

VENDOR

CODE OF **ETHICS**



Metropolitan Transportation Authority

New York City Transit

Long Island Rail Road

Long Island Bus

Metro-North Railroad

Bridges and Tunnels

Capital Construction

Bus Company

December 2009

Introduction

The Metropolitan Transportation MTA (“MTA”) is committed to a procurement process that fosters fair and open competition, is conducted under the highest ethical standards and enjoys the complete confidence of the public. To achieve these important public purposes, the MTA adopts this Vendor Code of Ethics, which may impose upon its procurement process standards that exceed those now applicable under New York law.

This Vendor Code of Ethics is applicable to all Vendors, as that term is defined below, involved in the procurement process of the MTA and its affiliated and subsidiary agencies for the award or performance of contracts for goods, services, public works and miscellaneous procurements.

Lamond W. Kears
Chief Compliance Officer

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Chapter 1: DEFINITIONS

As used in this Code, the following terms have the following meanings:

MTA Agency or MTA means any of the following: Metropolitan Transportation MTA Headquarters, MTA New York City Transit, Manhattan and Bronx Surface Transit Operating MTA, MTA Long Island Rail Road, MTA Metro-North Railroad, MTA Long Island Bus, MTA Bus Company, MTA Capital Construction Company, the Staten Island Rapid Transit Operating MTA, the First Mutual Transportation Assurance Company, MTA Bridges and Tunnels and any future subsidiary or affiliated Agency..

Vendor means any individual or entity seeking to or doing business with the MTA within the scope of this Code, including, without limitation, contractors, consultants, suppliers, manufacturers seeking to act as the primary contracting party, officers and employees of the foregoing, as well as any subcontractors, subconsultants and subsuppliers at all lower tiers.

Primary Contracting Party means the Vendor who intends to directly enter into or has a contract with the MTA.

Gift means the transfer, without equivalent consideration, of any thing or benefit, tangible or intangible, having more than nominal value, including, but not limited to, loans, forbearance, services, travel, gratuities of any kind, favors, money, meals, refreshments, entertainment, hospitality, promises, tickets to entertainment or sporting events, weekend trips, golf outings, loans of equipment, or other thing or benefit. A Gift need not be intended to influence or reward any individual or entity.

Family Member means any person living in the same household as an MTA Employee, domestic partner, and any person who is a direct descendant of that MTA Employee's Grandparents or the spouse of such descendant.

Designated or Single Point of Contact means the individual designated to be a Vendor's only contact with the MTA following the public advertisement of a solicitation or the issuance of a request for a bid, proposal, or quote for small purchases, until the award of a resulting contract.

Contact means oral or written communication with any officer, member of the Board or other employee of the MTA, other than the Designated or Single Point of

Contact, where it could be reasonably inferred that such contact was intended to influence, or could reasonably be expected to influence, the subject of the procurement.

Employee means any officer or employee of the MTA and also includes any member of the Board.

State Ethics Law means New York Public Officers Law Sections 73, 73-a, 74, and the rules and regulations promulgated thereunder as may be amended or modified by the New York State Legislature or the New York State Commission on Public Integrity.

Chapter 2: LIMITATIONS ON CONTACTS WITH THE MTA

Section 2.01 Designated or Single Point of Contact

Each procurement solicitation issued by MTA will identify the MTA's Designated or Single Point of Contact for that solicitation as required by the Procurement Lobbying Law. Once the Designated or Single Point of Contact is established, the Vendor and any person or entity acting on the Vendor's behalf, including without limitation, those providing compensated or uncompensated lobbying, advocacy, consulting or other services should ensure that its contacts with the MTA are in compliance with the requirements of the Procurement Lobbying Law.

Chapter 3: NON-COLLUSION

Section 3.01 Independent Bid Assessment

The Vendor will calculate the price(s) contained in any bid or proposal independently, without collusion, consultation, communication, or agreement with any other competing Vendor for the purpose of restricting competition.

