

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

**Applicability:** Prior to entering into contracts with the Agency and during contracts with the Agency, a firm and its associates or affiliates must disclose actual, apparent and potential Conflicts of Interest (“COI”), individual and organizational COI, 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 associates or affiliates of the firm. This includes all tiers of a proposal or contract and ensures that the firm and each of its associates or affiliates 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 Procurements for the Agency or on behalf of another governmental entity/agency.

In this document, associates or affiliates means any relationship (e.g., partnership, contractual connection, subconsultants, subcontractors) which is under the control of the proposing or awarded firm.

Definitions that apply to these COI Guidelines and COI Disclosure Form can be found in Code of Federal Regulations (“CFRs”), Oregon Revised Statutes (“ORS”), and Oregon Administrative Rules (“OARs”).

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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):**

1. A firm or any of its associates have any apparent, potential or actual COI per these COI guidelines, CFRs, ORS, OARs see Section 2) or per the criteria of any COI Disclosure Form or additional disclosure requirements included as part of a procurement or contract;
2. 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 (“EIS”) or Environmental Assessment (“EA”), submittal of COI Disclosure Forms is always

required); or

3. 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 COI per these guidelines or per the COI disclosure requirements associated with a particular procurement or contract. Any such changes must be disclosed to Agency within 10 business days of identifying a potential, apparent or actual conflict. Disclosure must be made via submittal of a completed and signed COI Disclosure Form.
4. With respect to a procurement or current contract with Agency:
  - a. Is any associate of the firm a former employee of Agency within the last two years that had or will have involvement (on behalf of Agency, governmental entity/agency, or firm) with the procurement, contract, subcontract, or the prospective project? [See Agency Ethics Policy PER 01-02.](#)
  - b. 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 firm's performance?
  - c. Does the firm or any associate of the firm have an actual, apparent or potential COI ("Individual" or "Organizational") with regard to any known member of the Agency, governmental entity/agency?
  - d. Did the firm or any associate of the firm conduct prior work on the project described in the procurement
  - e. Is the firm, or any associate of the firm, currently providing services that inform or contribute to the development, requirements, or expectations of the project described in the procurement??
  - f. Has the firm or any associate of the firm entered into personal services contract(s) with Agency or governmental entity/agency for the purpose of advising or assisting in developing specifications, a scope or statement of work, design concept or other plan set, an invitation to bid, a request for proposals or other documents and materials related to, or included in, this procurement?
5. Does the firm or any associate of the firm have any past, present or currently planned interests (see: Section 3 - COI Considerations Related to Previous Work on Projects, Section 4 - COI Considerations Related to Consultant Services Provided During Project Construction, and Section 6 - Additional Examples of Conflict of Interest Situations) which are an actual, apparent or potential COI ("Individual" or "Organizational") with respect to performing the work for Agency or governmental entity/agency (Ex: this could include an active contract for the Agency or governmental entity/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 COI 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 EA or 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. 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 must 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 must complete and submit a corrected and signed COI Disclosure Form (and coversheet as required for responding to a procurement) for the subject procurement.

For active solicitations: If required disclosures are not submitted with a proposal and a necessary disclosure is identified by the Agency, the Agency may request a disclosure. If a request for disclosure or updates is required, it may result in a scoring deduction on the firm's proposal (refer to your specific procurement documents for details).

A firm shall incorporate in each required COI Disclosure Form any COI disclosure information known to the firm, provided by its staff, associates or affiliates, prior to performing any services under a contract and if any potential or actual conflict is discovered while performing any services during the contract. Agency's COI Disclosure Form is available on [ODOT's Consultant Forms and Resources page](#).

## **2. Governing Standards**

Both Oregon and federal laws govern disclosure and management of COI in the 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.

### **Oregon Standards**

The current Oregon statutory framework, as generally applied, addresses COI in public contracting by emphasizing the need for open and impartial procurement methods and by prohibiting certain COI involving public officials. The following statutes and administrative rules establish Oregon's general policies and the restrictions and prohibitions regarding COI for public contracts and Public Officials. The following list is for reference only and may not include all references to COI found in OAR or ORS.

