MICHIGAN INFRASTRUCTURE AND TRANSPORTATION ASSOCIATION ANTITRUST COMPLIANCE POLICY

---THIS POLICY IS APPLICABLE TO ALL MITA EVENTS AND ACTIVITIES---

1.0 MITA ANTITRUST COMPLIANCE POLICY

It is the policy of Michigan Infrastructure and Transportation Association ("MITA") to comply with all applicable laws, including the antitrust laws. All member company representatives and the MITA staff must be sensitive to the unique legal issues involving trade associations and take the necessary steps to comply with U.S. federal and state antitrust laws and similar foreign competition laws. MITA recognizes the potentially severe consequences of failing to comply with the antitrust laws.

The antitrust laws are intended to foster and to protect competition, which benefits consumers. Competition leads to lower prices, higher quality, and increased output of goods and services. Associations like MITA can promote competition by engaging in a variety of activities, including educating the public, conveying information to the government, and collecting and disseminating certain information about the industries in which they operate. MITA, in fact, actively promotes the exchange of ideas and developments in the heavy civil construction industry throughout Michigan to foster competition among industry participants. For example, MITA vigorously challenges public owner bidding rules that contravene competitive bidding principles in order to maximize competition for public works projects. However, MITA recognizes group activities among competitors – such as those conducted by trade associations – often bring competitors together in person and through information sharing raise the suspicions of enforcement agencies that competitors might agree to engage in behavior that hurts consumers. Consequently, MITA works to ensure that the association is not misused as a vehicle for anti-competitive agreements or activities regarding prices, boycotts, exclusion of firms from the market, or other unlawful activities. For this reason, MITA has developed this Antitrust Compliance Policy ("Policy") to provide a general overview of antitrust laws and specific guidelines to assist MITA and its members conduct activities in conformity with antitrust laws.

The summary of antitrust law presented in this Policy is intended to highlight issues that commonly arise in a trade association context. The text of this Policy is not a comprehensive discussion of the antitrust laws. Compliance with U.S. and individual state laws can be challenging because of the fact-specific nature of antitrust analysis and the broad wording of the statutes. Members are encouraged to discuss member-specific matters with their own counsel.

2.0 ANTITRUST VIOLATIONS CAN HAVE SEVERE CONSEQUENCES

Violations of the antitrust laws can have very serious consequences for MITA, its members, and their employees.

2.1 Criminal Penalties

Antitrust violations of the Sherman Act may be prosecuted as felonies and are punishable by large fines and imprisonment. Individuals can be fined up to $1 million and sentenced to up to 10 years in federal prison for each offense, and corporations can be fined up

to $100 million for each offense. Prosecutors are skillful in drafting multi-count charges to maximize the number of alleged offenses. Under some circumstances, the maximum fines can be set at twice the gain or loss involved, which makes potential fines unlimited and not bound by the Sherman Act maximums. The events that give rise to an antitrust violation often provide the basis for other charges, such as wire fraud, mail fraud, and making false statements to the government. Those charges, if proven, carry additional penalties.

The possible consequences of a criminal antitrust violation for an association or corporation include: exposure to follow-on civil treble damages suits; exposure to enforcement actions in other jurisdictions or countries; disruption of normal business activities; and the expense of defending investigations and lawsuits. The possible consequences for an individual who commits an antitrust violation include: imprisonment; loss of employment and benefits; loss of community status and reputation; loss of future employment opportunities; and exposure to litigation.

2.2 Civil Penalties

While criminal actions can only be brought by the federal and state governments, civil cases can be initiated by individuals, companies, and government officials. They can seek to recover three times the amount of the actual damages, plus attorney's fees. Even unfounded law suits can be a significant drain on association and membership confidence, financial and human resources, and an unproductive distraction from the association's mission. For these reasons, MITA strives to avoid even the appearance of impropriety in all of its dealings and activities.

3.0 Basic Antitrust Principles And Prohibited Practices

3.1 Antitrust Statutes

The principal federal antitrust laws that are applicable to trade associations are the:

- Sherman Act, which prohibits "every contract, combination . . . or conspiracy" in restraint of trade, as well as monopolizing, attempting to monopolize, or conspiring to monopolize any part of trade or commerce; and
- Federal Trade Commission Act, which prohibits "unfair methods of competition" and "unfair or deceptive acts or practices" in or affecting commerce.

