

# Contractor's Code of Conduct

## ADMINISTRATIVE CODE 5-20 & PUBLIC UTILITIES CODE §130051.20, §130051.25, & §130685

**5-20-010** Application of the Contractor Code of Conduct. This chapter shall govern the conduct of all Contractors of the MTA. These standards supersede all prior written ethics policies adopted by the MTA which are in conflict with these standards. These standards are to be read in conjunction with applicable provisions of the MTA Procurement Manual and other applicable MTA ordinances, policies and procedures. All Contractors shall ensure that their subcontractors comply with this chapter.

### **5-20-020 Purpose.**

A. The purposes of this chapter are to protect the integrity of the procurement process, and to provide a comprehensive statement of pertinent regulations and obligations governing the conduct of contractors doing business with the MTA so they will be able to compete fairly and perform their work and services in an ethical manner

B. This document does not purport to respond to all ethical issues which may arise in the course of doing business with the MTA. Each person and entity doing business with the MTA is expected at all times to conduct himself or herself in the manner of an ethical, reasonable person.

**5-20-030 Interpretation.** The Ethics Officer is charged with educating and advising regarding ethical issues. All persons subject to this chapter are authorized to contact the Ethics Officer for an interpretation of this chapter.

**5-20-040 Enforcement.** The provisions of this chapter may be enforced by the Inspector General and other appropriate enforcement authorities. Violations of law or of this chapter by a contractor should be reported to the Inspector General.

**5-20-050 Contract Performance.** All contractors doing or seeking to do business with the MTA should refrain from conduct which they know or reasonably should know is likely to create in the minds of an objective observer the perception that they are using or performing their contract with the MTA in an improper manner. Improper conduct in the performance of a contract which will constitute a violation of this chapter includes, but is not limited to, the following:

- A. The making of false or misleading representations regarding any aspect of the performance of the contract;
- B. An intentional breach of any contract term;
- C. Intentional or grossly negligent use of inferior products; and
- D. Misuse of MTA information or access to MTA personnel.

**5-20-060 Contacts by Staff Prior to the Issuance of a Solicitation.** While informational and market research contacts by MTA employees with prospective contractors can be a valuable source of data to the MTA, such contacts can sometimes provide an unfair advantage in a future procurement to persons contacted as part of the market research. All parties must exercise sound judgment and caution to ensure that there is no preferential treatment of any prospective contractor and to avoid even the appearance of such preferential treatment.

**5-20-070 Lobbying.** The MTA shall not award a contract to any person or entity who is in violation of chapter 5-25.

**5-20-080 Prohibition Regarding Gifts and Contributions.** No bidder or proposer or any of their consultants or proposed subcontractors shall offer, give, or promise to offer or give, directly or indirectly, any gift to any MTA Board Member or employee. No contractor or person doing business with the MTA, or any of their subcontractors, shall offer or give, directly or indirectly, to any MTA Board Member or employee any gift(s) totaling more than fifty dollars (\$50) in a calendar year or more than ten dollars (\$10) in any calendar month. All persons doing business with the MTA or seeking to do business with the MTA, and each of their subcontractors and proposed subcontractors, are charged with full knowledge of the requirements of Public Utilities Code Section 130051.20, regarding the making of campaign contributions, and shall not violate or conspire with any other person to violate said Section.

**5-20-090 Prohibition Regarding Offers of Employment.** No bidder, proposer, or contractor shall offer, or promise to offer, either directly or indirectly, any future employment or business opportunity to any MTA official, or member of his or her immediate family, significant other or business associates of such persons if such offer of employment is conditioned expressly or impliedly on the awarding of a present or future contract or preference in the awarding of a contract to anyone at any time by the MTA.

**5-20-100 Prohibition Regarding Information.** Prior to a contract award, no bidder, proposer or contractor shall solicit or obtain, directly or indirectly, from any MTA employee, any information relating to current or future contracts, or a specific pending procurement, unless such information is at the time a public record required to be disclosed under the California Public Records Act, or has otherwise been made available at the same time in the same form to all other bidders, proposers and contractors.

**5-20-110 Prohibitions on Use and Disclosure of Confidential Information.** At no time shall any contractor who obtains confidential or proprietary MTA information in the course of doing or seeking to do business with the MTA disclose any such information to any person not authorized by the MTA to receive such information or use such information for any personal gain except as necessary to fulfill its contractual obligations to the MTA.

**5-20-120 Contractor Pre-Qualification.** The MTA will accept bids and proposals for contracts and procurement of goods or services only from firms or entities which are complying with the MTA pre-qualification process as set forth in chapter 4-05. Firms or entities seeking certification as pre-qualified shall submit a completed pre-qualification application. Firms or

entities intending to bid as a joint venture should submit a separate pre-qualification application for each joint venture.

