
CALIFORNIA HIGH-SPEED RAIL AUTHORITY

ORGANIZATIONAL CONFLICT OF INTEREST POLICY

I. Purpose

This Organizational Conflict of Interest Policy (“Policy”) prescribes ethical standards of conduct applicable to persons and entities entering into contracts with the California High-Speed Rail Authority (“Authority”) as authorized by Section 185000 et seq. of the California Public Utilities Code, and applies to prime Contractors as well as subcontractors at all tiers.

This Policy is distinct from and in addition to the Authority’s general Conflict of Interest Code and does not modify or supersede any requirements contained in that Code.

This Policy is intended to accomplish the following goals:

1. Promote integrity, transparency, competitiveness and fairness in the Authority’s procurements and contracts;
2. Prevent bidders, proposers, offerors or other entities seeking to contract with the Authority from obtaining or appearing to obtain an unfair competitive advantage with respect to the Authority’s procurements and contracts;
3. Ensure that work be performed in an objective, impartial manner in the best interest of the Authority and without the perception or appearance of impropriety and without the perception or appearance of an unfair competitive advantage;
4. Provide guidance to enable Contractors to make informed decisions while conducting business with the Authority; and
5. Protect the validity of Authority procurements, contracts, confidential and sensitive information concerning the High-Speed Rail (“HSR”) Project, and other Authority interests.
6. Prevent actual and mitigate potential conflicts of interests related to Contractor review, supervision or oversight of work by other entities on the HSR Project if the Contractor has a financial relationship with those entities on projects outside of the Authority’s Program.

The Authority recognizes that its goals must be balanced against the need to not unnecessarily restrict the pool of potential proposers or contractors available to participate in Authority procurements and contracts. This Policy neither purports to address every situation that may arise in the context of the Authority's procurements and contracts, nor to mandate a particular decision or determination by the Authority. The Authority retains the ultimate and sole discretion to determine on a case-by-case basis whether an Organizational Conflict of Interest (as defined below) exists and what actions may be appropriate to avoid, neutralize or mitigate any actual or potential Organizational Conflict of Interest or the appearance of any such Organizational Conflict of Interest.

This Policy does not address all applicable requirements that may affect persons and entities wishing to enter into contracts with the Authority. Examples of such requirements include: (a) the requirements of the California Political Reform Act and regulations promulgated by the California Fair Political Practices Commission, (b) restrictions in Public Contract Code section 10365.5 with respect to certain contractors engaged to perform consulting services, and (c) rules of conduct established by the California Board for Professional Engineers and Land Surveyors,¹ State Bar of California² and California Board of Accountancy,³ as applicable.

Attachment A hereto identifies certain hypothetical situations involving potential conflicts of interest and how they would likely be resolved under this Policy.

II. Definitions

1. An "**Affiliate**" of a Contractor is:
 - A. Any shareholder, member, partner or joint venture member of the Contractor;
 - B. Any person or entity which directly or indirectly through one or more intermediaries' controls, or is controlled by, or is under common control with, the Contractor or any of its shareholders, members, partners or joint venture members;
 - C. Any entity for which ten percent or more of the equity interest in such entity is held directly or indirectly, beneficially or of record by
 - (i). the Contractor,
 - (ii). any of the members, partners or joint venture members of the Contractor,
 - (iii). any Affiliate of the Contractor under clause (B) of this definition; and

¹ California Code of Regulations, Title 16, Division 5, Article 4, Sections 475 and 476.

² State Bar of California, Rules of Professional Conduct, Rules 3-300 and 3-310,

³ California Code of Regulations, Title 16, Division 1, Article 9.

- (iv). Any entity for which ten percent or more of the equity interest in such entity is held directly or indirectly, beneficially or of record by any of Contractor's shareholders other than shareholders whose only interest in Contractor is in the form of publicly traded stock.

For purposes of this definition the term “**control**” shall mean the possession, directly or indirectly, of the power to cause the direction of the management of an entity, whether through voting securities, by contract, family relationship or otherwise.

- 2. “**CEQA**” means the California Environmental Quality Act.
- 3. “**Construction Team**” means Contractors performing Authority contracts using Design-Bid-Build, Design-Build, Construction Manager-General Contractor or other project delivery methods.
- 4. “**Contractor**” means any individual or legal entity retained by the Authority to perform work on the HSR Project, or proposing to perform such work, including joint venture members and general partners of any such entity; any subcontractor of such individual or legal entity (at all tiers); and each individual employee of such individual, legal entity or subcontractor. The term “Contractor” includes Consultants and the term “subcontractor” includes “subconsultants.”
- 5. “**Consultant**” means a Contractor performing or proposing to perform professional or consulting services for the Authority or another public agency working on the HSR Project. The term includes, without limitation, any person or legal entity providing accounting, auditing, architecture, landscape architecture, construction project management, engineering, environmental consulting, land surveying, legal, or right of way acquisition services.
- 6. “**Design-Build**” is a method of project delivery in which one entity - the *design-build* team - works under a single contract with the Authority to provide *design* and construction services. For purposes of this Policy “Design-Build” also includes contracts that combine design and construction services with maintenance and/or finance services.
- 7. “**EIR**” means Environmental Impact Report.
- 8. “**EIS**” means Environmental Impact Statement.
- 9. “**FRA**” means the Federal Railroad Administration.

10. **“FTA”** means the Federal Transit Administration.
11. **“NEPA”** means the National Environmental Policy Act.
12. **“Organizational Conflict of Interest”** means a circumstance arising out of a Contractor’s existing or past activities (including projects outside of the Authority’s Program), business or financial interests, familial relationships, contractual relationships, and/or organizational structure (i.e., parent entities, subsidiaries, Affiliates, etc.) that results or would result in
 - (i). impairment or potential impairment of a Contractor’s ability to render impartial assistance or advice to the Authority or of its objectivity in performing work for Authority,
 - (ii). an unfair competitive advantage for any Contractor bidding or proposing or offering on an Authority procurement, or
 - (iii). a perception or appearance of impropriety with respect to any of the Authority’s procurements or contracts or a perception or appearance of unfair competitive advantage with respect to a procurement by the Authority (regardless of whether any such perception is accurate).
13. **“Project Section”** means each of the sections of the High-Speed Rail Project which were, are or will be studied in the draft and/or final EIR/EIS process, as such sections may be modified during the CEQA/NEPA process. The sections are currently identified as:
 - San Francisco - San Jose
 - San Jose - Merced
 - Merced - Fresno
 - Fresno - Bakersfield
 - Bakersfield - Palmdale
 - Palmdale - Burbank
 - Burbank - Los Angeles
 - Los Angeles - Anaheim
 - Los Angeles - San Diego
 - Sacramento - Merced

Certain of the Authority’s contracts may include services that apply to multiple Project Sections, geographical areas within one or more Project Sections, or portions of the Authority program, for example for trackwork and systems, project and/or program management, rolling stock, early train operator and operator or may include general services to the Authority that do not apply to any particular Project Section. For such contracts, all Contractors will be subject to the requirements of Sections VII (2), as appropriate.

14. **“Proposal”** includes any submission to an Authority procurement, including but not limited to a proposal, statement of qualifications or bid.
15. **“Procurement Services”** mean services provided by a Contractor for the benefit of the Authority relating to any or all of the following:
 - A. Development of procurement strategy and/or approach to risk allocation;
 - B. Development and preparation of procurement documents including but not limited to, requests for qualifications, requests for proposals, invitations for bids, contract documents and technical specifications, but excluding development and preparation of preliminary design, reports or similar “low level” documents for incorporation by others into a procurement package including but not limited to Preliminary Engineering for Project Definition required to support the project-specific EIR/EIS process and Preliminary Engineering for Procurement that provides a specific level of design for Design-Build procurement.
 - C. Development of evaluation criteria, process or procedures.
 - D. Administration of a procurement;
 - E. Evaluation of procurement submittals by Contractors (e.g., qualification submittals, proposals, etc.);
 - F. Negotiation of a contract; and
 - G. Advising the Authority in any other aspect of the procurement that the Authority determines, in its sole discretion, should be considered Procurement Services.
16. **“Public Records Act”** means the California Public Records Act, Government Code Section 6250 et seq.).
17. **“Regional Consultant or RC, or Engineering & Environmental Consultant or EEC”** means a Contractor under contract with the Authority and responsible for the management and delivery of the NEPA and CEQA environmental clearance for each Project Section.

III. **Applicability**

1. This Policy applies to all Contractors that have entered into, or wish to enter into, contracts with the Authority.

2. To the extent that the Authority has previously consented in writing to performance of work by a Contractor that would not have been permitted under this Policy, adoption of this Policy does not modify or alter the prior consent. The foregoing does not, however, mean that the Authority is required to consent to Contractor's participation in future Proposals or contracts.

IV. Federal Requirements

The Authority must comply with requirements applicable to FRA-funded projects, including United States Department of Transportation regulations applicable to federally funded procurements and contracts set forth in 2 CFR Part 200 ;⁴ nothing in this Policy is intended to limit, modify, supersede or otherwise alter the effect of other relevant federal, State, or local regulations, statutes or rules.