ORS 244.020 Definitions

[ORS 244.047](#) Financial interest in public contract.

ORS 244.120 Methods of handling conflicts; Legislative Assembly; judges; appointed officials; other elected officials or members of boards

ORS 244.130 Recording of notice of conflict; effect of failure to disclose conflict

ORS 279A.015 Policy

[ORS 279B.040](#) Prohibition on accepting bid or proposal from contractor that advised or assisted contracting agency to develop specifications or solicitation documents; exceptions.

[ORS 279C.307](#) Limitations in procurement of personal services; exceptions; procedure for obtaining exception from appropriate authority; basis for approving exception.

ORS 279C.332 Definitions for ORS 279A.065, 279C.307, 279C.335, 279C.337, and 279C.380

[OAR 137-049](#)-0690 Construction Manager/General Contractor Services ("CM/GC Services")

[OAR 731-148-0130](#) Source Selection; Pricing Information; Conflicts of Interest

### **Federal Standards**

FHWA has administrative rules that affect federally funded procurements. These rules are used as the basis for Agency's guidelines and specifically regulate both organizational and individual COI. The following list is for reference only and may not include all references to COI found in CFR.

[2 CFR 200.112](#) Conflict of Interest

[23 CFR 1.33](#) Conflicts of interest.

23 CFR 636.116 What organizational conflict of interest requirements apply to design-build projects?

23 CFR 636.117 What conflict of interest standards apply to individuals who serve as selection team members for the owner?

23 CFR 637.209 Laboratory and sampling and testing personnel qualifications.

[23 CFR 771.119](#) Environmental assessments.

[23 CFR 771.123](#) Draft environmental impact statements

23 CFR 172.7 Procurement methods and procedures

### **3. COI Considerations Related to Previous Work on Projects**

Any firm that has previously performed services on behalf of Agency or any governmental entity/agency for the prospective or actual project may have a potential conflict of interest if awarded the contract, which will be required to be mitigated prior to performing services for the contract. Services may not commence until the 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) any environmental documents prepared by the firm have been determined to be objective, and Agency demonstrated independent decision-making authority during the environmental process;
- (c) such services did not provide the firm with access to or knowledge of confidential or inside information that could provide an unfair competitive advantage with respect to the procurement or contract;
- (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; and
- (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.

All COI Disclosure Forms will be considered public records.

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

Below are examples of actual, apparent or potential COI that must be disclosed.

- (a) A consultant, or its associates that is a Professional of Record (“POR”) for a project, generally may not perform the role of construction contractor 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, unless as described under ORS 279C.307.
- (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.
- (f) Consultant or sub-consultants assisting the owners representative in preparing the Request For Proposal (“RFP”) for a design-build project may not submit a proposal in response to the design-build RFP.

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

#### **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 COI (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 must be disclosed

within 10 business days via submittal of a corrected and signed COI Disclosure Form and mitigation plan if required.

A firm shall assure that any COI Disclosure Form it submits includes all information required to be disclosed by its associates or affiliates, on behalf of the firm. The disclosure(s) required with the proposal applies to the prime and all proposed associates or affiliates that are identified or anticipated at the time of proposal submission.

The identification, initial assessment, and management of actual or potential COI is the responsibility of the Agency, the firm and the firm's proposed project team. The Agency, will make the final determination of the proposed mitigation plan offered by the firm regarding the actual or potential conflict.

Agency's COI determination regarding the firm(s) or any associates of the firm(s) COI disclosures (or COI discovered by Agency) may be based on the following factors:

- ✓ Situational Facts – description of the situation and all known facts specific to the actual, potential or apparent COI
  - ✓ Type of Work - specific product or service and contract(s) involved
  - ✓ Relationship to Management - specific interactions with Agency or governmental entity/agency decision-makers
  - ✓ Public Disclosure - timing and availability of product or service

Each disclosure or identification of a conflict is evaluated on a case-by-case basis. Decisions made in one situation may not be applicable to another. Therefore, the Agency will handle each situation individually. For example, the definition of "low-level" documents does not clear a Firm from a potential COI situation. The Agency determination will take into account the factors described in the Agency guidance documents, CFRs, OARs, ORS, as well as any additional factors the Agency deems relevant to the individual COI.

