



CALIFORNIA
High-Speed Rail Authority

Proposed Amendments to the Authority's Organizational Conflict of Interest Policy

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Purpose of the Existence of the Policy

- Developed in order to comply with federal grant agreements.
- The agreements require that the Authority maintain procedures for identifying & preventing real & apparent organizational conflicts of interest.

- **The Policy is intended to:**
 - » Ensure a fair and transparent procurement process.
 - » Maximize competition.
 - » Minimize risk of bid protests and litigation.

- **The Policy is based on:**
 - » State and federal procurement laws.
 - » Court history and administrative decisions.
 - » Best practice guidelines.
 - » Caltrans' OCIP Policy.

History of Policy & Amendments

- The Policy was created in 2011 with stakeholder input and following a public comment period.
- The Policy was amended in November of 2020, again with stakeholder input, to address the evolving nature of the high-speed rail project.
- In late 2022, processes were undertaken once again to amend the Policy.

Process Taken to Amend the Policy

- Nov 2022: Vice Chair Nancy Miller and Board member Martha Escutia were asked to direct staff on the process for updating the Policy.
- Vice Chair Nancy Miller and Board member Martha Escutia met with staff and reviewed draft proposals for changes to the Policy and directed a public comment period be undertaken on the proposed changes.
- The Authority held a public comment period to receive input on the draft Policy from Dec 21, 2022, to Feb 21, 2023. Notice of that public comment period was placed on the Authority's website and sent to an extensive list of interested stakeholders.
- The draft Policy was also sent to the Authority's Business Advisory Council ("BAC") on Jan 13, 2023.
- Authority staff presented to the BAC on the topic on Jan 25, 2023.

Proposed Changes from the 2020 Policy*

1. Lessening focus on the Design-Build contracting structure and broadening methods of delivery methods addressed Policy.
2. Clarification that potential bidders should be identifying potential OCOIs related to oversight of work by other entities on the HSR project if the contractor has a financial relationship with those entities on projects outside the Authority's program.
3. Clarification that Proposals include both Statements of Qualifications and bids.
4. A definition of "Regional Consultant" that clearly incorporates Engineering and Environmental consultants.
5. A clear description of the process for seeking an OCOI determination.
6. A statement that the responsibility for determining an actual or apparent conflict rests with the Authority, not the entity seeking a determination.
7. Additional factors to be considered when a bidder performs work on multiple contracts.
8. Updated hypotheticals to match recent conflict examples.
9. Removal of the contract compatibility matrix.

*The proposed changes to the Policy include several minimal edits to simplify and clarify text. Listed above are the substantive changes to the Policy

Actions Agreed Upon in Response to Comments

- The Authority will develop a checklist for the participants in a procurement which includes a time estimate for an Authority response to an organizational conflicts determination request. The checklist and timeline will be included in future procurement documents.
- Information for each procurement posted on the Authority's website will include information about the Authority's Policy, including the checklist and timeline.
- The Authority now requires a statement, signed under penalty of perjury by the firm Executive, that the firm considered the Policy and performed conflicts checks prior to submitting its bid or statement of qualification.
- Procurement documents will include a requirement that Contractors self-certify annually that required organizational conflict mitigations are in place, and Authority contract managers will enforce this requirement. Contract managers will continue to provide oversight for mitigations required after an organizational conflict of interest determination.
- The Authority will consider developing a new matrix, if appropriate, to assist stakeholders considering organizational conflicts of interests, that would be a standalone document and separate from the Policy itself.

Recommendations

It is recommended that the amended Organizational Conflict of Interest Policy be accepted by the Board for Authority use from the date of acceptance forward.

Thank you for your time and consideration.



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Questions?