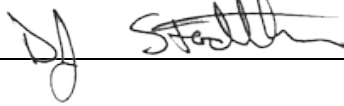




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APPROVED: 	DJ Stadler Executive Director
	Policy Version: 1

ORGANIZATIONAL CONFLICT OF INTEREST POLICY

1.0 PURPOSE

This Organizational Conflict of Interest Policy (“Policy”) prescribes ethical standards of conduct applicable to transactions undertaken by the Virginia Passenger Rail Authority (“VPRA”) as authorized by Va. Code § 33.2-287 *et seq.*, and applies to prime Contractors, Consultants, Affiliates, and subcontractors at all tiers.

This Policy is intended to accomplish the following goals:

1. Promote integrity, transparency, competitiveness and fairness in VPRA’s procurements and contracts;
2. Prevent bidders and proposers from obtaining or appearing to obtain an unfair competitive advantage with respect to VPRA’s procurements and contracts;
3. Provide guidance to enable Contractors to make informed decisions while conducting business with VPRA; and
4. Protect the validity of VPRA procurements, contracts, confidential and sensitive information concerning VPRA projects, and other VPRA interests.

VPRA recognizes that its goals must be balanced against the need to not unnecessarily restrict the pool of potential offerors available to participate in VPRA procurements and contracts. This Policy neither purports to address every situation that may arise in the context of VPRA’s procurements and contracts, nor to mandate a particular decision or determination by VPRA. VPRA retains the ultimate and sole discretion to determine on a case-by-case basis whether an Organizational Conflict of Interest (as defined below) exists and what actions may be appropriate to avoid, neutralize, or mitigate any actual or potential Organizational Conflict of Interest or the appearance of any such Organizational Conflict of Interest.

This Policy does not address all applicable requirements that may affect persons and entities wishing to enter contracts with VPRA or define each and every circumstance which will give rise to an Organizational Conflict of Interest. Nothing contained in this Policy is intended to limit, modify, or otherwise alter the applicability or effect of other relevant (federal, state, and local) laws to include the Virginia *State and Local Government Conflict of Interests Act* (Va. Code § 2.2-3100 *et seq.*). All such laws, rules, and regulations shall apply in their normal manner irrespective of this Policy.

2.0 DEFINITIONS

2.1 An “**Affiliate**” of a Contractor/Consultant is:

1. any shareholder, member, partner, or joint venture member of the Contractor;

2. any person or entity which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, the Contractor or any of its shareholders, members, partners, or joint venture members;
3. any entity for which ten (10) percent or more of the equity interest in such entity is held directly or indirectly, beneficially, or of record by;
 - a. the Contractor,
 - b. any of the members, partners, or joint venture members of the Contractor; and
4. any entity for which ten (10) percent or more of the equity interest in such entity is held directly or indirectly, beneficially or of record by any of Contractor's shareholders other than shareholders whose only interest in Contractor is in the form of publicly traded stock.

For the purposes of this definition, the term "control," shall mean the possession, directly or indirectly, of the power to cause the direction of the management of an entity, whether through voting securities, by contract, family relationship or otherwise.

- 2.2 **"Contractor"** means any individual or legal entity and their Affiliates retained by VPRA to perform work on any VPRA Project, or proposing to perform such work, including joint venture members and general partners of any such entity; any subcontractor of such individual or legal entity (at all tiers); and each individual employee of such individual, legal entity or subcontractor. The term "Contractor" includes "Consultants" and the term "subcontractor" includes "subconsultants."
- 2.3 **"Consultant"** means a Contractor performing or proposing to perform advisory, assessment, design, planning, architectural/engineering, surveying, program development/oversight, and/or management-related services on VPRA Projects. For the avoidance of doubt, the term includes but is not limited to, Professional Services as that term is defined within the *Virginia Passenger Rail Authority Procurement Rules*.
- 2.4 **"FRA"** means the Federal Railroad Administration.
- 2.5 **"FTA"** means the Federal Transit Administration.
- 2.6 **"Organizational Conflict(s) of Interest"** means a circumstance arising out of a Contractor's existing or past activities, business or financial interests, familial relationships, contractual relationships, and/or organizational structure (i.e., parent entities, subsidiaries, Affiliates, etc.) that results or would result in:
 1. impairment or potential impairment of a Contractor's ability to render impartial assistance or advice to VPRA or of its objectivity in performing work for VPRA;
 2. an unfair competitive advantage for any Contractor bidding or proposing on a VPRA procurement; or
 3. a perception of appearance of impropriety with respect to any of VPRA's procurement or contracts or a perception or appearance of unfair competitive advantage with respect to a procurement by VPRA, regardless of whether any such perception is accurate.
- 2.7 **"Procurement Services"** mean services provided by a Contractor for the benefit of VPRA relating to any or all of the following:

