

## Policies and Procedures No. 13

Board Approval: 6/26/2025

### SUBJECT:

CONFLICT OF INTEREST POLICY FOR CONSULTANTS AND CONTRACTORS

### PURPOSE:

To establish procedures regarding potential and actual conflicts of interest for consultants and contractors working on MTS projects, including design-build projects.

### POLICY:

- 13.1 Purpose. Local, state, and federal law include statutes, regulations, and rules that prohibit “conflicts of interest” to ensure that decisions are made impartially, based on organizational interests, and not influenced by personal interests or relationships of the employees or contractors hired to assist a public agency in making decisions. Disclosure of potential conflicts of interest is necessary to evaluate if the conflict can be mitigated by reasonable measures, or if the conflict would make an individual or entity ineligible to work on a particular contract for MTS.
- 13.2 Applicability. This policy applies to all consultants and contractors (referred to herein as a “firm”) that have entered into or wish to enter into contracts with MTS to perform services. This policy is supplemental to MTS’s Conflict of Interest Code and does not supersede or modify any requirements in that Conflict of Interest Code.
- 13.3 Policy Prohibiting Conflicts of Interest. A firm is eligible for award of contracts by MTS so long as the firm does not have an actual, potential, or apparent conflict of interest.

Conflicts of interest may be prohibited by statute (e.g. Government Code Section 1090 and the Political Reform Act) or by regulation (e.g. organizational conflicts of interest).

13.3.1 Statutory conflicts of interest arise when a firm participates in making an MTS contract in which it has a financial interest and no exceptions applies. Statutory conflicts of interest are governed by statute, as well as related case law and regulations.

13.3.2 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:

13.3.2.1 impairment or potential impairment of consultants' or contractors' ability to render impartial assistance or advice to MTS;

13.3.2.2 impairment or potential impairment of consultants' or contractors' objectivity in performing work for MTS;

13.3.2.3 an unfair competitive advantage for any proposer with respect to MTS's procurement (including, but not limited to, through access to nonpublic information or assisting MTS in the preparation of a Request for Qualifications (RFQ), Request for Information (RFI), Request for Proposals (RFP), Invitation for Bids (IFB), or the resultant contract); or a perception or appearance of impropriety or unfair competitive advantage with respect to any of MTS's procurements or contracts (irrespective of whether such perception is accurate).

13.4 Examples of Potential Conflicts of Interest. Prohibited conflicts of interest include, but are not limited to, the following situations:

13.4.1 *Design-Bid-Build Projects.* Any firm that provides design services for a project will be ineligible for award of a contract to construct the improvements which are the subject of the design services, unless otherwise permitted by law. This does not apply to a separate, follow-on contract to provide design services during construction for the subject project.

13.4.2 *Construction Management Services.*

13.4.2.1 Any firm that provides design services for a project will be ineligible for award of any contract to provide

construction management services for the specific project for which design services were provided unless otherwise permitted by law.

- 13.4.2.2 Any firm that provides construction management services for a project will be ineligible for award of a construction contract for which construction management services were or will be provided unless otherwise permitted by law.

#### 13.4.3 *Design-Build Projects.*

- 13.4.3.1 A firm that is or has acted as MTS's general engineering or architectural consultant for a design-build project.

- 13.4.3.1.1 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 design-build project may participate as a Proposer or join a design-build team if the Proposer terminates the agreement to provide work and provides no work for the District's general engineering or architectural consultant on the design-build project.

- 13.4.3.2 A firm has conducted preliminary design services for the design-build project such as conceptual layouts, preliminary design, or preparation of bridging documents.

- 13.4.3.3 A firm performed design work related to the design-build project for other stakeholders in the design-build project.

- 13.4.3.4 A firm performed design work on a previous contract that specifically excludes the firm from participating as a proposer or joining any design-build team for the design-build project.

#### 13.4.4 *Applicable to All Projects and Contracts.*

- 13.4.4.1 A firm has assisted or is assisting MTS in the management of the project or contract, including the preparation of the RFP, evaluation criteria, or any other aspect of the procurement.

13.4.4.2 A firm is under contract with any other entity or stakeholder to perform oversight of the project.

13.4.4.3 Any circumstances that would violate California Government Code Sections 1090 et seq. (contractual conflicts).

13.4.4.4 A firm that is or has acted as MTS's general engineering or architectural consultant shall not participate in the review and analysis of or render opinions regarding the firm's own work performed on an MTS project.

### 13.5 Other Conflict of Interest Rules.

13.5.1 MTS 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.

13.5.2 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 NEPA 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).)

### 13.6 Procedure for Identifying Potential Conflicts of Interest.

13.6.1 *Disclosure Obligations Prior to Contract Award.* During the solicitation or procurement process, firms having a conflict must immediately make a full written disclosure of the actual, perceived, or potential conflict to the contract administrator for the project, and shall have a continuing obligation to do so until they are no longer a proposer on the pending solicitation. If a firm determines that a potential conflict of interest exists, the firm's disclosure will not necessarily disqualify the firm from being awarded a contract. The firm shall submit proposed measures to avoid, neutralize, or mitigate all potential or actual conflicts. MTS, at its sole discretion, shall determine whether an actual or potential conflict of interest, or the appearance of any such conflict of interest, exists and whether the proposed measures are sufficient to overcome the actual,

perceived, or potential conflict and whether the firm may continue with the procurement process.

#### 13.6.2 *Disclosure Obligations After Contract Award.*

13.6.2.1 After a contract has been awarded, 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 conflict of interest is discovered after the contract has been awarded, the Contractor must make an immediate and full written disclosure to MTS that includes a description of the action that the Contractor has taken or proposes to take to avoid or mitigate the conflict. MTS, in its sole discretion, shall determine whether an actual or potential conflict of interest, or the appearance of any such 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, MTS 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.

13.6.2.2 If an actual, perceived, or potential conflict of interest is determined to exist and the Contractor was aware of the actual, perceived, or potential conflict of interest prior to award of the contract and did not disclose the conflict, MTS 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 MTS to be inadequate to protect MTS, MTS may terminate the contract. If the contract is terminated, MTS 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 MTS shall be entitled to pursue any and all appropriate legal remedies.

13.6.3 A "Notice of Potential for Conflict of Interest" shall be included within the procurement for services issued by MTS. The notice shall be the policy of the Board as listed herein. This policy shall be incorporated by reference into all contracts executed by MTS.

13.6.4 If there is any doubt by a firm regarding a potential conflict of interest for a specific project or function, MTS General Counsel will, upon written request, provide a written ruling.

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