, President, Sonoma State University, present
Albert K. Karnig, President, California State University, San Bernardino, present

Chair Otomo-Corgel called the meeting to order at 3:30 p.m.

Approval of Minutes

The minutes of January 27, 1998, were approved.

Status Report on the 1998/99 Governor's Support Budget

Chair Otomo-Corgel asked Mr. Richard West, senior vice chancellor for business and finance, to present the item.

Mr. West briefly reviewed the status of major budget activities that had occurred since the last board meeting. He noted current issues of interest and debate, including enrollment growth, enhancement of teacher preparation programs, and funding for CSU Channel Islands. Mr. West briefly reviewed the LAO's recommendations regarding these issues and commented on our responses to them. Referring to the LAO's projection of substantial additional revenue for 1998/99, and the projected demand for those funds, Mr. West said the CSU has committed to seek an augmentation of \$35.6 million to be evenly divided between compensation and physical plant maintenance. Mr. West said that we have the support of several legislators; however, whether our request survives depends on the various conference committees and other budget issues that arise toward the end of the year.

Mr. West reported that a bid for a bond bill for capital funding did not pass the legislature for placement of a ballot measure on the June ballot. He said future discussions will focus on getting a bill passed for placement on the November ballot.

Approval of Tax-Exempt Refinancing for a California State University Auxiliary Organization at California State University, Long Beach

Mr. West explained that the purpose of the item was to obtain the trustees' approval for the refinancing of a CSU Long Beach auxiliary debt of approximately \$3.9 million in order to take advantage of current lower interest rates. He said approval of the resolution would be an opportunity to save some money and would not be an extension of the principal.

The committee recommended approval of the resolution (RFIN 03-98-03).

Authorization to Refinance Dormitory Revenue Fund Student Union Obligations of the Board of Trustees

Mr. West presented the item and explained that the purpose of the item was to take advantage of favorable market conditions to reduce debt service costs for student union obligations at San Diego State University and CSU Northridge.

Trustee Razi said he believed we were in a good position to approve the resolution based on his assessment of our current long-term debt situation.

The committee recommended approval of the resolution (RFIN 03-98-04).

**Application for Financial Assistance for the 404 Hazard Mitigation Grant Program—
Designation of the CSU Authorized Agents**

Mr. West explained that federal funds are available to the CSU for hazard mitigation projects. To apply for these funds, the trustees must adopt a resolution designating an authorized agent. This item requests approval to designate the campus presidents or their designees as the trustees' authorized agents.

The committee recommended approval of the proposed resolution (RFIN 03-98-05).

1998/99 Lottery Revenue Budget

Mr. West said the item was for information only and would be brought back to the board for approval in May. He noted the lottery revenue available for 1998/99 is estimated to be \$35.7 million, of which \$29.8 million will be available for distribution to the campuses. This year's budget would also provide for a systemwide reserve of approximately \$5.9 million to be used for economic uncertainties and cash flow variations due to fluctuations in lottery receipts.

The meeting adjourned at 3:52 p.m.

BRIEF

Information Item

Agenda Item 1
May 12-13, 1998

COMMITTEE ON FINANCE

Status Report on the 1998/99 Support Budget

Presentation By

Richard P. West, Senior Vice Chancellor
Business and Finance

Summary

Legislative hearings have been scheduled throughout March, April, and May for consideration of the 1998/99 CSU Support Budget. Legislative fiscal committees and subcommittees are deliberating issues raised in the legislative analyst's report presented at the March meeting of the Board of Trustees, as well as issues of concern to members of the Senate and Assembly. Budget discussions are still under way and several issues of concern to CSU, specifically the \$35.6 million augmentation for compensation and maintenance, remain under consideration.

