

FORM COI
PROPOSER / MAJOR SUBCONTRACTOR CONFLICT OF INTEREST DISCLOSURE

Proposer: Proposer must complete Parts 1 and 2 of this Form COI and attach a full disclosure of all potential 23 CFR 636 organizational conflicts of interest.

Major Subcontractor: For each Major Subcontractor identified in Proposer's SOQ, Proposer shall require each such Major Subcontractor to complete Parts 1 and 2 of this Form COI, making a full disclosure of all potential 23 CFR 636 organizational conflicts of interest, and Proposer shall include each such Form COI and disclosure with its SOQ.

PART 1: PROPOSER'S/MAJOR SUBCONTRACTOR'S DECLARATION

1. Is any Associate of this firm (see definition in the COI Guidelines) a former employee or family member of an employee of Agency? Yes____ No____
2. Does any Associate of the firm have a conflict of interest with regard to any member of the procurement evaluation team? Yes____ No____
3. Did this firm, or any Associate of this firm, participate in preparing any part of the RFP or any documents or reports to which the RFP refers, including environmental baseline data and available engineering reports? Yes____ No____
4. Does this firm, or any Associate of this firm, have any past, present or currently planned interests which are an actual or potential organizational conflict of interest (as defined in the COI Guidelines), with respect to performing the Work for Agency under the present RFP? Yes____ No____

If the answer to any of the above questions is "no," I have so stated. If the answer to any of the above questions is "yes," attached to this Declaration I have (a) furnished all relevant facts, and (b) identified any actions that must be taken to avoid, neutralize, or mitigate such conflict of interest (e.g., communications barriers, restraint or restriction upon future contracting activities, or other precaution).

My signature below certifies that to the best of my knowledge, information and belief, and after thorough review of the firm's books and records, and after reasonable inquiry with knowledgeable persons within the firm:

1. This firm has no business or personal relationships with any other companies or persons that could be considered a conflict of interest or potential conflict of interest to Agency, and
2. There are no principals, officers, agents, employees, or representatives of this firm that have any business or personal relationships with any other companies or persons that could be considered a conflict of interest or a potential conflict of interest to Agency, pertaining to any and all Work or services to be performed as a result of this request and any resulting contract with Agency, except as disclosed on the present form.

PART 2: SIGNATURE AND FIRM INFORMATION

I hereby certify that I am authorized to sign as a Representative for the Firm regarding the foregoing affirmations and attached representations.

Complete Legal Name of Firm:

Address:

Fed ID No.:

Signature:

Name (type/print):

Title:

Telephone:

Fax No.:

Date:

ATTACH ALL NECESSARY DISCLOSURES AND EXPLANATIONS TO THIS FORM COI.

**Oregon Department of Transportation
Conflict Of Interest Guidelines and Disclosure Process**

(1) Background

The integrated nature of Design-Build creates the potential for conflicts of interest. Disclosure, evaluation, and management of these conflicts and of the appearance of conflicts, require attention to Laws, in the contracting process. The Oregon Department of Transportation (Agency) has crafted *Conflict of Interest Guidelines* (“COI Guidelines”) and a Disclosure Process. The COI Guidelines are intended to summarize the key governing standards of Laws, include definitions of key terms, and describe the COI Disclosure Process.

(2) Definitions

The following definitions apply to these COI Guidelines and the COI Disclosure Form:

Apparent Conflict of Interest – Meaning an individual or firm may reasonably be perceived to have an actual or potential Conflict of Interest.

Associate – An individual who is a professional or managerial employee, executive, director, key Project personnel, A&E firm, Contractor or Subcontractor, or any immediate family member of the foregoing.

Actual Conflict of Interest – Meaning that an individual or firm is unable to render impartial assistance or advice to the Agency, has impaired objectivity in performing the Project Work, or has an unfair competitive advantage.

Conflict of Interest (COI) – A personal Conflict of Interest or Organizational Conflict of Interest, and includes an Actual, Potential, or Apparent Conflict of Interest.

COI Disclosure Form – A manually signed disclosure of any Actual Conflict of Interest or Apparent Conflict of Interest, documented in the form of Agency’s COI Disclosure Form.

COI Guidelines – Refers to this document and all references herein.

