

ODOT CONFLICT OF INTEREST GUIDELINES for PROCUREMENTS & CONTRACTS
(“COI GUIDELINES”)
Oregon Department of Transportation (“Agency”)

Prior to entering into Contracts with Agency and during Contracts with Agency, a Firm and its Associates must disclose Actual, Apparent and Potential Conflicts of Interest, Individual and Organizational Conflicts of Interest, and any other conflicting or competing interests that could interfere with their ability to properly discharge their obligations to Agency.

A Firm shall follow these COI Guidelines when submitting any Proposal in response to an Agency Procurement or when entering into any Contract with Agency, and throughout the period during which the Procurement is open or the Contract is in effect. A Firm shall provide the COI Guidelines and associated COI Disclosure Form to all of its Subconsultants and Subcontractors at all tiers of a Proposal or Contract and shall ensure that the Firm and each of its Subconsultants or Subcontractors make any disclosures required by these guidelines or as required by a specific Procurement or Contract. The Agency will follow and apply these COI Guidelines when conducting Agency Procurements.

The [definitions](#) that apply to these COI Guidelines and the Agency’s COI Disclosure Form are at the end of this document.

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1. Required Disclosures

Submittal of a Correct and signed COI Disclosure Form is required if any of the following apply (note that “Public Official” includes all Agency employees):

- a Firm or any of its Associates have any Apparent, Potential or Actual Conflicts Of Interest per these COI guidelines or per the criteria of any COI Disclosure Form or additional disclosure requirements included as part of a Procurement or Contract;
- a Procurement or Contract document specifically requires submittal of a COI Disclosure Form (e.g., if the prospective Project includes preparation of an Environmental Impact Statement or Environmental Assessment, submittal of COI Disclosure Forms is always required.);
- a Firm has any changes to its staffing or organization (whether before or after entering into a Contract) that result in an Apparent, Potential or Actual Conflict Of Interest per these guidelines or per the COI disclosure requirements associated with a particular Procurement or

Contract. Any such changes shall be disclosed within 10 business days via submittal of a complete and signed COI Disclosure Form.

- the response to any of the following questions is “yes” (with respect to a Procurement or current Contract with Agency):
 1. Is any Associate of the Firm a former employee of Agency within the last two years that had or will have involvement (on Agency’s or Firm’s behalf) with the Procurement, Contract, subcontract, or the prospective Project?
 2. Is any Associate of the Firm a Relative or Member of the Household of a current employee of Agency who had or may have a role in this Procurement, Authorization of the Contract, Contract administration, or oversight of the Contractor’s performance?
 3. Does the Firm or any Associate of the Firm have an Actual, Apparent or Potential Conflict Of Interest (“Individual” or “Organizational”) with regard to any known member of the Agency evaluation or selection team for the Procurement?
 4. Did the Firm or any Associate of the Firm conduct prior work on the Project described in the Procurement, or participate in preparing any part of the Procurement or any documents or reports related to the Procurement or to which the Procurement refers?
 5. Does the Firm or any Associate of the Firm have any past, present or currently planned interests which are an Actual, Apparent or Potential Conflict of Interest (“Individual” or “Organizational”) with respect to performing the work for Agency?
 6. Has the Firm or an Associate of the Firm offered to a Public Official, or is the Firm aware of any Public Official that has solicited or received, directly or indirectly, any pledge or promise of employment or other benefit based on the understanding that the Public Official’s vote, official action or judgment would be influenced thereby?
 7. Has (or will) the Firm or an Associate of the Firm provided a direct beneficial financial interest to any person within two years after the person ceased to hold a position as a Public Official who was involved in the Procurement or Authorization for the Contract, or is the Firm aware of any such person or Public Official who has or will receive a direct beneficial financial interest within the two year period?
 8. Is the Firm aware of any current or former Public Official that has an Actual, Apparent or Potential Conflict Of Interest with respect to the Procurement or award of this Contract or performing the work for Agency?
 9. Does the prospective Contract include development of an environmental assessment (EA) or environmental impact statement (EIS)?
 10. If a Procurement is to obtain personal services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a public contract, is the Firm or an Associate or an Affiliate of the Firm a party to the subject public contract?
 11. Has the Firm or any Associate of the Firm entered into personal services contract(s) with Agency for the purpose of advising or assisting in developing specifications, a scope or statement of work, an invitation to bid, a request for proposals or other solicitation documents and materials related to this procurement?

