

PENINSULA CORRIDOR JOINT POWERS BOARD
ORGANIZATIONAL CONFLICT OF INTEREST POLICY
FOR
CALTRAIN MODERNIZATION PROGRAM

I. Purpose

This Organizational Conflict of Interest Policy ("Policy") prescribes ethical standards of conduct applicable to persons and entities entering into contracts with the Peninsula Corridor Joint Powers Board ("JPB"), and applies to subcontractors/subconsultants as well as prime contractors/consultants. This Policy is supplemental to the JPB's adopted Conflict of Interest Code ("Code") and does not modify or supersede any requirements contained in that Code.

This Policy is intended to accomplish the following goals:

- A. Promote full and open competition, integrity, transparency and fairness in the JPB's procurements and contracts;
- B. Prevent bidders and proposers from obtaining or appearing to obtain an unfair competitive advantage with respect to the JPB's procurements and contracts;
- C. Ensure that consultants/contractors provide services to the JPB in an impartial and objective manner;
- D. Provide guidance to enable consultants/contractors to make informed decisions while conducting business with the JPB; and
- E. Protect the validity of the JPB's contracts and protect the JPB's interests and confidential and sensitive information concerning the Caltrain Modernization Program ("CalMod Program").

This Policy neither purports to address every situation that may arise in the context of the JPB's procurements and contracts, nor to mandate a particular decision or determination by the JPB. The JPB 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.

II. Definitions

- A. An “**Affiliate**” of a Contractor is:
1. Any shareholder, member, partner or joint venture member of the Contractor;
 2. 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; and
 3. 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 shareholders, members, partners or joint venture members of the Contractor, or (iii) any Affiliate of the Contractor under clause (b) of this definition.

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.

- B. “**CalMod Program**” means a major investment program by the JPB in the 150 year-old Caltrain corridor. It calls for approximately \$1.5 billion in improvements to the commuter rail system. The program consists of three major elements including an advanced communications based overlay signal system (CBOSS) that includes the federally-mandated positive train control (PTC) feature, conversion of the propulsion power system from diesel to electric, and procurement of new rail vehicles known as electric multiple units (EMUs). The early investment program will not only modernize Caltrain service but also will be designed to support high speed rail in what is known as the “blended system”. For further information about the CalMod program, please visit www.caltrain.com/modernization.
- C. “**Contractor**” means any individual or legal entity retained by the JPB to perform Program Implementation Services (defined below) for the CalMod Program, or proposing to perform such work, including joint venture members and general partners of any such entity; any consultant, subconsultant or subcontractor of such individual or legal entity (at all tiers); and each individual employee of such individual, legal entity or subcontractor.
- D. “**Consultant**” means any individual or legal entity retained by the JPB to perform Procurement Services for the JPB or proposing to perform such services, including joint venture members and general partners of any such entity; any subconsultant of such individual or legal entity (at all tiers); and each individual employee of such individual, legal entity or

subconsultant. The services performed include, but are not limited to architecture, safety services, quality services, information technology services, real estate acquisition, engineering, environmental services, systems integration services, land surveying, project management, program management, planning, or construction management.

- E. **“Organizational Conflict of Interest”** means a circumstance arising out of a Consultant’s or Contractor’s existing or past activities, business or financial interests, familial relationships, contractual relationships, and/or organizational structure (i.e., parent entities, subsidiaries, Affiliates, etc.) that results in (i) impairment or potential impairment of a Consultant’s or Contractor’s ability to render impartial assistance or advice to the JPB or of its objectivity in performing work for JPB, (ii) an unfair competitive advantage for any bidder or proposer with respect to an JPB procurement; or (iii) a perception or appearance of impropriety with respect to any of the JPB’s procurements or contracts or a perception or appearance of unfair competitive advantage with respect to a procurement by the JPB (regardless of whether any such perception is accurate).
- F. **“Procurement Services”** mean services provided by a Consultant for the CalMod Program for the benefit of the JPB that relate to, but are not limited to, any of the following:
1. Development and preparation of procurement documents, including requests for qualifications, requests for proposals, invitations for bids, contract documents and technical specifications, but excluding development and preparation of preliminary design, operations planning studies and reports or similar “low level” documents for incorporation by others into a procurement package;
 2. Development of bid/proposal evaluation criteria, process or procedures;
 3. Management and/or administration of a procurement;
 4. Evaluation of bidder/proposer submittals (e.g., qualification submittals, proposals, etc.);
 5. Negotiation of a contract; and
 6. Advising the JPB in any other aspect of the procurement that the JPB determines, in its sole discretion, should be considered "Procurement Services."

- G. **"Program Implementation Services"** mean services related to the CalMod Program provided by a Contractor or consultant for the benefit of the JPB relating to, but not limited to, any or all of the following:
1. Electrification: Design, construction, installation, quality control, integration, testing and commissioning of 50+ miles of 25kvac overhead catenary system, traction power substations, communications, SCADA, rail signaling conversion from DC to AC, CBOSS/PTC, train control facilities, and wayside improvements;
 2. Rail Vehicles – EMUs: design, manufacture, assembly, fabrication, delivery, quality control, burn-in, integrated testing and commissioning of 96 EMUs; and
 - C. Miscellaneous Capital Improvements: Design and construction of various wayside improvements and adjustments as required by JPB to accommodate the CalMod Program.