Correct – In the context of determining the accuracy of a COI Disclosure Form, Correct means that the form, in all material respects, is complete, accurate, not misleading, and does not omit any material information.

Contract – An Agreement-to-Agree (“ATA”), Price Agreement (“PA”), Work Order Contract (“WOC”), or any other Contract with the Agency.

Firm – Within this COI Guidelines and Disclosure Process, Firm means a Proposer under a Procurement, an A&E Firm (“Consultant”) or Contractor under a Contract, a Subcontractor at any tier of a Proposer, an A&E Firm (“Consultant”), or Contractor. A Firm includes all persons, individual or corporate, without regard to form of legal entity.

Individual Conflict of Interest – Meaning that an individual has a Conflict of Interest

because of a financial or pecuniary interest, gift, or other activities or relationships with other persons including, but not limited to, individuals with whom the individual has business, familial, or household relationships.

Interest – In the context of a Conflict of Interest, “Interest” means a direct or indirect Interest and includes a personal, as well as a financial, Interest.

Low-Level Document – An A&E, non-A&E, and IT program or project-related document, which provides a basic understanding of a specific aspect of the program or project. Examples of Low-Level Documents related to A&E projects or programs may include any engineering or technical work completed prior to the Record of Decision in the National Environmental Policy Act (“NEPA”) process for Class 1 projects or the design approval stage in the Agency’s project delivery process for Class 2 and 3 projects. Both milestones can reach up to the 30% design level. All work completed prior to these two milestones is considered preliminary design by Federal Highway Administration (“FHWA”) and Agency standards. Illustrative examples of Low-Level Documents include, but are not limited to: Baseline reports, environmental baseline reports, environmental impact statements, location surveys, or traffic impact studies.

Organizational Conflict of Interest – A Firm or any of its Subcontractors having a Conflict of Interest because of other activities or relationships with other persons, including personal Conflicts of Interest of the Associates of the Firm or its Subcontractors¹, or the person’s objectivity in performing the contract work is, or might be, otherwise impaired, or a person who has an unfair competitive advantage (23 CFR 636.103).

Potential Conflict of Interest – An individual or Firm who, as a result of current plans, may reasonably be expected to have an Actual Conflict of Interest.

Procurement – A Request for Proposals (“RFP”), Request for Qualifications (“RFQ”), Request for Information (“RFI”), Invitation to Bid (“ITB”), or any other form of solicitation or procurement by the Agency.

Proposal – A bid, Proposal, or other submission appropriate to a Procurement.

Proposer – A legally operating business entity submitting a Proposal in response to a Procurement.

Subcontractor – A Subcontractor or sub-consultant at any tier.

Public Disclosure – The work product or service (in connection with the preparation of a Procurement) is available for public review and analysis for a reasonable amount of time, typically at least 30 Calendar Days.

Transportation Project or Project – Any proposed or existing undertaking pertaining to Highways, Bridges, motor carriers, motor vehicles, public transit, rail, transportation safety,

¹ Note that this definition is broader than the ones in OAR 731-070-0020(1) and 23 CFR 636.103.

and such other programs related to transportation that are assigned to the Agency under applicable law.

(3) Governing Standards

Both state and federal Laws govern disclosure and management of conflicts of interest in Highway contracting processes. ODOT also has a Code of Conduct Policy for conflicts of interest regarding the employment of former ODOT employees, which is explained below.

(4) State Standards

The current Oregon statutory framework addresses as generally applied Conflicts of Interest in public contracting by emphasizing the need for open and impartial procurement methods, or by narrowly prohibiting certain Conflicts of Interest involving public officials. The following statutes establish Oregon's general policies that apply to public contracts:

- The policies of the Public Contracting Code (ORS279A.015) encourage public contracting competition that supports openness and impartiality to the maximum extend possible, while recognizing that the nature of effective and meaningful competition depends upon the service being procured.
- According to ORS 279A.015(2), a sound and responsive public contracting system should instill public confidence through ethical and fair dealing, honesty and good faith on the part of government officials and those who do business with the government.

ORS chapter 244 articulates a general policy of prohibiting conflicts of interest of public officials. Among the prohibitions are offering a public employee a pledge of future employment based on an understanding that the offer would influence the public employee's official action or judgment.

