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DATE: May 2, 1997



TO: BOARD OF DIRECTORS
FROM: RYAN J. NAKAGAWA, ETHICS OFFICER
SUBJECT: CODE OF CONDUCT FOR CONTRACTORS AND CONSULTANTS

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Metropolitan
Transportation
Authority

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RECOMMENDATION

Approve MTA Code of Conduct for Contractors and Consultants.

ORGANIZATIONAL IMPACT

This Code of Conduct will be applied to and affect all MTA Contractors and Consultants and all entities seeking to do business with the MTA.

BUDGET IMPACT

It is not anticipated that this Code of Conduct will have any significant budget impact in the current fiscal year and the 1998 fiscal year.

ALTERNATIVES CONSIDERED

The Board may direct that a different version of this Code of Conduct be considered.

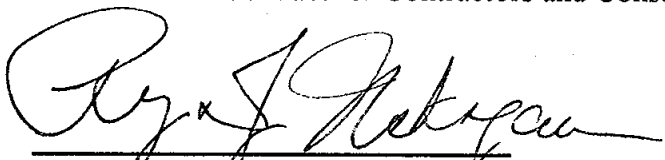
BACKGROUND

A motion by Supervisor Molina and Supervisor Yaroslavsky and approved by the Board directed that staff prepare a Code of Conduct for Contractors. This Code of Conduct was drafted with the assistance of Procurement staff.

This item was originally set to be considered at the April Board meeting. The Ethics Committee did not meet because of a lack of quorum and the item was continued to the May Board meeting.

ATTACHMENTS

MTA Code of Conduct for Contractors and Consultants.


Ryan J. Nakagawa, Ethics Officer

Ethics/Lobby
Registration

Code of Conduct for MTA Contractors and Consultants

Application of the Contractor Code of Conduct:

This Code of Conduct¹ shall govern the conduct of all contractors² of the MTA.

These standards supersede all prior written Ethics Policies duly adopted by the MTA which are in conflict with these standards.

These standards are to be read in conjunction with the latest edition of the MTA Procurement Manual and other applicable MTA policies and procedures.

All contractors shall insure that their subcontractors comply with this Code of Conduct.

Purpose

The purposes of these Standards of Conduct are:

- (1) To protect the integrity of the procurement process;
- (2) 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.

Not Exclusive

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 is expected to conduct himself or herself in the manner of an ethical, reasonable person with the express understanding that acting ethically is not an optional course of conduct at the MTA but the only course of conduct permitted.

Ethical Conduct

The MTA Ethics Department is charged with educating and advising about ethical issues. If you have any questions regarding this Code of Conduct you are welcome to contact the Ethics Department.

Enforcement

The provisions of this Code of Conduct is enforced by the MTA Inspector General and other appropriate enforcement authorities.

¹ In addition to the provisions in this Code of Conduct, contractors and prospective contractors shall be subject to related Federal and State laws and local ordinances.

² "Contractor" means any construction company, engineering firm, consultant, legal firm, or any company, supplier, or business entity who is presently engaging in any business with the MTA or any owner or employee of such entities and all entities who have submitted a bid or proposal for an MTA contract. "Contractor" shall also include "consultant" as defined in this code of conduct.

Avoiding the Appearance of Impropriety

All contractors should refrain from conduct which they know or reasonably should know is likely to create in the minds of reasonable, objective, fair-minded observer the perception that they are using their contract with the MTA in an improper manner.

Contacts by Staff Prior to the Issuance of a Solicitation

While informational and market research contacts with prospective contractors are a valuable source of data to the MTA, such contacts can be perceived as improper. All parties must exercise sound judgment and exercise caution to prevent an actual or implied impression that such contacts will result in preferential treatment of the prospective contractor.

Lobbying

Under MTA policy and P.U.C. §130051.18 a lobbyist is defined as any person who receives compensation, other than reimbursement for reasonable travel expenses, to influence any MTA action. All persons classified as a lobbyist under this definition shall register with the MTA prior to the commencement of any lobbying activity. The MTA shall not award a contract to any person or entity who is in violation of this policy.

This definition of lobbyist is broader than definitions used by other agencies. You should consult the MTA Lobby Registration Manual to determine whether you are a lobbyist.

Zero Tolerance Regarding Gifts

No bidder or proposer shall offer, give, or promise to offer or give, directly or indirectly any money, gift, gratuity or other thing of value to any MTA procurement staff at any time.

Zero Tolerance 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 staff, their immediate family, spouse, 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.

