



PROCEDURES FOR SANDAG CONSULTANTS SUBJECT TO CONFLICT OF INTEREST LAWS

I. BACKGROUND & APPLICABILITY TO CONSULTANTS

These procedures are intended to assist SANDAG consultants with complying with conflict of interest language in their contract with SANDAG. Pursuant to state regulations enforced by the California Fair Political Practices Commission (FPPC), the SANDAG Standard Services Agreement requires consultant employees to file a disclosure of financial interests known as a Form 700 if required by the SANDAG Conflict of Interest Code. The relevant Standard Services Agreement language is included in Attachment A. Additional information on Form 700s can be found on the FPPC website at <http://www.fppc.ca.gov/Form700.html>.

II. WHO IS COVERED BY THE SANDAG CONFLICT OF INTEREST CODE

SANDAG has adopted a Conflict of Interest Code for its officers, employees and consultants pursuant to [Government Code § 87300](#) *et seq.* According to the law, an agency's Conflict of Interest Code must list those employees, officers or consultants who are required to file a Form 700. The persons identified in the Conflict of Interest Code are designated as "Conflict Code Filers" because they "participate in the making of governmental decisions" that foreseeably could have a material financial effect on any of their economic interests. (2 Cal. Code of Regulations Section 18701.) SANDAG's Conflict of Interest Code can be found [on its website](#). In general, a Form 700 discloses the types of interests in real property, investments, business positions, and sources of income and gifts that could potentially affect the Conflict Code Filer. The Form 700 serves as a reminder to the Conflict Code Filer and the public of the financial interests decision-makers need to take into account as they could cause an actual, potential or perceived conflict of interest.

"Participating in making a governmental decision" includes negotiating, providing advice by way of research, investigation, or preparation of reports or analyses for the SANDAG decision-maker, if these functions are performed without significant intervening review. SANDAG consultants who, pursuant to a contract with SANDAG, perform the same functions that would otherwise be performed by SANDAG employees by carrying out functions such as project management and oversight decisions (including recommendations that are likely to be approved by a SANDAG employee without significant intervening review); preparing contract scopes of work, specifications, cost estimates or contract negotiations; crafting evaluation factors to be used in a procurement, or deciding whether the policies, standards, or guidelines for SANDAG have been met, are considered to have "project manager responsibilities" that would otherwise be carried out by a SANDAG employee and are therefore required to fill out and submit a Form 700.

A consultant's employee participates in making a governmental decision for SANDAG when, s/he negotiates without significant and substantive intervening review, with a third party (someone other than their employer or SANDAG) regarding a governmental or contract decision; or advises or makes recommendations to the SANDAG decision maker either directly or without significant and substantive intervening review. "Significant and substantive intervening review" means a review of someone else's work during which the reviewer independently verifies the information, recommendation, advice, etc. that constitutes project manager responsibilities that lead to a governmental decision.

Form 700s are public records.

III. STEPS FOR COMPLIANCE

Step 1: Identify who on your team will need to fill out a Form 700

The prime consultant will need to identify its own employees and the employees of its subconsultants (the consultant team) who have project manager responsibilities. Keep in mind, however, that even if a person has project manager responsibilities, if someone above that person in the decision-making process, whether a SANDAG employee or another consultant employee, is a Conflict Code Filer and that person conducts significant and substantive intervening reviews of the decision, recommendation or work in question, then not everyone prior to the Conflict Code Filer in the decision process needs to fill out a Form 700. If a consultant believes a member of its team with project management responsibilities for SANDAG is going to have his/her work undergo a significant and substantive intervening review by a SANDAG employee, the consultant must first check with a contract analyst in the SANDAG Contracts and Procurement Division. The analyst will collaborate with the SANDAG project manager to confirm that SANDAG is in agreement with this allocation of responsibility.

Step 2: Notify SANDAG of Consultant's Conflict Code Filers

It is up to the consultant to notify SANDAG of the names of the individuals on its team (whether prime or subconsultant) who should be Conflict Code Filers based on the parameters provided by SANDAG above in Section II. Designated persons must file statements of economic interests with SANDAG when assuming or leaving their position and annually while holding the position. It is important that the consultant maintains a list of its Conflict Code Filers and notifies SANDAG as soon as possible when the consultant's employees who are performing project management responsibilities for SANDAG change.

Consultant employees who have been designated as Conflict Code Filers may not work on SANDAG projects if they do not have an updated Form 700 on file with SANDAG.

A. For New Filers:

The consultant will need to notify SANDAG of its new Conflict Code Filers by submitting the following information for each individual employee to the SANDAG Clerk of the Board by email at clerkoftheboard@sandag.org. As a reminder, the consultant will need to update this list throughout the life of the contract as new individuals are identified as Conflict Code Filers due to their project management responsibilities for SANDAG.

