

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 or any other person who is serving on a District selection committee for the review of bids or proposals.
- B. **Contractor.** The term "Contractor" shall mean entities doing business with the District, including but not limited to Persons, partnerships, corporations, joint ventures or other entities who contract directly or indirectly (e.g. through an Affiliate) with, or are seeking to contract with, the District to provide goods to, or perform any type of work or services for or on behalf of, the District. A Contractor includes a contractor, supplier, consultant, subcontractor, subsupplier, subconsultant, vendor, manufacturer, broker or Affiliate. The definitions of "Person" and "Affiliate" in the District's Suspension & Debarment Policy are incorporated by reference into this Contractor Code of Conduct as though fully set forth herein~~any contractor, supplier, real property developer, or consultant of the District.~~
- C. **Solicitation.** The term "Solicitation" shall mean a Request for Proposals (RFP), Request for Qualifications (RFQ), Invitation For Bid (IFB), Statement Of Qualifications (SOQ), or other District procurement solicitation.
- D. **Gift.** The term "Gift" shall mean the provision of anything of value, whether tangible or intangible, that provides a personal benefit, when full consideration is not provided for the value of the benefit received. Examples of Gifts include, but are not limited to, tangible items, discounts, event tickets, travel, accommodations, meals, entertainment, and cash.
- E. **Close Personal Relationship.** The term "Close Personal Relationship" shall mean any relationship other than kinship, spousal or spousal equivalent that establishes a significant personal or financial bond between an individual and such other individual that could impair an individual's ability to act fairly and independently. Examples include, but are not limited to, a household co-habitant or a personal friend.
- F. **Immediate Family.** The term "Immediate Family" shall mean a father, mother, spouse, child, parent, brother, sister, grandfather, grandmother, father-in-law, mother-in-law, sister-in-law, brother-in-law, step relatives in the same relationship and domestic partner and civil unions recognized under State law.

II. Application of the Contractor Code of Conduct

This Contractor Code of Conduct ("Code") shall govern the conduct of all Contractors of the District. The Code supersedes all prior written ethics policies adopted by the District which conflict with the Code. The Code is to be read in conjunction with applicable provisions of the District's Procurement Manual and other applicable Board Rules, policies, and procedures. The Code is informed by state and federal laws but may be stricter or impose greater limitations than such laws. All Contractors shall ensure that their subcontractors comply with this Code.

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 Code 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 ethically perform their work and services.

This Code does not purport to respond to all ethical issues that 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 is charged with advising District management regarding ethical issues. Contractors and District managers may contact the Ethics Officer (ethicsofficer@bart.gov) with questions regarding this Code of Conduct.

VII. Enforcement

Violations of law or this Code by a Contractor should be reported to the District Ethics Officer (ethicsofficer@bart.gov) and Internal Audit (internalaudit@bart.gov) division. In any instance where the District has received an allegation of a violation of this Code of Conduct, the District may, in its sole discretion, issue a stop work order for affected contracts, including but not limited to, agreements and work plans, pending investigation and/or resolution of the allegation. In addition to imposing any remedy or sanction provided in this Code, the District may also, in its sole discretion, act against a Contractor for violations of law or this Code as outlined in the District Suspension and Debarment Policy (www.bart.gov/about/bod/policies).

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 to persons contacted as part of the market research prior to a Solicitation or a future procurement. 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. Requirement to Log Communications. During the period of time commencing with the submittal of a bid or proposal in response to a 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.

B. Submission and Maintenance of Logs. The logs shall be submitted on a weekly basis to the District Ethics Officer and Internal Audit division, 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 for three (3) years from the contract award date and shall be subject to public inspection and copying pursuant to California Government Code Section 7920 et seq.

C. 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 5-5.1 of the Rules of the Board of Directors limiting the making of contributions

(monetary or in-kind) to Board members or candidates for Director and shall not violate or conspire with any other person to violate said Section.

Contract and agreement documents shall require contractors, and their subcontractors, to submit a certification of compliance with this Rule with their bid or proposal, or as otherwise directed in contract and agreement documents. Failure to submit a certification within five calendar days after it is due may render the bid or proposal non-responsive.

