MEMO

TO: **Administration Committee and Regional Council**

FROM: **Executive Director**

SUBJECT: **Request Approval to Amend the SCAG Conflict of Interest Policy**

DATE: **August 20, 2003**

EXECUTIVE DIRECTOR'S APPROVAL:

RECOMMENDED ACTION:

Approve attached amendments to the SCAG Conflict of Interest Policy, Sections 1.4, 2.6.2, and 2.74. The purpose of these amendments is primarily to permit greater flexibility in application of the One-Year "Revolving Door" Ban.

BACKGROUND:

The Regional Council originally adopted a comprehensive SCAG Conflict of Interest Policy ("Policy") in July 2000. As a general rule, the Policy precludes former members and employees from providing consulting services to SCAG within one year after departure from SCAG. The proposed amendments would continue to observe this general rule. However, greater flexibility is needed to exempt former members and employees with special knowledge in a particular area.

As discussed at last month's Executive Committee meeting, I am proposing amendment language for Section 2.7.4. This would allow the President of the Regional Council or SCAG Executive Director, respectively, to make specific findings in writing that would grant an exemption on a case-by-case basis for a former member or employee with special knowledge, if the four specified criteria are met.

Additionally, clarifications have been made to the definition of "consultant" (Section 1.4) and the terminology for "Subregions" (Section 2.6.2).

FISCAL IMPACT:

No fiscal impact.

PC Doc 85724 Reed
Model Improvement MOU-Final

SOUTHERN CALIFORNIA
ASSOCIATION of GOVERNMENTS

Conflict of Interest Policy
Southern California Association of Governments

(Approved by the Regional Council, 7/6/00; Proposed Amendments, 9/4/03)

The Regional Council of the Southern California Association of Governments hereby adopts a conflict of interest policy in order to provide comprehensive and clear rules of conduct for its members, employees and consultants. The purpose of this policy is to further ensure that each Association member, employee and consultant is guided in the interest of the Association, rather than by personal interests. This policy shall incorporate and supplement existing state and federal conflict of interest laws and regulations.[1]

In order to implement this policy, all persons or firms, including subcontractors, seeking contracts or purchase orders of $25,000 or more, are required to complete the "SCAG Conflict of Interest Form."

Section 1: Persons Covered and Definitions

The following terms used in this policy shall have the meanings set forth below. Except as otherwise provided herein, the terms and provisions of this policy shall have the meanings and shall be interpreted in accordance with the applicable definitions and provisions of the Political Reform Act of 1974, as amended (Gov. Code Section 81000 et seq.) and the regulations of the California Fair Political Practices Commission, as amended.

1.1 Persons covered under this conflict of interest policy ("policy") shall include members, employees and consultants of the Southern California Association of Governments.

1.2 The "Association" for purposes of this policy shall refer to the Southern California Association of Governments ("SCAG"). The terms "Association" and "SCAG" shall be used interchangeably.

1.3 "Members" for purposes of this policy, shall include voting and non-voting members of the SCAG Regional Council; Policy Committee on Transportation and Communications; Policy Committee on Energy and Environment; Policy Committee on Community, Economic and Human Development; Implementation Advisory Committee; Regional Advisory Council; and any other Policy Committee or Advisory Committee formed by the Regional Council pursuant to its authority under the Bylaws of the Association.

[1] This policy shall not conflict with nor exempt any persons from state or federal conflict of interest laws.

1.4 For purposes of this policy, a "consultant" shall mean any individual, ~~including an executive director or coordinator~~ who provides ~~management, coordinating, consulting or similar~~ services pursuant to a contract or other agreement with the Association~~, Subregional Council of Governments ("SUB-COG"),~~ or any affiliated ~~other~~ subregional organization ("Subregion") ~~affiliated with SCAG.~~ and meets the definition of "consultant" under Fair Political Practices Commission Regulation 18701(a)(2). A "consultant" shall not include an executive director or coordinator of a Subregion ~~SUB-COG~~ with a fixed contract or salary from SCAG that is not dependent on a dollar amount of contracts received.

1.5 "Employees" shall mean temporary, probationary, regular, exempt, and non-exempt individuals employed by the Association.