These COI Guidelines embody the intent of encouraging competition through openness, impartiality, and public disclosure of relevant information as described in ORS 279A.015 and ORS Chapter 244.

(5) State Code of Conduct Regarding Former ODOT Employees

When an ODOT employee has performed functions for ODOT in any phase or stage of a Procurement, including but not limited to drafting specifications, reviewing or scoring bids or Proposals, authorizing services or assigning work, or awarding a Contract, and the employee leaves ODOT and is employed by an Entity that has a contract with ODOT or is a bidder or Proposer on a Procurement with the intent of signing a Contract with ODOT, Entity shall be subject to specific restrictions described below for a one-year period from the date the ODOT employee last performed the functions cited above.

This one-year prohibition applies to work performed under any such Contract and failure to disclose such relationship or to remedy such potential violation shall result in the rejection of Entity's bid or Proposal or cancellation of the Contract with ODOT at any time. It would

also constitute grounds for cancellation of an Entity's prequalification with ODOT and for a determination of Entity not being a responsible Contractor for future Procurements.

Entity shall declare if a former ODOT employee works for Entity, the job the employee previously performed for ODOT, and the role the employee now serves for Entity. Use of the former ODOT employee by Entity in any role relating to the same or substantially similar ODOT Procurement or Contract for which the employee participated while employed by ODOT is prohibited. This prohibition applies to an employee for only the one-year period immediately following the date the employee left ODOT employment. Each such declaration by an Entity shall include a signed statement by the former ODOT employee describing the proposed role of the employee in the particular Procurement or Contract.

(6) Federal Standards

Procurements Related To Design-Build and Design-Bid-Build Transactions

Pursuant to 23 USC § 112(b)(3), the Federal Highway Administration (FHWA) has promulgated administrative rules effective January 9, 2003, that affect federally-funded Design-Build procurements and related procurements. These rules, which are in 23 Code of Federal Regulations (CFR) Parts 635 and 636, are used as the basis for Agency's guidelines on the subject and are summarized below. These rules specifically regulate both organizational and individual conflicts of interest. The federal rules define "Organizational Conflict of Interest" as follows:

"Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the owner or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage" (23 CFR § 636.103).

The COI Guidelines define "Actual or Potential Organizational Conflict of Interest" for contracting Entities as follows:

"An actual or potential organizational conflict of interest means that because of other activities or relationships with other persons, including Associates of the Entity, an Entity:

- is unable or potentially unable to render impartial assistance or advice to Agency,
- is or might be otherwise impaired in its objectivity in performing the Contract Work, or
- has or potentially has an unfair competitive advantage."

The COI Guidelines define "Associate" of the Entity as follows:

"An Associate of the Entity is an employee, executive, director, key project personnel, or proposed consultant, contractor or subcontractor, or any immediate family member of the foregoing."

The main rule on organizational conflicts of interest in Design-Build transactions is 23 CFR § 636.116. This rule affects not only Design-Build procurements, but also “any contract for engineering services, inspection or technical support in the administration of the Design-Build contract.” Following is a summary of this federal rule. Agency will apply this rule to all future Design-Build procurements.

Generally, a consultant who assists the state in preparing an RFP document may not subsequently propose in response to the RFP. However, the state may determine that the consultant does not have a Conflict of Interest for a subsequent procurement if the consultant furnished only “Low-Level Documents” that were incorporated into the RFP and made available to all Proposers, and did not assist the state in the development of Instructions to Proposers or evaluation criteria for the RFP.

These Design-Build regulations also apply to “improper business practices and personal Conflicts of Interest” of Agency’s Proposal evaluation team members. 23 CFR § 636.117 indicates that Federal Acquisition Regulations (the “FARs”---specifically 48 CFR Part 3, “Improper Business Practices and Personal Conflicts of Interest”) will apply to Agency’s Proposal evaluation team members in the absence of relevant state laws and procedures. These regulations require government business to be “above reproach,” conducted “with complete impartiality and with preferential treatment for none” and with “the highest degree of public trust and an impeccable standard of conduct.” to avoid “even the appearance of a Conflict of Interest.”