- First and Last Name
- Email address
- Mailing address
- Phone number
- Assuming office date (the date the individual began performing project management responsibilities for SANDAG)
- Type of consultant (see table 2 of the SANDAG Conflict of Interest Code)

B. For Existing Filers:

It is important that the consultant notify SANDAG when those individuals previously identified as Conflict Code Filers are no longer performing project management responsibilities for SANDAG. Once an individual is identified as a Conflict Code Filer and completes a Form 700 in the eDisclosure system, they

are required by law to continue to complete a Form 700 each year or be subject to fines and penalties by the FPPC. In order to remove a Conflict Code Filer, the consultant must notify SANDAG of the date the individual stopped performing project management responsibilities for SANDAG so the individual can complete a Leaving Office Statement. Until a Leaving Office Statement is filed, the individual is still considered a Conflict Code Filer and must continue to file annual statements.

Step 3: Notification by SANDAG & Establishment of Account with eDisclosure System

Once SANDAG receives notification by a consultant of a new Conflict Code Filer, the Clerk of the Board will send an email to the individual notifying them of their obligation to complete a Form 700 and what to expect. A sample email is included as Attachment B. The Clerk will create an account with the eDisclosure system and the individual will receive instructions from the eDisclosure system about how to complete registration. Once the account is established, the individual can complete and file their Form 700.

Step 4: Instructions for Completing the Form 700

General instructions for completing a Form 700 can be found on the FPPC website, <http://www.fppc.ca.gov/Form700.html>, and clicking on the Form 700 itself. When filling out the Form 700, the financial interests that consultant employees need to report are only those which are listed in disclosure categories 2 and 4 of the SANDAG Conflict of Interest Code.

Questions regarding how to fill out the forms can be answered by calling the FPPC's toll free advice hotline 1-866-ASK-FPPC (1-866-275-3772), Monday-Thursday, 9-11:30 a.m.

A. Assuming Office Statement

The first time a consultant employee is asked to complete a Form 700, s/he will complete an Assuming Office Statement. The assuming office statement must be completed no later than 30 days after the date the employee first started performing project management responsibilities for SANDAG. The reporting period will be the 12 months prior to the date the office was assumed. For example, if a consultant assumed office on 5/1/2019, they will complete the statement disclosing information for the period 5/1/2018-4/30/2019.

B. Annual Statement

Once an individual completes an assuming office statement, they are required to complete an annual statement no later than April 1 of each year. Individuals that do not complete a Form 700 by the deadline may be subject to a fine up to \$5,000 by the FPPC. Typically, reminder notices are sent by email from SANDAG and the eDisclosure system in January each year.

C. Leaving Office Statement

Once an individual is no longer performing project management responsibilities for SANDAG, they must complete a Leaving Office Statement within 30 days. To do this, the consultant or individual needs to notify the SANDAG Clerk of the Board that the individual is no longer performing project management responsibilities for SANDAG and therefore should no longer be a Conflict Code Filer. The date the employee stopped performing project management responsibilities for SANDAG will become the leaving office date. When completing a leaving office statement, the individual will disclose its interest for the

calendar period leading up to the leaving office date. For example, if an individual leaves office on 5/15/2019, they will complete the statement disclosing information for the period 1/1/2019-5/15/2019.

Step 5: Review of Form 700s

Consultant employees are strongly cautioned not to simply mark the box indicating they have no disclosures to report on the form. Consultant employees always have their own employment income to report and many times have spousal income to report as well. The FPPC has prosecuted and fined persons who have failed to disclose income and gifts.

Form 700s should be used by the consultant to ensure its employees do not have prohibited conflicts. SANDAG also will use the forms to check whether the assignments given to consultant employees conflict with reported financial interests. If a conflict is found, the individual will not be permitted to work on the project in a project manager role.

Consultants will need to provide training to their employees who are identified as Conflict Code Filers on how to avoid prohibited conflicts of interest. Information regarding prohibited conflicts can be found [here](#) in Sections I, II, III, VII and XIII of the California Attorney General's handbook entitled Conflicts of Interest.

ATTACHMENT A
STANDARD SERVICES AGREEMENT LANGUAGE

I. CONFLICT OF INTEREST

A Conflict of Interest Statement

Consultant's employees shall file a disclosure of financial interests with SANDAG if it is required by the SANDAG Conflict of Interest Code. SANDAG shall determine if Consultant's employees must be designated in the SANDAG Conflict of Interest Code for purposes of the Political Reform Act or for compliance with any applicable financial disclosure requirements based on the scope of work in the Agreement. Consultant represents that, to its knowledge, entry into this Agreement will not result in a conflict of interest prohibited by California Government Code Section 1090 for the SANDAG employees or Board of Directors. Depending on the work assigned to them, Consultant's employees may be required to sign agreements regarding confidentiality and/or conflicts of interest. Employees of Consultant or subconsultant that will be in a position to influence a procurement or contracting decision by SANDAG will be required to file Disclosures of Financial Interests, which will be public records. Such employees will be prohibited from receiving gifts (tickets, meals, travel, etc.) from entities with which SANDAG may contract with as a result of the services covered by the Agreement. An example of the type of document Consultant's employees may be required to sign is attached to the Agreement as an Exhibit entitled "Consultant Employee in Project Management Role – Conflict of Interest and Confidentiality Statement." In addition, a Consultant's employees may be required to meet additional background check requirements depending on the nature of the duties they will perform for SANDAG or fill out forms disclosing financial interests. SANDAG will supply copies of the agreements or documents that the Consultant's employees may need to execute to meet these additional requirements when applicable.