ITEM

2

Agenda Item 1
May 12-13, 1998

COMMITTEE ON FINANCE

Status Report on the 1998/99 Support Budget

The California State University proposed 1998/99 Support Budget was presented at the November 1997 meeting of the Board of Trustees. The 1998/99 budget request totaled \$2.1 billion in general fund support and \$741.6 million to be collected as revenue and reimbursements. The general fund request was calculated in accordance with the governor's higher education funding compact and includes state funding to replace revenue lost as a result of a five percent reduction in the State University Fee rates for undergraduate students. In addition, funding above compact levels was requested for final conveyance of the Camarillo Hospital site in Ventura County for use as an expanded CSU off-campus center and for an additional three percent enrollment growth above the compact commitment of one percent annual average growth.

The governor's proposed 1998/99 budget, issued January 9, 1998, included all of the CSU requested funding and \$6.5 million for three additional initiatives sponsored by the administration: teacher preparation, a federal GOALS 2000 reimbursement for teacher recruitment, and CSU participation in the development of the California Virtual University. The total governor's budget request includes \$160.7 million in new general fund support, \$19.4 million to backfill revenue lost as a result of a five percent reduction in undergraduate State University Fee rates, and \$18.1 million in new State University Fee revenue resulting from the 10,320 full-time equivalent students (FTES) targeted increase in CSU enrollments. It is anticipated that CSU 1998/99 enrollment growth will increase by an additional 600 FTES once the \$5 million teacher preparation plan is implemented.

The Legislative Analyst's Office (Analyst) published the Analysis of the 1998/99 Budget Bill on February 18, 1998. Several recommendations were made to delete or redirect funding in the CSU support budget. The Analyst proposed that the \$39.6 million provided for additional enrollment growth be redirected to facilities maintenance and the creation of an Extra-Teaching Incentive Fund. The Analyst also recommended that the legislature delete the \$5.2 million funding for the Camarillo Hospital site conveyance and that \$3.3 million of the funding provided for teacher preparation be redirected to the state's Cal Grant program for scholarships to students pursuing the multiple subject teaching credential. The Analyst also urged the legislature to review the new federal tuition tax credits for possible General Fund savings in the state's financial aid programs. CSU has prepared a detailed response opposing all of the Analyst's recommendations and has presented those responses to the appropriate legislative committees.

Legislative hearings are still in progress and the committee will be given current information on further developments related to the 1998/99 CSU Support Budget. This will include a report on meetings and actions of the legislative committees and the Department of Finance. A status report on the 1998/99 Support Budget will be provided.

BRIEF

Action Item

Agenda Item 2
May 12-13, 1998

COMMITTEE ON FINANCE

**Approval for the Issuance of the California State University Housing System Revenue Bonds,
Sonoma State University Student Housing**

Presentation By

Richard P. West, Senior Vice Chancellor
Business and Finance

Summary

This item requests the Board of Trustees to authorize the sale and issuance of California State University Housing System Revenue Bonds in an aggregate principal amount not to exceed \$30,000,000 to finance the construction of student apartments by the housing program at Sonoma State University.

Recommended Action

Adoption of the proposed resolutions.

ITEM

2

Agenda Item 2
May 12-13, 1998

COMMITTEE ON FINANCE

Approval for the Issuance of the California State University Housing System Revenue Bonds, Sonoma State University Student Housing

Background

This item requests that the Board of Trustees authorize the sale and issuance of an additional series of California State University Housing System Revenue Bonds in an amount not to exceed \$30,000,000 to finance the construction of student apartments by the housing program at Sonoma State University.

The campus currently has 911 housing spaces. The new apartment complex proposes to add an additional 604 bed spaces for a combined total of 1,515 housing spaces. The configuration will be 147 four-bedroom apartments each with its own bathroom, with shared kitchen and living spaces. In addition, there will be 16 studio apartments. The project also calls for the construction of a small multipurpose community building and associated site development for the complex on a twelve-acre site located in the southwest corner of the campus. The campus plans to utilize a design-build approach for the project. Construction is expected to be completed by June 2000 with student occupancy beginning in fall 2000.