In addition to these federal statutes, most states have enacted comparable laws. For instance, Michigan adopted the Michigan Antitrust Reform Act in 1984. Many other nations, including major U.S. trading partners, now have their own antitrust or competition laws.

3.2 **Hard-Core Offenses** (Criminal Prosecution Likely)

Certain antitrust violations are sometimes referred to as hard-core or *per se* offenses. Conduct that falls in this category is presumed to be illegal by the courts and the absence of any actual harm to competition will not be a defense. Conspiracies falling in the hard-core category are likely to be prosecuted as criminal offenses, and include:

3.2.1 Price-fixing agreements

Agreements or understandings among competitors (or potential competitors) directly or indirectly to fix, alter, peg, stabilize, standardize, or otherwise regulate the prices paid by customers are automatically illegal under the Sherman Act (illegal *per se*). An agreement

among buyers fixing the price they will pay for a product or service is likewise unlawful. Price is defined broadly to include all price-related terms, including discounts, rebates, commissions, and credit terms. Agreements among competitors to fix, restrict, or limit the amount of product that is produced, sold or purchased, or the amount or type of services provided, may be treated the same as price-fixing agreements.

3.2.2 Bid-rigging agreements

Agreements or understandings among competitors (or potential competitors) on any method by which prices or bids will be determined, submitted, or awarded are illegal *per se*. They include: rotating bids; agreements regarding who will bid or not bid; agreements establishing who will bid to particular customers; agreements establishing who will bid on specific assets or contracts; agreements regarding who will bid high and who will bid low; agreements that establish the prices firms will bid; and exchanging or advance signaling of the prices or other terms of bids.

3.2.3 Market or customer allocation agreements

Agreements or understandings among competitors (or potential competitors) to allocate or divide markets, territories, or customers are always illegal *per se*.

3.2.4 Group boycotts

An agreement with competitors, suppliers, or customers not to do business with another party may be found illegal as a boycott or "concerted refusal to deal." These agreements or activities are considered *per se* violations in certain instances. Agreements or collective action to refuse to deal with certain suppliers, customers, or other competitors, or to undertake actions that tend to exclude certain participants from the marketplace or deny them access to a significant competitive benefit available to others in the market are prohibited. Before the *per se* rule is applied, however, several factors are considered, such as whether the activity was undertaken for an anticompetitive purpose, whether the group possesses market power, and whether it holds exclusive or unique access to a business element necessary for effective competition.

In the trade association context, group boycott issues may arise in relation to membership or exhibition restrictions, or in disciplinary or expulsion action against members. Because these situations must be analyzed closely in accordance with strictly defined legal guidelines, counsel should be notified prior to MITA's consideration of any of these actions. Moreover, MITA committees, boards and members shall only discuss membership inclusion or expulsion during formal meetings with the participation of executive staff and/or counsel present.

3.3 Sensitive Activities

For most other activities, the prohibitions of the Sherman Act do not apply *per* se and extend only to agreements and transactions that are found to be unreasonable restrictions on competition. Therefore, enforcement agencies and courts examine the "reasonableness" of the restraint involved in light of all the relevant circumstances. In applying this "Rule of Reason" to alleged anticompetitive business activities, the enforcement agencies and courts conduct an extensive economic analysis of the alleged restraint on trade, the business context in which it arose, its purpose and probable anticompetitive effects, and the business or economic justification for the restraint.

Though usually not subject to criminal prosecution, there are other activities that invite close antitrust scrutiny by enforcement authorities and private plaintiffs. These activities include:

3.3.1 Standards Development and Certification

Trade association standard development and certification programs generally are pro-competitive and lawful. Antitrust problems can arise, if standards, certification programs, or codes of ethics are used as a device for fixing prices, restraining output, chilling innovation, or having the effect of boycotting or unreasonably excluding competitors from the market.

(a) Trade associations often to draft materials for submission to standards development organizations, such as ASTM International or the American National Standards Institute (ANSI), who then complete the necessary standards development and promulgation process. MITA does not draft materials for private standard-setting organizations. However, the Michigan Department of Transportation periodically issues standard specifications for construction that identify basic requirements governing the materials, equipment and methods used in construction contracts administered by the Department. MITA contributes suggestions and analysis to the Department committees that develop these standard specifications. Whenever MITA is involved in that process, Executive Board and MITA counsel participate in the meetings with Department of Transportation officials to recommend measures that promote sound and reasonable construction practices and economic efficiency, and as such produce superior roadways for the public's use and benefit. At no time will the purpose of MITA's contributions to the Department's adoption of standard specifications be to unreasonably restrict competition, restrain price or quality competition, limit output of products or services, or discouraging innovation.