12. If the prospective Contract includes personal services related to Project construction, do any of the criteria in [section \(4\) "COI Considerations Related to Consultant Services Provided During Project Construction"](#) apply?

If none of the foregoing apply, a Firm shall provide a written and signed certification (specified by Agency) that the Firm has read and complied with these COI Guidelines and the COI Disclosure Form and did not answer Yes to any of the questions, or, if required by the Agency, the Firm shall complete and submit a Correct and signed COI Disclosure Form.

A Firm shall incorporate in each required COI Disclosure Form any COI disclosure information provided by its staff and attach COI Disclosure Forms from each of its Subcontractors (that have required disclosures of conflicts or potential conflicts of interest), prior to such Firm performing any services under a Contract.

Agency's COI Disclosure Form is available on [ODOT's Consultant Forms and Resources page](#). Some Procurements may require submittal of a COI Disclosure Form (other than the standard form) that is specific to the Procurement.

2. Governing Standards

Both Oregon and federal laws govern disclosure and management of conflicts of interest in transportation contracting processes. The disclosure requirements of these COI Guidelines apply to all Agency contracting activities {Architectural and Engineering (A&E) and non-A&E, public improvements, public works, goods, and trade services} without regard to which particular federal or Oregon laws govern the activity. Agency also has an Ethics Policy for conflicts of interest regarding the employment of former Agency employees, which is explained below.

Agency Ethics Policy (PER 01-02) Regarding Former Agency Employees

"When employees of private sector firms which have or compete for contracts with the Department are hired by the Department or when Department employees go to work for firms which have or compete for contracts with the Department, questions may arise about where information is obtained, what actions are taken, what decisions are made, and whether the employer or employee gains any unfair competitive benefit or advantage in either the prior or the new employment environment. The Department's objective is to limit and, when possible, eliminate any perception that a contractor or employee gains an advantage because of job transitions."

"A person who has separated from the Department may not have a direct beneficial financial interest in a public contract that person took part in drafting, negotiating, making, accepting or approving in the capacity of a public official for two years after date the contract was authorized. This includes any subcontract or contract arising out of a price agreement that the person took part in negotiating, making, accepting or approving in their capacity of a public official. This prohibition does not apply if the contract was authorized by a committee or other governing body of which the person was a member if the person did not participate in authorizing the contract."

For each Procurement, Firms shall disclose to Agency the identification of any employee(s) that had been employed by Agency within the last two-year period and that had or will have involvement with the Procurement, Contract, subcontract, or the prospective Project. Such disclosures shall include the employee's name and proposed role for the Firm in the particular Procurement and any resulting Contract or subcontract. Failure of a Firm to disclose such relationship or to remedy such potential violation may result in the rejection of the Firm's offer or cancellation of the Contract with the Agency as well as being grounds for cancellation of a Firm's prequalification, or designation of a Firm as ineligible for future Procurements as not being a responsible bidder. (Also see below regarding the ORS 244.047 two-year ban on any direct beneficial interest.)

Oregon State Standards

The current Oregon statutory framework, as generally applied, addresses conflicts of interest in public contracting by emphasizing the need for open and impartial Procurement methods and by prohibiting certain conflicts of interest involving public officials. The following statutes and administrative rules establish Oregon's general policies and the restrictions and prohibitions regarding conflicts of interest for public contracts and Public Officials:

- The policies of the Public Contracting Code (ORS 279A.015) encourage public contracting competition that supports openness and impartiality to the maximum extent 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 prohibits 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.
- ORS 244.047(2) and (3) provide the following:
 - (2) "Except as provided in subsection (3) of this section, a person may not, for two years after the person ceases to hold a position as a public official, have a direct beneficial financial interest in a public contract that was authorized by:
 - (a) The person acting in the capacity of a public official; or
 - (b) A board, commission, council, bureau, committee or other governing body of a public body of which the person was a member when the contract was authorized.
 - (3) Subsection (2) of this section does not apply to a person who was a member of a board, commission, council, bureau, committee or other governing body of a public body when the contract was authorized, but who did not participate in the authorization of the contract."

Agency's administrative rules in OAR 731 Division 70 establish conflict of interest rules for the Oregon Innovative Partnership Program. The Oregon Government Ethics Commission also has administrative rules for public officials in OAR 199 Division 5.

