



POLICY NO. PLY-PRO-2023-01

NAME: PROCUREMENT STANDARDS OF CONDUCT POLICY

DATE ISSUED: September 22, 2022

SUPERCEDES: All Previous Procurement-Related Conflict of Interest Policies
and Procedures

VERSION: FINAL V 01

GENERAL MANGER SIGNATURE:

A handwritten signature in blue ink, appearing to read "Edy", is written over the "GENERAL MANGER SIGNATURE:" label.

I. PURPOSE

The purpose of this policy is to consolidate all previous procurement-related conflict of interest procedures and policies and establish a single procurement standards of conduct policy for all Board Members, employees, officers, and agents of the Sonoma-Marin Area Rail Transit District (hereinafter "District") involved in the planning, evaluation, selection, and award of all goods and services purchased by the District. Furthermore, this policy is to ensure that as decisions are made, they are made on proper grounds, for legitimate reasons, and without bias or unfairness.

This policy is intended to comply with the requirements of the Federal Transit Administration ("FTA").

This Policy will remain in effect until modified or rescinded.

II. RESPONSIBILITIES

All Board Members, employees, officers, and agents of the District involved in the planning, evaluation, selection, and award of all goods and services purchased for

the District are responsible for complying with this policy, as well as all other applicable state and federal laws and regulations pertaining to conflicts of interest.

III. DEFINITIONS

- A. "Agent" – Any individual or organization authorized to act on behalf of the Sonoma-Marín Area Rail Transit District.
- B. "Board Member" – A member of the Board of Directors of the Sonoma-Marín Area Rail Transit District.
- C. "Confidential Information" - Includes any proprietary, privileged, or nonpublic information coming to the person's attention as a result of an employment position with the District, the knowledge of which makes possible financial gain.
- D. "Contract" – A mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the recipient to expenditure and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by 31 U.S.C. 6301, et seq.
- E. "Designated Employees" – Any District staff member who is required to file a statement of economic interests pursuant to the California Political Reform Act of 1974 (Form 700), as amended, and any other employee who is engaged in or otherwise involved in the award or administration of third-party contracts of the District.
- F. "Gift" – Any payment or item to the extent that consideration of equal or greater value is not received, including a rebate or discount in the price of anything of value, unless the rebate or discount is being offered to the general public in the regular course of business, and excluding payments that are exempt from the definition of gifts under the Political Reform Act and regulations adopted by the Fair Political Practices Commission. Gifts to a Board, committee or staff member's immediate family which confer a clear personal benefit on the Board, committee or staff member are gifts within this definition.
- G. "Suppliers" – All vendors, service providers, consultants, and contractors.

IV. POLICY

A. Conflict of Interest

In accordance with the Political Reform Act of 1974 (Government Code Section 81000 et seq.), the District's Board of Directors adopted a Conflict-of-Interest Code which identifies designated employees who are required to disclose economic interests and are prohibited from participating in decisions which will have a reasonably foreseeable material effect on their financial interests.

For purposes of these Standards of Conduct, it is further required that no Board Member, employee, officer, or agent of the District shall participate in any procedure, task, or decision relative to the planning, evaluation, award, or administration of a contract if a conflict of interest, real or apparent, exists. Such a conflict of interest arises when (a) the Board Member, employee, officer, or agent, (b) any member of his or her immediate family, (c) his or her partner, (d) his or her business associate, or (e) an organization which employs, or which is about to employ, any of the above described individuals has a financial or other interest in a firm that participates in a District procurement process or that is selected for a contract award or if an individual described above has received a gift of over two hundred fifty dollars (\$250.00) during the previous twelve (12) months from a supplier, or indirectly through an intermediary, if it is known to the person that the gift was in whole or in part funded by the supplier.

The standards governing the determination as to whether such an interest exists are set forth in Sections 1090, 1091, and 1091.5 of the California Government Code.

The General Manager may implement additional administrative requirements as necessary to monitor and assure adherence with these Standards of Conduct.

Recognizing a Conflict of Interest

In addition to the provisions of the Political Reform Act, as enforced by the Fair Political Practices Commission, which prohibit a Public Official or employee from participating in District decisions in which the individual knows or has reason to know they have a financial interest, a conflict of interest exists when it is likely that staff member could be influenced, or could be perceived to be influenced, by a personal interest in carrying out their duties of employment. Acting for the benefit of private interests instead of for the benefit of the public may constitute official misconduct. In some cases, bias in decision-making may cause invalidation of a decision. Related interests that may give rise to a conflict of interest include:

1. Personal beliefs or attitudes that influence the impartiality of District decisions.
2. Personal relationships with the people the District is dealing with that go beyond the level of a professional work relationship.
3. Secondary employment that compromises the integrity of the employee and the District.
4. In all purchases for the District, any practices which might result in unlawful activity are prohibited, including but not limited to, rebates, kickbacks, or other unlawful considerations. District employees are specifically prohibited from participating in the selection process when those employees have a close personal relationship, family relationship, or business relationship, outside of District business, with a person or business entity seeking a contract. A District employee may often be the only person aware of the potential for conflict. As such, it is each individual's responsibility to avoid financial or other interests that could compromise the impartial performance of their duties and disclose any potential or actual conflict of interest.

B. Duty to Disclose

District Board Members, employees, officers, and agents shall not be involved in any purchasing decision, task, or procedure (including participation in the planning, evaluation, award, or administration of a contract) in which they or persons related to them have a real or apparent conflict of interest. In cases where there may be a conflict of interest, employees are required to report in writing such conflict to the Procurement Manager, who shall document the conflict of interest and take appropriate action. Failure to make such disclosure is subject to discipline, up to and including termination of employment, as determined appropriate by SMART.

C. Ex Parte Communication

Suppliers or Supplier's representatives may not communicate orally with a Board Member, employee, officer, or agent of the District, with the exception of Procurement staff or the Disadvantaged Business Enterprise Liaison Officer (hereinafter "DBELO") regarding any solicitation until after a contract has been executed by the District. Suppliers and their representatives are not prohibited, however, from making oral statements or presentations in public to one or more representatives of the District during a public meeting.

In the context of a solicitation, an "ex parte communication" is any communication regarding the solicitation between a Supplier (or the Supplier's representative) and the District's General Manager, Board Member, officer,

employee or agent, regardless of who initiates the communication, other than as part of the procurement process before the District executes a contract, unless it is in writing and available for disclosure to the general public.

D. Confidential Information

No Board Member, employee, officer, or agent of the District shall use confidential information for his or her actual, anticipated, or apparent personal gain, or for the actual, anticipated, or apparent personal gain of any person related to such employee as such relationship is defined in this policy.

E. Discipline for Violation

The violation of any of these Standards of Conduct will subject the violator to any disciplinary proceedings or action deemed appropriate by SMART, up to and including termination of employment.

V. REFERENCES

- A. SMART Enabling Legislation (AB 2224)
- B. Administrative Code of the Sonoma-Marín Area Rail Transit District
- C. SMART Board-Adopted Conflict of Interest Code
- D. FTA Circular 4220.1F – Third Party Contracting Guidance
- E. 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards