

RCTC Conflicts of Interest Policy for Interstate 15 Express Lanes Project

Section 1. Purpose. This Policy prescribes Conflict of Interest policies applicable to private entities, including Consultants and Proposers, participating or desiring to participate in the Commission's planning, procurement, design, construction or development of the Project. A private entity's failure to comply with these standards of conduct may result in potential liability to the Commission and the private entity and the private entity's preclusion from participation in the Project. This Policy is intended to apply in the context of the Commission's development of the Project pursuant to a design-build delivery method and contract.

Section 2. Definitions.

Section 2.1. "Affiliate" means with respect to any Consultant: (a) any member, partner or joint venturer of such Consultant; (b) any individual or entity that directly or indirectly controls, or is controlled by, or is under common control with, such Consultant or any of its members, partners or joint venturers; and (c) any other entity for which 20% or more of the equity interest in such other entity is held directly or indirectly, beneficially or of record by (i) such Consultant, (ii) any of such Consultant's members, partners or joint venturers or (iii) any Affiliate of such Consultant under clause (b) of this definition.

Section 2.2. "Commission" means the Riverside County Transportation Commission.

Section 2.3. "Conflict of Interest" means a circumstance arising out of a Consultant's existing or past activities, including past activities as a Consultant to or employee of the Commission, business interests, familial relationships, contractual relationships, and/or organizational structure (i.e., Affiliates, etc.) wherein (i) the Consultant is or may be unable to render impartial assistance or advice to the Commission, (ii) the Consultant's objectivity in performing the scope of work sought by the Commission is or might be otherwise impaired, (iii) the Consultant has, or is perceived to have, an unfair competitive advantage; (iv) the Consultant's performance of Services on behalf of the Commission does or may provide an unfair competitive advantage to a third party; or (v) regardless of whether accurate, there is a perception or appearance of impropriety or unfair competitive advantage benefiting the Consultant or a third party as a result of the Consultant's participation on the Project.

Section 2.4. "Consultant" means any person or business entity (including any individual employee of such entity or any division and/or Affiliate of such entity) previously or currently retained, or in the process of being retained, by the Commission to provide Services in connection with the Project, including subconsultants and individual employees of subconsultants.

Section 2.5. "Executive Director" means the executive director of the Commission or his or her designee.

Section 2.6. "Policy" means this RCTC Conflicts of Interest Policy for the Project.

Section 2.7. "Project" means the Interstate 15 Express Lanes Project.

Section 2.8. "Proposer" means any person or business entity, including joint ventures, partnerships, limited liability companies, corporations, consortia, teams or other groups or organizations of individuals or entities, or the individuals and entities that make up such groups, that have submitted a qualification submittal or proposal for work on the Project or are interested in submitting a qualification submittal or proposal for work on the Project.

Section 2.9. "Services" means, in the context of this Policy, consulting services related to the Project, which may include, but are not limited to, some or all of the following: planning services, procurement services, federal and state environmental services; financial advisory services; insurance services, legal services; DBE compliance or program development services, labor compliance services, traffic and revenue studies; operations and toll planning services; program oversight; design and construction management services, preliminary engineering services (including right-of-way, structures, survey and utility), and public and community outreach services.

Section 3. Conflicts of Interest.

Section 3.1. Purpose. This section prescribes the Commission's policy on Conflicts of Interest relating to Consultants participating or desiring to participate in the planning, procurement, design, construction or development of the Project, and thereby:

- (A) protects the integrity and fairness of the planning, procurement, design, construction or development of the Project;
- (B) avoids circumstances where a Consultant or Proposer obtains, or appears to obtain, an unfair competitive advantage as a result of work performed by a Consultant;
- (C) provides guidance to Consultants and Proposers, or potential Consultants and Proposers, so they may assess, and make informed business decisions concerning their decision to provide Services on the Project or to submit a qualification submittal and/or proposal related to the design, construction or development of the Project; and
- (D) protects the Commission's interests and confidential and sensitive Project-specific information.

Section 3.2. Applicability. This Policy applies to Consultants who desire to participate in, have participated in or are participating in the performance of Services for the Commission related to the Project. This Policy may prohibit or restrict the ability of a Proposer to have a Consultant participate on a Proposer team as an equity owner or team member, act as a consultant or subconsultant to a Proposer, or have a financial interest in a Proposer or an equity owner or team member of a Proposer. This Policy relates solely to the Project and does not address the Commission's approach to conflicts of interest on other Commission projects.

Section 3.3. Conflicts of Interest Disclosure

Section 3.3.1. Obligation to Disclose. Consultants participating in the Project shall arrange their affairs so as to prevent Conflicts of Interest from arising. Any

Consultant having an actual, potential or perceived Conflict of Interest shall disclose the matter to the Commission in writing with supporting facts and information to the following individual:

Mr. Matt Wallace
Procurement and Asset Manager

Riverside County Transportation Commission
4080 Lemon Street. 3rdFloor
Riverside, CA 92502
Email: mwallace@rctc.org

Disclosures will also be requested as part of any request for qualifications or request for proposals relating to the design, construction or development of the Project.

The Consultant's Conflict of Interest disclosure obligation is ongoing. Consultants should undertake reasonable due diligence, including necessary conflict searches, to determine whether new actual, potential or perceived Conflicts of Interest arise. Due diligence should extend to investigation of past relationships and, if the Consultant is an entity, to employees, officers or directors of the Consultant. If a Consultant becomes aware of an actual, potential or perceived Conflict of Interest at any time during its participation in the Project, the Consultant shall promptly disclose the matter to the Commission as described herein. A Consultant shall use its best efforts to respond to any requests for additional information and documentation which the Commission deems necessary to fully evaluate the Commission's Conflict of Interest issues and to consider the Commission's determination. The Consultant's failure to provide such information or documentation when requested may impact the Commission's final determination hereunder.

Section 3.3.2. Failure to Comply. If a Consultant fails to comply with this Policy, including failure to comply with any mitigative measures imposed under this Policy, or otherwise fails to disclose an actual, potential or perceived Conflict of Interest, the Commission may, in its sole discretion:

- (A) Preclude and/or disqualify the Consultant and its Affiliates, including any Proposer with whom the Consultant is or had affiliated, from participation in the planning, procurement, design, construction and/or development of the Project, including any competitive process associated therewith;
- (B) Require the Consultant and its Affiliates, including any Proposer with whom the Consultant is or had affiliated, to implement mitigative measures;
- (C) Segregate or terminate the Consultant and its Affiliates, including any Proposer with whom the Consultant is or had affiliated, from planning, procurement, design, construction and/or development of the Project; and/or
- (D) Pursue any and all other rights and remedies available at law, in equity or set forth in any request for qualifications or request for proposals, which rights and remedies shall include the right to seek any and all direct or indirect costs and damages resulting from the Consultant's failure to comply with this Policy, including, but not limited to, costs resulting from third-party challenges to the procurement or the

Commission's re-procurement of the Project.

Section 3.4. Period in Which a Conflict of Interest Applies. If the Executive Director determines that the performance of Services by a Consultant creates an actual, potential or perceived Conflict of Interest, the provisions in this Policy and any decisions made by the Commission related to such Conflict of Interest (including prohibitions, mitigative measures, etc.) shall continue and apply for the duration of the planning, procurement, design, construction and development of the Project, provided that the Executive Director may, on a case-by-case basis and in his or her sole discretion, modify the length of this time period in writing if he/she determines that the modification is in the best interests of the Commission and the Project.

Section 3.5. Application to New Firm. If a Conflict of Interest applies to an individual, the Conflict of Interest and prohibition with respect to the individual will not apply to the individual's new place of employment, unless the new employer is an Affiliate of the employee's previous employer or unless mitigative measures will not, in the Commission's sole discretion, mitigate or eliminate the Conflict of Interest issue. If the new employer is not an Affiliate of the previous employer and is otherwise eligible to perform Services for the Commission pursuant to this Policy and applicable law, the new employer will remain eligible despite the employment of the individual, but mitigative measures may be required of the new employer with respect to the employee.

Section 3.6. Federal and State Requirements.

Section 3.6.1. Federal and State Laws. For federal-aid projects and in certain other circumstances, the Commission must comply with the Federal Highway Administration's organizational conflict of interest regulations found in 23 CFR §636.116. The Commission must also comply with certain California laws and regulations, including, without limitation, Government Code §§1090 and 87100 et seq. Nothing in this Policy is intended to limit, modify, supersede or otherwise alter the effect of those laws and regulations, and the Commission will apply this Policy consistent with those laws and regulations.

Section 3.6.2. Limitations on Commission Consents and Approvals. To the extent that application of the federal and state laws and regulations described in Section 3.6.1 would preclude or limit participation by a Consultant or an individual with respect to the Project, then notwithstanding any other aspect of this Policy or any contrary decision by the Commission in response to an actual, potential or perceived Conflict of Interest under this Policy, such federal and state laws and regulations shall control and be determinative. Under no circumstances shall a decision, approval or consent by the Commission in response to a disclosure, request or actual, potential or perceived Conflict of Interest under this Policy be considered an opinion with respect to the applicability or effect of such federal and state laws or regulations, and Consultant shall bear all responsibility and liability for determining if a conflict under federal and/or state laws or regulations exist in relation to the Consultant's work or proposed work on the Project.

Section 3.7. Binding Effect of Commission Decisions. The Commission shall not

withdraw or amend a prior consent or approval granted to a Consultant under this Policy unless:

(A) The application of the federal and state laws and regulations described in Section 3.6 requires the consent or approval to be withdrawn or amended; or

(B) The Commission decides, in its sole discretion, to withdraw or amend the consent or approval based on factual circumstances that the Commission has been made aware of that were not disclosed when the Commission made its original decision, or factual circumstances that are new or have changed since the Commission made its original decision; or

(C) The Consultant or Proposer team fails to comply with any mitigative measures imposed under this Policy.

Section 3.8. General Conflict of Interest Standards. Except as provided in Section 3.9 of this Policy, no Consultant that has previously provided Services or that is currently providing Services to the Commission with respect to the Project may be a Proposer or participate as an equity owner, team member, consultant, or subconsultant of or to a Proposer for the Project, or have a financial interest in any of the foregoing entities with respect to the Project. In Commission's sole discretion, this prohibition may be extended to Consultants that worked for the Commission on a project other than the Project, where such work was, in the Commission's sole determination, strategic to Commission's design-build program or afforded such Consultant access to information about the Project or the Commission's approach to the Project (or other design-build projects) or procurement of the Project (or other design-build projects) that would provide an unfair competitive advantage for such Consultant.

Section 3.9. Determination Regarding Provision of Services for the Project.

Section 3.9.1. Discretion of the Commission. Unless otherwise indicated in this Policy, all approvals, actions or discretion under this Policy and with respect to an actual, potential or perceived Conflict of Interest shall be within the sole discretion of the Commission. Unless a particular decision regarding application of this Policy is referred to the Commission's Board of Directors by the Executive Director, the Executive Director retains the ultimate and sole discretion to act on behalf of the Commission hereunder and to determine on a case-by-case basis whether an actual, potential or perceived Conflict of Interest exists and what actions may be appropriate to avoid, neutralize, or mitigate any actual, potential or perceived Conflict of Interest.

Section 3.9.2. Determination Process. In response to a disclosure under Section 3.3 above or information the Commission obtains independent of a Consultant, the Executive Director shall determine whether a Consultant has an actual, potential or perceived Conflict of Interest that the Executive Director determines should prevent the Consultant from (i) being a Proposer, (ii) participating as an equity owner, team member, consultant, or subconsultant of or to a Proposer for the Project, (iii) having a financial interest in any of the foregoing entities with respect to the Project or (iv) otherwise participating in the design, construction or development of the Project. Once the Executive Director makes this determination, he/she or his/her designee shall send the Consultant a written notice regarding the decision and, if participation is approved,

whether the approval and participation is limited or subject to the Consultant meeting certain conditions. The Executive Director shall consider some or all of the following factors when making the determination:

(A) Whether the Consultant will not, or in the case of the previous performance of Services did not, have access to or obtain knowledge of confidential or sensitive information, procedures, policies and processes that could provide, or could be perceived to provide, an unfair competitive advantage with respect to the procurement, design, construction or development of the Project;

(B) Whether the data and information provided to the Consultant in the performance of the Services is either substantially irrelevant to the procurement for the Project or is generally available on substantially an equal and timely basis to all Proposers;

(C) The type of Services at issue;

(D) The particular circumstances at issue, including the Consultant's ability to effectively implement the safeguards described in Section 3.12, including an ethical wall, or to otherwise mitigate the Conflict of Interest in a manner satisfactory to the Commission;

(E) The specialized expertise, if any, needed by the Commission and Proposers to implement the Project;

(F) The period of time between the previous work for the Commission and the potential Conflict of Interest situation;

(G) Whether the Consultant's work for the Commission has been completed or is ongoing;

(H) The potential impact on the procurement and implementation of the Project, including impacts on competition;

(I) Whether, with respect to a Consultant's prior environmental services related to the Project, if any, a record of decision or finding of no significant impact has been issued for the Project;

(J) Whether, with respect to a Consultant's prior traffic and revenue Services related to the Project, if any, the prior work will have no impact on the Project's plan of finance, on a Proposer's ability to obtain and close funding or on the potential sources of funding for the Project;

(K) Whether the Executive Director believes that the Consultant's participation is in the best interests of the Commission; and

(L) Any other factors or circumstances deemed relevant by the Commission.

Section 3.10. Procurement and Financial Services. Independent of the process described in Section 3.9, a Consultant actively engaged and performing procurement services or financial services with respect to the Project may not be a Proposer or participate as an equity owner, team member, consultant, or subconsultant of or to a Proposer for the Project, or have a financial interest in any of the foregoing entities with respect to the Project.

Section 3.11. Multiple Services. If a Consultant is providing more than one category or type of Services to the Commission for the Project (e.g., environmental services as well as procurement services) and there are differences in this Policy's considerations, standards, restrictions, limitations and outcomes applicable to those categories or types of Services, the standards, restrictions, limitations and outcomes applicable to a category that are more stringent will be applied (e.g., if a Consultant were only providing preliminary engineering services that have been completed, they may be approved to participate on a Proposer team, whereas, if they were also providing ongoing procurement services for the Project, they may not be approved to participate on a Proposer team).

Section 3.12. Restriction of Services and Conditions to Approvals and Exceptions. In order to address actual, potential or perceived Conflicts of Interest, the Executive Director as part of providing his or her consent to the participation of a Consultant may, in his or her sole discretion:

(A) Restrict the scope of Services the Consultant may be eligible to perform for the Commission or the Proposer team in order to further the intent and goals of this Policy;

(B) Condition an approval, determination, or exception as the Executive Director determines appropriate to further the intent and goals of this Policy, including by requiring the Consultant or Proposer to implement certain safeguards, including, but not limited to:

(i) The execution of confidentiality agreements satisfactory to the Commission, which may, among other things, include the segregation and protection of information obtained as a result of the Consultant's prior or ongoing work for the Commission or from former or current Commission employees; and/or

(ii) The execution of ethical wall agreements satisfactory to the Commission, which segregate certain personnel from participation in the Project; and/or

(iii) The execution of agreements satisfactory to the Commission regarding the dissemination of work product and materials created as a result of Consultant's prior or ongoing work for the Commission, including dissemination to the Commission and restrictions on dissemination by the Consultant to any Proposer team, including a team on which they intend to participate.

Section 3.13. Provisions are Nonexclusive. The provisions in this Policy do not address every situation that may arise in the context of the Commission's planning, procurement, design, construction or development of the Project nor require a particular decision or determination by the Executive Director when faced with facts similar to those described in this Policy. In addition, additional policies, procedures and limits related to conflicts of interest or similar issues may be imposed by the Commission at any time with respect to the Project or any other Commission projects.