V. Organizational Conflicts of Interest Disclosure

1. Obligation to Disclose

Subject to the written requirements established for a particular procurement, any Contractor having or potentially having an Organizational Conflict of Interest shall promptly disclose the matter to the Authority at:

The Office of the Chief Counsel
770 L Street, Suite 620 MS 1
Sacramento CA 95814

OR

Via E-Mail at Legal@hsr.ca.gov

The disclosure should contain a detailed description of (i) the facts and circumstances giving rise to the actual or potential Organizational Conflict of Interest; and (ii) any efforts the Contractor has taken or proposes to take to mitigate the conflict. The procurement documents or contract may provide supplemental requirements regarding disclosures and may provide additional information requested in a disclosure or request for an Organizational Conflict of Interest determination. The failure to disclose any actual, perceived or potential Organizational Conflict of Interest may result in serious consequences to the Contractor and its Affiliates.

Upon receipt of a disclosure, the Authority will expeditiously review the matter, request

⁴ 2 C.F.R. § 200 replaced 49 C.F.R. §§ 18.36 & 19.40-19.48 Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards both including identical relevant sections used in this analysis.

additional information or clarifications from requestor when needed, conduct internal consultations when appropriate, and, in accordance with this Policy, advise the Contractor in writing whether it has an Organizational Conflict of Interest with respect to its participation in a procurement or performance of a contract with the Authority. During the review and determination process the Authority will update the requestor about the review status, as needed.

Upon receipt of the Authority's determination the Contractor making the disclosure may provide additional information or make additional requests with respect to the disclosure, for which the Authority will consider and provide further advice in writing as to whether the Contractor has an Organizational Conflict of Interest with respect to its participation in a procurement or performance of a contract with the Authority.

The Authority's decision on the matter may be considered an exhaustion of administrative remedies and shall not be subject to an internal Authority appeal.

An Organizational Conflict of Interest may arise at any time, and a Contractor's obligation to disclose is ongoing. Contractors participating in contracts with the Authority and bidding/proposing/offering on Authority contracts shall use all reasonable efforts to arrange their affairs so as to prevent Organizational Conflicts of Interest from arising. Contractors should undertake reasonable due diligence, including necessary conflict searches, to determine whether new actual, perceived or potential Organizational Conflicts of Interest have arisen. Each Contractor shall consider whether disclosure is required in connection with new hires, changes in the company's board of directors, mergers, and new business relationships including joint ventures and contractor/subcontractor relationships. Due to the potential for conflicts which could result in an Authority contract being deemed invalid and void, the Authority is particularly concerned about a Contractor's relationships with current and former Authority employees and individuals designated by the Authority as consultants subject to the Authority's Conflict of Interest Code. A Contractor must immediately inform the Authority if it is negotiating to hire, has made an offer of employment to, or has actually hired (i) an existing Authority employee, (ii) a former Authority employee, (iii) an individual who is currently on the Authority's list of consultants subject to the Authority's Conflict of Interest Code, or (iv) an individual who was formerly on the Authority's list of consultants subject to the Authority's Conflict of Interest Code but who is not currently performing work for the Authority.

Contractors whose responsibilities to the Authority include review, supervision or oversight of work by other entities should pay careful attention to their relationships with the other entities and their Affiliates and should take care to avoid relationships with such other entities that would give rise to an Organizational Conflict of Interest. Due diligence should extend to investigation of current and past relationships that exist within or outside of the Authority's program and, if the Contractor is a corporate entity, to officers or directors of the Contractor. A Contractor shall not be the Authority's agent for review, approval, or acceptance of its own work product. If a Contractor becomes aware of an actual, perceived or potential Organizational Conflict of Interest at any time during its participation in a procurement or performance of a contract, the Contractor shall promptly disclose the

matter as described herein.

2. **Failure to Comply**

If the Authority determines, in its sole discretion, that a Contractor has failed to comply with this Policy in any respect (including any failure to disclose an actual, perceived or potential Organizational Conflict of Interest), the Authority may, among other things, take the following actions:

- A. Preclude and/or disqualify the Contractor and its Affiliates, as well as any other persons or legal entities on the Contractor's team, from participation in the Authority's procurements;
- B. Require the Contractor and its Affiliates, as well as any other persons or legal entities on the Contractor's team, to implement mitigating measures;
- C. Cancel or amend the contract under which the Contractor is performing work for the Authority; and/or
- D. If the Contractor was or should have been aware of and failed to disclose an Organizational Conflict of Interest prior to award of the contract, terminate such contract for default.