**5-20-130 Prohibition Regarding Participation in Procurement Development.** No contractor who participates in the development of a scope of work, solicitation documents, contractual instruments or technical specifications may participate as a proposer or sub-proposer on that particular procurement or perform any work on that particular procurement or any other procurement that would constitute an organizational conflict of interest or would give that contractor an unfair advantage over other bidders on that procurement. This prohibition may be waived in writing by the administrative head of procurement for the MTA upon a showing of good cause.

**5-20-140 Contractor's Personnel.** Each contractor retained by the MTA is fully responsible for the quality and performance of its staff and retains full responsibility for the selection of its personnel. MTA officials are not permitted to direct or recommend personnel that the contractor should hire, and no contractor shall request such a recommendation. However, the MTA retains the right in its absolute discretion to require the removal of any personnel of a contractor or subcontractor assigned at any level to perform services on an MTA contract if the MTA determines, in its sole discretion, that the personnel to be removed are not able to adequately or appropriately perform the services required for the particular contract. Any direction by the MTA to a contractor that specified personnel be removed from work on an MTA contract shall be made in writing.

**5-20-150 Duty to Disclose Conflicts of Interest.**

A. Each bidder, proposer and contractor, and each of their consultants and subcontractors, seeking to do business, or doing business, with the MTA has an obligation to promptly disclose in writing to the administrative head of procurement for the MTA any of the following potential conflicts of interest which become known to the management of the bidder, proposer or contractor:

1. Any financial relationship between the bidder, proposer or contractor and a Board Member or member or his or her staff, or an MTA employee;
2. Any financial or close personal relationship between any officers, directors or key employees of the bidder, proposer or contractor and a Board Member or member of his or her staff, or MTA employee;
3. Any outstanding offer of employment to, or the current or former employment of, any current or former Board Member or member or his or her staff, or of an MTA employee or former employee, by the bidder, proposer or contractor; or
4. Any campaign contributions exceeding ten dollars (\$10) made by or on behalf of the bidder, proposer or contractor or its lobbyist to any current Board Member within the previous four (4) years.

B. The duty to disclose potential conflicts of interest as described in paragraph A. exists prior to and during any employment or contract and regardless of whether the facts actually constitute a conflict of interest under any law. The Ethics Officer, in consultation with

the General Counsel, shall provide advice to the administrative head of procurement for the MTA and to the Board of Directors as to whether any facts disclosed under this section constitute a prohibited conflict of interest, and of the impact, if any, of that conflict on the relationship between the bidder, proposer or contractor and the MTA.

C. Failure to make a disclosure as required by this section, shall be sufficient cause for the MTA to decline to do business with the bidder, proposer or contractor or any of its subcontractors or consultants.

#### **5-20-160 Sanctions.**

A. The MTA encourages good faith reporting of all suspected violations of this chapter. There shall be no penalty or other adverse consequences imposed upon anyone making a good faith report of a suspected violation of this chapter. The identity of any person reporting a violation of this chapter not be disclosed except as necessary to carry out the purposes and requirements of this chapter.

B. Any party alleged to have violated this chapter, shall be presumed innocent of that charge unless and until a violation is demonstrated by credible evidence, and prior to any such determination of any actual violation no penalty may be imposed.

C. Suspected violations of this chapter shall be reported immediately to the Inspector General for investigation. The Inspector General shall investigate the allegations and, if they are determined to have merit, the matter will be referred to the appropriate enforcement authorities.

D. In any instance where the Inspector General has determined that an allegation of a violation of this chapter has merit, the administrative head of procurement for the MTA, or his or her designee, may take one or more of the following actions:

1. Meet with the contractor to obtain an explanation of the violation;
2. Impose a fine upon the contractor as authorized by the contract documents;
3. Suspend the contract or subcontract involving the offending contractor and commence debarment proceedings under chapter 4-10;
4. Direct the prime contractor to remove the offending subcontractor from the project;
5. Rescind, void, or terminate the contract; and/or
6. Impose another reasonable and appropriate penalty.

E. In any instance where the administrative head of procurement for the MTA proposes a sanction under this section, he or she shall notify the contractor in writing of the recommended action. The contractor may request an informal hearing with the administrative head of procurement for the MTA or his or her designee to explain the contractor's position regarding the alleged violation and/or the proposed sanction. Any such request must be made in writing and received by the administrative head of procurement within ten (10) working days of the issuance of the notice of the recommended sanction. If no request is received within the ten (10) working day period, the sanction may be imposed forthwith. If a timely request for an informal hearing is received, the informal hearing shall

take place within ten (10) working days after the administrative head of procurement receives the request. The contractor may be represented by legal counsel at its own expense at the hearing. Within ten (10) working days after the informal hearing, the administrative head of procurement or his or her designee shall advise the contractor in writing of the outcome of the hearing. Except as set forth in paragraph F., the decision of the administrative head of procurement shall be final.

