



# Vendor Code of Ethics



New York City Transit  
Long Island Rail Road  
Metro-North Railroad  
Bridges and Tunnels  
Capital Construction  
Bus Company

## TABLE OF CONTENTS

Chapter 1: DEFINITIONS	2
Chapter 2: LIMITATIONS ON CONTACTS WITH THE MTA	3
Section 2.01 Designated Point(s) of Contact	3
Chapter 3: NON-COLLUSION	4
Section 3.01 Independent Bid Assessment	4
Section 3.02 Non-Communication of Bid	4
Section 3.03 Bid Submission	4
Chapter 4: GIFTS OR CONTINGENT FEES	4
Section 4.01 Zero Tolerance	4
Section 4.02 Personal Relationships	5
Section 4.03 Contingent Fees	5
Chapter 5: NEGOTIATIONS FOR FUTURE EMPLOYMENT	5
Section 5.01 General	5
Section 5.02 Restrictions	6
Chapter 6: CONFLICT OF INTEREST	7
Section 6.01 Financial Interest	7
Section 6.02 Disclosure and Cooperation	8
Chapter 7: FORMER MTA EMPLOYEES	8
Section 7.01 Appearance Before Former Agency-Two Year Bar	8
Section 7.02 Appearance Before Former Agency-Life Time Bar	8
Chapter 8: DISTRIBUTION AND CERTIFICATION	9
Section 8.01 Gift Certification	9
Section 8.02 Distribution of Vendor Code of Ethics & Vendor's Participating Employee Acknowledgements	9
Section 8.03 Vendor Certifications	9
Section 8.04 Subcontractor Certifications	10
Chapter 9: PENALTIES	11
Section 9.01 Responsibility Determination	11
Section 9.02 Civil/Criminal Penalties	11
Chapter 10: REPORTING OBLIGATION	11
Section 10.01 Reporting Gift Requests	11
Section 10.02 Reporting Material Changes	11

## Chapter 1: DEFINITIONS

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

**Contact** means any oral or written communication with any officer, member of the Board or other employee of the MTA, other than the Designated Point(s) 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 an MTA procurement.

**Designated Point(s) of Contact** means the individual(s) 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.

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

**Family Member** means (i) an MTA Employee's Spouse, Domestic Partner, Child or Sibling; (ii) a person who is a direct descendant (or the spouse of a direct descendant) of a Grandparent of the MTA Employee or a Grandparent of the MTA Employee's Spouse or Domestic Partner; or (iii) a person living in the same household as an MTA Employee.

**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.

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

Transportation Assurance Company, MTA Bridges and Tunnels and any future subsidiary or affiliated Agency.

**Participating Employee** means any Vendor employee who engages in any written or oral communication of a non-clerical or administrative nature with the MTA or with an MTA employee(s) as part of the procurement.

**Participating MTA Employee** means any MTA Employee who the Vendor knows, has reason to know, or can reasonably anticipate is involved in a specific procurement, in either a direct or decision-making capacity, but not in a clerical capacity. This includes but is not limited to the Designated Point of Contact, the project manager, the project manager's staff to the extent that they are involved in the procurement, members of selection committees, technical experts and negotiating teams.

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

**State Ethics Law** means New York State 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 Joint Commission on Public Ethics.

**State Procurement Lobbying Law** means New York State Finance Law Sections 139-j and 139-k, and the rules and regulations promulgated thereunder as may be amended or modified.

**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 suppliers at all lower tiers.

## **Chapter 2: LIMITATIONS AND REPORTING OF CONTACTS WITH THE MTA**

### **Section 2.01 Designated Point(s) of Contact**

Each procurement solicitation issued by MTA will identify the MTA's Designated Point(s) of Contact for that solicitation as required by the State

Procurement Lobbying Law. Once the Designated Point(s) of Contact is/are 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 State 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.

With regard to specific procurements, Vendors shall not discuss future employment with Participating MTA Employees from the date the procurement is advertised or solicited through the date that the procurement is awarded, even if an MTA Participating Employee contacts the Vendor regarding employment. Questions regarding whether a particular MTA employee is a Participating MTA Employee for a specific procurement should be directed to the Designated Point of Contact for the procurement.

## **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 manager's 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 Disclosure and 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 State 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.

### **Section 7.02 Appearance Before Former Agency-Life Time Bar**

Except as provided for in Section 73 of the State 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: DISTRIBUTION AND 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 and Vendor's Participating Employee Acknowledgements**

As a condition of being considered for the award of any contract above the MTA's small purchase threshold, the Vendor will be required to distribute copies of the MTA Vendor Code of Ethics to all Participating Employees prior to any of those employee's participation in the procurement. The Code may be distributed either in hard copy or electronically as a separate PDF.

Additionally, as a condition of being considered for the award of any contract above the MTA's small purchase threshold, the Vendor will be required to obtain an acknowledgement from each of its Participating Employees ("Participating Employee Acknowledgements") that they have received, read, understand, and will comply with the MTA Vendor Code of Ethics.

The Vendor's responsibility for distributing copies of the MTA Vendor Code of Ethics, obtaining such signed Participating Employee Acknowledgements, and retaining said acknowledgements is ongoing and shall last through the completion of performance of the contract.

Receipt and retention of Participating Employee Acknowledgments by the Vendor shall be subject to audit by the MTA.

### **Section 8.03 Vendor Certifications**

As a condition of being considered for the award of any contract above the MTA's small purchase threshold, the Vendor will be required to submit with its bid or proposal and include in its contract a further certification executed by an authorized official of that Vendor.

This certification must attest that:

- (a) The Vendor has been provided with a copy of the MTA Vendor Code of Ethics and will comply with all of the provisions of the Code;
- (b) All of its Participating Employees during the course of the procurement or contract have been provided with a copy of the MTA Vendor Code of Ethics prior to any of those employee's participation in the procurement;
- (c) All Participating Employees have completed the acknowledgement required by Section 8.02 of this Code;
- (d) The Vendor will retain all of the signed Participating Employee Acknowledgements through the completion of performance of the contract; and
- (e) The Vendor will continue to distribute the MTA Vendor Code of Ethics, obtain signed Participating Employee Acknowledgements as new Participating Employees are added or changed during the contract period, and retain all of the signed acknowledgements through the completion of performance of the contract.

#### **Section 8.04 Subcontractor Certifications**

As a condition of being considered for the award of any contract above the MTA's small purchase threshold, the Vendor will obtain certifications executed by authorized officials from all of its lower tier subcontractors, subconsultants and suppliers (as well as from any other subcontractors, subconsultants and suppliers from whom that Vendor is soliciting or has received proposals for work on an MTA contract) whose employees have communicated or may communicate with MTA employees. This obligation is ongoing and shall last through the completion of performance of the contract. Receipt and retention of lower tier certifications by the Vendor shall be subject to audit by the MTA.

## **Chapter 9: PENALTIES**

### **Section 9.01 Responsibility Determination**

For violation of any provision of the MTA 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 MTA 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 MTA's Chief Compliance Officer and senior procurement official of the MTA, 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 and representations made in the Contractor Responsibility Form.