Disbursement of Preliminary Information

No bidder, proposer or contractor shall request or attempt to request from any MTA staff the dissemination of any information regarding present or future contracts or expectations of such contracts unless this information is made available at the same time and in the same form to all other bidders, proposers or contractors.

Receipt of Protected Information

No bidder, proposer or contractor shall solicit or obtain, directly or indirectly, from any MTA employee, any information developed during the course of conducting the procurement relating to the procurement prior to the contract award unless this information is a public record under the Public Records Act..

Contractor Pre-Qualification

The MTA will accept bids and proposals for contracts and procurement of goods or services having a value, to be determined by the MTA, only from firms or entities which are complying with the MTA pre-qualification process. 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.

Advice on 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. This prohibition may be waived in writing by the MTA Executive Officer for Procurement upon a showing of good cause.

Conflicts of Interest

A conflict of interest exists when one has a financial interest in or towards a person or entity which results in a real or apparent advantage to that person or entity. Contractors shall not have any financial relationship with any MTA Board Member, Alternate or employee, or a member of that employee's immediate family, who has participated or will participate in the contract to which the contractor is a party.

If the contractor has a financial relationship with any MTA Board Member, Alternate or employee, the contractor shall disclose this fact in writing to the Executive Officer for Procurement as soon as this possible conflict of interest is known. The Contractor is under a continuing duty to advise the MTA of any Conflict of Interests which may arise during the term of the contract.

By its very nature, a perceived conflict of interest with an MTA employee may exist under other numerous situations including, but not limited to, past dealings with the contractor, a close personal relationship with the officers or directors of the contractor, a pattern of regular contacts with the officers or directors of the contractor for any reason; a relationship with an entity or person favored by the contractor.

A conflict of interest may also exist when the contractor has previously employed, or is currently offering employment to, or considering an employment application of, any MTA staff or his or her immediate family.

While not all conflicts will cause a contractor to be disqualified, failure to disclose a known conflict may justify disqualification and/or sanctions. BE SAFE- DISCLOSE.

The Executive Officer for Procurement, in consultation with legal counsel, shall determine whether a conflict of interest exists and recommend appropriate action for resolution. If it is determined that an actual or apparent conflict of interest exists, the MTA Executive Officer for Procurement shall notify the contractor of this finding and the action that the MTA shall take to resolve this conflict of interest in writing.

Sanctions

The MTA encourages reporting of all good faith suspected violations of this Code of Conduct. Prior to a determination of actual violation by the responsible party or entity, there exists the presumption the alleged violator is innocent of the violation. There shall be no adverse consequences suffered by anyone making a good faith report of a suspected violation nor shall there be any adverse consequences suffered by anyone accused of violating these standards and subsequently found not to have violated this Code of Conduct. The identity of any persons reporting violations of these standards shall be kept confidential.

All suspected violations shall be reported immediately to the Inspector General for investigation. The Inspector General shall investigate the allegations and, if determined to have merit, the matter will be referred to the appropriate enforcement authorities.

In addition, if the Inspector General has determined that the alleged violations have merit, the MTA may take one or more of the following actions:

1. Meeting with the contractor to explain the violation;
2. Imposing a monetary fine upon the contractor according to the schedule set forth in the contract documents;
3. Suspending the contract or subcontract involving the offending contractor;
4. Directing the prime contractor to remove the offending subcontractor from the project;
5. Rescinding, voiding, or terminating the contract; and/or
6. Any other reasonable penalty deemed appropriate

The Executive Officer for Procurement shall state in writing to the contractor its recommendations regarding the violation and, if appropriate, sanctions. The contractor may request an informal hearing with the Executive Officer for Procurement or designee to explain its position regarding the alleged violation and/or punishment prior to the Executive Officer for Procurement taking any action. This request must be made in writing and received by the Executive Officer for Procurement within 10 working days of the recommendation for sanctions. If no request is received within the 10 working day period the recommended action shall be taken.

If a timely request for a hearing is received the informal hearing shall take place within ten days after the Executive Officer for Procurement receives the request. The contractor may be represented by legal counsel at its own expense at the hearing. Within working 10 days after the informal hearing, the Executive Officer for Procurement or designee shall advise the contractor in writing the outcome of the hearing at which time the decision becomes final.

If the sanctions imposed by the Executive Officer for Procurement are anything more than a conference with the alleged offending contractor and/or a fine of more than \$1,000.00 the alleged offending contractor may request a full hearing before the American Arbitration Association (AAA) pursuant to its rules and regulations. This request must be in writing and

directed to the Executive Officer for Procurement. This request must be received within 10 days after the Executive Officer's decision becomes final.