If the Authority cancels a contract as specified above, it will have no obligation, responsibility or liability to reimburse all or part of the costs incurred or alleged to have been incurred by the Contractor, its Affiliates or other team members. Additionally, the Authority shall be entitled to recover any and all payments made to the Contractor subsequent to the date when the Contractor became aware of or should have become aware of the existence of the Organizational Conflict of Interest.

VI. **Conflict of Interest Standards Applicable to Environmental Contractors**

Contractors responsible for preparing documents under CEQA and NEPA are required to comply with all State and Federal laws and regulations applicable to such services, including requirements relating to organizational conflicts of interest. Until such time as the FRA issues a policy, guidelines or regulations regarding organizational conflicts of interest for such services, the Authority will follow the guidance provided by the FTA, including the FTA's Best Practices Procurement Manual. Among other things, the FTA manual precludes any consulting firm that has or shares the responsibility for preparing an EIS or portions of an EIS, including a supplemental EIS, from having any financial or other interest in the outcome of the project that is the subject of the EIS, until after the EIS is complete. Accordingly, any Contractor that is responsible for preparing an EIS for a Project Section or portion of a Project Section will be precluded from joining a Construction Team or similar team for such Project Section(s) until after the Record of Decision has been issued. Further review may be necessary following the issuance of

the applicable Record of Decision to determine if an Organizational Conflict of Interest exists.

Subcontractors to a CEQA/NEPA Contractor may request permission to be released from further CEQA/NEPA work to allow them to join Construction Teams or participate in other procurements for the Project Section(s) being analyzed in the CEQA/NEPA document. The Authority has no obligation to authorize a CEQA/NEPA subcontractor to participate on a Construction or other team or to agree to release the subcontractor from its responsibilities relating to the CEQA/NEPA document. The Authority's decision on the matter may" be considered an exhaustion of administrative remedies and shall not be subject to an internal Authority appeal.

VII. Conflict of Interest Standards Applicable to Contractors Desiring to Participate in New Procurements (Including Design-Build Procurements)

1. Procurement Contractor

- A. No team submitting a Proposal for an Authority contract (referred to herein as Contract A) may include any Contractor that provides or has provided Procurement Services for Contract A.

2. Contractor Providing Services for the Same Project Section

- A. Except as provided in Sections VII(2)(B) and (C) below, no Contractor may submit or participate in a Proposal for a contract to the Authority for a Project Section if the Contractor or any Affiliate of the Contractor is currently actively engaged in or has previously provided professional or consulting services to the Authority with respect to that same Project Section.
- B. A Contractor subject to Section VII(2)(A) may submit a request to the Authority to permit the Contractor or its Affiliate to submit or participate in a Proposal for a new contract for the same Project Section as the original contract, except that no such request may be made (i) if Section VI applies or (ii) if the Contractor or Affiliate provided Procurement Services with respect to the current procurement. Upon receipt of such request, the Authority will consider the factors set forth in Section IX and may, in its sole discretion, provide written authorization allowing such a Contractor or its Affiliate to participate on the team, subject to implementation of safeguards and mitigation measures deemed appropriate by the Authority.
- C. Except as otherwise provided in Section VI, or when the Contractor or Affiliate provided Procurement Services with respect to the current procurement, a Contractor subject to Section VII(2)(A) may submit

or participate in a Proposal for a new contract without written authorization under Section VII(2)(B), if all of the following conditions are satisfied as of the date of issuance of the request for proposals or other procurement document for the contract:

- (i). all services to be performed by such Contractor and its Affiliates with respect to the relevant Project Section have been fully completed,
- (ii). all relevant contracts with the Contractor and Affiliates have been terminated or the Authority has stated in writing that no further services will be required of the Contractor or its Affiliates under said contract, and
- (iii). the Contractor's and Affiliate's relevant work product under the original contracts will be made available to all of the proposers,
- (iv). the new work to be performed does not require the Contractor to approve or accept its own prior work.

Section VII(2)(C)(i) & (ii) will be satisfied for the Contractor performing services under an existing contract if the procurement is to replace that existing contract. However, VII(2)(C)(iii) is still required before the Contractor performing services under that existing contract may submit or participate in the replacement contract Proposal.

3. Contractor Providing Services on a Different Project Section

A Contractor (or its Affiliate) may propose or participate in a proposal for a Project Section contract even though the Contractor is providing (or has completed) professional or consulting services for a different Project Section. In certain cases, the Contractor may be considered to have performed work on a Project Section because of overlapping limits, interfaces or coordination efforts between Project Sections, or because the Contractor provided general services to the Authority, or because an Affiliate has performed work on the Project Section in question. Under such circumstances, the Contractor must obtain permission under Section VIII(1)(B) before it (or its Affiliate) may submit or participate in a proposal.

