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Policies and Procedures

No. 13

SUBJECT: Board Approval and Repealed in Part: 6/22/06

CONFLICTS OF INTEREST REGARDING SERVICE CONTRACTS

PURPOSE:

To establish procedures regarding potential and actual conflicts of interest regarding service contracts.

POLICY:

13.1 Conflicts of Interest

13.1.1 A consultant is eligible for award of service contracts by MTS, San Diego Trolley, Inc. (SDTI), and San Diego Transit Corporation (SDTC), hereinafter referred to as "the Agencies" so long as the contract in question does not create an actual, potential, or apparent conflict of interest. A prohibited conflict of interest exists when a firm is or may be unable to render impartial, objective assistance or advice to the Agencies or where a firm would receive an unfair competitive advantage. Prohibited conflicts of interest include, but are not limited to, the following situations:

- Any firm that provides design services to the Agencies will be ineligible for award of a construction contract to construct the improvements, which are the subject of the design services, unless otherwise provided for by law.
- Any firm that provides design services to the Agencies will be ineligible for award of any contract to provide construction management services resulting from the specific project for which design services were provided unless otherwise provided for by law.
- Any firm that provides construction management services to the Agencies will be ineligible for award of a construction contract for which construction management services were or will be provided unless otherwise provided for by law.



Metropolitan Transit System (MTS) is a California public agency and is comprised of San Diego Transit Corporation and San Diego Trolley, Inc. nonprofit public benefit corporations, in cooperation with Chula Vista Transit and National City Transit. MTS is the taxicab administrator for eight cities and the owner of the San Diego and Arizona Eastern Railway Company. MTS member agencies include: City of Chula Vista, City of Coronado, City of El Cajon, City of Imperial Beach, City of La Mesa, City of Lemon Grove, City of National City, City of Poway, City of San Diego, City of Santee, and the County of San Diego.

- 13.1.2 General consultants or subconsultant firms may provide services on other Agency projects. A consultant shall not, however, participate in the review and analysis of or render opinions regarding its work performed on other Agency projects or as limited in Section 13.1.1 above. Unless otherwise defined by the Chief Executive Officer, a general consultant is a consultant whose procurement is typically for a two-year period with 3 one-year option extensions to provide services as needed from time to time on a work-order basis rather than for one specific predefined project. General consultants support staff in managing other Agency consultants. Examples of general consultants are the general engineering consultant, the general construction consultants, the general right-of-way consultant, the general planning consultant, and the general environmental consultant. General consultants are prime contractors to the Agencies. Subconsultants to general Consultants are not classified as General consultants. General Consultant procurements are identified as such during the procurement process.
- 13.1.3 A "Notice of Potential for Conflict of Interest" shall be included within the procurement for services issued by the Agencies. The notice shall be the policy of the Board as listed herein. Any service agreement over \$100,000 issued in accordance with this policy shall include or make reference to the policy listed herein.
- 13.1.4 A "firm" shall be defined as any company or family of companies where there is a single parent board of directors or staff of officers who can influence the policies and actions of the design company, construction management company, and the construction company.
- 13.1.5 "Ineligible" shall include the following definition:
- Firms that are ineligible to provide services include the prime contractor for the services, subcontractors for portions of the services, and affiliates of either. An affiliate is a firm that is subject to the control of the same persons through joint ownership or otherwise.
- 13.1.6 If there is any doubt by a firm regarding a potential conflict of interest for a specific project or function, General Counsel will, upon written request, provide a written ruling. This procedure is encouraged prior to submittal of a response to a procurement solicitation. In the event a conflict of interest is determined to exist, a written appeal may be made to the Chief Executive Officer. The Chief Executive Officer shall determine the adequacy of the appeal and make a subsequent final decision. No further appeal shall be considered.
- 13.1.7 The Chief Executive Officer shall review and, if appropriate, waive any actual, potential, or apparent conflict of interest that may exist or arise as a result of concurrent legal representation of clients whose interests may conflict.

Original Policy approved on 7/28/80.
Policy revised on 9/15/81.
Policy revised on 10/5/84.
Policy revised on 11/9/89.
Policy revised on 7/26/90.
Policy revised on 2/27/92.
Policy revised on 9/10/92.
Policy revised on 5/27/93.
Policy revised on 6/15/94.
Policy revised on 8/10/95.

Policy revised on 3/14/96.
Policy revised on 5/8/97.
Policy revised on 3/25/99.
Policy revised on 11/9/00.
Policy revised on 12/14/00.
Policy revised on 1/10/02.
Policy revised on 2/14/02.
Policy revised/renumbered on 2/12/04.
Policy repealed in part/revised on 6/22/06.