

STAFF REPORT

SUBJECT: Adoption of an Organizational Conflict of Interest Policy for all Projects Funded by the U.S. Department of Energy and Design-Build Projects

FROM: Christy Wegener, Executive Director

DATE: April 7, 2025

Action Requested

Staff requests the Board of Directors (Board) approve Resolution 13-2025, authorizing the Adoption of an Organizational Conflict of Interest Policy for all Projects Funded by the U.S. Department of Energy (DOE) and Design-Build Projects.

Background

The Alliance for Renewable Clean Hydrogen Energy Sources (ARCHES) is a public-private partnership formed to create a sustainable statewide clean hydrogen hub in California and beyond, utilizing local renewable resources to produce hydrogen with the objective to fully decarbonize the regional economy, while prioritizing environmental justice, equity, economic leadership and workforce development.

In early 2023, LAVTA was approached to gauge interest in joining the ARCHES application. In March 2023, the LAVTA Board took action to authorize the agency's participation in the program (Attachment 1). In October 2023, the DOE awarded up to \$1.2B to ARCHES with the goal of achieving a net-zero carbon economy by 2045.

LAVTA is one of 13 transit agencies throughout the state of California to join the ARCHES program. Participating transit agencies will receive grant funding from ARCHES to support deployment of hydrogen fuel-cell electric buses (FCEB) and the development of hydrogen infrastructure. Through ARCHES, LAVTA will be eligible for up to \$25M in expenses associated with hydrogen-related infrastructure, rolling stock (buses), staff training and travel, and consulting costs through approximately 2031. LAVTA executed the subrecipient agreement on December 17, 2024.

DOE requires that LAVTA develop and implement an organizational conflict of interest policy prior to expending any funds provided by DOE. In addition, the state design-build statute requires LAVTA to develop and implement an organizational conflict policy to utilize this procurement method, which LAVTA intends to utilize this year (collectively "Policy"). LAVTA has developed the Policy to satisfy these requirements and provide guidance with regard to identifying and mitigating organizational conflicts of interest for DOE-funded projects and design-build projects.

The Policy is in addition to LAVTA's Conflict of Interest Code and does not supersede or

modify any of the requirements of the Conflict of Interest Code. The Policy applies to all projects funded by DOE as well as design-build projects, as required by statute.

Discussion

In Fiscal Year 2025, LAVTA will begin its transition to zero emissions bus technology by purchasing the agency's first zero-emission hydrogen fuel-cell buses as well as constructing the necessary fueling and maintenance infrastructure. Staff will be advancing a recommendation for the agency's first FCEB bus procurement as well as issuing an RFQ for the hydrogen fueling station the second half of the fiscal year. Staff are targeting early/mid-2027 for receipt of the first FCEBs as well as final commissioning of the hydrogen fueling station.

LAVTA needs to implement the Policy before using any funds for effectuate these goals.

Fiscal Impact

There is no fiscal impact associated with adopting this policy.

Recommendation

Staff recommends the Board approve Resolution 13-2025, authorizing the Adoption of an Organizational Conflict of Interest Policy for all Projects Funded by the U.S. Department of Energy and Design-Build Projects.

Attachments:

1. Resolution 13-2025
2. Conflict of Interest Policy

RESOLUTION NO. 13-2025

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
LIVERMORE AMADOR VALLEY TRANSIT AUTHORITY AUTHORIZING
THE ADOPTION OF AN ORGANIZATIONAL CONFLICT OF INTEREST
POLICY FOR ALL PROJECTS FUNDED BY THE U.S. DEPARTMENT OF
ENERGY AND DESIGN-BUILD PROJECTS**

WHEREAS, on March 3, 2023, the Livermore Amador Valley Transit Authority (LAVTA) Board of Directors approved the agency's participation in California's Alliance for Renewable Clean Hydrogen Energy Sources (ARCHES) Application to the U.S. Department of Energy (DOE); and