1. development of procurement strategy and/or approach to risk allocation;
 2. development and preparation of procurement documents including requests for qualifications; requests for proposal; invitations to bid; designs, layouts, and technical specifications; and other items to be incorporated into the contract documents, but excluding provision of low level documentation and/or services which are not material to the procurement;
 3. development of evaluation criteria, processes, or procedures;
 4. administration of procurement;
 5. evaluation of procurement submittals by Contractors (e.g., qualification submittals, proposals, etc.);
 6. negotiation of a contract; and
 7. advising VPRA in any other aspect of the procurement that VPRA determines, in its sole discretion, should be considered Procurement Services.
- 2.8 **“VPRA Project”** means work procured and undertaken by VPRA, including, but not limited to, initiatives under the “Transforming Rail in Virginia” program.

3.0 APPLICABILITY

- 3.1 This Policy applies to all Contractors that have entered into, or wish to enter into, contracts with VPRA.
- 3.2 To the extent that VPRA has previously consented in writing to performance of work by a Contractor that would not have been permitted under this Policy, adoption of this Policy does not modify or alter the prior consent. The foregoing does not, however, mean that VPRA is required to consent to Contractor’s participation in future proposals or contracts and shall, under no circumstance, constitute grounds under which a Contractor may assert that no Organizational Conflict of Interest exists on such future proposals or contracts.

4.0 FEDERAL REQUIREMENTS

- 4.1 VPRA must comply with requirements applicable to FRA and FTA funded projects, including United States Department of Transportation regulations applicable to federally funded procurements and contracts set forth in 49 C.F.R. Part 18. Nothing in this Policy is intended to limit, modify, supersede, or otherwise alter the effect of other relevant federal, state, or local regulations, statutes or rules.

5.0 ORGANIZATIONAL CONFLICT OF INTEREST DISCLOSURE

- 5.1 *Obligation to Disclose.*
 1. Subject to the written requirements established for a particular VPRA Project, any Contractor having or potentially having an Organizational Conflict of Interest shall promptly disclose the matter to VPRA via electronic mail at procurement@vpra.virginia.gov.
 2. The disclosure should contain a detailed description of (i) the facts and circumstances giving rise to the actual or potential Organizational Conflict of Interest; and (ii) any efforts the Contractor has taken or proposes to take to mitigate the conflict. The procurement documents or contract may provide supplemental

requirements regarding disclosures. The failure to disclose any actual, perceived or potential Organizational Conflict of Interest may result in serious consequences to the Contractor, including cancelation of a contract and/or termination of the Contractor on a VPRA Project.

3. An Organizational Conflict of Interest may arise at any time, and a Contractor's obligation to disclose is ongoing. Contractors participating in contracts with VPRA and bidding/proposing on VPRA Projects shall use all reasonable efforts to arrange their affairs so as to prevent Organizational Conflicts of Interest from arising. Contractors should undertake reasonable due diligence, including conflict searches, to determine whether new actual, perceived or potential Organizational Conflicts of Interest have arisen. Each Contractor shall consider whether disclosure is required in connection with new hires, changes in the company's board of directors, mergers, and new business relationships including joint ventures and Contractor/subcontractor relationships.

5.2 *Request for Determination.*

1. To the extent a potential offeror is unclear as to whether an actual, potential, or perceived Organizational Conflict of Interest exists, it should promptly request a written determination from VPRA via electronic mail at procurement@vpra.virginia.gov.
2. The request shall specify the underlying facts from which a conflict of interest might potentially arise, and propose measures to avoid, neutralize or mitigate any resulting conflict of interest. To facilitate VPRA's determination, documents and any other relevant material may be submitted to support the request.
3. Wherever possible, the request shall be submitted not less than fifteen (15) days prior to the due date for submittals on any pending procurement involving a VPRA Project.

6.0 CONFLICT OF INTEREST STANDARDS

- 6.1 In determining if an actual or perceived Organizational Conflict of Interest exists, VPRA will consider all relevant Organizational Conflict of Interest factors to ascertain whether participation by the Contractor on a VPRA Project will either (i) result in an unfair competitive advantage for the Contractor (or appearance thereof); or (ii) impair the Contractor's objectivity in performing contract work for VPRA.
- 6.2 VPRA will follow 48 C.F.R. § 9.5 "Organizational Conflicts of Interest," and relevant caselaw, when rendering decisions in accordance with this Policy. Where available, VPRA may also consider official guidance issued by state and federal bodies.
- 6.3 Except as provided under the provisions of this Policy, Contractors who assist (or who, pursuant to an open contract, remain available to assist) VPRA with Procurement Services on a specific VPRA Project or who otherwise are involved in advising VPRA regarding risk factors on a specific VPRA Project will not be allowed to participate as an offeror or join a team submitting a proposal in response to any follow-on procurement involving that same VPRA Project.
- 6.4 Except as provided under the provisions of this Policy, Contractors who provide (or who, pursuant to an open contract, remain available to provide) program and/or project management services to VPRA will not be able to participate as an offeror or join a team submitting a proposed in response to any VPRA Project on which they may be required to evaluate their own performance or that of a fellow team member on a VPRA Project.

