

# Exhibit H

## CONFLICT OF INTEREST GUIDELINES AND DISCLOSURE PROCESS (COI GUIDELINES)

Oregon Department of Transportation (Agency)

Revised June 2007

A Firm shall follow these COI Guidelines when submitting any Proposal in response to an Agency solicitation or when entering into any Contract with Agency, and throughout the period during which the Proposal 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 any tier of a Proposal or Contract and shall ensure that each Subconsultant or Subcontractor complete, sign and return the COI Disclosure Form. A Firm shall incorporate in its COI Disclosure Form any COI disclosure information provided by its staff and attach COI Disclosure Forms from each of its Subcontractors, prior to such Firm performing any services under a Contract.

### 1. Definitions

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

**“Apparent Conflict Of Interest”** means that an individual or Firm may reasonably be perceived to have an actual or potential conflict of interest.

**“Associate”** (of the Firm) means an individual who is a professional or managerial employee, executive, director, key project personnel, consultant, contractor or Subcontractor, or any immediate family member of the foregoing.

**“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.

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

**“Conflict Of Interest”** or **“COI”** means a personal conflict of interest or organizational conflict of interest and includes an actual, potential, or apparent conflict of interest.

**“COI Disclosure Form”** means 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.

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

**“Contract”** means an Agreement to Agree (ATA), Price Agreement (PA), Work Order Contract (WOC), Purchase Order (PO), or any other contract with Agency.

**“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. A Firm includes all persons, individual or corporate, without regard to form of legal entity.

**“Individual Conflict Of Interest”** means 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 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. Examples of Low-level Documents related to A&E projects or programs 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 Agency’s project delivery process for Class 2 & 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: Engineering Baseline Reports, Environmental Baseline Reports, Environmental Impact Statements, Location Surveys, or Traffic Impact Studies.

**“Organizational Conflict Of Interest”** means that a Firm or any of its Subcontractors has 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 Subcontractors<sup>1</sup>, 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).

**“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.

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

**“Procurement”** means an 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.

**“Subcontractor”** means a subcontractor or subconsultant at any tier.

**“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.

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

## **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 (A&E and non-A&E, public improvements, goods, and trade services) without regard to which particular federal or Oregon laws govern the activity. Agency also has a Code of Conduct Policy for conflicts of interest regarding the employment of former Agency employees, which is explained below.

### **Agency Code of Conduct Policy Regarding Former Agency Employees**

When an Agency employee has performed functions for Agency in any phase or stage of a Procurement, including but not limited to drafting specifications, reviewing or scoring a bid or Proposal, authorizing service or assigning work, or awarding a Contract and the employee leaves

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<sup>1</sup> Note that this definition is broader than the ones in OAR 731-070-0030(1) and 23 CFR 636.103.

Agency and is employed by a Firm that has a Contract with Agency or is a Bidder or Proposer on a Procurement with the intent of signing a contract with Agency, the Firm shall be subject to specific restrictions described below for a one-year period from the date the Agency 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 may result in the rejection of the Firm's bid or Proposal or cancellation of the Contract with Agency at any time. It would also constitute grounds for cancellation of a Firm's prequalification with Agency and for a determination of the Firm not being responsible for future Procurements.

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

### **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 establish Oregon's general policies that apply to public contracts:

- 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.

Agency's 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.

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

Pursuant to 23 USC § 112(b)(3), the FHWA has promulgated administrative rules effective January 9, 2003 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 summary to design-bid-build and non-A&E activities as well):

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 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, an interest, other than his employment or retention by a State or other governmental instrumentality, in any Contract in connection with such Project (see 23 CFR § 1.33).

#### **Federal Standards for NEPA Projects; 40 C.F.R. Section 1506.5(c)**

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(c) 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. See Question No. 6 in the Attachment 1 COI Disclosure Form.

### **3. COI Guidelines**

See Agency’s Code of Conduct Policy above regarding the employment of former Agency employees.

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,
- (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 Price Agreement 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 and
- (e) the work product from the Firm incorporated into or relevant to the procurement is available on an equal and timely basis to all Proposers.

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 Disclosure Process**

A Firm shall represent the correctness of a completed COI Disclosure Form at the time of submitting a proposal to Agency or entering into a Contract with Agency. A Firm shall file an amended COI Disclosure Form within ten business days of any material change in the information reported on the 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. Since not all Subcontractors will be identified in the proposal, the disclosure required with the proposal applies to Subcontractors that are identified or required to be identified at that time.

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 disclosures or COI management plan offered by the Firm.

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

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 a Firm producing them from a potential COI situation. The ultimate determination will take into account the other factors described above.