VIII. Restrictions Affecting Contractors Joining Design-Build Teams Only

1. Procurement Contractor

A. Unless the Authority provides prior written approval as specified

below, no team submitting a Proposal for Contract A may include:

- (i). any Contractor that provides or has provided Procurement Services (other than development of technical specifications or review and evaluation of technical submittals) for any other Authority design-build contract (referred to herein as Contract B) within 12 months prior to the Proposal due date for Contract A or
- (ii). any Affiliate of such a Contractor. Subject to Sections VI and VII(1)(A), a Contractor that has provided Procurement Services for Contract B within 12 months prior to the Proposal due date for Contract A may submit a request to the Authority to permit the Contractor or its Affiliate to participate on a design-build team submitting a Proposal for Contract A. Upon receipt of such request, the Authority will consider the factors set forth in Section IX and may, in its sole discretion, provide written authorization allowing such a Contractor or its Affiliate to participate on the team, subject to implementation of safeguards and mitigating measures deemed appropriate by the Authority.

IX. Organizational Conflict of Interest Factors to Consider

The Authority considers Conflict of Interest factors when considering Organizational Conflict of Interest determinations for all Contractors as defined in the Policy with an intention to:

1. Promote integrity, transparency, competitiveness and fairness in the Authority's procurements and contracts;
2. Prevent bidders and proposers from obtaining or appearing to obtain an unfair competitive advantage with respect to the Authority's procurements and contracts;
3. Ensure that work be performed in an objective, impartial manner in the best interest of the Authority and without the perception or appearance of impropriety and without the perception or appearance of an unfair competitive advantage;
4. Provide guidance to enable Contractors to make informed decisions while conducting business with the Authority; and
5. Protect the validity of Authority procurements, contracts, confidential and sensitive information concerning the HSR Project, and other Authority interests.

6. Prevent actual and mitigate potential conflicts of interests as a result of Contractor review, supervision or oversight of work by other entities on the HSR Project if the Contractor has a financial relationship with those entities on projects outside of the Authority's Program.

The responsibility for determining whether an actual or apparent conflict will arise, and to what extent a Contractor should be excluded from competition, rests with the Authority.

The Authority will consider the following relevant factors, including case-specific factors, in determining whether a Contractor should be permitted to participate or to continue to participate in a procurement or the performance of a contract:

1. Relevance or Materiality of the Information

- A. This factor may include considering whether the Contractor has in its possession information that will not and should not be made public or disclosed to other participants in the procurement, as the case may be, or that will give an unfair advantage to the Contractor or prevent the Contractor from performing future work in an impartial manner, including the following:
 - (i). Planning, budgetary, or business information;
 - (ii). The Authority' strategies, tactics, plans, alternatives or other inside information concerning the procurement; or
 - (iii). Information prepared for use by the Authority for the purpose of evaluating proposals, for defining the scope of the work, or for determining terms, conditions or specifications.
- B. This factor may include considering the "age" of the information, including whether the length of time between the acquisition of the information, combined with interim developments within a project (e.g., transaction structure, design, etc.), is sufficient to render the information irrelevant, immaterial, or of little or no value.
- C. This factor may include considering the extent to which the information is or will be available to other participants in the procurement and the time other participants had or will have to analyze and assimilate the information.

2. Inherent Conflicts from the Performance of Work on Multiple Contracts

- A. This factor may include considering whether in the performance of the contract the Contractor would be in a position to accept or evaluate work it performs under a different contract or an evaluation of Proposals.

- B. This factor may include considering whether in performance of the contract the Contractor may be considered to have performed work on a Project Section because of overlapping limits, interfaces or coordination efforts between Project Sections, or because the Contractor provided general services to the Authority, or because an Affiliate has performed work on the Project Section in question.
- C. This factor may include considering whether a Contractor, as part of its performance of an Authority contract, has in some sense set the ground rules for competition or whether the Contractor, whether intentionally or not, skewed the competition in for another Authority contract, for example, writing the statement of work or the specifications.
- D. This factor consists of considering whether a Contractor has access to nonpublic information as part of its performance of an Authority contract and whether that information may provide the Contractor with an unfair competitive advantage in another Authority procurement or contract.

3. Materiality of the Relationship

- A. This factor may involve considering whether the subject relationship involves branch offices or a parent company of the Contractor, and the degree of separation of work teams and information between the offices and companies.
- B. This factor may include considering the substance of a subject relationship, including whether the relationship is so indirect or remote that an actual or perceived Organizational Conflict of Interest is sufficiently mitigated (e.g., no effective risk of passing or use of confidential information or bias in the discharge of functions).