A recent market research by an independent consultant determined that student housing demand is expected to increase as additional students are added to the campus population, most of whom are expected to be freshmen and sophomores. The campus projected headcount enrollment is expected to reach 7,600 students by the year 2000-2001. Current university housing spaces are in such demand that occupancy exceeds design capacity for all units. The off-campus housing market is at less than 3 percent vacancy. Zoned land is not presently available within city limits to support new rental housing. The market research concluded that the unmet demand for housing will be even greater at the time the new housing is completed.

The campus has developed a comprehensive project and financial plan supporting the project. The debt service for the proposed bonds will be paid from revenue generated from the new student housing facilities. The debt is also secured by housing revenues from the systemwide dormitory revenue bond program. With the assistance of staff at the Chancellor's Office, the plan was reviewed by the Housing Proposal Review Committee. This is a standing committee chaired by a campus president with membership of two vice presidents and a housing officer. The committee, after reviewing the plan, provided a positive recommendation for the project to the chancellor and the president of Sonoma State.

At the time this item was prepared, the campus had not received construction bids and had not determined if they had a qualified winning bidder for construction of the project. This process is expected to be completed by the time of this meeting of the trustees

A separate item will be also presented to the trustees' Committee on Campus Planning, Buildings and Grounds at this meeting requesting the trustees to approve schematics for this project.

Orrick, Herrington & Sutcliffe LLP as bond counsel is preparing resolutions to be presented at this meeting which will achieve the following:

1. Authorize the sale and issuance of the California State University Housing System Revenue Bonds, in an amount not to exceed \$30,000,000 and certain actions relating thereto including the approval of the form of the Notice of Sale as presented to the board at this meeting.
2. Approve the form of the official statement prepared by Sutter Securities, financial advisor, as presented to the board at this meeting.
3. Provide for a delegation to authorize the chancellor, the senior vice chancellor for business and finance, and their designees to take any and all necessary actions to execute documents for the sale and issuance.
4. State the official intent of the Board of Trustees under federal income tax law to pay and reimburse the capital costs of the project from the proceeds of the bonds.

Recommended Action

The resolutions being presented by bond counsel and the form of the official statement will be distributed to the trustees at the meeting and are recommended for approval.

BRIEF

Action Item

Agenda Item 3
May 12-13, 1998

COMMITTEE ON FINANCE

**Approval for the Issuance of the California State University Housing System Revenue Bonds,
California State University, Chico Student Housing**

Presentation By

Richard P. West, Senior Vice Chancellor
Business and Finance

Summary

This item requests that the Board of Trustees authorize the sale and issuance of California State University Housing System Revenue Bonds in an aggregate principal amount not to exceed \$6,000,000 to finance the acquisition of four apartment complexes by the housing program at California State University, Chico.

Recommended Action

Adoption of the proposed resolutions.

ITEM

2

Agenda Item 3
May 12-13, 1998

COMMITTEE ON FINANCE

Approval for the Issuance of the California State University Housing System Revenue Bonds, California State University, Chico Student Housing

Background

This item requests that the Board to Trustees authorize the sale and issuance of an additional series of California State University Housing System Revenue Bonds in an amount not to exceed \$6,000,000 to finance the acquisition of four apartment complexes by the housing program at California State University, Chico.

The campus currently has 1,505 housing spaces. The properties proposed for acquisition are located within five blocks of the campus and together include 341 housing spaces bringing the new campus total to 1,846 housing spaces. One of the four properties consists of a 240-bed space apartment complex. The cluster design of the apartments incorporates four bedrooms with a common kitchen and dining room with every two bedrooms sharing a common bathroom. The facility was built in 1975 and is made up of 13 two-story and 2 one-story buildings. The facility is approximately 50-60 percent occupied and it will require some minor renovations. This complex is adjacent to the University Village Apartments acquired by the campus housing program in 1991. This new acquisition expands the housing facilities to a total of nine acres at this location. The other three properties incorporate 101 bed spaces in three separate townhouse style apartment complexes in two locations. They consist of three- and four-bedroom units and will serve upper division students and academic theme housing programs. These facilities were built between 1986 and 1989. They are approximately 95-100 percent occupied and will require almost no upgrades. Both facilities are currently occupied primarily by university students.