**Agency in its sole discretion may cancel a procurement or terminate a contract if a firm fails to disclose any potential or actual conflict.**

Potential Consequences for Failure to Disclose:

- Rejection of firm's proposal
- Rescinding the firm's offer letter
- Cancellation of current contract(s) impacted by the conflict
- Removal from prequalification list (for repeated failed disclosures, or intentional misconduct or fraud)
- Firm deemed ineligible for future Procurements due to not being a responsible bidder (for repeated failed disclosures, or intentional misconduct or fraud)

## **6. Organizational Conflict of Interest**

An organizational conflict of interest may result when factors create an actual or potential conflict of interest on an instant contract, or when the nature of the work to be performed on the instant contract creates an

actual or potential conflict of interest on a future acquisition. In the latter case, some restrictions on future activities of the contractor may be required.

Organizational Conflict of Interests are typically categorized into three types:

- (1) **Unequal Access to Information.** Access to "nonpublic information" as part of the performance of an ODOT or any governmental entity/agency contract could provide the consultant a competitive advantage in a later competition for another ODOT contract.
- (2) **Biased Ground Rules.** A consultant in the course of performance of an ODOT or any governmental entity/agency contract, has in some fashion established important "ground rules" for another ODOT contract, where the same consultant may be a competitor. For example, a consultant may have drafted the statement of work, specifications, or evaluation criteria of a future ODOT procurement.
- (3) **Impaired Objectivity.** A consultant in the course of performance of an ODOT or any governmental entity/agency contract, is placed in a situation of providing assessment and evaluation findings over itself, or another business division or a subsidiary of the same corporation, or another entity with which it has a significant financial relationship.

## 7. Additional Examples of Conflict of Interest Situations

The following examples illustrate conflict of interest situations that could arise during the course of a procurement with Agency. The following examples are only to be used for reference. Each COI disclosure will be reviewed individually, and determinations made based on current guidelines and the specific details of the individual project and disclosure.

1. A design-build procurement requires the responding proposers to propose how to manage site features that were uncovered by a geotechnical engineering firm. A multi-specialty engineering firm that is the parent company of the geotechnical engineering Firm submits a proposal to design the overall project (including a COI disclosure form and mitigation plan).

*Potential Considerations (not exhaustive):*

- Was all information shared?
  - Were all findings made available for public review?
  - If a local project, did the local agency provide ODOT access to the information to release with the solicitation?
  - If a local project, did the geotechnical firm provide ODOT access to the information during the solicitation with a request that it be released under a solicitation addendum?
2. Agency seeks comprehensive program management services for a series of transportation projects. One of the proposing Firms employed a senior official from the Agency who played a significant role in providing direction for the procurement within the last two years. The Firm submits a proposal and COI Disclosure Form with a proposed mitigation plan to Agency. 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 from the date the contract is executed will not have a role or direct beneficial interest in the contract (See [ODOT Policy PER 01-02](#)).

*Potential Considerations (not exhaustive):*

Depending on the particular facts in the Firms mitigation plan and Agency's records, Agency might determine that, while the proposing firm has a potential organizational COI, that conflict has been adequately mitigated and the firm will not be disqualified.

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 COI, 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. Based on the particular facts, the Agency may determine the company has an actual COI.

*Potential Considerations (not exhaustive):*

- The company should offer mitigating facts or organizational plans as part of its proposal response to address Agency's concern.
  - Does the company have Impaired Objectivity, where the company is placed in a situation of providing business to division or a subsidiary of the same corporation, or another entity with which it has a significant financial relationship?
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.

*Potential Considerations (not exhaustive):*

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 COI as all information shared through the advisory committee meetings is available to the public. The firm is still required to submit a disclosure regarding its role on the advisory committee.