In design-bid-build transactions, where engineering services are procured separately from the construction services, ordinarily the consulting Entity providing the engineering services is not eligible to bid on the construction work for the project. This understanding is based upon fairly broad provisions set forth in Section 1.33 of Title 23 of the Code of Federal Regulations. The relevant portions of the regulation provide as follows:

“...No engineer, attorney, appraiser, inspector or other person performing services for a state or a governmental instrumentality in connection with a project shall have, directly or indirectly, a financial or other personal interest, other than his employment or retention by a state or other governmental instrumentality, in any contract or subcontract in connection with such project.”

For purposes of this provision, the term “project” is defined as “an undertaking by a state highway department for Highway construction, including preliminary engineering, acquisition of rights-of-way and actual construction, or for highway planning and research, or for any other work or activity to carry out the provisions of the Federal laws for the administration of Federal aid for highways.” While the terms “engineer” and “engineering” are not defined in this regulation, the Brooks Act (governing the procurement of architectural and engineering services for federal projects) defines “architectural and engineering services” or A&E Services as follows:

“(A) professional services of an architectural or engineering nature, as defined by state law, if applicable, which are required to be performed or approved by a person licensed, registered, or certified to provide such services as described in this

paragraph;

“(B) professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and

“(C) such other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.” 40 USC § 1101(2).”

Public disclosure of A&E Services or products is an important consideration in determining if an organizational conflict of interest exists. Agency definition for “public disclosure” is as follows: the A&E product or service is available for public review and analysis for a reasonable amount of time, typically at least thirty (30) calendar days.

(7) COI Guidelines

See the Agency’s Code of Conduct Policy regarding the employment of former Agency employees under (5) above.

No Firm that has previously performed services on behalf of the Agency for a project may be a Proposer or participate as an equity owner, team member, Subcontractor of or to a Proposer, or have a financial interest in any of the foregoing entities with respect to the project, unless the Agency is satisfied in its sole discretion that:

- (a) Such services were completed prior to initiation of the Procurement for the project;
- (b) Such services included only Low-Level Documents and did not include development of Instructions to Bidders or evaluation criteria for the RFP;
- (c) Such services did not provide the Entity with access to, or knowledge of, Agency confidential or inside information that could provide an unfair competitive advantage with respect to the Procurement;
- (d) The Price Agreement (“PA”) or Work Order Contract (“WOC”) and information provided to the Entity in the performance of its services are either irrelevant to the Procurement, or are available on an equal and timely basis to all Proposers; and
- (e) The work product from the Entity incorporated into or relevant to the Procurement is available on an equal and timely basis to all Proposers.

In such instances where the Agency is satisfied in the manner described above, the Agency may still, in its sole discretion, restrict the scope of procurement services for which the Entity shall be eligible to perform in order to further the intent and goals of these COI Guidelines.

Public disclosure of services or products is an important consideration in determining if an Organizational Conflict of Interest exists. All COI Disclosure Forms will be considered public records.

(8) COI Disclosure Process

An Entity shall represent the correctness of a completed COI Disclosure Form at the time of submitting a Proposal to the Agency, or entering into a Contract with the Agency. An Entity shall file an amended COI Disclosure Form within 10 Business Days of any material change in the information reported on the COI Disclosure Form.

The identification, assessment, and management of Actual or Potential Conflicts of Interest is a joint task between Agency and the private sector. It requires both parties to work together in an atmosphere of candor and accountability. As the owner, Agency makes the final determination as to the adequacy of any COI management plan offered by the private sector.

Agency's COI determination is based on a number of factors such as:

- ✓ Situational Facts – description of the situation and all known facts specific to the actual or perceived COI
- ✓ Type of Work - specific product or service and contract(s) involved
- ✓ A&E Services - specific skill set applied
- ✓ Relationship to Management - specific interactions with Agency decision-makers
- ✓ Public Disclosure - timing and availability of product or service

It is important to understand that the specific facts disclosed in any COI situation will be unique to that situation. Therefore, the decisions and conclusions reached in one situation may or may not be directly applicable to another. For example, the definition of "Low-Level Documents" does not isolate an Entity producing them from a potential COI situation. The ultimate determination will take into account the other factors described above.