- ORS 279.C.307 includes the following:

- (1) “Except as provided in subsection (2) of this section, a contracting agency that procures personal services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a public contract that is subject to this chapter may not:
 - (a) Procure the personal services from a contractor or an affiliate of a contractor who is a party to the public contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the personal services; or
 - (b) Procure the personal services through the public contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the personal services.
- (2) Subsection (1) of this section does not apply to a procurement for construction manager/general contractor services or a design-build procurement, as defined in OAR 137-049-0610.

As used in ORS 279C.307, ORS 279C.332(1) provides this definition of “affiliate: , “affiliate” means a person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the contractor described in subsection (1)(a) of this section.”

- ORS 279B.040 includes the following:
 - (1) Except as provided in subsection (2) of this section, a state contracting agency that procures personal services for the purpose of advising or assisting the state contracting agency in developing specifications, a scope or statement of work, an invitation to bid, a request for proposals or other solicitation documents and materials related to a procurement may not accept from the contractor, or an affiliate of the contractor, that advised or assisted the state contracting agency a bid or proposal for the goods or services described, specified or identified in the solicitation documents or materials if a reasonable person would believe that, by giving the advice or assistance, the contractor or affiliate would have or would appear to have an advantage in obtaining the public contract that is the subject of the solicitation.
 - (2)(a) If a state contracting agency anticipates that the state contracting agency will or must seek advice or assistance of the type described in subsection (1) of this section from a contractor that is also engaged in providing goods or services that will be described or identified in the solicitation documents and materials that result from the advice or assistance, and the state contracting agency wishes to accept a bid or proposal from the contractor, the state contracting agency, before awarding a contract for the advice or assistance, shall apply to the Director of the Oregon Department of Administrative Services for an exception to the prohibition set forth in subsection (1) of this section.
 - (b) The state contracting agency in the application for the exception shall include findings and justifications, along with sufficient facts to support the findings and justifications, that will enable the director to make an independent judgment as to whether:
 - (A) The state contracting agency needs advice or assistance from a contractor to develop the solicitation documents and materials described in subsection (1) of this section;
 - (B) Accepting a bid or proposal from the contractor that gives the advice or assistance is the only practicable way in which the state contracting agency can conduct the procurement successfully; and

(C) Approving the exception:

(i) Is unlikely to encourage favoritism in awarding public contracts or to substantially diminish competition for public contracts; and

(ii)(I) Is reasonably expected to result in substantial cost savings to the state contracting agency or the public; or

(II) Otherwise substantially promotes the public interest in a manner that could not be practicably realized by complying with the prohibition described in subsection (1) of this section.

(c) (A) If the director approves the state contracting agency's application, the director shall prepare written findings and justifications for the approval. The state contracting agency's findings, justifications and facts and the director's findings, justifications and approval are public records that are subject to disclosure as provided in ORS 192.410 to 192.505.

(B) If the director disapproves the state contracting agency's application, the director shall state the director's reasons for the disapproval in a written notice to the state contracting agency and shall indicate whether the disapproval extends only to the state contracting agency's acceptance of a bid or proposal from a contractor that gives advice or assistance in preparing solicitation documents and other materials or whether the director also disagrees with the state contracting agency's stated need for advice or assistance from a contractor.

(C) The director's approval or disapproval is final.

(3) As used in this section, "affiliate" means a person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with a contractor described in this section.

(4) This section does not apply to the Secretary of State or the State Treasurer.

[OAR 731-148-0130](#)(4), (5) and (6) provide:

"(8) As required by ORS 279C.307, pertaining to requirements to ensure the objectivity and independence of providers of certain Personal Services which are procured under ORS chapter 279C, Contracting Agencies may not:

(a) Procure the Personal Services identified in ORS 279C.307 from a Contractor or an affiliate of a Contractor who is a party to the Public Contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the Personal Services; or

(b) Procure the Personal Services identified in ORS 279C.307 through the Public Contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the Personal Services.

(9) The requirements of ORS 279C.307 and section (8) of this rule apply in the following circumstances, except as provided in section (10) of this rule:

(a) A Contracting Agency requires the Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Public Contract or performance under a Public Contract that is subject to ORS chapter 279C. A Public Contract that is "subject to ORS chapter 279C" includes a Public Contract

for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, a Public Contract for Related Services or a Public Contract for construction services under ORS chapter 279C.