(b) From time to time, MITA operates certification programs to assist members in meeting bidding and contracting criteria that owners of public works projects require in contract specifications (e.g., confined space, hazardous waste removal, and storm water operator certifications). While MITA provides these programs to its members, there are other certification programs available to nonmembers from other sources and agencies – certification is not exclusive to MITA members and is not a condition of membership. Nonetheless, each certification program must be approved by the MITA Executive Board.

(c) Presently, MITA has not adopted a code of ethics or acceptable business practices. To be legally acceptable, such codes must meet certain criteria. For example, any member charged with violating an ethical standard must be given due notice and an opportunity for a hearing before the association imposes sanctions. Based on these and other considerations, any proposed code of ethics or business practices, and funding support for the administration of such programs must be presented to and approved in advance by the MITA Executive Board.

3.3.2 Statistical Programs

In addition to the issues described above, other antitrust problems may arise where trade association activities are undertaken which may have anticompetitive effects on non-members. Particular guidelines must be followed before undertaking any association project, such as an industry survey or other statistical program, or petitioning industry or government

organizations on matters that may have a competitive impact on non-members. MITA does not presently undertake statistical programs. If it should elect to do so in the future, it shall consult with counsel before discussing or planning these programs.

Statistical programs are typically reviewed under a Rule of Reason analysis, meaning a careful examination of all the circumstances to determine whether the statistical program fosters or facilitates anticompetitive conduct, such as unlawful limits on sales or production. The following guidelines are intended to frame the parameters within which MITA will conduct statistical programs, if ever undertaken, but are not an exhaustive treatment.

(a) All MITA statistical programs shall be reviewed and approved in advance by the Executive Vice President.

(b) Requests for statistical program authorization shall include the purposes and uses of the program.

(c) All company data shall be collected on a strictly confidential basis.

(d) Industry members shall not collectively discuss data input to the survey.

(e) Only aggregated data will be reported. No aggregated data shall be reported when the limited number of participants or market share dominance of any one company would enable companies to determine the market share of competitors.

(f) MITA statistical programs shall not include forecasting future market performance due to the antitrust sensitivity of such projections.

(g) Data on market trends shall be based on historical data and should reflect the survey preparers' professional judgment based on that historical data.

(h) Statistical program participants shall not be asked to provide specific projections for future prices, market share, production capacity or similar information. A general discussion on a one-to-one basis with the survey preparer on company plans that may affect various market segments is permissible.

(i) A carefully implemented document retention program shall be followed to limit the retention time of sensitive company data and records after completion of the project, e.g., reporting of results; however, documents may be retained when needed to validate future submittals consistent with good statistical program management practices.

(j) While final reports may be made more readily available to participating companies, no business with a legitimate commercial interest should be denied reasonable access to the information unless they declined to participate in the statistical program.

(k) In contrast to statistical programs, surveys may be conducted to take a snapshot related to a topic of interest. Some survey topics, such as product formulation information or facility equipment, while providing critical insights to the industry that may help regulatory agencies or industry participants, could be mischaracterized as anti-competitive. Thus, it is important to include within the survey an explanation of its purpose. Surveys should be appropriately cleared by the MITA Executive Board.

3.3.3 Exclusionary membership criteria

MITA's membership criteria are broadly inclusive of all segments of the heavy civil construction industry.

3.4 Other Activities

(a) Lobbying: While MITA's right to lobby government officials and agencies is subject to First Amendment protections, lobbying activities will be undertaken by MITA only by MITA's President or an authorized Vice President after approval by MITA's Executive Board.

4.0 Guidelines for MITA Meetings and Functions

Association meetings, conference calls, and other activities often bring competitors together. Although these functions generally are lawful and pro-competitive, they can provide opportunities to reach unlawful agreements. Because an antitrust violation does not require proof of a formal agreement, a discussion among competitors of a sensitive topic, such as a price increase, followed by common action of those present, could be enough to convince a jury of an unlawful agreement.