4. Resources and Expertise

- A. This factor may include considering the expertise required to undertake the subject work and the availability of suitably qualified and skilled Contractors.
- B. This factor may include considering the magnitude of the resources required to deliver a Project Section in a timely manner.
- C. This factor may include disclosing these exigencies in a competitive process, including to any relevant governing association or body to obtain its concurrence.

5. Professional Governing Body Rules

- A. This factor may include considering the rules that are put in place by professional or other governing bodies regarding actual and perceived Organizational Conflicts of Interest and determining whether delivery of a certification or acknowledgement by a prospective Contractor or Contractor of its compliance with any such rules would be sufficient mitigation.
- B. This factor may include obtaining the advice of any such professional or governing body to the participation of a Contractor.
- C. This factor may include considering the case law relevant to Organizational Conflicts of Interest matters.

X. Safeguards and Mitigation Efforts

The Authority recognizes that its goals must be balanced against the need to not unnecessarily restrict the pool of potential proposers or bidders or offerors available to participate in Authority procurements and contracts. Therefore, the Authority will look for opportunities to apply safeguards or mitigation that will allow a bidder or proposer or offerors to participate despite an identified conflict of interest. The Authority retains the ultimate and sole discretion to determine on a case-by-case basis whether an Organizational Conflict of Interest (as defined below) exists and what actions may be appropriate to avoid, neutralize or mitigate any actual or potential Organizational Conflict of Interest or the appearance of any such Organizational Conflict of Interest.

If the Authority, after considering the relevant factors set forth in Section IX above, including case-specific factors, is of the view that a Contractor should be permitted to participate or to continue to participate in a particular procurement or contract, then the Authority, in its sole discretion, may require the Contractor to implement suitable safeguards, including those described below, to mitigate any Organizational Conflict of Interest.

1. The Authority may require a Contractor to establish ethical walls and related safeguards and procedures, including the segregation of individuals and information within a Contractor firm or company, thereby allowing the Contractor firm or company to participate or continue to participate in the HSR Project
 - A. Segregated individuals may include those persons who were involved in an earlier phase or in work associated with or relevant to a specific Project Section.
 - B. Segregated information may include confidential information obtained as a result of a Contractor's or prospective Contractor's former contracts with the Authority or confidential information obtained from former or current Authority employees.

2. The Authority may require assurances or demonstration of the type of ethical walls and the effectiveness of the ethical walls.
3. The Authority may require information (including in affidavit form) as to when ethical walls were put into place, how they operate, and whether there is any form of notification within the subject firm or company of their existence.
4. The Authority may audit, or direct others to audit on its behalf, for compliance with ethical walls and related safeguards and procedures.
5. The Authority may require such other safeguards or mitigation measures as it deems appropriate to address a specific instance of an Organizational Conflict of Interest.

XI. Application of Policy to Contractor Employees

If the Authority determines that a potential or actual Organizational Conflict of Interest exists for a particular Contractor, an Organizational Conflict of Interest shall also be considered to apply to any employee of such Contractor that has participated in a material way in the performance of work giving rise to the determination. If such individual leaves the Contractor's employment, the potential or actual Organizational Conflict of Interest shall apply to such individual in the same manner as it applies to the Contractor. However, the individual's new employer (if not an Affiliate of the original employer) will not be considered to have an Organizational Conflict of Interest provided the new employer adopts and implements safeguards and mitigation measures satisfactory to the Authority its sole discretion.

XII. Confidentiality

The Authority recognizes that certain information submitted to the Authority in connection with a disclosure or a request for Authority approval hereunder may be considered by the submitting party to constitute confidential information that is exempt from disclosure under the Public Records Act (including, but not limited to, Government Code section 6254(k) and Evidence Code section 1040). In such event, the submitting party shall be responsible for clearly and conspicuously identifying the information as "CONFIDENTIAL INFORMATION SUBMITTED PURSUANT TO CHSRA ORGANIZATIONAL CONFLICTS OF INTEREST POLICY." Each Contractor submitting information pursuant to the Policy should contact its own legal counsel concerning the Public Records Act and its application to the submitting party's own circumstances.

The Authority intends to maintain confidentiality of information submitted hereunder to the extent permitted by applicable law. If the Authority is asked, while a procurement is pending, to disclose any material marked confidential that was submitted in connection with that procurement, the Authority will endeavor to notify the submitting party of the request. If any litigation is filed, the Authority's sole involvement will be as a stakeholder retaining the

material until otherwise ordered by a court, and the submitting party shall be responsible for otherwise prosecuting or defending any action concerning the materials at its sole expense and risk including all costs to defend and indemnify the Authority. In no event shall the Authority, or any of its agents, representatives, consultants, directors, officers or employees, be liable to a submitting party for the disclosure of any information submitted hereunder.