III. Applicability

- A. This Policy applies to all Consultants and Contractors that have entered into, or wish to enter into, contracts with the JPB to perform work on the CalMod Program.
- B. To the extent that the JPB has previously consented in writing to performance of work by a Consultant or 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 JPB is required to consent to a Consultant's or Contractor's participation in future proposals or contracts.

IV. Federal Requirements

The JPB must comply with Federal Transit Administration ("FTA") and Federal Railroad Administration ("FRA") requirements and regulations applicable to federally funded procurements and contracts. 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 and Determination Process

A. Obligation to Disclose

Each and every Consultant or Contractor who submits or plans to submit a proposal or bid in response to a solicitation for CalMod Program services will be required to submit a Conflict of Interest Disclosure (COID) that identifies past, present and known future relationships with the a) CalMod Program, and b) California High Speed Rail project within, or

having effect within, the geographic limits of the CalMod Program. The COID shall state that the Consultant or Contractor has no past, present or known future conflicts of interest, or it shall disclose past, present or future known or potential conflicts of interest for the review by and consideration of the JPB. Each Consultant or Contractor shall submit its COID to the JPB at:

Cheryl Cavitt, Director of Contracts and Procurement
CalModCOI@caltrain.com

Consultants and Contractors are referred to the specific solicitation documents for disclosure schedules, JPB review timelines, and other specific requirements of each solicitation.

B. **JPB's Determination**

The JPB will analyze the disclosure, in accordance with Section VII below, which provides a structure for a case-by-case analysis of actual or apparent Organizational Conflicts of Interest. As provided in Section VII, the JPB will determine on a case-by-case basis whether an Organizational Conflict of Interest exists that would preclude a Consultant's or Contractor's participation in the subject solicitation and if so, whether it may be waived or overcome through mitigating actions.

The JPB's determination will take into consideration services that a Consultant or Contractor has provided or is providing to the JPB (both in the CalMod Program context and outside of that context) and services that a Consultant or Contractor has provided or is providing to the California High Speed Rail Authority.

A fundamental ground rule with regard to the CalMod Program is the following: A Consultant or Contractor that serves as a prime consultant or contractor for either Procurement Services or Program Implementation Services may not also serve as a prime consultant/contractor for the other category of services. It is conceivable that such Consultants or Contractors may be permitted to serve as subconsultants or subcontractors for a prime consultant or contractor in the other category of services, but such work will be subject to the Organizational Conflicts of Interest analysis set forth in Section VII below.

The disclosure to the JPB shall describe the facts and circumstances giving rise to any Organizational Conflict of Interest and shall also propose alternatives/mitigation measures for addressing or eliminating the Organizational Conflict of Interest. If at any time, the JPB becomes aware of an Organizational Conflict of Interest in connection with a Consultant's or Contractor's performance of services for the JPB, the JPB shall similarly notify the Consultant or Contractor and its Affiliates.

The procurement documents or subject contract may provide an alternative process for such disclosure, in which case the alternative process shall control over the process described herein. The failure to disclose any actual, perceived or potential Organizational Conflict of Interest may result in serious consequences to the Consultant or Contractor and its Affiliates as described below.

In the event an Organizational Conflict of Interest is presented, whether disclosed by a Consultant or Contractor or discovered by JPB, the JPB will review the matter, consider alternatives/mitigation measures proposed, and make a determination, in accordance with this Policy, as to whether the particular Consultant or Contractor or bidder/proposer has an Organizational Conflict of Interest with respect to its participation in a procurement or performance of a contract for the JPB. The JPB's determination will be given in writing. The JPB will provide a determination to the Consultant or Contractor in accordance with the schedule in the specific solicitation documents.

The JPB's decision on the matter shall be final and binding and shall not be subject to appeal by the Consultant or Contractor in question or any other Consultant or Contractor.

C. Continuing Obligation to Disclose

An Organizational Conflict of Interest may arise at any time, and a Consultant's/Contractor's obligation to disclose is ongoing. If a Consultant or 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 Consultant or Contractor shall promptly disclose the matter as described herein. Consultants or Contractors participating in contracts with the JPB and bidders/proposers for JPB contracts shall use all reasonable efforts to arrange their affairs so as to prevent Organizational Conflicts of Interest from arising. Consultants or 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 Consultant or Contractor shall consider whether disclosure is required in connection with new hires, changes in the company's board of directors, mergers, or new business relationships including joint ventures and contractor/subcontractor relationships.

Consultants or Contractors whose responsibilities to the JPB 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 past relationships and, if the Consultant or

Contractor is a corporate entity, to officers or directors of the Consultant or Contractor.

