



MEMORANDUM

TO: Members of the ICOC

FROM: C. Scott Tocher, Counsel to the Chair

RE: **Item 5:** Consideration of Adoption of Regulation 100502, Definition of “California Supplier”

DATE: January 26, 2009

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Executive Summary

Proposition 71 requires the ICOC to adopt standards to ensure that grantees purchase goods and services from “California suppliers” to the extent reasonably possible, in a good faith effort to achieve a goal of more than 50 percent of such purchases from California suppliers.

At its August 2008 meeting, the ICOC adopted the language contained in Regulation 100502 (attached) on an interim basis and authorized staff to begin the permanent adoption process pursuant to the Administrative Procedure Act (“APA”). The regulation has undergone the notice process pursuant to the APA. Staff proposes that the regulation, unchanged from the version adopted by the ICOC last August, be permanently adopted by the ICOC and forwarded to the Office of Administrative Law for final review.

I. Authority

Proposition 71 empowers the ICOC to adopt rules and regulations to carry out the purposes of the Proposition. (Health & Safety Code § 125290.40, subd. (j).) As stated above, Proposition 71 requires the ICOC to set standards ensuring grantees purchase goods and services from California suppliers “to the extent reasonably possible...” In its entirety, section 125290.30, subdivision (i) of the Health and Safety Code, enacted by Proposition 71, states:

“(i) Preference for California Suppliers
“The ICOC shall establish standards to ensure that grantees purchase goods and services from California suppliers to the extent

reasonably possible, in a good faith effort to achieve a goal of more than 50 percent of such purchases from California suppliers.”

At its March 12, 2008 meeting, the ICOC accepted a petition by Invitrogen, a California life sciences corporation, to define the term “California supplier.” The ICOC created an advisory subcommittee of Members Duane Roth and Ted Love to make a recommendation to the ICOC on an appropriate definition. The advisory subcommittee endorsed the definition as set forth in proposed Regulation 100502.

II. Intent of Proposed Definition

Where a company is headquartered in California or has a significant presence in the state and makes a significant contribution to the state's economy, the proposed definition seeks to label such enterprises “California suppliers.” The definition attempts to address companies both small and large and focus on the potential for benefit to the state’s citizens by patronizing such enterprises. It should be noted, however, that failure to qualify under this (or any other) definition *does not* disqualify an enterprise from being a supplier of goods and services to CIRM grantees.

The proposed definition differentiates between companies that are headquartered in California and those that are not. Essentially, a company's entire portfolio of products and services, including those related to the construction of facilities in the state, will qualify if the company 1) is headquartered here; or 2) has 1/3 of its employees in California; or 3) employs 5,000 or more Californians; or 4) employs at least 800 Californians in functions related to supporting products or services for life sciences or facilities. (Parts (1), (2)(a), (3)(a), and (3)(b).)

If an out-of-state company has a subdivision or unit headquartered here, the subdivision or unit's products will qualify (but not those of the parent). (Part (2)(b).)

Finally, an out-of-state company will qualify for any products produced here (where at least 50% of the cost is attributable to work in California). (Part (2)(c).)

Recommendation: Staff recommends the ICOC permanently adopt proposed Regulation 100502 and forward the regulation to the Office of Administrative Law for final review.