### Examples

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 an 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, six months ago. Agency initially assesses this situation as a potential organizational conflict of interest and provides information to potential Proposers of this assessment through an addendum to the RFP. In its proposal, the Proposer provides mitigating information and written assurances that this individual works in an area of the company that will not be working on their program management proposal and that the individual will be isolated inside the company from any information associated with the program and will not be lobbying Agency. 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. Depending on the particular facts, Agency might determine that the role of the Firm was to represent the industry in the context of a public meeting where other Firms were invited to submit comments, and that the Firm therefore does not have 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. Agency contracts with a Firm to assist it in performing NEPA analysis, compare design alternatives and prepare an Environmental Impact Statement (EIS) and a Record of Decision for a project. Agency determines that during the term of the Firm's Contract with Agency the Firm is disqualified because it would have a financial or other interest in the outcome of the project if it were allowed to submit a proposal or participate as a team member with a Firm submitting a proposal. Agency's determination is irrespective of whether all documentation the Firm has prepared will be made publicly available.

**Exhibit H – Appendix 1**  
**CONFLICT OF INTEREST (COI) DISCLOSURE FORM**  
**Oregon Department of Transportation (Agency)**

**This COI Disclosure Form must be completed by the Firm and each of its Subcontractors. See COI Guidelines for definitions of terms and for conditions for submitting this COI Disclosure Form.**

**This COI Disclosure Form is submitted in response to (check only one):**

- Agency RFP#** \_\_\_\_\_
- Project-Specific Contract #** \_\_\_\_\_.
- Price Agreement #** \_\_\_\_\_ **WOC#** \_\_\_\_\_ [or] **PO#** \_\_\_\_\_.
- Changes to COI Disclosure Form previously submitted for (RFP #** \_\_\_\_\_ **or Price Agreement #** \_\_\_\_\_, **or WOC #** \_\_\_\_\_, **Contract #** \_\_\_\_\_

**This COI Disclosure Form must be signed in ink by a principal of the Firm to certify that it is correct. A Firm's certification that its disclosure form is correct includes the disclosure by its Associates and Subcontractors.**

My signature certifies that as disclosed on or attached to the present form:

- (a) the Firm's disclosures are complete, accurate, and not misleading.
- (b) the Firm has received COI Disclosure Form(s) from all Subcontractors (if any) and the present form has attached any COI Disclosure Form(s) thereof.

**I hereby certify that I am authorized to sign this COI Disclosure Form as a Representative for the Firm identified below:**

**Complete Legal Name of Firm:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Name (type/print):** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Telephone:** (\_\_\_\_) \_\_\_\_\_ **Fax No.:** (\_\_\_\_) \_\_\_\_\_

**Date:** \_\_\_\_\_

**Please answer all questions "Yes", "No" or "N/A", and if uncertain answer "Yes." If the answer to any of the questions 1 through 6 is "Yes," then:**

- (a) **furnish all relevant facts that are necessary to make the response complete, accurate, and not misleading; and**
- (b) **identify 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)**

1. Is any Associate of the Firm a former employee of Agency within the last year or a family member of a current employee of Agency? No  Yes : **If the answer to this question is “Yes”, complete the attached “Relatives and Former Agency Employees - Roles and Signatures” table (Part A and/or Part B, as applicable).**

2. Does the Firm or any Associate of the Firm have a conflict of interest with regard to any known member of an Agency procurement evaluation or selection team? No  Yes : \_\_\_\_\_

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3. Did the Firm, or any Associate of the Firm, participate in preparing any part of any ITB or RFP or any documents or reports to which any such ITB or RFP refers, including environmental baseline data and available engineering reports, that have been advertised or will be advertised pertaining to this Project? No  Yes : \_\_\_\_\_

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4. Does the Firm, or any Associate of the Firm, have any past, present or currently planned interests which are an Actual or Potential Organizational Conflict of Interest (as defined in Agency’s COI Guidelines), with respect to performing the work for Agency. No  Yes :

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5. Does the Firm, or any Associate of the Firm, have any individuals with an Actual or Potential Personal Conflict of Interest (as defined in Agency’s COI Guidelines), with respect to performing the work for Agency? No  Yes : \_\_\_\_\_

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6. Does the prospective Contract/WOC include development of an EA or EIS? No  Yes

**If yes**, in accordance with the disclosure statement requirements of Council on Environmental Quality Regulation, 40 C.F.R 1506.5(c), does Consultant have any financial or other interest in the outcome of this Project; and/or does Consultant have any agreement, enforceable promise, or guarantee to provide any future work on this Project? No  Yes :

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7. Have Subcontractors furnished COI Disclosure Forms separate from the present form? (If yes, attach Subcontractor disclosures.) No  Yes  N/A : \_\_\_\_\_

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