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ATTACHMENT A

HYPOTHETICAL ORGANIZATIONAL CONFLICTS OF INTEREST SITUATIONS

The following table addresses potential Organizational Conflicts of Interest with respect to Contractors that provide services to the Authority, including Regional Consultants (“RCs”) that provide planning services, environmental services and design services for the Project Sections geographical areas within one or more Project Sections, or portions of the Authority program, Contractors that are engaged to provide professional and consulting services relating to administration of a design-build contract, as well as Consultants providing program management services. These hypotheticals are presented for the purpose of illustrating the process to be followed in ascertaining whether an Organizational Conflict of Interest exists. These hypotheticals are intended to be examples and shall not take the place of disclosure or determinations under the Policy; all potential Organizational Conflicts of Interest must be reviewed on a case-by-case basis. In all cases, the hypotheticals are based on the following assumptions:

1. The Contractor that is the subject of the hypothetical does not have any Affiliates that also act or have previously acted as Contractors.
2. The Contractor that is the subject of the hypothetical does not perform any services for the Authority other than those described in the hypothetical.
3. The limits of relevant Project Sections do not overlap.

Hypothetical Situation	Result
1. RC or other Contractor for a Project Section (or Affiliate) wishes to join a, Construction Team (or participate in a different type of project delivery non-consulting contract) for the same Project Section.	<ul style="list-style-type: none"> • Any RC is prohibited from participating in any Construction Team for the same Project Section until after the Record of Decision has been issued. • If the Contractor has performed Procurement Services (including developing technical specifications for the procurement) for the contract in question, the Contractor/Affiliate cannot participate. • If the RFP for the new contract is issued prior to final NEPA/CEQA approval, and if the Contractor has ongoing responsibility for preparation of the NEPA/CEQA document, the Contractor/Affiliate cannot participate. • In situations not involving Procurement Services or preparation of the NEPA/CEQA document, the Contractor/Affiliate may participate in the

Hypothetical Situation	Result
	<p>procurement without Authority approval if (a) the Contractor's services have been completed, (b) the Contractor's contract has been terminated or the Authority has stated in writing that no further services will be required of the Contractor and (c) the Authority has stated in writing that the Contractor's relevant work product will be made available to all of the proposers/bidders/offerors.</p> <ul style="list-style-type: none"> In all other cases, the Contractor may request Authority approval for the Contractor/Affiliate to participate. Safeguards and mitigation measures may be required.
<p>2. RC or other Contractor for one Project Section (or Affiliate) wishes to join a Construction Team (or participate in a different type of project delivery non-consulting contract) for another Project Section.</p>	<p>In general, no approval is required for the Contractor /Affiliate to participate. However:</p> <ul style="list-style-type: none"> If the Contractor 's services include performance of Procurement Services within the 12-month period prior to issuance of the design-build RFP, the Contractor must request Authority approval for the Contractor /Affiliate to participate on the team. If the Authority approves participation, it may require safeguards and mitigation measures to be implemented.
<p>3. Contractor (or Affiliate) that previously performed work on a Project Section wishes to join a Construction Team (or participate in a different type of project delivery non-consulting contract) for that Project Section, and will not be a major participant on the new team.</p>	<ul style="list-style-type: none"> The same answer applies as for hypothetical 2. If Authority approval is required, the role played by the Contractor for the Authority and the role it would play on the Construction Team will be taken into consideration when determining whether any organizational conflicts exist, and the nature of any mitigation required.
<p>4. Contractor (or Affiliate) that performs design or construction work (or participate in a different type of project delivery non-consulting contract)</p>	<ul style="list-style-type: none"> In situations not involving Procurement Services the Contractor/Affiliate may participate in the procurement without Authority approval if (a) the Contractor's services have been completed, (b) the Contractor's contract has been terminated or the Authority has stated in writing that no further