1.6 "Immediate Family" shall mean the spouse and dependent children.

Section 2: Prohibitions

2.1 Gifts: No Association employee or consultant shall accept any favors or gifts from persons, concerns or corporations who have, or seek to have, contracts with SCAG or have, or seek to have, plans, projects, or environmental impact reports reviewed by SCAG.

2.2 Outside Employment:

(a) No Association employee may engage in any employment activity or enterprise for compensation which, as determined by the Executive Director, is inconsistent, incompatible, in conflict with, or inimical to his or her duties as an Association employee as stated in the employee's Performance Agreement or with the duties, functions, or responsibilities of SCAG.

(b) No Association employee may offer, require or accept any goods or services of value from any person including any other Association employee in exchange for special treatment in or from SCAG.

2.3 Political Activity: Pursuant to provisions of the California Government Code Sections 3201-3209 and Federal Hatch Act relating to political activities of public employees, Association employees shall not:

(a) Use political authority or influence in personnel matters (Cal. Gov. Code Section 3204);

(b) Solicit political contributions from fellow employees or officers of SCAG, except as permitted by Cal. Gov. Code Section 3205; nor,

(c) Engage in political activity during working hours or at SCAG offices (Cal. Gov. Code Section 3207).

2.4 **Private Gain or Advantage:** No Association employee shall use his or her position at SCAG or its facilities, equipment, supplies or information developed at public expense for private gain or advantage. Violation of this section may result in immediate termination of any employee by the Executive Director.

2.5 **SCAG Policy Statements**: Under the bylaws of the Association, all policy statements regarding SCAG originate from the General Assembly or the Regional Council. No person in his or her official capacity as an Association employee shall represent SCAG in political debate or become involved in political issues or lobbying activities which are contrary to, or conflict with, stated SCAG policies. Where a policy of SCAG is unclear or nonexistent, employees must use discretion and judgement in making representative statements that they are in keeping with current SCAG policy.

Subsection 2.6: Participation in SCAG Contracts and Decisions

2.6.1 **Federal Contracts:** Pursuant to 49 C.F.R. Section 18.36 (b)(3), an Association member, employee or consultant shall not participate in selection, or award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict of interest would arise when one or more of the following persons has a financial or other interest in the firm selected for award:

(a) a person covered under this policy or his or her agent;

(b) immediate family;

(c) partner, or,

(d) any organization, which employs, or is about to employ, any of the above persons.

2.6.2 **Subregional Consultants:** Any consultant who participates in any manner in the development, negotiation, allocation, award, selection, administration or expenditure of funds from SCAG to the Subregion ~~SUB-COG~~, shall not contract or perform work for the receipt of any SCAG funds delegated or distributed to the Subregion ~~SUB-COG~~ by SCAG. Notwithstanding the foregoing, a consultant shall be entitled to receive SCAG funds for managing or coordinating activities on behalf of the Subregion ~~SUB-COG~~ in accordance with SCAG's guidelines as permitted by law.

2.6.3 **SCAG Advisory Committee members** may bid on SCAG contracts consistent with applicable state and federal laws. However, an Advisory Committee member shall resign from positions at SCAG in the event his or her bid is successful.

2.6.4 Other Contracts: Pursuant to Cal. Gov. Code Section 1090 *et seq.*, an Association member, employee or consultant shall not participate in making any contract or other agreement involving SCAG, if he or she is financially interested in the contract.

(a) For purposes of this section, to "participate in making a contract" includes decisions to modify, extend or renegotiate a contract.

(b) If a member is financially interested in a contract within the meaning of Section 1090, not only is that member disqualified but the entire body is disqualified from voting on that contract. Members shall seek guidance from SCAG Legal Counsel to determine whether or not a member is financially interested in a contract.

(c) If SCAG Legal Counsel determines that a member has a financial interest in a bid or proposal for a contract in potential violation of Section 1090, such bid or proposal will be disqualified from consideration by SCAG.

2.6.5 Participation in SCAG Decisions: Pursuant to Cal. Gov. Code Section 87100 *et seq.*, an Association member, employee or consultant shall not make, participate in making or attempt to use his or her official position to influence a decision affecting SCAG when a conflict of interest, real or apparent, would be involved. Such a conflict of interest would arise when a member, employee or consultant has a personal financial interest in a decision affecting SCAG. Such a person is deemed to have a financial interest if it is reasonably foreseeable that the decision will have a material effect, distinguishable from its effect on the public generally, on himself or his immediate family. The effect of a decision is material whenever a member, employee or consultant knows or has reason to know that a decision will significantly affect his or her economic interests. [2]

2.6.6 Disclosure: Association members, employees and consultants subject to the requirements of the Political Reform Act, Cal. Gov. Code Section 87100 *et seq.*, are required by the SCAG Conflict of Interest Code to file an annual Statement of Economic Interests. Such disclosure statements shall be filed with the Executive Assistant to the Regional Council, pursuant to Cal. Gov. Code Sections 87200-87210. Under the Conflict of Interest Code for SCAG, revised in 1996, Regional Council members, the Executive Director and other designated employees and consultants are required to disclose "all investments, interests in real property, income, and business positions." SCAG Legal Counsel shall provide guidance in meeting disclosure requirements.

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2 Fair Political Practices Commission regulations, C.C.R., tit. 2 Sections 18702.1, 18702.2-18702.6; "Conflicts of Interests," prepared by the Office of the Attorney General, Civil Division, 1998, pp. 1-18.

2.6.7 Disqualification: If an Association member, employee or consultant has a financial interest in a decision affecting SCAG within the meaning of Cal. Gov. Code Section 87100 *et seq.*, incorporated in part into section 2.6.5 of this policy, the member shall be required to disqualify himself or herself from making or participating in a decision involving SCAG, or using his or her position to influence or attempt to influence a decision involving SCAG. Members, employees and consultants shall seek guidance from SCAG Legal Counsel to determine whether recusal is required.

2.6.8 Exception: Cal. Gov. Code Section 87100, incorporated into Section 2.6.5 of this policy, does not prevent a person covered under this policy from making or participating in making a SCAG decision to the extent his participation is legally required for the action or decision to be made. A member, employee or consultant is "legally required to make or to participate" only if there is no reasonable alternative manner of decision making, under C.C.R. tit.2, Section 18701(a). The fact that an official's vote is needed to break a tie does not make his participation legally required for purposes of this section.[3]

Procedures for Disqualification from Participation in a SCAG Decision:

2.6.9 (a) Once a member determines that he or she has a financial interest in a SCAG decision in violation of Cal. Gov. Code Section 87100 *et seq.*, incorporated in part into Section 2.6.5 of this policy, the member must publicly announce the economic interest which is the subject of the actual, potential, or apparent conflict of interest, and the fact that the person covered is disqualifying himself or herself from any participation in the decision, under C.C.R. tit, 2, Section 18700(b)(5).

(b) If the person covered is an employee rather than a member of the Association, the employee's announcement is required to be in writing and given to the official's supervisor or Executive Director, under C.C.R., tit.2 Section 18700(b)(5).

Subsection 2.7: One (1) Year Bans

2.7.1 One (1) Year Prohibition on Involvement with SCAG Contracts: No former Association member, employee, or consultant shall or attempt to influence any SCAG decision directly relating to any contract where the former member, employee or consultant knows or has reason to know terms not available to members of the public.

(a) Former, non-voting committee members are subject to this prohibition to the extent that the business of the committee on which the non-voting member

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3 Cal. Gov. Code Section 87101; "Conflicts of Interests," prepared by the Office of the Attorney General, Civil Division, 1998, pp., 17-18.

served, was related to subject matter of the proposed contract or other agreement between the non-voting member and SCAG.

(b) This prohibition shall apply for one (1) year from the time the member's term expires; one (1) year from the time the former SCAG employee is terminated; or one (1) year from the time a consultant's contract or other agreement expires.

2.7.2 One (1) Year Prohibition on Consulting and Bidding: No former Association member or employee shall for compensation participate in bidding on SCAG contracts, including providing consulting services to a bidder on a bidding process involving SCAG, nor participate in consultant work funded by SCAG or through SCAG.