5. Agency or governmental entity/agency contracts with an A&E Firm to develop "low-level" documents prior to releasing 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.

*Potential Considerations (not exhaustive):*

Agency may determine that the company has a potential organizational COI 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 procurement. The firm then mitigates the potential COI by suspending development of new reports during the open period of the procurement and making all data and information sources available on an Agency website prior to the RFP release. Agency may determine that the potential conflict has been adequately mitigated 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 project contract for a design-build procurement. The firm and its subconsultants have 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 and subconsultants including management and technical personnel.



*Potential Considerations (not exhaustive):*

There are Biased Ground Rules established from the prior contract with the consulting firm and its subconsultants. As a result, the firm and subconsultants 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 COI 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.).

*Potential Considerations (not exhaustive):*

Agency may conclude the proposing firm does not have a COI that detracts from its eligibility for the program management award. Agency may determine that the related entity has a COI 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.

*Potential Considerations (not exhaustive):*

- Will the firm be involved in the design of shopping center?
  - Will the firm be working for a developer to perform due diligence?
  - What is the "benefit" from which the firm stands to gain?
9. A Consultant is currently under contract with ODOT for a Local Agency (LA) TSP update. ODOT solicits for a facility plan which was included in the original LA TSP and TSP update. Deliverables in the contract for the TSP update that will inform or contribute to the development, requirements, or expectations of the project described in the procurement of the facility plan. After the solicitation evaluation process for the ODOT facility plan, ODOT issues Intent to Award for the facility plan to the same consultant which is under contract for the TSP update.

*Potential Considerations (not exhaustive):*

- Are there Biased Ground Rules?
- Is there Impaired Objectivity (See ORS 279C.307(1) and 23 CFR §1.33)?
- Did the consultant identify anything in its COI disclosure?
- Was the disclosure submitted before contract execution?

10. A Consultant firm is under contract with a LA as the outsourced city engineer (consultant company) to provide reviews and recommendations of engineering and planning documents provided by staff and consultants. ODOT is delivering a project for the LA for the design of a multi-use path. ODOT's intergovernmental agreement (IGA) with the LA requires it to provide a funding match. The IGA further requires ODOT to coordinate with the LA on the deliverables under the contract. The LA intends to use outsourced city engineer for the coordination. ODOT's contract is with the same consultant the LA has as its outsourced city engineer.

*Potential Considerations (not exhaustive):*

- Is there Impaired Objectivity (See ORS 279C.307(1) and 23 CFR §1.33)?
- Did the consultant identify anything in its COI disclosure?
- Was the disclosure submitted before contract execution?

11. A Consultant is currently under contract with a LA to provide bridge type options and high-level engineering documents for a pedestrian foot bridge. The LA will be selecting the bridge type. ODOT will be delivering the bridge project for the LA. ODOT's intergovernmental agreement (IGA) with the LA requires it to provide a funding match. ODOT intends to release the solicitation for the bridge design before the LA will be provided the final bridge type options and before the Local Agency selects the bridge type. The Consultant desires to propose on the bridge project.

*Potential Considerations (not exhaustive):*

- Is there Unequal Access to Information?
- Are there Biased Ground Rules?
- Is there Impaired Objectivity (See ORS 279C.307(1) and 23 CFR §1.33)?
- Did the consultant identify anything in its COI disclosure?
- Was the disclosure submitted before contract execution?

12. Parent companies and their subsidiaries

○ A&E Contracts

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 project management services to Agency under a separate contract for this project. 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.

*Potential Considerations (not exhaustive):*

- Is there Impaired Objectivity (See ORS 279C.307(1) and 23 CFR §1.33)?
- The A&E Firm that is the parent of XYZ Inc. would be ineligible for award of the A&E design contract as one of their subsidiaries is providing project management for the same project.

○ Construction contracts

Agency issues an Invitation to Bid ("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.

*Potential Considerations (not exhaustive):*

- Are there Biased Ground Rules?
- Is there Impaired Objectivity (See ORS 279C.307(1) and 23 CFR §1.33)?
- 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.