(b) The Procurements of Personal Services subject to the restrictions of ORS 279C.307 include, but are not limited to, the following:

(A) Procurements for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, which involve overseeing or monitoring the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C;

(B) Procurements for commissioning services, which involve monitoring, inspecting, evaluating or otherwise overseeing the performance of a Contractor providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C;

(C) Procurements for project management services, which involve administration, management, monitoring, inspecting, evaluating compliance with or otherwise overseeing the performance of a Contractor providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, construction services subject to ORS chapter 279C, commissioning services or other Related Services for a Project;

(D) Procurements for special inspections and testing services, which involve inspecting, testing or otherwise overseeing the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C; and

(E) Procurements for other Related Services or Personal Services, which involve administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing the Public Contracts described in Section (9)(a) of this rule.

(10) The restrictions of ORS 279C.307 do not apply in the following circumstances, except as further specified below:

(a) To a Contracting Agency's Procurement of both design services and construction services through a single "Design-Build" Procurement, as that term is defined in OAR 137-049-0610. Such a Design-Build Procurement includes a Procurement under an Energy Savings Performance Contract, as defined in ORS 279A.010. Provided, however, the restrictions of ORS 279C.307 do apply to a Contracting Agency's Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Design-Build Contract or performance under such a Contract resulting from a Design-Build Procurement; and

(b) To a Contracting Agency's Procurement of both pre-construction services and construction services through a single "Construction Manager/General Contractor" Procurement, as defined in OAR 137-049-0610. Provided, however, the restrictions of ORS 279C.307 do apply to a Contracting Agency's Procurement of Personal Services for the purpose of administering,

managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Construction Manager/General Contractor Contract or performance under such a Contract resulting from a Construction Manager/General Contractor Procurement.”

Agency’s COI Guidelines embody the intent of encouraging competition through openness, impartiality, and public disclosure of relevant information (and the avoidance of conflicts of interest) as described in ORS 279A.015, ORS Chapter 244, and Agency’s Code of Conduct Policy.

The two-year prohibition against a Public Official having a direct beneficial financial interest in a public contract as provided in ORS 244.047 would generally preclude the person from working under the public contract and from representing the Firm in dealings with the public agency for whom the person had worked. Sharing in the general profits of the Firm (such as a year-end bonus for overall corporate profits) is likely not a direct beneficial financial interest, however, a bonus or other compensation paid just on the basis of the public contract would be subject to the prohibition.

Federal Standards—Procurements Related To Design-Build and Design-Bid-Build

Pursuant to 23 USC § 112(b)(3), the FHWA has promulgated administrative rules that affect federally funded Design-Build procurements and related procurements. These rules, which are in Chapter 23 of the CFR Part 636, are used as the basis for Agency’s guidelines on the subject and specifically regulate both Organizational and Individual Conflicts Of Interest. Agency’s COI Guidelines incorporate a number of concepts from these federal provisions.

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’s COI Guidelines apply this rule to design-bid-build and non-A&E activities as well):

Generally, a consultant who assists the state in preparing a Request for Proposals (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 offerors, and did not assist the state in the development of instructions to offerors or evaluation criteria for the RFP.

These Design-Build regulations also apply to “improper business practices and personal conflicts of interest” of the Agency’s selection team members. 23 CFR § 636.117 indicates that Federal Acquisition Regulations (“FARs”---specifically 48 CFR Part 3, Improper Business Practices and Personal Conflicts of Interest) will apply to the state’s selection 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 Firm providing the engineering services is not eligible to bid on the construction work for the Project.

No Firm or any Associate of a Firm in connection with a Transportation Project shall have, directly or indirectly, any interest, other than his employment or retention by a State or other governmental instrumentality, in any Contract in connection with such Project. No firm or an Associate of a Firm shall have, directly or indirectly, any interest in any real property acquired or to be acquired for a Project unless such interest is openly disclosed upon the records of Agency and such Firm or Associate has not participated and will not participate in such acquisition for and in behalf of Agency (see 23 CFR § 1.33).

Federal Standards - National Environmental Policy Act (NEPA)

No Firm preparing or providing environmental analysis or impact documents relating to a Project, including draft and final Environmental Assessments (EA) or Environmental Impact Statements (EIS) may have a financial or other interest in the outcome of the Project. A financial or other interest in the outcome of the Project includes any known benefits other than general enhancement of professional reputation, and includes any agreement, enforceable promise, guarantee or expectation of future work on the Project as well as any indirect benefit the Firm is aware of such as if the Project would aid proposals sponsored by the Firm's other clients. Compliance with [40 C.F.R. 1506.5\(b\)\(4\)](#) is required, which includes the requirement for a conflict of interest disclosure statement from each Firm establishing that the Firm does not have a financial or other interest in the Project.