(a) This prohibition shall apply for one (1) year from the time the member's term expires or one (1) year from the time the employee is terminated.

(b) This prohibition is limited only to Regional Council members, Policy Committee members, and SCAG employees.

2.7.3 One (1) Year Prohibition on Lobbying: No former Association member, employee or consultant for one year from the time the member's term expires, shall for compensation act as an agent or attorney for, or otherwise represent, any other person than SCAG in any formal or informal appearance before, or, with the intent to influence a decision, make any written or oral communication on behalf of any person other than SCAG to any court or any agency officer, employee, member, board or commission in connection with any proceeding, application, request for ruling or other determination, contract, claim, controversy, legislation, or other particular matter pending before such court or before such officer, member, employee, board or commission if both of the following apply:

(a) SCAG is a party or has a direct and substantial interest.

(b) The proceeding is one in which the member, employee or consultant participated

2.7.4 Exemptions~~: The prohibitions contained in Sections 2.7.1, 2.7.2, 2.7.3 shall not apply:~~

(a) The prohibition contained in Section 2.7.2 shall not apply to prevent a former member~~,~~ or employee ~~or consultant~~ from entering a ~~making or providing a statement or~~ contract which is based on ~~the former employee's~~ such person's ~~-~~own special knowledge in the particular area that is the subject of the ~~statement or~~ contract~~,~~ if the President of the Regional Council (in the case of a former member) or the SCAG Executive Director (in the case of a former employee), makes findings in writing that: ~~provided that no~~

~~compensation is thereby received other than that regularly provided for by law or regulation for witnesses or contractors; or~~

1. the former member or employee has outstanding and otherwise unavailable qualifications;

2. the former member or employee is acting with respect to a particular matter which requires such qualifications;

3. the best interests of SCAG would be served by the participation of the former member or employee; and,

4. the public interest would be served by the participation of the former member or employee ~~the public interest would be served by the participation of the former member,oremployee~~ .

(b) The prohibitions contained in Sections 2.7.1, 2.7.2, and 2.7.3 shall not apply to communications and contracts made solely for the purpose of furnishing information from ~~by~~ a former member, employee or consultant required by a ~~if a~~ court or state, federal or local ~~administrative~~ agency. ~~to which the communication is directed or with or for which a contract is made, makes findings in writing that: the former member, employee or consultant has outstanding and otherwise unavailable qualifications;~~

~~2.the former member, employee or consultant is acting with respect to a particular matter which requires such qualifications; and~~

~~3.the public interest would be served by the participation of the former member, employee or consultant; or~~

~~(c) with respect to appearances or communications in a proceeding or contracts to which a court or the Regional Council gives its consent by determining that:~~

~~1.at least one (1) year has elapsed since the term of the former member, employee or consultant expired; and,~~

~~2.the public interest would not be harmed.~~

Section 3: Penalties

3.1 Gifts accepted in violation of Section 2.1 of this policy shall be returned. Additionally, members, consultants and employees subject to the Political Reform Act (Cal. Gov. Code Section 87100 *et seq.)* who violate state gift restrictions under Gov. Code Section 89521, may be subject to a civil action brought by the

Fair Political Practices Commission for up to three times the amount of the unlawful gift. Members shall seek guidance from the Association Legal Counsel to determine whether a gift or gratuity violates this policy, state or federal laws.

3.2 Contracts made in violation of this policy shall be void and unenforceable.

3.3 Violation of this policy is grounds for termination of an Association employee.

3.4 **Willful violations:** Any Association member, employee or consultant found guilty of willfully violating any provisions of Cal. Gov. Code Section 1090 *et seq.,* incorporated in part into Section 2.6.4 of this policy, is punishable by a fine of not more than $1,000 or imprisonment in state prison. Additionally, such an individual is forever disqualified from holding any office in this state. (Cal. Gov. Code Section 1097.) When a state or local government agency is informed by affidavit that a member, employee or consultant has violated Section 1090, the agency may withhold payment of funds under the contract pending adjudication of the violation (Cal. Gov. Code Section 1096).

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