The contractor shall bear the costs associated with the arbitration. The hearing shall take place in the County of Los Angeles, State of California and shall take place as soon as possible. Any decision rendered by the AAA shall be binding on all parties.

In the case of a procurement in which a contract has not yet been awarded, the MTA shall determine whether to terminate the procurement or take other appropriate action.

Definitions

“Board Member/Alternate” includes Board Members and their Alternates of the Metropolitan Transportation Authority.

“Consultant” means an individual who, pursuant to a contract with a state or local agency:

- a) Makes a governmental decision whether to:
 - 1) Approve a rate, rule, or regulation
 - 2) Adopt or enforce a law;
 - 3) Issue, deny, suspend, or revoke any permit, license, application, certification, approval, order, or similar authorization or entitlement;
 - 4) Authorize the agency to enter into, modify, or renew a contract provided it is the type of contract which requires Agency approval;
 - 5) Grant Agency approval to a contract which requires agency approval and in which the agency is a party or to the specifications for such contract;
 - 6) Grant Agency approval to a plan, design, report, study, or similar item;
 - 7) Adopt, or grant agency approval of, policies, standards, or guidelines for the agency, or for any subdivision thereof; or
- b) Serves in a staff capacity with the agency and in that capacity performs the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the agency's Conflict of Interest Code.

“Contractor” means any construction company, engineering firm, consultant, legal firm, or any company, supplier, or business entity who is presently engaging in any business with the MTA or any owner or employee of such entities and all entities who have submitted a bid or proposal for an MTA contract. “Contractor” shall also include “consultant” as defined in this code of conduct.

“(Campaign) Contribution” means a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received unless it is clear from the surrounding circumstances that it is not made for political purposes. An expenditure made at the behest of a candidate, committee, or elected officer is a contribution to the candidate, committee, or elected officer unless full and adequate consideration is received for making the expenditure.

“Contribution” also includes the purchase of tickets for events such a dinners, luncheons, rallies, and similar fundraising events; the candidate's own money or property used on behalf of his or her candidacy; the granting of discounts or rebates not extended to the public generally or the granting of discounts or rebates by television and radio stations and newspapers not extended on an equal basis to all candidates for the same office; the payment of compensation by any person for the personal services or expenses of any other person if such services are rendered or expenses incurred on behalf of a candidate or committee without payment of full and adequate consideration.

“Contribution” also includes any transfer of anything of value received by a committee from another committee, unless full and adequate consideration is received.

“Contribution” does not include amounts received pursuant to an enforceable promise to the extent such amounts have been previously reported as a contribution. However, the fact that such amounts have been received shall be indicated in the appropriate campaign statement.

“Contribution” does not include a payment made by an occupant of a home or office for costs related to any meeting or fundraising event held in the occupant's home or office if the costs for the meeting or fundraising event are five hundred dollars (\$500) or less.

“Contribution” does not include volunteer personal services or payments made by any individual for his or her own travel expenses if such payments are made voluntarily without any understanding or agreement that they shall be, directly or indirectly, repaid to him or her.

“**Financial interest**” means, with regard to a Board Member/Alternate or MTA employee or a member of his or her immediate family, a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, or on:

- (a) Any business entity or real property in which the Board Member/Alternate or MTA employee has a direct or indirect investment worth one thousand dollars (\$1,000) or more; or
- (b) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the general public without regard to official status aggregating two hundred fifty dollars (\$250) or more, provided to, received by, or promised to the Board Member/Alternate or MTA employee within twelve (12) months prior to the time the decision is made; or
- (c) any business entity in which the Board Member/Alternate or MTA employee is a director, officer, partner, trustee, or holds any management position; or
- (d) any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to a Board Member/Alternate or MTA employee within twelve (12) months prior to the time when the decision is made; or employee knows or has reason to know that a party to the contract is a person with whom the Board Member/Alternate or MTA employee, or any member of his or her immediate family, has engaged in any business transaction or transactions on terms not available to members of the public, regarding any investment or interest in real property, or the rendering of goods or services totaling in value on thousand dollars (\$1,000) or more within twelve (12) months prior to the time the official action is to be performed.

For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater.

