LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

(LACMTA)

ORGANIZATIONAL CONFLICTS OF INTEREST POLICY

Section I - Overview

A. Purpose

This Organizational Conflicts of Interest (OCI) Policy prescribes ethical standards of conduct applicable to persons and entities entering into contracts with the Los Angeles County Metropolitan Transportation Authority (LACMTA) and applies to consultants, prime contractors as well as subcontractors at all tiers. This Policy applies to all LACMTA procurements, agreements, and contracts. This Policy is authorized under LACMTA Administrative Code and governs all OCI references contained in agency policies, contracts, and records.

B. Objective

The objective of an OCI analysis is to determine whether current or prior circumstances, activities, financial interests, access to information, opportunity to influence, relationships or contracts with a Business Entity (defined below) seeking to participate in a procurement process will cause the Business Entity to be precluded from further participation in the procurement process because of a determination that its current, proposed, or former role as a LACMTA contractor, consultant, subcontractor, or subconsultant results in, or may result in, an OCI. Typically, an OCI determination may not be made at the outset of a procurement because the Business Entity's role may not be known until the proposal or bid has been officially submitted to the LACMTA. This Policy has been developed to aid LACMTA and its potential contractors in better understanding how LACMTA makes OCI determinations.

This Policy neither attempts to address every situation that may arise in the context of LACMTA procurements and contracts, nor does it mandate a particular decision or determination by LACMTA. OCI determinations are an important aspect of public contracting, protecting the integrity, quality, and fairness of procurements and resultant work.

C. Definitions

1. **Business Entity** means a construction company, engineering firm, joint venture, consultant, legal firm, product vendor, nonprofit or volunteer group, and any business or entity seeking a contract or agreement, directly as a contractor, joint venture member or indirectly as a subcontractor, with LACMTA for the furnishing of goods, construction or general services.

2. **Contract** refers to the written agreement between Business Entities and LACMTA, (where the Business Entity is or was a prime contractor or member of a joint venture prime contract, or if the Business Entity was a subcontractor, the prime contract under which the Business Entity performed services), which establishes the level of involvement of the Business Entity in LACMTA business. The value of the contract is generally irrelevant for purposes of determining OCIs; it is the scope of work proposed, and the actual work currently or previously performed by the Business Entity that will be considered.

3. **Finding of an OCI** refers to the official determination of the OCI Review Panel upon the conclusion of the panel's review of the information gathered by the Contract Administrator (CA) and provided by the Business Entity.

4. **Interested Party/Parties** refers to the bidder/proposer whose bid/proposal includes the Business Entity, whether that Business Entity is a prime contractor, joint venture prime contractor, or subcontractor.

5. **Notice of Finding (NOF)** of a potential OCI refers to the written notice issued by the CA that a Business Entity has been found to have a real or apparent OCI and may not be permitted to continue participating in the procurement process on its own or as a member of a proposing or bidding team. The NOF will include a basis for the Review Panel's preliminary OCI determination.

6. **Organizational Conflict Of Interest (OCI)** occurs where, because of circumstances, activities, financial interests, relationships, or contracts, a Business Entity is unable, potentially unable, or could reasonably appear to be unable, to render impartial assistance or advice to LACMTA; the Business Entity's objectivity in performing the contract work is or might be impaired; or a Business Entity has, or could reasonably appear to have, an unfair competitive advantage as the result of having had prior access to information or an opportunity to influence agency actions. To eliminate a potential unfair competitive advantage, and in compliance with appropriate federal, state, and local authorities, a contractor that develops or assists in developing specifications, requirements, statements of work, invitation for bids, and/or request for proposals for a LACMTA procurement shall be excluded from competing for the resultant procurement unless otherwise permitted by law, rule, or policy.

LACMTA's responsibility for identifying, avoiding, and mitigating real or apparent OCIs is limited in scope and limited in time. Those duties are limited to understanding the nature of the future contract under the procurement and how it may relate to existing or past contracts and drafting the procurement documents.