F. If the administrative head of procurement for the MTA imposes a sanction under paragraph D.3., the contractor shall have such hearing rights as are set forth in chapter 4-10. If the administrative head of procurement imposes a sanction under paragraph D.2., which involves a fine in excess of one thousand dollars (\$1,000), or imposes a sanction under paragraph D.4., D.5. or D.6., the contractor may request arbitration before the American Arbitration Association pursuant to its rules and regulations to determine whether a violation of this chapter has been shown, and, if so, whether the sanction imposed is appropriate. A request for arbitration must be in writing and be directed to the administrative head of procurement. This request must be received within ten (10) working days after the decision of that official becomes final. The contractor shall bear the costs associated with any such arbitration. The arbitration hearing shall take place in the County of Los Angeles as soon as possible. The decision of the arbitrator shall be final.

G. Notwithstanding any other provision of this section, in any procurement where a violation of this chapter has been established prior to the award of the contract, the MTA, at its sole discretion, shall determine whether to terminate the procurement or to proceed to award a contract with or without disqualifying the offending bidder or proposer.

**5-20-170 Contacts When Procurements Are Pending.** During a communication black out period as described in Chapter 5-10 herein, any person, or entity, including their officers, employees, representatives, agents or consultants but excluding governmental entities, submitting proposal concerning a procurement as described in Chapter 5-10 herein, shall not contact by any means any 1) Metro Board Member or their staff; or 2) Metro staff other than those authorized to represent Metro concerning the procurement; in connection with that Metro procurement.

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**130051.20.** (a) (1) No construction company, engineering firm, consultant, legal firm, or any company, vendor, or business entity seeking a contract with the Los Angeles County Metropolitan Transportation Authority shall give to a member, alternate member, or employee of the authority, or to any member of their immediate families, a contribution of over ten dollars (\$10) in value or amount. A "contribution" includes contributions to candidates or their committees in any federal, state, or local election.

(2) Neither the owner, an employee, or any member of their immediate families, of any construction company, engineering firm, consultant, legal firm, or any company, vendor, or business entity seeking a contract with the authority shall make a contribution of over ten dollars (\$10) in value or amount to a member, alternate member, or employee of the authority, or to any member of their immediate families.

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(3) No member, alternate member, or employee of the authority, or member of their immediate families, shall accept, solicit, or direct a contribution of over ten dollars (\$10) in value or amount from any construction company, engineering firm, consultant, legal firm, or any company, vendor, or business entity seeking a contract with the authority.

(4) No member, alternate member, or employee of the authority shall make or participate in, or use his or her official position to influence, a contract decision if the member, alternate member, or employee has knowingly accepted a contribution of over ten dollars (\$10) in value in the past four years from a participant, or its agent, involved in the contract decision.

(5) No member, alternate member, or employee of the authority, or member of their immediate families shall accept, solicit, or direct a contribution of over ten dollars (\$10) in value or amount from a construction company, engineering firm, consultant, legal firm, or any company, vendor, or business entity that has contracted with the authority in the preceding four years.

(b) A member, alternate member, or employee of the authority who has participated as a decisionmaker in the preparation, evaluation, award, or implementation of a contract and who leaves the authority shall not, within three years of leaving the authority, accept employment with any company, vendor, or business entity that was awarded a contract as a result of his or her participation, evaluation, award, or implementation of that contract.

**130051.25.** (a) For the purpose of this section, “recordable injury” means any injury requiring treatment beyond simple first aid.

(b) A construction firm that contracts with the Los Angeles County Metropolitan Transportation Authority shall report total recordable injuries to the authority on a monthly basis.

(c) The authority shall annually determine if the number of recordable injuries reported to the authority during the preceding calendar year exceeded the national average of similar injuries as reported by the Bureau of Labor Statistics for the most recent published year. If the authority determines that the number of recordable injuries reported to the authority during the preceding calendar year exceeded the national average, the authority shall not base any safety bonus program for contractors on injuries that result in lost time, and shall base such a program on the overall rate of recordable injuries.

**130685.** (a) Prior to the issuance of a request for proposal (RFP), request for interest in qualification (RFIQ), or invitation for bid (IFB), and ending on the date of the selection of the contractor, no person or entity submitting a proposal in response to the RFP, RFIQ, or IFB, nor any officer, employee, representative, agent, or consultant representing the proposer shall contact by any means or engage in any discussion concerning the award of the contract with any board member or his or her staff. Any contact shall be grounds for the disqualification of the proposer.

(b) A board member who receives any communication from a proposer in violation of this chapter shall report that communication to the inspector general. The inspector general shall forward this information to the director of contracts and responsible procurement staff.

(c) Board members shall not meet with a person or entity who submitted a proposal in response to the RFP, RFIQ, or IFB, nor any officer, employee, representative, agent, or consultant representing the proposer regarding a protest submitted regarding the recommended contract award or any lawsuit or potential lawsuit regarding the recommended contract award.