A recent housing acquisition study by an independent consultant confirmed that current projections of CSU enrollment indicate that the campus will continue to grow beyond its current enrollment of slightly more than 14,000 students and recommended that the campus provide additional housing, if new, full-time, out-of-area freshman and transfer student enrollments stay at current levels or increase. In addition to the study, campus records document an increased demand for student housing. Over 300 accepted new students could not be accommodated in housing units at the start of the current academic year.

The campus has developed a comprehensive project and financial plan to support the project. The new debt service for the proposed bonds will be paid from revenue generated from the new student housing facilities. The debt is also secured by housing revenues from the systemwide dormitory revenue fund program. With the assistance of staff at the Chancellor's Office, the plan was reviewed by the Housing Proposal Review Committee. This is a standing committee chaired by a campus president with membership of two vice presidents and a housing officer. The committee, after reviewing the plan, provided a positive recommendation for the project to the chancellor and the president of CSU Chico.

The acquisition also requires the approval of the State Public Works Board (SPWB). An item for action by the SPWB has been scheduled for its May 8, 1998, meeting. The sale of the bonds will not occur until after the approval of the SPWB and all purchase escrow requirements have been satisfied.

A separate item will be also presented to the trustees' Committee on Campus Planning, Buildings and Grounds at this meeting requesting the trustees to amend the campus nonstate capital outlay program for the acquisition of these properties.

Orrick, Herrington & Sutcliffe LLP as bond counsel is preparing resolutions to be presented at this meeting which will achieve the following:

1. Authorize the sale and issuance of an additional series of California State University Housing System Revenue Bonds, in an amount not to exceed \$6,000,000 and certain actions relating thereto including the approval of the form of the Notice of Sale as presented to the board at this meeting.
2. Approve the form of the official statement prepared by Sutter Securities, financial advisor, as presented to the board at this meeting.
3. Provide a delegation to authorize the chancellor, the senior vice chancellor for business and finance, and their designees to take any and all necessary actions to execute documents for the sale and issuance.
4. State the official intent of the Board of Trustees under federal income tax law to pay and reimburse the capital costs of the project from the proceeds of the bonds.

Recommended Action

The resolutions being prepared by bond counsel and the form of the official statement will be distributed to the trustees at the meeting and are recommended for approval.

BRIEF

Action Item

Agenda Item 4
May 12-13, 1998

COMMITTEE ON FINANCE

1998/99 Lottery Revenue Budget

Presentation By

Richard P. West, Senior Vice Chancellor
Business and Finance

Summary

The purpose of the item is to present the 1998/99 Lottery Revenue Budget for approval. The recommended lottery budget for 1998/99 is \$29.8 million. This proposed budget was reviewed with the Board of Trustees at its March 1998 meeting and with the System Budget Advisory Committee at its January 1998 meeting.

ITEM

2

Agenda Item 4
May 12-13, 1998

COMMITTEE ON FINANCE

1998/99 Lottery Revenue Budget

Total lottery revenue available to the California State University in 1998/99 is estimated to be \$35.7 million. After providing for a systemwide reserve of \$5.9 million as a cushion for economic uncertainties and cash flow variations due to fluctuations in lottery receipts, the total available for allocation is \$29,800,000. The \$5.9 reserve assists CSU campuses by providing necessary start-up funds for the beginning of the fiscal year and provides for cash-flow variations due to fluctuations in quarterly lottery receipts.

The Lottery Revenue Budget is allocated in two categories—campus base budgets and systemwide programs. Campus base budget allocations totaling \$21,984,500 have not changed since 1995/96. Campus base budget allocations include funds for access and academic development, the California pre-doctoral program, the CSU scholarship program for future scholars, teacher recruitment, and other campus based programs determined by the campus.

Systemwide programs, the second Lottery Revenue Budget category, totals \$7,815,500 for 1998/99 and includes funds for the California pre-doctoral program, CSU Summer Arts, the Forgivable Loan Program, systemwide lottery program administration costs, technology access and support program costs, Chancellor's Office funds for campus-based programs, and a cash flow reserve for anticipated interest earnings. As these interest earnings are received, campuses receive a pro-rata share of the interest based on the average monthly lottery balances for each campus during the previous six months.