A Consultant or Contractor shall not be the JPB's agent for review, approval, or acceptance of its own or its Affiliate's work product.

D. Failure to Comply

If the JPB determines, in its sole discretion, that a Consultant or 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) either prior to award of the contract or during performance of the contract, the JPB may, among other things, take the following actions:

1. Preclude and/or disqualify the Consultant or Contractor and its Affiliates, as well as any other persons or legal entities on the Consultant's or Contractor's team, from participation in a JPB procurement;
2. Require the Consultant or Contractor and its Affiliates, as well as any other persons or legal entities on the Consultant's or Contractor's team, to implement mitigating measures;
3. Terminate or amend the contract under which the Consultant or Contractor is performing work for the JPB; and/or

Failure to comply with this Policy may subject the Consultant or Contractor to damages incurred by the JPB in addressing Organizational Conflicts of Interest that arise out of work performed by the Consultant or Contractor.

VI. Conflict of Interest Standards Applicable to Environmental Consultants

Consultants responsible for preparing documents under the California Environmental Quality Act ("CEQA") are required to comply with all state and federal laws and regulations applicable to such services, including requirements relating to Organizational Conflicts of Interest. With regard to such conflicts, the JPB will follow the guidance provided by the FTA, including the FTA's Best Practices Procurement Manual ("BPPM"). Among other things, the BPPM recommends precluding any consultant that is responsible for preparing an Environmental Impact Statement ("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 Consultant that is responsible for preparing an EIS for the CalMod Program will be precluded from providing Procurement Services or Program Implementation Services until after the Record of Decision has been issued.

Subconsultants to a CEQA Consultant may request permission to be released from further CEQA work to allow them to provide or join a team that will or is providing Procurement Services or Program Implementation Services being analyzed in the CEQA document. The JPB has no obligation to agree to release the subconsultant

from its responsibilities relating to the CEQA document. The JPB's decision on the matter shall be final and binding and shall not be subject to appeal.

VII. Organizational Conflict of Interest Factors to Consider

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

A. Relevance or Materiality of the Information

1. This factor includes considering whether the Consultant or 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 Consultant or Contractor, including the following:
 - a. Planning, budgetary, or business information;
 - b. The JPB' strategies, tactics, plans, alternatives or other inside information concerning the procurement; or
 - c. Information prepared for use by the JPB for the purpose of evaluating proposals, for defining the scope of the work, or for determining terms, conditions or specifications.
2. This factor includes 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, changed circumstances, etc.), is sufficient to render the information irrelevant, immaterial, or of little or no value.
3. This factor includes 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.

B. Materiality of the Relationship

1. This factor involves considering whether the subject relationship involves branch offices, subsidiaries, joint venture partners, or a parent company of the Consultant/Contractor, and the degree of separation of work teams and information between the offices and companies.
2. This factor includes 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).

C. Resources and Expertise

1. This factor includes considering the expertise required by the JPB for successful Program Implementation and whether the expertise is readily available from suitably qualified and skilled Consultants or Contractors.
2. This factor includes considering the magnitude of the resources required to deliver the CalMod Program in a quality, cost-effective and timely manner.
3. This factor includes disclosing these exigencies in a competitive process, including to any relevant governing association or body to obtain its concurrence.

D. Professional Governing Body Rules - Common Law

1. This factor includes considering the rules, if any, 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 or existing Consultant or Contractor of its compliance with any such rules would be sufficient mitigation.
2. This factor includes obtaining the advice of any such professional or governing body to the participation of a Consultant or Contractor.
3. This factor includes considering the case law relevant to Organizational Conflicts of Interest matters.

VIII. Safeguards and Mitigation Efforts

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

- A. The JPB may require a Consultant or Contractor to establish ethical walls and related safeguards and procedures, including the segregation of individuals and information within a Consultant or Contractor firm or company, thereby allowing the Consultant or Contractor firm or company to participate or continue to participate in the CalMod Program.

Segregated information may include confidential information obtained as a result of a Consultant's or Contractor's or prospective Consultant's or Contractor's former contracts with the JPB or confidential information obtained from former or current JPB employees.

- B. The JPB may require assurances or demonstration of the type of ethical walls and the effectiveness of the ethical walls.
- C. The JPB 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.
- D. The JPB may audit, or direct others to audit on its behalf, for compliance with ethical walls and related safeguards and procedures.
- E. The JPB may require such other safeguards or mitigation measures as it deems appropriate to address a specific instance of an Organizational Conflict of Interest.

IX. Application of Policy to Employees

If the JPB determines that a potential or actual Organizational Conflict of Interest exists for a particular Consultant or Contractor, an Organizational Conflict of Interest shall also be considered to apply to any employee of such Consultant or Contractor that has participated in a material way in the performance of work giving rise to the determination. If such individual leaves the Consultant's or Contractor's employment, the potential or actual Organizational Conflict of Interest shall apply to such individual's new employer in the same manner as it applies to the original Consultant or 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 – as described in Section VIII - satisfactory to the JPB its sole discretion.