3. COI Considerations Related to Previous Work on Projects

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

- (a) such services were completed prior to initiation of the Procurement for the Project (exceptions may apply for NEPA services on a case-by-case evaluation of the Project specifics against the applicable CFRs),
- (b) such services included only Low Level Documents and did not include development of instructions to offerors or evaluation criteria for the RFP,
- (c) such services did not provide the Firm 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 prior Contract and information provided to the Firm in the performance of its services are either irrelevant to the Procurement or are available on an equal and timely basis to all Proposers,
- (e) the work product from the Firm incorporated into or relevant to the Procurement is available through Public Disclosure on an equal and timely basis to all Proposers, and

(f) any environmental documents prepared by the Firm have been determined to be objective, and that the Agency demonstrated independent decision-making authority during the environmental process.

In such instances where Agency is satisfied in the manner described above, Agency may still, in its sole discretion, restrict the scope of Procurement services for which the Firm 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.

4. COI Considerations Related to Consultant Services Provided During Project Construction

Below are examples of Consultant services provided during Project construction which generally result in Actual, Apparent or Potential Conflicts of Interest that must be disclosed. Consultant services described in “(a)” through “(c)” below may be approved by Agency in its sole discretion, including approval of a COI mitigation plan where applicable. Agency has determined Consultant services described in “(d)” and “(e)” below are Actual, Apparent or Potential Conflicts of Interest that will not be approved with or without a mitigation plan.

(a) An Associate of Consultant that is a Professional of Record for a Project, may not perform the role of Construction Project Manager, Inspector, Quality Control Compliance Specialist (QCCS), or Contract Administration Specialist for any element of construction contract administration, construction engineering and inspection (“CA/CEI”) services on that Project, unless approved in writing (email acceptable) by Agency.

(b) Consultant and its Associates who are providing or have provided consulting services to Agency on a Project may not perform any services for the construction contractor on the same Project, unless approved in writing (email acceptable) by Agency. This includes, without limitation, any planning, permitting, NEPA services, preliminary engineering, environmental, design or any other services related to the Project.

(c) In the normal course of business, Agency will contract for CA/CEI services before construction contractor is awarded the Contract and known. Where a Consultant is providing engineering services to construction contractor(s) on an active* Agency Project and is under Contract with Agency as the prime Consultant to provide CA/CEI services for the same active* Agency Project, after award of the construction Contract, Consultant shall submit a COI Disclosure Form with proposed mitigating actions to address the conflict for consideration by the Agency. Agency will provide written notice (email acceptable) to Consultant of Agency’s determination regarding the proposed mitigation plan.

(d) Consultant and its Associates may not perform Quality Control for a construction contractor and work for Agency under a CA/CEI Contract on the same Project.

(e) Consultant and its Associates may not perform Materials Quality Control testing for a construction contractor on an active* Agency Project and Quality Assurance/QCCS work for the

Agency on a different active* Agency Project where the construction contractor is the same on both Projects.

* For the purposes of this section, an Agency construction Project is considered “active” from construction contract Notice to Proceed to 2nd Note.

Note: Agency intends to include in a future update of the COI Guidelines, additional COI considerations related to Design-Build, CMGC and other Alternate Contracting Methods.

5. COI Disclosure Process

A Firm shall certify its conformance with these COI Guidelines at the time of submitting a proposal to Agency or entering into a Contract with Agency. If submittal of COI Disclosure Form(s) is required per these COI Guidelines or a specific Procurement or Contract, a Firm shall represent the correctness of a completed COI Disclosure Form. If a Firm has any changes to its staffing or organization (whether before or after entering a Contract) that result in an Actual, Apparent or Potential Conflict Of Interest (Individual or Organizational) per these COI Guidelines or per the criteria of any COI form associated with a particular Procurement or Contract, any such changes shall be disclosed within 10 business days via submittal of a Correct and signed COI Disclosure Form.

A Firm shall assure that any COI Disclosure Form it submits includes any information required to be disclosed by its Subcontractors and other Associates, on behalf of the Firm. A Firm may submit either the Subcontractors’ separate COI Disclosure Forms or incorporate Subcontractor information into its own COI Disclosure Form. The disclosure required with the proposal applies to the prime and all proposed Subcontractors that are identified or anticipated at the time of proposal submission.