“Gift” means:

- (a) except as provided in subdivision (b), any payment to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status. Any person, other than a defendant in a criminal action, who claims that a payment is not a gift by reason or receipt of consideration has the burden of proving that the consideration received is of equal or greater value.
- (b) The term “gift” **does not include**:
 - (1) Informational material such as books, reports, pamphlets, calendars, or periodicals. No payment for travel or reimbursement for any expenses shall be deemed “informational material.”
 - (2) Gifts that are not used and which, within 30 days after receipt, are returned to the donor or delivered to a charitable organization without being claimed as a charitable contribution for tax purposes.
 - (3) Gifts from an individual's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin or the spouse of any such person, or significant other; provided that a gift from any such person shall be considered a gift if the donor is acting as an agent or intermediary for any person not covered by this paragraph.
 - (4) Campaign contributions as defined in this Appendix.
 - (5) Any devise or inheritance.
 - (6) Personalized plaques and trophies with an individual value of less than two hundred fifty dollars (\$250).
 - (7) Hospitality (including food, beverages, or occasional lodging) provided by an individual in his or her home when the individual or member of the individual's family is present, to an official.

- (A) Hospitality provided by a lobbyist in accordance with the above is also not a gift unless:
- (i) Any part of the cost of such hospitality is paid for by the lobbyist's employer or lobbying firm directly; or
 - (ii) The lobbyist is reimbursed by his or her lobbyist employer or lobbying firm for any part of the cost of such hospitality; or
 - (iii) The lobbyist deducts any part of the cost of such hospitality as a business expense on any tax return, either State or Federal; or
 - (iv) There is an understanding between the lobbyist and his or her lobbyist employer or lobbying firm that the amount of compensation received by the lobbyist includes a portion to be utilized by the lobbyist to provide gifts of hospitality in the lobbyist's home.
- (B) In determining the applicability of subsections (A)(i) through (A)(iv) above, the cost of providing hospitality does not include any part of the value or rental of the home of the lobbyist, nor does it include any depreciation on the premises where the hospitality is extended.

“Lobbying” means influencing or attempting to influence MTA action through direct or indirect communication, other than administrative testimony, with an MTA official.

“Lobbying firm” means any business entity, including an individual lobbyist, which meets either of the following criteria: (1) The business entity receives or becomes entitled to receive any compensation, other than reimbursement for reasonable travel expenses, for the purpose of influencing MTA action on behalf of any other person, and any partner, owner, officer, or employee of the business entity is a lobbyist; or (2) The business entity receives or becomes entitled to receive any compensation, other than reimbursement for reasonable travel expenses, to communicate directly with any MTA official for the purpose of influencing MTA action on behalf of any other person, if a substantial or regular portion of the activities for which the business entity receives compensation is for the purpose of influencing MTA action.

“Lobbyist” means any individual who receives any economic consideration, other than reimbursement for reasonable travel expenses, for lobbying, including consultants and officers of employees of any business entity seeking to enter into a contract with the MTA.

“Lobbyist employer” means any person, other than a lobbying firm, who does either of the following:

- (1) Employs one or more lobbyists for the purpose of influencing MTA action, or;
- (2) Contracts for the services of a lobbying firm for economic consideration for the purpose of influencing MTA action.

“MTA action” means the drafting, introduction, consideration, modification, enactment, or defeat of an ordinance, resolution, contract, or report by the governing board of an organizational unit of the MTA, or by an MTA official, including any action taken, or required to be taken, by a vote of the members of the MTA or by the members of the governing board of an organizational unit of the MTA, except those actions relating to Public Utilities Code, Article 10 (commencing with §30750) of Chapter 5 of Part 3 of Division 10.

“MTA employee” means any individual, including a consultant who receives compensation from the MTA for full or part-time employment. The term MTA employee includes a "designated MTA employee".

“MTA official” means any Board Member, Alternate, member of an organizational unit of the MTA, or employee of the MTA.

“Official responsibility” means the direct administrative or operating duties for the MTA, whether intermediate or final, and whether exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct MTA action.

“Person” means an individual, proprietorship, firm, partnership, joint venture, joint stock company, syndicate, business trust, estate, company, corporation, association, club, committee, organization, or group of persons acting in concert.

“Public official” means every member, officer, employee or consultant of a state or local government agency, but does not include judges and court commissioners in the judicial branch of government.

“Public official” also does not include members of the Board of Governors and designated employees of the State Bar of California, members of the Judicial Council, and members of the Commission on Judicial Performance, provided that they are subject to the provision of Article 2.5 (commencing with §6035) of Chapter 4 of Division 3 of the Business and Professions Code as provided in §6038 of that article.

“Significant other” means an individual with whom a Board Member/Alternate or MTA employee participates in a dating relationship.