Section 3.02 Non-Communication of Bid

Unless otherwise required by law, the price(s) which the Vendor quotes in its bid or proposal will not knowingly be disclosed by the Vendor, directly or indirectly, to any other competing Vendor prior to the closing date for bids or proposals.

Section 3.03 Bid Submission

The Vendor will not make any attempt to induce any other individual or entity to submit or not to submit a bid or proposal.

Chapter 4: GIFTS OR CONTINGENT FEES

Section 4.01 Zero Tolerance

No Vendor may offer or give any Gift, directly or indirectly, to an MTA Employee. Similarly, no Vendor may offer or give any Gift, directly or indirectly, to any family member of an MTA employee where such Gift is made because of the Vendor's relationship with the MTA Employee.

Section 4.02 Personal Relationships

Notwithstanding the foregoing, if a Vendor has a family or personal relationship with the employee, a gift that is unconnected with the employee's duties at the MTA is not necessarily prohibited.

In determining whether the giving of an item was motivated by personal rather than business concerns, the following factors are considered:

- (a) the history of the relationship between the donor and the recipient; and
- (b) whether the item was purchased by the donor.

The giving of an item shall not be considered to be motivated by a family or personal relationship if the donor seeks to charge or deduct the value of the item as a business expense or seeks reimbursement from a client.

However, regardless of the family or personal relationship between a Vendor and an employee, a Gift is strictly forbidden where it is being given under circumstances where it can reasonably be inferred that it was intended to influence the employee in the performance of his or her official duties.

Section 4.03 Contingent Fees

The Vendor will not employ or retain any individual or entity for the purpose of soliciting or securing an MTA contract upon any agreement or understanding for a commission, percentage, brokerage, or fee that is contingent or dependent upon the outcome of the procurement.

Chapter 5: NEGOTIATIONS FOR FUTURE EMPLOYMENT

Section 5.01 General

MTA Employees are subject to the restrictions set forth below in connection with negotiations for future employment with Vendors. It is expected that Vendors will approach any such solicitation or negotiation with knowledge and understanding of these restrictions and will conduct themselves accordingly.

Section 5.02 Restrictions

(a) Solicited

Employees are prohibited from soliciting an employment opportunity with a non-governmental individual or entity that has a specific pending matter before the Employee.

Those Employees seeking employment outside of government with an entity or individual that has a specific pending matter before the Employee may only solicit an employment opportunity with the non-governmental individual or entity after waiting:

- (i) 30 days from the time the matter before the Employee is closed, or
- (ii) 30 days from the time the Employee has no further involvement with the matter because of recusal or reassignment.

(b) Unsolicited

Employees who receive an unsolicited post-government employment-related communication from a non-governmental individual or entity that has a

specific pending matter before the Employee cannot pursue employment with the non-governmental entity or individual unless the following occurs:

- (i) they recuse themselves from the matter and any further official contact with the entity or individual and
- (ii) they wait 30 days from such recusal to enter into post-government employment communications with the entity or individual.

(c) Notification

Employees must promptly notify their supervisor and Agency ethics officer of such outside employment related communications whether or not they intend to pursue the post-government employment opportunity.

In the event of such notification of a solicitation and Employee's desire to pursue the solicitation, the Employee's supervisor is obligated to advise such supervisor's superiors, in writing, up to and including the Department Head, of the Employee's desire to pursue the solicitation and the managers intention to establish recusal procedures, if practical, to reassign the individual or to refuse reassignment.

(d) Recusal

Recusal procedures shall be applied only if practical and in the best interests of the applicable MTA Agency. Reassignment shall be refused when the manager determines that reassignment would be impractical or inappropriate. The manager may not take action with respect to notifying the Employee of such manager's decision until approved by the Department Head. If recusal procedures are not practical and in the best interests of the applicable MTA Agency or if reassignment is refused, the Employee is prohibited from pursuing the solicitation.

Chapter 6: CONFLICT OF INTEREST

Section 6.01 Financial Interest

Neither the Vendor, nor any director, officer, principal, or partner thereof, as the case may be, may have a 10% or greater interest, nor shall the Vendor, nor any director, officer, principal, or partner thereof, acquire a 10% or greater interest, either directly or indirectly, in any company or firm that would conflict in any manner or degree with the performance of the MTA contract.

The Vendor will not permit an employee having a 10% or greater interest, either directly or indirectly, in any company or firm that would conflict in any manner or degree with the performance of the MTA contract to be employed in the performance of the MTA contract.

Section 6.02 Cooperation

The Vendor shall provide to the MTA, at the MTA's request and upon such forms as may be furnished by the MTA, a disclosure of organizational, financial, contractual or other affiliations with any organization that has interests that may be substantially affected by the procurement solicitation. The Vendor shall cooperate in any inquiry or investigation undertaken by the MTA to determine whether any such affiliations present a conflict of interest.

Chapter 7: FORMER MTA EMPLOYEES

Section 7.01 Appearance Before Former Agency-Two Year Bar

Except as provided for in Section 73 of the New York Ethics Law the Vendor will not permit a former officer or employee of the MTA to appear or practice before the agency that employed the officer or employee in relation to any case, proceeding or application or other matter before that agency, either prior to award or in the performance of an MTA contract, for a period of two years after termination of the officer's or employee's services with the agency; or

Section 7.02 Appearance Before Former Agency-Life Time Bar

Except as provided for in Section 73 of the New York Ethics Law the Vendor will not permit a former officer or employee of the MTA to appear, practice, communicate or otherwise render service before the agency that employed the officer or employee or any other agency of the MTA, either prior to award or in the performance of an agency's contract in relation to any case, proceeding, application or transaction with respect to which such former officer or employee was directly concerned and in which he or she personally participated, or which was under his or her active consideration during the period of his or her employment. This provision is a lifetime bar on projects that the former employee previously worked on while employed by the agency.

Chapter 8: CERTIFICATION

Section 8.01 Gift Certification

Every bid or proposal made to and every contract with the MTA above the small purchase threshold must contain a certification that no individual or entity has been or will be offered or given any Gift in connection with such bid or contract and that no conflicts of interest exist.

Section 8.02 Distribution of Vendor Code of Ethics

Additionally, as a condition of being considered for the award of any contract above the MTA's small purchase threshold, the Primary Contracting Party will be required to submit with its bid or proposal and include in its contract a further certification executed by an officer of that Party. This certification must attest that the Primary Contracting Party and all officers and personnel who may interact or have interacted with the MTA during the course of the procurement or contract have been provided with a copy of this Vendor Code of Ethics.

Section 8.03 Subcontractor Certifications

The Primary Contracting Party will obtain similar certifications from all of its lower tier subcontractors, subconsultants and suppliers, as well as from any other subcontractors, subconsultants and suppliers from whom that Party is soliciting or has received proposals for work on an MTA contract. Receipt and retention of lower tier certifications by the Primary Contracting Party shall be subject to audit by the MTA.

Chapter 9: PENALTIES

Section 9.01 Responsibility Determination

For violation of any provision of this Vendor Code of Ethics, the MTA may avail itself of every remedy in law or equity, or as agreed to by parties in any contract, including but not limited to declaring the Vendor non-responsible, debarred or in material breach of the contract.

Section 9.02 Civil/Criminal Penalties

Additionally, violation of the Vendor Code of Ethics or a provision thereof may subject the Vendor to criminal or civil penalties under State or Federal law.

Chapter 10: REPORTING OBLIGATION

Section 10.01 Reporting Gift Requests

Notwithstanding the provisions of Chapter 4 above, the Vendor is obligated to immediately report to the senior procurement official of the MTA and the MTA's Chief Compliance Officer, any and all requests made to the Vendor by any officer, employee of the MTA, or member of the Board for a Gift.

Section 10.02 Reporting Material Changes

The Vendor is under a continuing obligation to report any change in circumstances that materially affects any prior report to the MTA, including but not limited to disclosure of conflicts of interest.