

Administrative Policy

Title: Conflict of Interest
Adopted: April 2, 2009
Adopted by: Board of Directors
Responsibility: Procedure and Documents Committee

Purpose

The American Institute of Architects, California Council (Council) is a not-for-profit corporation organized and existing under the laws of the State of California for the purposes of conducting operations and activities as an organization eligible for tax-exempt status under Section 501(c)(6) of the Internal Revenue Code. The purpose of this conflict of interest policy is to protect the interest of the Council when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer, director, committee member, chief employed executive, chief employed finance executive, or other employed staff of the Council. This policy is intended to supplement but not replace any applicable federal or State of California laws governing conflict of interest applicable to nonprofit mutual benefit corporations.

Definitions

1. Conflict of Interest

A conflict of interest arises when a person in a position of authority over an organization may benefit financially from a decision he or she could make in such capacity, including indirect benefits such as to family members or businesses with which the person is closely associated.

2. Interested Person

Any director, officer, committee member, chief employed executive, chief employed finance executive, or other employed staff who has a direct or indirect financial interest, as defined below, is an interested person and is covered by this policy.

3. Financial and Other Interests

A person has a financial interest if the person has, directly or indirectly, through business, investment, family, or other close personal relationship:

- a. An ownership or investment interest in any entity with which the Council has a transaction or arrangement;
- b. A compensation arrangement with the Council or with any entity or individual with which the Council has a transaction or arrangement; or
- c. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Council is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

A financial interest is not necessarily a conflict of interest. A person who has a financial interest may have a conflict of interest only if the Board, the Council's Executive

Committee, or another appropriate committee or other body of the Council decides that a conflict of interest exists.

Procedures

1. Duty to Disclose

In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the directors and/or members of committees considering the proposed transaction or arrangement.

2. Determining Whether a Conflict of Interest Exists

After disclosure of the financial interest and all material facts, and after any discussion with the interested person, he/she shall leave the Board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining Board or committee members shall decide if a conflict of interest exists.

3. Procedures for Addressing the Conflict of Interest

- a. An interested person may make a presentation at the Board or committee meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.
- b. The presiding officer or chair of the Board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
- c. After exercising due diligence, the Board or committee shall determine whether the Council can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.
- d. If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the Board or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the Council's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination, it shall make its decision as to whether to enter into the transaction or arrangement.

4. Violations of the Conflict of Interest Policy

- a. If the Board or committee has reasonable cause to believe a member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.
- b. If, after hearing the member's response and after making further investigation as warranted by the circumstances, the Board or committee determines the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

Records of Proceedings

The minutes of the Board and the meeting report for all committees shall contain:

- a. The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the governing board's or committee's decision as to whether a conflict of interest in fact existed; and
- b. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

Compensation

- a. A voting member of the Board who receives compensation, directly or indirectly, from the Council for services is precluded from voting on matters pertaining to that member's compensation.
- b. A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Council for services is precluded from voting on matters pertaining to that member's compensation.
- c. No voting member of the Board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Council, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

Annual Statements

Each director, officer, member of a committee, chief employed executive and chief employed finance executive shall annually sign a Conflict of Interest Acknowledgement and Disclosure Form which affirms such person:

- a. Has received a copy of the conflicts of interest policy;
- b. Has read and understands the policy;
- c. Has agreed to comply with the policy; and
- d. Understands the Council is a non-profit corporation and, in order to maintain its federal tax exemption, it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

Periodic Reviews

To ensure the Council operates in a manner consistent with exempt purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

- a. Whether compensation arrangements and benefits are reasonable, based on competent survey information and the result of arm's length bargaining.

- b. Whether partnerships, joint ventures, and arrangements with management organizations conform to the Council's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further legitimate purposes, and do not result in inurement or impermissible private benefit.

Use of Outside Experts

When conducting the periodic reviews as provided for in this policy, the Council may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the governing board of its responsibility for ensuring periodic reviews are conducted.

Other Conflicts of Interest

Each principal officer, director and member of a committee has fiduciary duties and other responsibilities to the Council. Each such individual is subject to such duties and responsibilities, whether they arise from federal or state law, from the Council's Bylaws or Rules of the Board, from Board-approved policies or other actions of the Board, or from other sources. This policy shall apply to any situations in which any director, officer, or member of a committee has an actual or apparent conflict between his/her private interests and his/her fiduciary duties or other responsibilities to the Council. All such actual or apparent conflicts of interest shall be disclosed to the AIACC President (or Secretary/Treasurer), who shall refer such matters to the appropriate officers of the Council and ensure that they are considered and resolved in a fair and expeditious manner.