The 1998/99 budget remains largely the same as in 1997/98 with two exceptions. First, projected interest earnings available to campuses is projected to increase from \$1,000,000 in 1997/98 to \$1,400,000 in 1998/99. Second, the \$5,000,000 allocation to support technology access and support, which was included in the 1997/98 budget, was a one-year supplemental allocation funded from excess balances in the lottery account and has not been funded in the 1998/99 budget.

For 1999/2000, the Systemwide Budget Advisory Committee, which has reviewed the proposed 1998/99 budget, will review the strategy for use of lottery funds and formulate recommendations to advise the chancellor on the best use of these funds. The Statewide Academic Senate and Chancellor's Office staff will be developing a proposal for a new process for determining the best use of funding available for systemwide programs. Recommendations will be considered by the chancellor with the Executive Council during the formulation of the 1999/2000 lottery budget proposal to the board.

The following resolution adopting the proposed 1998/99 Lottery Revenue Budget is recommended for approval:

RESOLVED, By the Board of Trustees of the The California State University, that the 1998/99 Lottery Revenue Budget totaling \$29.8 million included in Agenda Item 4, Attachments A and B of the May 12-13, 1998, meeting of the Board of Trustees' Committee on Finance be approved for implementation by the chancellor, with authorization to make transfers between components of the Lottery Revenue Budget and phase expenditures in accordance with receipt of lottery funds; and, be it further

RESOLVED, That the chancellor is hereby granted authority to adjust the 1998/99 Lottery Revenue Budget approved by the Board of Trustees to the extent of receipt of greater or lesser lottery revenue than budgeted in 1998/99 to respond to opportunities or exigencies; and, be it further

RESOLVED, That a report of Lottery Revenue Budget receipts and expenditures be made to the Board of Trustees.

See attachments in printed agenda

BRIEF

Action Item

Agenda Item 5
March 17-18, 1998

COMMITTEE ON FINANCE

Proposed Revision of Title 5 Regulations on Minority, Women, and Disabled Veteran Owned Business Participation in CSU Contracts

Presentation By

Christine Helwick
General Counsel

Summary

The United States Court of Appeals in the Ninth Circuit has invalidated provisions of the California Public Contract Code that require contractors with the state to meet minority and women owned business participation goals or show a good faith effort to meet them. This item amends those provisions in Title 5 of the California Code of Regulations which implement those invalid laws. Accordingly, requirements to meet or show a good faith effort to meet minority and women owned contractors participation in CSU contracts will be eliminated.

ITEM

2

Agenda Item 5
March 17-18, 1998

COMMITTEE ON FINANCE

Proposed Revision of Title 5 Regulations on Minority, Women, and Disabled Veteran Owned Business Participation in CSU Contracts

Background

In the case of *Monterey Mechanical Co. v. Pete Wilson, et al.*, the United States Court of Appeals, Ninth Circuit, ruled that the minority and women business participation goals requirement for state contracts in the California Public Contract Code violates the United States Constitution. Monterey Mechanical Company was the low bidder on a major utilities upgrade project at California Polytechnic State University, San Luis Obispo, but was disqualified for failure to comply with the minority, women, and disabled veteran provisions of the California Public Contract Code. It filed suit claiming the statute creates an unconstitutional exclusive preference. It also requested issuance of a preliminary injunction which would have prohibited CSU from awarding the contract to the successful bidder and would have required that the award be made to Monterey Mechanical. The motion was denied. Cal Poly awarded the contract to the next lowest bidder which complied with the statute. Monterey Mechanical appealed. The appellate court reversed the lower court decision, ruling the statute, at least partially, unconstitutional. Inasmuch as the United States Court of Appeals has concluded that the minority and women business participation goals violate the United States Constitution, the regulations which implement those offending statutory provisions are being revised to conform the regulations which govern the contracting process of the California State University to constitutional standards. Since disabled veteran business participation goals were not held to be unconstitutional by the federal appellate court, the regulations as amended will continue to provide that disabled veteran business participation provisions will be followed.