The primary responsibility of identifying and disclosing OCIs is with Business Entities and Interested Parties. In that regard, to facilitate LACMTA's ability to identify and prevent OCIs, Business Entities and Interested Parties are responsible for completely disclosing all information relevant to LACMTA's evaluation of OCIs during the procurement process. In

the event there is a failure to disclose information relevant to a determination of an OCI, the Business Entity or Interested Party will be at fault for such failure and may be subject to disqualification and/or applicable sanctions or penalties governed by laws, and LACMTA codes or policies.

7. **OCI Review Panel** refers to those individuals that meet on an as-needed basis to review issues relating to the possible finding of OCIs and may include the CA overseeing the procurement process, one representative from Vendor/Contract Management which may be the CA, one representative from the project team(s) familiar with the Business Entity's current and/or former work activities, the Ethics Officer and/or their designee from the Ethics Department, and a representative from the Office of General Counsel. The OCI Review Panel is the only body within LACMTA that is authorized to make determinations of OCIs and will be the final administrative stage of review within the agency. Each person serving as a member of the OCI Review Panel shall be considered as acting within the course and scope of their employment, or under the terms and conditions of their contract with LACMTA for such service and shall be subject to all the protections available to public employees as set forth in the California Government Code.

8. **Recommendation for Review** refers to the request prepared by the CA and submitted to the Review Panel for its consideration, that based upon a review of the information available, a Business Entity may have a potential OCI.

D. Limitations of the OCI process

This process is limited to an analysis of the potential for OCIs and does not specifically address issues related to financial conflicts of interest, LACMTA Codes of Conduct, LACMTA Pre-Qualification, lobbying, or fundraising or political contribution matters. In addition, OCI determinations involving uniquely complex projects or procurements may limit the potential pool of proposing parties or teams. In those limited cases, the Ethics Officer under their sole discretion may waive the process, or aspects of the process, described in this Policy. Additionally, the prohibition against OCIs may be waived in writing by the administrative head of procurement for LACMTA together with the Ethics Officer. Such a waiver shall set forth the extent of the conflict and shall specify the exception that the administrative head of procurement together with the Ethics Officer has determined that application of this prohibition would not be in LACMTA's best interest.

E. Mitigation and Safeguards

LACMTA recognizes that agency goals must be balanced against the need to not unnecessarily restrict the pool of potential proposers or bidders available to participate in procurements and contracts. LACMTA may accept opportunities to apply safeguards or mitigation that will allow a Business Entity to participate despite an identified real or apparent OCI.

Therefore, LACMTA retains the ultimate and sole discretion to determine on a case-by-case basis whether an OCI exists and what actions may be appropriate to avoid or mitigate any OCI. If LACMTA, after considering relevant information, determines that a Business Entity should be permitted to participate in a particular procurement or contract, then LACMTA, in its sole discretion and absolute right, may require the Business Entity to implement suitable safeguards to mitigate any OCIs. This process may require the Business Entity to demonstrate appropriateness or effectiveness of safeguards or mitigation actions, be subjected to audits of proposed or implemented plans, and/or provide any other relevant information that LACMTA determines is necessary to avoid or mitigate an OCI.

F. Differentiation from a Finding of Pre-Qualification

This Policy does not relate in any way to the separate analysis involving the pre-qualification status of a Business Entity, which is conducted separately by LACMTA staff. A finding that a Business Entity is pre-qualified shall not affect or reflect upon, limit or preempt any OCI determination.

G. Pre-Procurement Lists of Conflicted Parties

As a general practice, LACMTA will not provide a list of parties deemed to have an OCI before procurement documents have been issued. However, in exceptional circumstances LACMTA may create a narrow list of conflicted parties in the procurement process. In that event, Business Entities and Interested Parties will be afforded the same opportunities to respond as described in Section III. The absence of any Business Entity from such a list shall not be intended as a representation that LACMTA believes such absent Business Entities are free from OCI determinations. LACMTA shall have sole discretion to determine whether such exceptional circumstances exist.

Section II - Contract Administrator

A. Role of the Contract Administrator

LACMTA assigns a CA to develop and manage each procurement for construction projects and procurement of goods and services. The CA is responsible for managing the procurement. In this role, the CA may identify a real or apparent OCI. During this review process, the CA may discover information submitted by the Business Entity, or by a LACMTA department that may give rise to a concern that continued participation by the Business Entity may result in a potential OCI which could prevent the Business Entity from participating in pursuit of the contract.

