

# District Contractor Code of Conduct

## I. Definitions

The following definitions shall apply to this Contractor Code of Conduct:

- A. District Official. The term "District Official" shall mean any Board member, officer, or employee of the District.
- B. Contractor. The term "Contractor" shall mean any contractor, supplier, real property developer, or consultant of the District.

## II. Application of the Contractor Code of Conduct

This section shall govern the conduct of all Contractors of the District. These standards supersede all prior written ethics policies adopted by the District which are in conflict with these standards. These standards are to be read in conjunction with applicable provisions of the District's Procurement Manual and other applicable Board Rules, policies and procedures. All Contractors shall ensure that their subcontractors comply with this section.

## III. Conflict with Contract Terms

The terms of this Contractor Code of Conduct are not intended to limit or otherwise modify other terms contained in a contract between the District and any Contractor. In the event there is a conflict between this Contractor Code of Conduct and the terms of a contract between the District and a Contractor, the terms of the contract shall govern.

## IV. Purpose

The purpose of this section is 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 District so they will be able to compete fairly and perform their work and services in an ethical manner.

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

## V. Professional Conduct

- A. District Contractors shall conduct themselves in a manner consistent with the law, this Code of Conduct, District policies, and good judgment.

- B. They shall not commit any act which may bring reproach or discredit upon the District.
- C. Speech or behavior that is likely to create an appearance of impropriety is to be avoided.
- D. Contractors shall not involve themselves in altercations or any other act of hostility with the District employees, other contractors, or the public. Neither shall they engage in acts which will subject the District to criticism or adversely affect the interests of the District.
- E. It is up to each Contractor to maintain a professional, safe, and productive environment.

#### **VI. Interpretation**

The District Ethics Officer, in consultation with the Office of the General Counsel, is charged with advising District management regarding ethical issues. Contractors and District managers may contact the Ethics Officer with questions regarding this Code of Conduct.

#### **VII. Enforcement**

Violations of law or of this Code by a Contractor should be reported to the District Ethics Officer.

#### **VIII. Contacts by Staff Prior to the Issuance of a Solicitation**

While informational and market research contacts by District employees with prospective Contractors can be a valuable source of data to the District, 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. The District may be prohibited by law from awarding a contract to a Contractor who has received such preferential treatment or where there is an appearance of preferential treatment.

#### **IX. Communication During Pendency of Bid or Proposal**

- A. "District Official". For the purpose of this section only, the term "District Official" shall mean any Board member, officer, or employee of the District, or any other person who is serving on a District selection committee for the review of bids or proposals.
- B. Requirement to Log Communications. During the period of time commencing with the submittal of a bid or proposal in response to a Request for Proposals (RFP), Request for Qualifications (RFQ), Invitation for Bid (IFB), or other

District procurement solicitation, and ending with the award of the contract, District Officials shall keep a log of all communications, whether oral or written, from any person who is not a District Official, regarding a pending bid or proposal. The log shall contain the following information for each communication:

- i. the date of the communication;
- ii. the name of the person making the communication; and
- iii. a brief statement of the topic of the communication, including the name of any bidder or proposer that is a subject of the communication.

C. Submission and Posting of Logs. The logs shall be submitted on a weekly basis to the District Ethics Officer, together with any written communications received from any person who is not a District Official regarding pending bids or proposals. The logs and any such written communications shall be maintained by the Ethics Officer and shall be subject to public inspection and copying pursuant to California Government Code Section 6250 *et seq.* Additionally, the Ethics Officer shall on a weekly basis post the logs on the District's website.

D. Exceptions. The requirement to keep a log of communications described in subsection B. above shall not apply where:

- i. The communication is required by the terms of the solicitation, such as a document submitted as part of a proposal, or the oral interview of a proposer or bidder;
- ii. The communication is made publicly at a meeting of the Board; or
- iii. In the case of negotiated procurements, the communication is initiated by a member of the District's selection committee for the purpose of negotiating the contract in accordance with the terms of the solicitation.

#### **X. Prohibition Regarding Gifts**

No bidder, proposer or Contractor, or any of their consultants or proposed subcontractors shall offer, give, or promise to offer or give, directly or indirectly, any gift or favor of any value to any District Official.