Sections 43870, 43871, 43872, 43873, and 43874 of Title 5 currently require that bidders seeking to be responsive and to qualify for award of contracts for construction and procurement of materials, supplies, equipment, and service for the California State University meet the minority, women and disabled veteran business enterprise statewide participation goals or demonstrate a good faith effort to meet them. This change would eliminate the need for responsive bidders to meet or demonstrate a good faith effort to meet the minority business enterprise or women business enterprise participation goals. It would retain the requirement to meet or demonstrate a good faith effort to meet the disabled veteran business enterprise participation goal.

Proposed Resolution

The following resolution is recommended for adoption:

RESOLVED, By the Board of Trustees of The California State University, acting under the authority prescribed herein and pursuant to Section 89030.1 of the Education Code, that the board hereby amends its regulations in Article 1, Subchapter 9 of Chapter 1, Division 5 of Title 5 of the California Code of Regulations as follows:

Article 1 — ~~Minority and, Women, and Disabled Veteran Business Enterprise~~ Participation ~~Goals~~Goal for California State University Contracts

§ 43870. Contract Approval.

Contracts of the Trustees under the California State University Contract Law (Public Contract Code, section 10700 et seq.) and contracts of the Trustees under section 10295 of the Public Contract Code shall comply with the DVBE provisions of article 1.5 (commencing with section 10115) of chapter 1 of part 2 of division 2 of the Public Contract Code and these regulations.

Note: Authority cited: Section 89030, Education Code; and Section 10115.3(b), Public Contract Code. Reference: Sections 10115 et seq., 10290 et seq., 10700 et seq., 12100 et seq. and 12120 et seq., Public Contract Code.

§ 43871. Definitions.

As used in these regulations:

(a) “Trustees,” for the purposes of this subchapter, means the Board of Trustees of the California State University created by section 66600 of the Education Code, and includes any division or campus thereof which has been delegated the authority to enter into contracts on behalf of the Trustees, and any person acting under authority of such delegation.

(b) ~~“MWDVBE”~~“DVBE” means ~~minority business enterprise, women business enterprise and/or disabled veteran business enterprise.~~

(c) The ~~terms, “minority business enterprise” (“MBE”), “Women business enterprise” (“WBE”), and term~~ “contract” shall have the ~~respective meanings~~ meaning set forth in section 10115.1 of the Public Contract Code.

(d) The term “disabled veteran business enterprise” (“DVBE”) shall mean a business concern meeting the criteria of Military and Veterans Code Section 999(g).

(e) “Bidder” means any person or entity making an offer or proposal, competitively or noncompetitively, for the purpose of securing the awarding or letting of a contract by the Trustees.

Note: Authority cited: Section 89030, Education Code; and Section 10115.3(b), Public Contract Code. Reference: Sections 10115, et seq., 10290 et seq., 10700 et seq., 12100 et seq. and 12120 et seq., Public Contract Code; and Section 999(g) Military and Veterans Code.

§ 43872. ~~Minority, Women and Disabled Veteran Business Enterprise~~ Goals~~Goal~~.

In addition to other State contracting requirements, to qualify as a responsive bidder, a bidder may be required to meet the statewide participation ~~goals, goal,~~ or demonstrate that a good faith effort was made to meet ~~them~~ it, or, for contracts for materials, supplies, or equipment, including electronic data processing goods and services, have filed prior to the date for submitting an offer or proposal with the Trustees, a ~~minority, women, and disabled veterans business enterprise~~ utilization plan with the Department of General Services.

Note: Authority cited: Section 89030, Education Code; and Section 10115.3(b), Public Contract Code. Reference: Sections 10115; et seq., 10290 et seq., 10700 et seq., 12100 et seq. and 12120 et seq., Public Contract Code.

§ 43873. Meeting the Goal or Making a Good Faith Effort.