Hypothetical Situation	Result
<p>on a Project Section or geographical region wishes to join a Construction Team for the Trackwork or Core Systems (electrification, signaling etc.) for the same Project Section of geographical region</p>	<p>services will be required of the Contractor and (c) the Authority has stated in writing that the Contractor’s relevant work product will be made available to all of the proposers/bidders/offerors.</p> <ul style="list-style-type: none"> • In all other cases, the Contractor may request Authority approval for the Contractor/Affiliate to participate. Safeguards and mitigation measures may be required. • The Contractor or Affiliate is prohibited from entering into a contract or participating in the Trackwork or Core Systems procurement and contract if 1) hypothetical 12 applies; or if the Contractor has possession of non-public information giving it an unfair competitive advantage; or 3) the Contractor’s role in the two contracts would create an impairment or potential impairment of its ability to provide advice to the Authority.
<p>5. An Affiliate of a Contractor that provided Procurement Services wishes to join a Construction Team.</p>	<ul style="list-style-type: none"> • If the Contractor provided Procurement Services for the Construction Team procurement in question, the Affiliate may not join a team. • If the Contractor wishes to join a design-build team only and provided Procurement Services for a different procurement within the past 12 months, Authority approval is required.
<p>6. A Contractor that performs design or construction management services for a Project Section (or an Affiliate of the Contractor) is asked to team with the Construction Team for that Project Section (or Affiliate of the design-builder) for a separate project/contract.</p>	<ul style="list-style-type: none"> • The Contractor/Affiliate must disclose the relationship to the Authority under 16 CCR § 475 referenced in the Policy. The Authority may require safeguards and mitigation measures to be implemented. The contract between the Authority and the Contractor may include additional requirements.
<p>7. An entity that wishes to join a Construction Team or similar team</p>	<ul style="list-style-type: none"> • The result depends on the nature of the services provided. The Contractor may request Authority

Hypothetical Situation	Result
has knowledge about the Project Section based on services provided to a third party that were funded by the Authority.	approval for the Contractor/Affiliate to participate. Safeguards and mitigation measures may be required.
8. In its performance of contract work a Contractor or an Affiliate is placed in a position to accept and approve work it performs or did perform under a different contract.	<ul style="list-style-type: none"> The Contractor or Affiliate is prohibited from entering into a contract or participating in a procurement in which the Contractor or Affiliate is placed in a position to accept and approve work it performs or did perform under a different contract.
9. A Contractor for a Project Section wishes to join a program management team for the same Project Section.	<ul style="list-style-type: none"> In situations not involving Procurement Services the Contractor/Affiliate may participate in the procurement without Authority approval if (a) the Contractor's services have been completed, (b) the Contractor's contract has been terminated or the Authority has stated in writing that no further services will be required of the Contractor and(c) the Authority has stated in writing that the Contractor's relevant work product will be made available to all of the proposers/bidders/offerors. In all other cases, the Contractor may request Authority approval for the Contractor /Affiliate to participate. Safeguards and mitigation measures may be required.
10. Consultant A wishes to compete for a contract to provide review, supervision and oversight of ongoing work performed by a Authority Joint Venture Construction Team. One of the Joint Venture partners on the Construction Team is an Affiliate of Consultant A.	<ul style="list-style-type: none"> Consultant A is prohibited from competing in the procurement and entering into a contract to review, supervise and oversee the work performed by the Joint Venture Construction Team because Consultant A would be reviewing and approving its own work product as a result of its affiliation with one of the Construction Team Joint Venture partners.

Hypothetical Situation	Result
<p>11. A Contractor wishes to compete for an Authority Procurement or continue working under an Authority contract while also competing for a contract with another entity other than the Authority. The subject matter/scope of work of both contracts has the potential for overlap.</p>	<ul style="list-style-type: none"> • The Policy defines an Organizational Conflict of Interest as a circumstance arising out of a Contractor’s existing or past activities, <i>business or financial interests, or contractual relationships</i> that results or would result in impairment or potential impairment of a Contractor’s ability to render impartial assistance or advice to the Authority or of its <i>objectivity in performing work</i> for Authority, among other circumstances. • Under the circumstances the Contractor could potentially have contractual duties and obligations owed to two different entities that have different objectives. • Because of the potential for an Organizational Conflict of Interest, the Contractor must request Authority approval for the Contractor/Affiliate to participate on the team. If the Authority approves participation, it may require safeguards and mitigation measures to be implemented.
<p>12. Consultant A wishes to compete for a contract to provide review, supervision and oversight of ongoing work performed by an Authority Joint Venture Construction Team. One of the Joint Venture partners is an Affiliate of Consultant A on a project outside the Authority’s program.</p>	<ul style="list-style-type: none"> • The Policy defines an Organizational Conflict of Interest as a circumstance arising out of a Contractor’s existing or past activities, <i>business or financial interests, or contractual relationships</i> that results or would result in impairment or potential impairment of a Contractor’s ability to render impartial assistance or advice to the Authority or of its <i>objectivity in performing work</i> for Authority. • Because of the potential for an Organizational Conflict of Interest, the Contractor must request Authority approval for the Contractor/Affiliate to participate on the team. If the Authority approves participation, it may require safeguards and mitigation measures to be implemented.