In light of the costs involved in defending antitrust claims, even when they are without merit, it is necessary to conduct MITA meetings in a manner that avoids even the appearance of improper conduct. Generally, the best way to accomplish this is by following regular procedures and avoiding competitively sensitive topics.

4.1 Meetings

(a) Written agenda will be prepared and distributed in advance. If circumstances do not permit the preparation and distribution of written agenda, the staff member attending the meeting will assist the person chairing the meeting to set or clarify the agenda at the start of the meeting. Agenda will not include any subjects that are identified in this Policy as improper for consideration or discussion. A copy of MITA's "Antitrust Reminders and Meeting Guidelines" will be printed on the back of agenda or separately provided to meeting attendees. Staff is reminded to include the "Antitrust Reminders and Meeting Guidelines" with agenda sent by electronic mail, posted on a Web site, or distributed by any other method.

(b) An antitrust reminder should be part of the agenda and be made at the beginning of the meeting.

(c) A chair or moderator should be identified before the meeting or at the start of the meeting.

(d) MITA staff or counsel shall be advised of and be present at all MITA meetings, including conference calls and other electronic and Web-based gatherings. This Policy ensures that a person familiar with this Policy is present. In addition, the presence of staff or counsel helps counter or avoid possible insinuations arising from competitors meeting privately. While many meetings are largely technical or regulatory sessions that do not raise sensitive antitrust topics, MITA endeavors to take appropriate steps to avoid entanglement of MITA or its members in antitrust allegations. This conservative approach has demonstrated its proven

value repeatedly during MITA's (and its predecessor associations) long and active history.

(e) Meetings should follow the written agenda and not depart from the agenda except for legitimate reason, which should be recorded in the minutes. Discussion should focus on objective information.

(f) Accurate minutes should be prepared. The minutes should include the time and place of the meeting, a list of all individuals present and their affiliations, a list or description of matters discussed, actions taken with a summary of the reasons therefore, and a record of any votes taken.

(g) Because of their sensitive nature, certain topics will **not** be discussed at MITA meetings unless otherwise advised by legal counsel. Off-limit topics include:

(i) prices, pricing methods, or terms or conditions of sale;

(ii) pricing practices or strategies, including methods, timing, or implementation of price changes;

(iii) discounts, rebates, service charges, or other terms and conditions of purchase and sale;

(iv) price advertising;

(v) what constitutes a fair, appropriate, or "rational" price or profit margin;

(vi) whether to do business with certain suppliers, customers, or competitors;

(vii) complaints about the business practices of individual firms;

(viii) the validity of any patent or the terms of a patent license;

(ix) confidential company plans regarding future product or service offerings; and

(x) any ongoing litigation.

4.2 Meeting Presentations

MITA staff shall discuss the topics or content of presentations with speakers before a meeting and request a copy of any material the speaker intends to distribute at the meeting. Staff should strive to inform speakers of this Policy well in advance of the meeting date so that speakers have adequate time to review the Policy in developing their presentations.

4.3 Social Events & Electronic Gatherings

MITA's policy to comply with the antitrust laws includes social events, such as dinners and receptions, as well as electronic gatherings, such as conference calls, Web-based gatherings or similar events. Participants in social events or electronic gatherings should not raise material that is sensitive from an antitrust perspective. This includes information concerning prices, pricing practices, discounts, or other terms or conditions of sale, and other matters described in this Policy. Similarly, participants should not communicate information concerning market shares, salaries, costs, sales territories, profit margins, or other statements that could be construed as encouraging the selection or rejection of customers or suppliers. MITA does not endorse the proprietary products or processes of any company.

5.0 Document and E-Mail Guidelines

Many antitrust investigations and lawsuits are fueled by poorly phrased or exaggerated statements in internal documents, especially in e-mail. Common sense should be used when composing documents and e-mail. No matter how informal or private a communication is intended to be, it must be assumed that anything written in a document or e-mail is potentially discoverable in an investigation or lawsuit. As a general rule, nothing should be put in writing that you would not want read aloud to a prosecutor, plaintiff's lawyer, jury composed of people who know nothing about you or your business, or a news reporter.

Examples of statements that should be avoided:

(a) Language suggesting guilt (such as "read and destroy").

(b) Words of aggression or competitive exclusion (such as "dominate the market," "kill the competition" or "get rid of the discounters").