The identification, assessment, and management of Actual or Potential Conflicts Of Interest are joint tasks among Agency, the Firm and the Firm’s team. A Firm must work together with Agency in an atmosphere of candor and accountability during the period of negotiation or performance of the Contract with Agency. Agency makes the final determination as to the adequacy of any COI management/mitigation plan offered by the Firm to address the Firm’s COI disclosures or COI issues discovered by Agency, whether previously disclosed or not.

Agency’s COI determination regarding Contractor’s COI disclosures (or COI issues discovered by Agency) is based on a number of factors including, but not limited to:

- ✓ 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
- ✓ Relationship to Management - specific interactions with Agency decision-makers
- ✓ Public Disclosure - timing and availability of product or service

The specific facts disclosed by the Firm or discovered by the Agency 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 a Firm producing them from a potential COI situation. The ultimate determination will take into account the factors described above and any other factors Agency deems relevant.

6. Examples of Conflict of Interest Situations

Agency offers the following examples to better illustrate conflict of interest situations that may arise during the course of the performance of a Personal Services Contract or a Price Agreement and any WOC entered into between Agency and a Firm, or during any Agency Procurement process, in order to provide guidance to Firms as they determine if their specific situations warrant disclosure, evaluation, and management.

1. A Design-Build solicitation requires the responding teams to propose how to manage site features that were uncovered by a geotechnical engineering Firm. The Firm’s reports to Agency on the Project are available to the public. A multi-specialty engineering Firm that is the parent company of the geotechnical engineering Firm submits a proposal to design the overall Project. Depending on the particular mitigating facts, Agency might determine in writing that the multi-specialty engineering Firm is eligible to propose.
2. Agency seeks comprehensive project management services for a series of Transportation Projects. One of the proposing Firms employed a senior official from Agency who played a significant role in providing direction for the solicitation within the last two years. Prior to proposing, a Firm submits a COI Disclosure Form with a proposed mitigation plan to Agency and requests a determination of whether or not the Firm’s COI mitigation plan is sufficient to allow the Firm to contract with Agency for the Project. In its proposed mitigation plan, the prospective Proposer provides written assurances that this individual:
 - works in an area of the company that will not be working on their program management proposal,
 - their ODOT experience will not be cited in the proposal,
 - will be isolated inside the company from any information associated with the program, will not be lobbying Agency, and
 - for a period of two years will not have a role or direct beneficial interest in the contract.

Depending on the particular facts, Agency might determine that, while the proposing Firm has a potential Organizational Conflict Of Interest, that conflict has been adequately mitigated and the Firm will not be disqualified from submitting a proposal.

3. Agency issues an RFP for design and oversight of an intelligent system to collect bridge tolls. The RFP provides that companies having a financial interest in the relevant telecommunications hardware will be excluded from bidding. A company under common ownership with a major electronics manufacturer desires to bid. Agency initially assesses this situation as an Organizational Conflict Of Interest, because it cannot know in advance whether the hardware products of this electronics manufacturer would be used in the Project, and Agency informs potential Proposers of its concern related to this type of conflict via addendum to the RFP. In its proposal, the company offers no mitigating facts

or organizational plans that address Agency's concerns about the conflict. Depending on the particular facts, Agency determines that the company has an actual conflict of interest.