XII. Prohibition Regarding Offers of Employment

California Government Code Section 87407 prohibits public officials from using their official positions to influence any governmental decision directly relating to any person with whom they are negotiating or have any arrangement concerning prospective 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, or business associates of the District Official, or any other person with whom a District Official has a Close Personal Relationship 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, following the procedure set forth in subsection XVI.B below, any of the following potential conflicts of interest which become known to the management of the bidder, proposer or Contractor:
- i. **Business Investments or Interests:** Any financial interest held by a District Official in the Contractor (examples include, but are not limited to, an investment or ownership interest in Contractor, or income received in the past twelve (12) months from Contractor).
 - ii. **Personal Relationship:** Any financial or Close Personal Relationship between any officers or employees of the Contractor and a District Official.
 - iii. **Prior Employment:** Employment in the past five (5) years or sixty (60) months of a District Official by Contractor.
 - iv. **Family or Relative Employment:** Present employment by Contractor of an Immediate Family member of a District Official.
 - v. **Offers of Employment:** Any pending offer, or promised offer, made either directly or indirectly, of any future employment or business opportunity with Contractor to any District Official, or member of the District Official's Immediate Family, business associates of the District Official, or any other person with whom a District Official has a Close Personal Relationship.
 - vi. **Gifts or Favors:** Offer or presentation of Gifts to a District Official or an Immediate Family Member of a District Official.

- vii. Campaign Contributions: Any campaign contributions to a Board member or candidate for the Board, whether monetary or in-kind, exceeding the limits outlined in the San Francisco Bay Area Rapid District Rules of the Board of Directors.
 - viii. Other: Any other interest in or connection with the Contractor by a District Official that might tend to subject the District to criticism on the basis that such interest or connection would impair the District's objectivity in awarding or administering a Solicitation or existing contract.
- B. Bidders, proposers, and Contractors shall report the above-described conflicts of interest using the [District Contractor Conflict-of-Interest Declaration](#) form. The completed form shall be submitted to the District's Ethics Officer and Internal Audit at conflictofinterest@bart.gov.
- C. The duty to disclose potential conflicts of interest as described above exists prior to and during any employment or contract regardless of whether the facts constitute a conflict of interest under any law. The District Ethics Officer and Internal Audit division shall provide advice to either the Director of Procurement or the Director 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 the impact, if any, of that conflict on the relationship between the bidder, proposer or Contractor and the District.
- D. 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. Individuals who, in good faith, report an improper activity by a District employee, officer, or Contractor are protected from retaliation pursuant to the District's Whistleblower and Anti-Retaliation Policy.
- E. In any instance where the District has determined that an allegation of a violation of this section has merit, the General Manager, or his or her designee, may take remedial action, including but not limited to:
- 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 or any affected work plans; and/or
 - iv. Any other reasonable and appropriate action.

- F. In any instance where the General Manager, or his or her designee, 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, 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 General Manager, or his or her designee, 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 General Manager, or his or her designee, 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 General Manager, 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. Post-Employment Contracting

Former District Officials ~~who were required to, or should have been required to, file a Form 700 (Statement of Economic Interests)~~, are prohibited from contracting with BART (as a contractor or subcontractor, or employee of a contractor or subcontractor) for twelve months after terminating BART employment, regardless of whether the former District Official participated in the making of that contract while employed by BART.

XVIII. Important Notice - Related Laws

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.

Policy Information & History

Type of Policy: Code of Conduct

Effective Date: August 2013

Last Revised: December ~~2023~~2024

Board of Directors Adoption: ~~2023~~2024-12-0705

Next Review: December 2025 or as needed

Policy Owner: Performance & Audit (lead), General Counsel, Procurement

Policy Contact: Director of Performance & Audit

Revision Date	Version #	Author	Description
2023-12-07	2.0	Performance & Audit	Updated 2013 version to better align with other BART policies and procedures, state and federal rules and regulations, and to incorporate recommendations from audits and investigations conducted by BART's Office of Inspector General.
YYYY-MM-DD 2024-12-05	<u>3.0</u>	{Office, Department/Unit} Performance & Audit	{Brief & specific description of change} Updated to align with the Suspension & Debarment Policy adopted by the Board of Directors at the same meeting. Modify Post-Employment Contracting to remove the provision that it applies to only those who are required to file, or should be required to file, a Form 700.
YYYY-MM-DD		[Office, Department/Unit]	[Brief & specific description of change]