WHEREAS, in order to utilize the funds from ARCHES, local agencies are required to adopt an organizational conflict of interest policy applicable to projects funded by the DOE; and

WHEREAS, in order to utilize the design-build procurement method, state law requires local agencies to adopt an organizational conflict of interest policy applicable to Design-Build projects; and

WHEREAS, LAVTA desires to use ARCHES funds to procure certain hydrogen fueling infrastructure and may use funds from the DOE for other projects in the future; and

WHEREAS, LAVTA also desires to use the design-build procurement process for upcoming procurements; and

WHEREAS, staff recommends that the Board of Directors adopt a resolution to establish the Organizational Conflict of Interest Policy for Projects Funded by the U.S. Department of Energy and Design-Build Projects; and

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors hereby adopts the Organizational Conflict of Interest Policy for Projects Funded by the U.S. Department of Energy and Design-Build Projects, attached hereto as Attachment A.

BE IT FURTHER RESOLVED that the Executive Director or designee is authorized to take further actions as may be necessary to give effect to this Resolution, including updating LAVTA's Procurement Manual.

PASSED AND ADOPTED THIS 7 DAY OF APRIL 2025.

Evan Branning, Chair

ATTEST:

Christy Wegener, Executive Director

LIVERMORE AMADOR VALLEY TRANSIT AUTHORITY

**ORGANIZATIONAL CONFLICT OF INTEREST POLICY FOR ALL PROJECTS
FUNDED BY THE U.S. DEPARTMENT OF ENERGY AND DESIGN-BUILD
PROJECTS**

I. **PURPOSE OF POLICY**

This policy establishes the organizational conflict of interest guidelines applicable to all projects awarded by the U.S. Department of Energy (DOE) to Livermore Amador Valley Transit Authority (LAVTA) and design-build projects.

II. **APPLICABILITY**

This policy applies to all consultants and contractors that have entered into or wish to enter into contracts with LAVTA (a) to perform design-build work or (b) that are DOE funded. This policy is supplemental to LAVTA's Conflict of Interest Code and does not supersede or modify any requirements in that Conflict of Interest Code.

III. **POLICY**

Contractors and consultants participating as proposers or joining teams on DOE-funded projects or design-build projects (Proposers) may not have an organizational conflict of interest.

Organizational conflicts of interest are created by circumstances arising out of consultants' or contractors' existing or past activities, business or financial interests, familial relationships, contractual relationships, or organizational structure (e.g., parent entities, subsidiaries, affiliates) that result in: (i) impairment or potential impairment of consultants' or contractors' ability to render impartial assistance or advice to LAVTA, (ii) impairment or potential impairment of consultants' or contractors' objectivity in performing work for LAVTA, (iii) an unfair competitive advantage for any Proposer with respect to LAVTA's procurement (including, but not limited to, through access to nonpublic information or assisting LAVTA in the preparation of a Request for Qualifications (RFQ), Request for Proposals (RFP), or a design-build contract), or (iv) a perception or appearance of impropriety or unfair competitive advantage with respect to any of LAVTA's procurements or contracts (irrespective of whether such perception is accurate).

This policy neither purports to address every situation that may arise in the context of LAVTA's procurements and contracts, nor to mandate a particular decision or determination by LAVTA. LAVTA retains the ultimate and sole discretion to determine, on a case-by-case basis, whether an actual, perceived, or potential organizational conflict of interest exists.