4. Agency seeks advice of an industry advisory committee to formulate the specifications for an information technology (IT) RFP. An IT Firm that participated in the advisory committee wishes to submit a proposal in response to the RFP. Unless the Firm had involvement or potential conflicts beyond the advisory committee role (where other Firms were involved in the context of a public meeting), this scenario would not typically be considered an Organizational Conflict Of Interest.
5. Agency contracts with an A&E Firm to develop "low-level" documents prior to establishing a schedule for a RFP in which the "low level" documents, still under development, will be used by prospective Proposers. The A&E Firm has attended the pre-proposal meeting and wishes to propose on the RFP. Agency determines that the company has a potential Organizational Conflict Of Interest because of the fact that the low-level documents have not been made public and the Firm will still be developing the documents during the solicitation. The company then mitigates the potential conflict of interest by suspending development of new reports during the open period of the solicitation and making all data and information sources available on an Agency website prior to the RFP release. Agency determines that the potential conflict has been adequately managed and the Firm will not be disqualified from submitting a proposal or being part of the proposing team.
6. Agency contracts with a consulting Firm to assist Agency in the development of an RFP and sample Contract for a Design-Build Procurement for construction of certain Transportation Projects. The Firm has close contact with Agency decision-makers in the development of the evaluation criteria for the RFP and the proposed Contract terms, and that information is shared throughout the Firm with all management and technical personnel. The Firm will not be able to submit a proposal in the design-build Procurement, or participate as a team member with a Firm submitting a proposal in response to the RFP.
7. Agency seeks comprehensive program management services for a series of Transportation Projects. Prior to release of the RFP, Agency shared its interpretation of the applicable conflict of interest requirements with the industry. One of the proposing Firms has a related entity with a planned interest in future design-build construction work related to the transportation program. The COI Disclosure Form does not clearly state whether the related entity is a subsidiary, major partner, Subcontractor, or affiliate of a Subcontractor. The proposing Firm describes its intent to restrict the flow of information concerning construction Projects to the related entity and thereby to its affiliate construction company but does not clarify how much information will be shared between the principal and its Subcontractors and affiliates or the controls placed on the principal-Subcontractor-affiliate relationship. Furthermore, the proposing Firm has provided mitigation information, indicating that the related entity will not participate in providing services under the program management Contract (i.e., design, source selection, award of Contract, etc.). Agency may conclude the proposing Firm does not have a conflict of interest that detracts from its eligibility for the program management award. Agency may determine that the related entity has a conflict of interest in future design-build construction work related to the bridge repair and replacement program that has not been adequately mitigated by the measures and information provided by the proposing Firm. As a result, if the proposing Firm is awarded the program management Contract, the related construction company will

be ineligible for construction work under the program. This determination will depend upon the precise relationship between the related entity and the Proposer.

8. Completion of a Project may encourage construction of a shopping center or industrial park from which a Firm stands to benefit. If a Firm is aware that it has such an interest in the decision on the proposal, it will be disqualified from preparing an EIS to preserve the objectivity and integrity of the NEPA process.
9. Agency issues an RFP for A&E services to prepare plans, specifications, and estimate (PS&E) to replace a bridge. The PS&E will be completed as part of a design-bid-build process. One of the A&E Firms proposing on the design services owns XYZ Inc., a subsidiary that provides program management services to Agency under a separate contract. Agency's intent, as advertised in the RFP, is to use XYZ Inc. for administration and oversight of the A&E design services for the bridge replacement Project. The A&E Firm that is the parent of XYZ Inc. would be ineligible for award of the A&E design contract.
10. Agency issues an ITB for construction services to replace a bridge. The replacement is being done using the design-bid-build process. One of the construction Firms bidding on the public improvement Project owns XYZ Inc., a subsidiary that provides construction contract administration and inspection services to Agency under a separate contract. Agency's intent, as advertised in the ITB, is to use XYZ Inc. for administration and inspection of the bridge replacement Project. Unless the construction Firm that is the parent of XYZ Inc. submits a request for change during the ITB process, and Agency issues an addendum that changes XYZ Inc. to a different Firm, the construction Firm that owns XYZ Inc. would be ineligible for award of the construction contract.

7. Definitions

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

"Actual Conflict Of Interest" means that an individual or Firm is unable to render impartial assistance or advice to Agency, has impaired objectivity in performing the Project work, or has an unfair competitive advantage. For purposes of ORS Chapter 244, and as defined in ORS 244.020(1), "Actual Conflict of Interest" means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which *would be* to the private pecuniary benefit or detriment of the person or the person's relative or any business with which the person or a relative of the person is associated unless the pecuniary benefit or detriment arises out of the circumstances described in the ORS Chapter 244 definition for "Potential Conflict of Interest" (see definition below).

"Agency" means Oregon Department of Transportation.

"Affiliate" (of the Firm) means a person or entity that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control of the Firm.

"Apparent Conflict Of Interest" means that an individual or Firm may reasonably be perceived to have an Actual Conflict of Interest or a Potential Conflict Of Interest.

"Associate" (of the Firm) means an employee, executive, director, officer, owner, key personnel, consultant, contractor or Subcontractor (or any immediate family member of the foregoing), and includes employees of consultants, contractors or Subcontractors.

"Authorization" (of the Contract). A public contract is authorized by a Public Official if the Public Official performed a significant role in the selection of a Firm or the execution of the Contract. A

significant role includes recommending approval or signing of the Contract, including serving as a reference, recommending selection or serving on a selection committee or team, or having the final authorizing authority for the Contract.