B Attempts to Influence Government Decisions

Consultant shall not make or participate in making or in any way attempt to use Consultant's position to influence a governmental decision in which Consultant knows or has reason to know Consultant has a financial interest other than the compensation promised by this Agreement. Consultant represents that Consultant has diligently conducted a search and inventory of Consultant's economic interests, as defined in the regulations promulgated by the Fair Political Practices Commission, and has determined that Consultant does not, to the best of Consultant's knowledge, have an economic or organizational interest which would conflict with Consultant's duties under this Agreement. Consultant agrees to scrupulously avoid performing services for any person or entity or entering into any contractual or other relationship with any person or entity that might create a conflict with the rendering of services under this Agreement. Consultant will immediately advise the General Counsel of SANDAG if Consultant learns of an economic or organizational conflict of interest or other prohibited conflict of interest on the part of Consultant or any of its subcontractors during the term of this Agreement.

C Ethical Standards of Conduct

All SANDAG business must be conducted within ethical standards approved by the SANDAG Board of Directors. Some of these standards can be found in SANDAG Board Policies Nos. 004

and 016 at sandag.org/legal. SANDAG staff are specifically prohibited from participating in the selection process when those staff have a close personal relationship, family relationship, or past (within the last 12 months), present, or potential business or employment relationship with a person or business entity seeking a contract. It is unlawful for any contract to be made by SANDAG if any individual Board member or staff has a prohibited financial interest in the contract.

D Exchange of Gifts with SANDAG

Consultants, contractors, vendors and agents thereof currently doing business with or planning to seek contract awards from SANDAG are strongly discouraged from giving gifts to SANDAG officers, employees, agents or Board members who have taken or may in the future take part in contracting decisions for SANDAG. The SANDAG officers, employees, agents, and Board members shall not solicit or accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements that could bias their decision-making. This prohibition applies to any gift, gratuity, favor, entertainment, or loan, and includes such items as liquor, lodging, travel, food, and tickets to public functions such as sports events, theater, etc. If a person has any reason to believe a financial or organizational conflict of interest exists with regard to a particular procurement, he/she should notify the SANDAG Office of General Counsel immediately.

E Determination of Conflict

A Proposer is eligible for award of service contracts by SANDAG so long as the contract or Task Order in question will not create an actual, potential, or apparent financial or organizational conflict of interest. A prohibited organizational conflict of interest exists when a firm is or may be unable to render impartial, objective assistance or advice to SANDAG or where a firm would receive an unfair competitive advantage. Examples of situations that could create such a conflict of interest are listed in Board Policy No. 016. Proposers that have a conflict of interest due to performing work for SANDAG are ineligible to submit a proposal. A process for determining whether a Proposer has a conflict is set forth in Board Policy No. 16. Ineligible firms include the prime Proposer, its subconsultants and affiliates of either. An affiliate is a firm that is subject to the control of the same persons through joint ownership or otherwise.

ATTACHMENT B
SAMPLE FORM 700 NOTIFICATION EMAIL

Joe Smith,

You've been identified as a **Consultant – Project Oversight** for SANDAG, in which you participate in making government decisions. As a result, you are required to file a Form 700 – statement of economic interests (Form 700) with SANDAG when assuming or leaving your position, and annually while holding the position to ensure that you do not have a prohibited conflict of interest. Consultant staff who perform these functions on behalf of SANDAG must be free of conflicts and are therefore required to fill out and submit a Form 700 disclosing employment income, gifts received, property or stock owned, and other financial interests that could be perceived as a potential bias to decision making.

Examples of “participating in making a governmental decision” include but are not limited to:

- Negotiating, providing advice by way of research, investigation, or preparation of reports or analyses that will be relied upon as unbiased advice by a SANDAG decision-maker
- Providing services that a SANDAG employee functioning as a project manager would typically provide concerning procurements using public funds. Examples include preparing contract scopes of work, specifications, or cost estimates; assisting with contract negotiations; determining whether SANDAG should make payment on an invoice; and crafting evaluation factors to be used in a procurement.

SANDAG filers should complete their Form 700 electronically through the County of San Diego's eDisclosure System (South Tech Hosting). In a moment I will create your online account. Be on the lookout for two emails with instructions to file and your temporary password.

- <https://www.southtechhosting.com/SanDiegoCounty/eDisclosure>

Please check your SPAM folder and be sure to mark the following email addresses as a trusted source: sdcounty@southtechhosting.com On Behalf Of Form700@sdcounty.ca.gov

You can review the SANDAG [Conflict of Interest Code](#) for a list of positions, including consultants, designated employees, and officials.

In general, a Form 700 discloses the types of interests in real property, investments, business positions, and sources of income and gifts that could potentially affect the Conflict Code Filer. The Form 700 serves as a reminder to the Conflict Code Filer and the public of the financial interests that decision-makers need to take into account as they could cause an actual, potential or perceived conflict of interest.

Thank you for your time and please do not hesitate to contact me if you have any questions.