B. Recommendation for Review by Contract Administrator

If the CA's review discloses the existence of a potential OCI, the CA shall inform the Ethics Officer and/or their designee by detailing the basis for the potential OCI and recommending the convening of an OCI Review Panel.

Section III - OCI Review Panel Process

1. Upon receipt of a recommendation from a CA pursuant to Section II.B, the OCI Review Panel shall be convened for the purpose of reviewing all pertinent documentation and information.

2. If the OCI Review Panel's deliberations result in a finding that no OCI exists, the CA will document the fact there is no present OCI in the procurement file.

3. If the Review Panel makes a preliminary determination that an OCI may exist, the OCI Review Panel will direct the CA to prepare a NOF setting forth the basis for the potential finding, which shall be forwarded to the Business Entity. The CA shall also inform the Business Entity of its deadline to respond in writing to the NOF. Where the Business Entity is a member of a joint venture or part of a team as a subcontractor, the Interested Party shall also be provided with a copy of the NOF.

4. Any Business Entity that has been issued a NOF shall be given the opportunity to review and respond to the preliminary determination set forth in the NOF. A response must be submitted timely in writing, address only the issues raised in the NOF, and include all relevant supporting documentation. The Business Entity shall have 10 business days from the date of the NOF to submit a written response to the preliminary determination set forth in the NOF. The written response, together with all relevant documentation, shall be submitted to the CA at the address identified in the procurement documents.

This written response may (1) challenge the basis for the OCI identified in the NOF and/or (2) provide a proposed OCI mitigation plan. A mitigation plan must provide detailed information for addressing issues related to a conflicted Business Entity. The OCI Review Panel has the sole discretion to determine whether a mitigation effort can properly remedy an OCI. If the Review Panel approves a mitigation plan, the party proposing the accepted mitigation plan must comply with all applicable local, state or federal authorities. The mitigation plan will be subject to the guidance discussed in Section I.E.

5. Although a Business Entity found to have an OCI shall be responsible for submitting its own written response to the NOF, an Interested Party, as defined herein, may participate in the process on the same terms as described in Section III.4. The Interested Party shall also only address the issues identified in the NOF.

6. This review process is intended to cause the review to be completed in a timely manner, but such a review shall not unreasonably delay the affected procurement. The Review

Panel shall apply its independent judgment regarding the determination of whether (1) the Business Entity has provided sufficient information to overcome the preliminary determination that an OCI exists and/or (2) provided an acceptable mitigation plan. The Review Panel will review all timely submitted written materials presented by a Business Entity, along with any timely submitted written materials presented by an Interested Party. The Review Panel may ask for more information from the CA, the Business Entity, and/or the Interested Party. Upon completion of its review and deliberations, the Review Panel shall issue a written determination. The written determination shall be issued no later than 28 calendar days after receipt of a written response to the NOF. The written determination will either uphold the preliminary determination discussed in the NOF, reject it based upon the information received from the Business Entity in response to the NOF, or reject it in part based upon a mitigation plan received from the Business Entity.

If such written determination upholds the preliminary determination, the Business Entity and/or Interested Party may, within 5 business days, request a hearing before the OCI Review Panel concerning the written determination. Such hearings will only address the issues raised in the NOF and the subsequent written determination. The Review Panel shall, within 10 business days of a hearing request, provide the requesting party with a hearing date. Following the hearing, the Ethics Officer shall issue a final written determination within 10 business days after consultation with the Review Panel.

7. If a Business Entity or Interested Party, which has been served with an NOF, fails to file a timely written response under this Policy, the preliminary determination shall become final, and the Business Entity shall be deemed disqualified from participation in the procurement process.

8. The determination of the OCI Review Panel is the final determination of LACMTA. The Business Entity or Interested Party may seek judicial review of that determination in the Los Angeles County Superior Court. The appropriate party respondent in any such action shall be LACMTA and not the individual members of the Review Panel, the CA, or any other LACMTA officer, employee, contractor, consultant, agent or representative.