#### **XI. Financial Contribution Limitation**

All Contractors and prospective Contractors, and each of their subcontractors and proposed subcontractors, are charged with full knowledge of the requirements of Section 5 of the Rules of the Board of Directors limiting the making of campaign contributions to Board members or candidates for Director, and shall not violate or conspire with any other person to violate said Section.

**XII. 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 District 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 District. In addition, District officers and employees may be disqualified from working on District matters involving a person or entity with whom the officer or employee is negotiating, or has any arrangement concerning, prospective employment, whether or not the prospective employer has conditioned an offer of employment on the awarding of a present or future contract or preference in the awarding of a contract.

**XIII. Prohibition Regarding Information**

Prior to a contract award, no bidder, proposer or Contractor shall solicit or obtain, directly or indirectly, from any District Official, 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.

**XIV. Prohibitions on Use and Disclosure of Confidential Information**

At no time shall any Contractor who obtains confidential or proprietary District information in the course of doing or seeking to do business with the District disclose any such information to any person not authorized by the District to receive such information or use such information for any personal gain except as necessary to fulfill its contractual obligations to the District.

**XV. Prohibition Regarding Participation in Procurement Development**

No Contractor who participates in the development of a scope of work, solicitation documents, contract documents or technical specifications may participate as a bidder, 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 or proposers on that procurement.

**XVI. 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 District has an obligation to promptly disclose in writing to the Department Manager of Procurement for the District, or in the case of property development projects to

the Department Manager of Real Estate and Property Development for the District, any of the following potential conflicts of interest which become known to the management of the bidder, proposer or Contractor:

- i. Any financial relationship between the bidder, proposer or Contractor and a District Official;
  - ii. Any financial or close personal relationship between any officers, directors or employees of the bidder, proposer or Contractor and a District Official;
  - iii. Any negotiations concerning employment with or outstanding offer of employment to, or the current or former employment of, any District Official or former District Official, by the bidder, proposer or Contractor;  
or
  - iv. Any campaign contributions to a Board member or candidate for the Board, whether monetary or in-kind, exceeding \$1000, made during the time period from receipt of the bidder or proposer's bid through award. The duty to disclose campaign contributions shall apply to all bidders and proposers and to all first tier subcontractors and sub-suppliers whose subcontracts exceed \$100,000.
- B. The duty to disclose potential conflicts of interest as described above 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 District Ethics Officer shall provide advice to either the Department Manager of Procurement or the Department Manager of Real Estate and Property Development for the District 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 District.
- C. The District encourages good faith reporting of all suspected violations of this section. The identity of any person reporting a violation of this section shall not be disclosed except as necessary to carry out the purposes and requirements of this section or as otherwise required by law.
- D. Suspected violations of this section shall be reported immediately to either the Department Manager of Procurement or the Department Manager of Real Estate and Property Development for investigation. The Department Manager of Procurement or the Department Manager of Real Estate and Property Development shall investigate the allegations in consultation with the District Ethics Officer.
- E. In any instance where the District has determined that an allegation of a violation of this section has merit, the Department Manager of Procurement or the Department Manager of Real Estate and Property Development, or his or her

designee, may take one or more of the following actions:

- i. Meet with the Contractor to obtain an explanation of the violation;
- ii. Direct the prime Contractor to remove the offending subcontractor from the project;
- iii. Rescind, void, or terminate the contract; and/or
- iv. Any other reasonable and appropriate action.

- F. In any instance where the Department Manager of Procurement or the Department Manager of Real Estate and Property Development propose 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 Department Manager of Procurement or the Department Manager of Real Estate and Property Development, 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 Department Manager of Procurement or the Department Manager of Real Estate and Property Development 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 Department Manager of Procurement or the Department Manager of Real Estate and Property Development 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 Department Manager of Procurement or the Department Manager of Real Estate and Property Development, or his or her designee, shall advise the Contractor in writing of the outcome of the hearing.
- G. Notwithstanding any other provision of these sections, in any procurement where a violation of this section has been established prior to the award of the contract, the District, 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.

## **XVII. Important Notice – Related Laws**

Also note that in addition to the District Code of Conduct, Contractors are required to comply with all applicable laws in connection with the District procurement process and the work performed pursuant to any agreement with the District.