An organizational conflict of interest may exist in the following instances:

- a. A Proposer is LAVTA's general engineering or architectural consultant for the DOE-funded project or design-build project. However, a sub-consultant of the general engineering or architectural consultant that has not yet performed work on the contract to provide services for the project may participate as a Proposer or join a project team if the Proposer terminates the agreement to provide work and provides no work for LAVTA's general engineering or architectural consultant on the project.
- b. A Proposer has assisted or is assisting LAVTA in the management of the DOE-funded project or design-build project, including the preparation of the RFP, evaluation criteria, or any other aspect of the procurement.
- c. A Proposer has conducted preliminary design services for the DOE-funded project or design-build project such as conceptual layouts, preliminary design, or preparation of bridging documents.
- d. A Proposer performed design work related to the DOE-funded project or design-build project for other stakeholders in the project.
- e. A Proposer performed design work on a previous contract that specifically excludes the Proposer from participating as a Proposer or joining any team for the DOE-funded project or design-build project.
- f. A Proposer is under contract with any other entity or stakeholder to perform oversight of the DOE-funded project or design-build project.
- g. Any circumstances that would violate California Government Code Sections 1090 *et seq.* (contractual conflicts).

LAVTA may be required to comply with requirements and regulations applicable to federally funded procurements and contracts. Nothing in this policy is intended to limit, modify or otherwise alter the effect of other relevant federal, state, or local regulations, statutes or rules.

Consultants responsible for preparing documents under the California Environmental Quality Act (CEQA) are required to comply with all state laws and regulations applicable to such services, including requirements relating to organizational conflicts of interest. For federally funded projects subject to the National Environmental Policy Act compliance, consultants involved in the preparation of environmental assessments or environmental impact statements must submit a disclosure statement to the lead agency that specifies any financial or other interests in the outcome of the project. (See 40 CFR §1506.5(b)(4).)

IV. PROPOSER'S OBLIGATIONS

Proposers with a conflict of interest as defined under this policy must immediately make a full written disclosure of the actual, perceived, or potential conflict to the contract administrator for the project, and will have a continuing obligation to do so until they are no longer Proposers.

If a Proposer determines that a potential conflict of interest exists, the Proposer's disclosure will not necessarily disqualify the Proposer from being awarded a contract. The Proposer must submit proposed measures to avoid, neutralize, or mitigate all potential or actual conflicts. LAVTA, at its sole discretion, will determine whether an actual or potential organizational conflict of interest, or the appearance of any such organizational conflict of interest, exists and whether the proposed measures are sufficient to overcome the actual, perceived, or potential conflict and whether the Proposer may continue with the procurement process.

V. OBLIGATIONS AFTER CONTRACT AWARD

The successful Proposer to whom the contract is awarded (Contractor) has an ongoing obligation to monitor and disclose actual, perceived, or potential conflicts of interest. If an actual, perceived, or potential organizational conflict of interest is discovered after the contract has been awarded, the Contractor must make an immediate and full written disclosure to LAVTA that includes a description of the action(s) that the Contractor has taken or proposes to take to avoid or mitigate the conflict. LAVTA, in its sole discretion, will determine whether an actual or potential organizational conflict of interest, or the appearance of any such organizational conflict of interest, exists and whether the proposed measures are sufficient to overcome the actual, perceived, or potential conflict. During the pendency of such evaluation, LAVTA reserves the right to suspend work under the contract without obligation, responsibility, or liability to reimburse all or part of the costs incurred or alleged to have been incurred by the Contractor during or leading up to such suspension.

If an actual, perceived, or potential organizational conflict of interest is determined to exist and the Contractor was aware of the actual, perceived, or potential organizational conflict of interest prior to award of the contract and did not disclose the conflict, LAVTA may terminate the contract. If a conflict of interest arises after the contract award and the Contractor's proposed measures to avoid or mitigate the conflict are determined by LAVTA to be inadequate to protect LAVTA, LAVTA may terminate the contract. If the contract is terminated, LAVTA assumes no obligation, responsibility or liability to reimburse all or part of the costs incurred or alleged to have been incurred by the Contractor, and LAVTA will be entitled to pursue any and all appropriate legal remedies.

VI. INCORPORATION BY REFERENCE

This policy will be incorporated by reference into all contracts executed by LAVTA that are funded by the DOE and all contracts for design-build projects executed by LAVTA.

VII. DISSEMINATION OF POLICY

All employees, officers and officials should be given copies of this policy, and this policy will be posted in appropriate places.