“Bidder” means a legally operating business entity submitting a bid in response to a Procurement.

“Conflict Of Interest” or **“COI”** means an Individual Conflict Of Interest or Organizational Conflict Of Interest and includes an Actual, Potential, or Apparent Conflict Of Interest.

“CA/CEI” means: construction contract administration, construction engineering and inspection.

“COI Disclosure Form” means a manually signed disclosure of any Actual Conflict Of Interest, Apparent Conflict Of Interest or Potential Conflict Of Interest documented in the form of Agency’s COI Disclosure Form.

“COI Guidelines” refers to this document and all references herein.

“Consultant” means a Firm (including its Associates) that provides architectural, engineering and land surveying services and related services.

“Contract” means a Price Agreement (PA), Work Order Contract (WOC), Purchase Order (PO), or any other contract with Agency.

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

“Firm” means a Proposer or Bidder under a Procurement, a consultant or contractor under a Contract, or a Subcontractor at any tier of a Proposer, consultant, or contractor, and any partner or member of any of the foregoing. A Firm includes all persons, individual or corporate, without regard to form of legal entity, and any partner or member of any of the foregoing.

“Individual Conflict Of Interest” means that an individual has a conflict of interest because of a financial 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) means a direct or indirect interest and includes a personal as well as financial interest.

“Low-Level Document” means A&E, non-A&E and IT program or Project related documents which provide a basic understanding of a specific aspect of the program or Project. As referred to in 23CFR 636.116 with regard to A&E and related services, “the role of the consultant or subconsultant was limited to provision of preliminary design, reports, or similar “low-level” documents that will be incorporated into the RFP, and did not include assistance in development of instructions to offerors or evaluation criteria”.

“Member of the Household” (of the Public Official) means any person who resides with the Public Official.

“Organizational Conflict Of Interest” means that a relationship or situation exists whereby a Firm or any of its Associates has past, present, or currently planned interests or activities that either directly or indirectly (through a client, contractual, financial, organizational or other relationship) may relate to the work to be performed under the proposed Contract with Agency and which (a) diminish the Firm’s or an Associate’s capacity to give impartial, technically sound, objective assistance or advice, (b) may impair the Firm’s or an Associate’s objectivity in performing the Contract, (c) may impair Agency’s objectivity in oversight of the Contractor’s performance, or (d) may result in an unfair competitive advantage. It does not include the normal flow of benefits from the performance of the Contract.

“Potential Conflict Of Interest” means that an individual or Firm, as a result of current plans, may reasonably be expected to have an actual conflict of interest. For purposes of ORS Chapter 244, and as defined in ORS 244.020(11), “Potential Conflict of Interest” means any action or any

decision or recommendation by a person acting in a capacity as a public official, the effect of which *could be* to the private pecuniary benefit or detriment of the person or the person's relative, or a business with which the person or the person's relative is associated, unless the pecuniary benefit or detriment arises out of the following: (a) an interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position.; (b) any action in the person's official capacity which would affect, to the same degree, a class consisting of all inhabitants of the state or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person's relative or business with which the person or the person's relative is associated, is a member or is engaged; or (c) membership in or membership on the board of directors of a nonprofit corporation that is tax-exempt under section 501(c) of the Internal Revenue Code.

"Procurement" means 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 Agency.

"Proposal" means a bid, proposal, or other submission appropriate to a Procurement.

"Proposer" means a legally operating business entity submitting a Proposal in response to a Procurement.

"Public Disclosure" means 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 thirty (30) calendar days.

"Public Official" means any person who is serving the State of Oregon or any of its political subdivisions or any other public body as defined in ORS 174.109 as an elected official, appointed official, employee, agent or otherwise, irrespective of whether the person is compensated for the services. (All Agency employees are Public Officials.)

"Relative" (of a Public Official) means:

- the Public Official's spouse or domestic partner;
- the children, siblings, spouses of siblings or parents of the Public Official or the Public Official's spouse; or
- any individual for whom the Public Official has a legal support obligation or for whom the Public Official provides benefits arising from the Public Official's public employment or from whom the Public Official receives benefits arising from that individual's employment.

"Subcontractor" means a subcontractor or subconsultant at any tier.

"Transportation Project" or **"Project"** means any proposed or existing undertaking pertaining to highways, bridges, motor carriers, motor vehicles, public transit, rail, transportation safety, information systems, and such other programs related to transportation that are assigned to Agency under applicable law.