- 6.5 In certain cases, the Contractor may be considered to have performed work on a VPRA Project because of overlapping limits, interfaces or coordination efforts between VPRA Projects, or because the Contractor provided general services to VPRA. Under such circumstances where the contract is providing professional or consulting services for a different VPRA Project, the Contractor holds a duty to disclose the relationship in accordance with Section 5 before it may submit or participate in a proposal. VPRA shall have sole discretion and decision-making authority over whether any current or previous relationship with VPRA creates an actual or perceived Organizational Conflict of Interest.
- 6.6 VPRA may determine there is not an Organizational Conflict of Interest where:
1. the role of the Contractor was de minimis in nature (i.e. not material to the procurement at issue) and provided the Contractor was not otherwise involved in furnishing Procurement Services to VPRA on the procurement at issue;
 2. to the extent feasible, the information possessed or otherwise accessible to the Contractor can be made available to all offerors in a timely manner (i.e., without causing prejudice to the other offerors), including documents and reports prepared by the Contractor pursuant to its contract with VPRA;
 3. the Contractor has not discussed any aspect of the VPRA Project at issue with, or obtained any advice from any other Contractor determined to have an Organizational Conflict of Interest on the VPRA Project at issue; or
 4. the information possessed or otherwise accessible to the Contractor is stale or is already in the public domain.

7.0 SAFEGUARDS AND MITIGATION EFFORTS

- 7.1 Should either an actual or perceived Organizational Conflict of Interest exist, VPRA may, in its sole discretion, consider allowing a Contractor to participate in a VPRA Project after the Contractor has implemented suitable safeguards to mitigate any Organizational Conflict of Interest.
- 7.2 VPRA retains the ultimate and sole discretion to determine on a case-by-case basis if safeguards and mitigation efforts should be permitted to allow a Contractor to participate in a VPRA Project, and what actions to avoid, neutralize, or mitigate any actual, potential, or perceived Organizational Conflict of Interest is required.
- 7.3 The allowance of safeguards or mitigation strategies on a particular VPRA Project should not be construed to mean that such measures will be deemed permissible on another VPRA Project.

8.0 CONFLICT DETERMINATIONS; REVIEW PROCEDURES

- 8.1 The Director of Procurement (“DOP”) will review Organizational Conflicts of Interest related to VPRA Projects. A review may be undertaken upon disclosure or request for determination by a Contractor or upon the DOP’s independent finding that such review is merited. The Contractor shall have a duty to cooperate in the DOP’s investigation and to provide such information and documentation as may be requested by the DOP.
- 8.2 The DOP shall make a written determination whether he/she believes the actual, potential, or perceived Organizational Conflict of Interest exists and whether the proposed measures can effectively avoid, neutralize or mitigate any unfair competitive advantage. The DOP will also take into consideration whether the exclusion of the Contractor would limit the number of potential qualified Proposers in a manner contrary to the best interests of the VPRA.

- 8.3 If the DOP determines that an Organizational Conflict of Interest exists and cannot be effectively neutralized or mitigated, the potential offeror will not be allowed to participate as a team member in response to the RFQ or RFP solicitation absent an express waiver of the Organizational Conflict of Interest by the DOP upon a finding that such waiver is in the best interest of the VPRA. Failure to abide by the DOP's determination may result in a proposal being declared non-responsive.
- 8.4 The DOP's determination may be appealed once to the Chief Operating Officer ("COO") within ten (10) calendar days of receipt the DOP's determination. Within fifteen (15) days after receipt of a timely appeal of the DOP's determination, the COO shall issue a written decision of the action taken. As with the DOP, the COO shall have the authority to waive an Organizational Conflict of Interest when found to be in the best interest of the VPRA. The COO's decision will be considered final.

9.0 APPLICATION OF POLICY TO CONTRACTOR EMPLOYEES

- 9.1 If VPRA determines that a potential or actual Organizational Conflict of Interest exists for a particular Contractor, an Organizational Conflict of Interest shall also be considered to apply to any employee as such Contractor that has participated in a material way in the performance of work giving rise to the determination. If such individual leaves the Contractor's employment, the potential or actual Organizational Conflict of Interest shall apply to such individual in the same manner as it applies to the Contractor.

10.0 MODIFICATION OF CONFLICT OF INTEREST DETERMINATIONS

- 10.1 Notwithstanding the provisions of Section 8, the DOP and/or COO may subsequently modify their determination as to an Organizational Conflict of Interest in the event there is change in factual circumstances or the extent either or both obtains information that contradicts representations that a Contractor made in connection with an Organizational Conflict of Interest determination.

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