

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.