6.0 Executive Responsibilities

The President has the responsibility to oversee the implementation of MITA's Antitrust Compliance Policy. The Executive Vice President is responsible for day-to-day management and implementation and related administrative functions, such as oversight of MITA's document management program. Supportive guidance for MITA employees can be found in MITA policies for E-Mail Usage, Internet Access and Information Technology General Usage.

7.0 Training

This Policy shall be included in the MITA employee manual. All staff members will receive a copy of this Policy as part of their initial orientation and sign an acknowledgement that they have read it and have been given an opportunity to ask questions. In addition, staff members should attend an antitrust orientation session presented by MITA's counsel.

A copy of this Policy shall also be available to members through the MITA Website. The orientation for new MITA Directors and Officers will include a presentation on antitrust compliance and member responsibilities.

8.0 Compliance Review and Internal Enforcement

Questions or concerns with potential noncompliance should be sent promptly to the Executive Vice President or, if the Executive Vice President is not available, the President. If there is sufficient reason to believe that an antitrust violation may have been committed, a review will be undertaken promptly. If an instance of questionable conduct is presented, the Executive Vice President will consult with MITA's counsel promptly to determine whether an internal investigation is appropriate.

Employees that violate or fail to comply with this Policy are subject to disciplinary action, ranging from adverse reviews to termination.

Because compliance with association policies is a membership requirement, membership can be terminated as a result of member company violations of this Policy. MITA shall communicate with members when questions are raised concerning their compliance with this Policy.

Attachment

MITA Antitrust Compliance Remedies and Meeting Guidelines

MICHIGAN INFRASTRUCTURE AND TRANSPORTATION ASSOCIATION

Antitrust Reminders and Meeting Guidelines

Group activities of competitors are inherently suspect under the antitrust laws. Many agreements and activities between and among competitors, however, are both legal and beneficial to society and the industry. It is expected that all member representatives involved in MITA activities, as well as MITA consultants and meeting participants, will be sensitive to the legal issues involving trade associations and take all measures necessary to comply with U.S. antitrust laws and similar Michigan competition laws.

Prohibited Topics

Whether seriously or in jest, do not discuss or exchange information regarding:

1. **Prices**, including:
   (a) Individual company prices, price changes, price differentials, pricing patterns or policies, discounts, allowances, credit terms, warranties, rebates or special financing, indemnification agreements, or other terms and conditions of sale affecting price.
   (b) Industry pricing policies, price levels, price changes, pricing procedures, profit margins or other data that bear on price.
   (c) Individual company data on costs, production, capacity, inventory, sales, profit margins or other data that bear on price.
2. **Production**, including:
   (a) Individual company plans concerning the design, production, distribution or marketing of particular products, including possible or proposed customers or territories.
   (b) Agreements (express or implied) with competitors to control or limit production; control or limit product quality or research; or allocate sales according to customers, territories or products.
3. **Marketing procedures**, including:
   (a) Matters relating to dealing or not dealing with actual or potential individual suppliers, customers, or competitors that might exclude them from the market;
   (b) Territorial restrictions, allocations of customers, restrictions on types of products or any other kind of market division.

Meeting Guidelines

(a) Agenda will be prepared and distributed before the start of the meeting.
(b) Meeting discussions will be limited to agenda items unless the Chair approves additional topics.
(c) Minutes of a meeting represent the legal record of what transpired. Carefully review draft minutes and call for corrections if the meeting minutes are not accurate.
(d) Staff (or counsel) shall be present at each meeting.
(e) Object to any discussions or activities that appear to violate MITA's antitrust policy and leave the meeting or discussion, and report the concerns to the President of MITA.
(f) Avoid colloquial language that might be mischaracterized later (e.g., "dominance," "only game in town," "control of market").
(g) Statements suggesting or advocating that MITA members make joint decisions on pricing, production, capacity, other aspects of competition (such as references to "industry consensus," "industry understanding," "industry acceptance," or "rational competition.").

This list is not exhaustive and understanding and acting in compliance with U.S. and Michigan antitrust and competition laws sometimes can be difficult. Please review the MITA Antitrust Compliance Policy online at http://www.mi-ita.com for further information. If you have a question about the propriety of MITA activities or discussions in an MITA meeting, you are encouraged immediately to contact MITA counsel or your company's legal counsel. All members are encouraged to adopt their own antitrust compliance program. Compliance with this Policy may not result in complete compliance with antitrust laws or individual member antitrust compliance programs.