(a) ~~The requirement to meet the DVBE goal or make a good faith effort requirement to meet it~~ must be satisfied, at the time of bid opening, by meeting the provisions of (b) or (c) below.

(b) The requirement for ~~the making of a good faith effort meeting the DVBE goal~~ shall be deemed to have been met if a bidder

~~(1) Is a minority business enterprise and committed to performing not less than 15 percent of the dollar amount of the bid with its own forces and committed to use WBEs for not less than 5 percent of the dollar amount of the bid and committed to use DVBEs for not less than 3 percent of the dollar amount of the bid, or~~

~~(2) Is a disabled veteran business enterprise and committed to performing not less than 3 percent of the dollar amount of the bid with its own forces and committed to use MBEs for not less than 15 percent of the dollar amount of the bid and committed to use WBEs for not less than 5 percent of the dollar amount of the bid, or~~

~~(4) Is committed to use MBEs for not less than 15 percent, WBEs for not less than 5 percent and DVBEs for not less than 3 percent of the dollar amount of the bid.~~

(c) ~~In all other cases the~~ The requirement for making a good faith effort to meet the DVBE goal shall be determined as follows: the Trustees shall evaluate the effort made by the bidder to seek out and consider ~~minority, women, and~~ disabled veteran business enterprises as potential subcontractors, materials and equipment suppliers, or both in order to meet the ~~criteria requirement~~ set forth in subdivision (b). In evaluating such effort, the Trustees shall consider written evidence of the actions specified in Public Contract Code, section 10115.2(b). Based on this evaluation, the Trustees, in its sole discretion, may make a finding that the good faith effort requirement has been met.

Note: Authority cited: Section 89030, Education Code; and Section 10115.3(b), Public Contract Code. Reference: Sections 10115; et seq., 10290 et seq., 10700 et seq., 12100 et seq. and 12120 et seq., Public Contract Code.

§ 43874. Contract Awards.

(a) If a bidder fails to meet the “good faith effort” requirement of section 43873 and, for contracts for materials, supplies, or equipment, including electronic data processing goods and services, fails to have filed prior to the date for submitting an offer or proposal with the Trustees a ~~minority, women, and~~ disabled veterans business enterprise utilization plan with the Department of General Services, such bidder shall be deemed not to be a responsive bidder for purposes of Trustees’ evaluation of an award of contract and is thus ineligible for an award. No provision of these regulations, however, shall be deemed to require the Trustees to make an award.

(b) With respect to invitations for bid for the purchase of supplies or equipment pursuant to the provisions of article 3 of chapter 2 of part 2 of division 2 of the Public Contract Code or the acquisition of goods and services pursuant to the provisions of chapter 3 of part 2 of division 2 of the Public Contract Code (commencing with section 12100) where the Trustees have reserved the right to make multiple awards of a single contract award, a bidder shall be deemed responsive regarding the requirement for the making of a good faith effort if there would be compliance with the provisions of section 43873 based on award for a single contract, notwithstanding such bidder may be unable to achieve compliance with the established goals if the Trustees exercise the right to make multiple awards.

(c) The statutory goals for awards of contracts under these provisions shall apply to the overall amount expended each year by the Trustees, and need not be met by every individual contract.

Note: Authority cited: Section 89030, Education Code; and Section 10115.3(b), Public Contract Code. Reference: Sections 10115; et seq., 10290 et seq., 10700 et seq., 12100 et seq. and 12120 et seq., Public Contract Code.

And, be it further

RESOLVED, That the Board of Trustees has determined that the adoption of the proposed revision will not impose a cost or savings on any state agency; will not impose a cost or savings on any local agency or school district that is required to be reimbursed under Section 17561 of the Government Code; will not result in any cost or savings in federal funding to the state; and will not impose a mandate on local agencies or school districts; and, be it further

RESOLVED, That the Board of Trustees delegates to the chancellor of the California State University authority to further adopt, amend, or repeal this revision if the further adoption, amendment, or repeal is required and is nonsubstantial or solely grammatical in nature, or sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action.