

APPROVED:

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Department of Transportation

CONFLICT OF INTEREST PROCEDURE FOR DEPARTMENT CONTRACTS

PURPOSE:

The goal of the Department of Transportation's (Department) contracting program is to procure contracts in a fair, open, and competitive manner. Additionally, consultant firms representing the Department must be free of conflicting professional or personal interests. Such competing interests could hinder objective decision making, and potentially make it difficult for consultant firms to discharge their contractual obligations impartially. A conflict of interest can create the appearance of impropriety, even where none exists, that can undermine confidence in the Department's contracting program. In order to prevent potential conflicts, the following procedure shall be adhered to when contracting for professional services. It is the responsibility of the consultant firm to recuse itself from submitting Letters of Interest, Letters of Response, or technical proposals for a project if a conflict of interest exists. Subconsultants are responsible for disclosing potential conflicts of interest to the prime consultant firm, and recusing themselves accordingly where conflicts exist. Where the procedure allows District approval, it is the responsibility of the consultant firm with the potential conflict of interest (whether prime or subconsultant) to request a determination on eligibility prior to submittal of Letters of Interest, Letters of Response, or technical proposals. Approval must be obtained in writing from the District Secretary prior to a consultant firm's submittal of Letters of Interest, Letters of Response, or technical proposals. An undisclosed, later discovered conflict of interest may cause a Letter of Interest, Letter of Response, or technical proposal to be considered non-responsive.

AUTHORITY:

Sections 20.23(3)(a) and 334.048(3), Florida Statutes

SCOPE:

This procedure applies to all Department offices involved in contracting for professional services and to professional services consultant contracts and design-build contracts.

REFERENCES:

Sections 287.055, 337.105, 337.14, and 337.164, Florida Statutes
Rule Chapters 14-22 and 14-75, Florida Administrative Code (F.A.C.)

1. DEFINITIONS

1.1 Affiliate

For the purpose of this procedure, the term "affiliate" shall mean a predecessor or successor of a consultant firm or contractor under the same, or substantially the same, control or a group of business entities which are connected or associated so that one entity controls or has the power to control each of the other business entities. The term "affiliate" includes the officers, directors, executives, shareholders active in management, employees, and agents of the affiliate. The ownership by one business entity of a controlling interest in another business entity or a pooling of equipment or income among business entities shall be prima facie evidence that one business entity is an affiliate of another.

2. ALL PROFESSIONAL SERVICES CONTRACTS

2.1. Restrictions on Consultant Firms that Develop Project Scopes

Any consultant firm, or its affiliate, that developed the scope of services, the Request for Proposal (RFP) or other solicitation documents for a particular project phase is ineligible to compete for that phase of the project for which they developed the documents.

Any consultant firm, or its affiliate, that developed the RFP or other solicitation documents for a design-build project is ineligible to compete for construction engineering and inspection (CEI) for that design-build project.

A consultant firm, or its affiliate, that developed the scope of services, the RFP, or other solicitation documents for a design project is eligible for CEI services for that same project.

2.2 Restrictions on Preliminary Engineering Activities

A consultant firm, or its affiliate, that performed a value engineering study or cost risk analysis on a project is eligible to perform work on other phases of the project.

A consultant who solely performed Project Development and Environmental (PD&E) services on a project is eligible to compete for work on other phases of the project, if the PD&E services have been completed. For on-going PD&E services, the District Secretary will determine whether to allow the PD&E firm to compete for work on other

phases based on the complexity of the project and whether a competitive advantage exists.

A consultant who performed a safety or traffic operations study is eligible to perform design services for the same project.

A consultant who performed a corridor analysis or pre-design analysis is eligible to perform design services for the same project.

3. CONSULTANT CEI CONTRACTS

3.1 Restrictions on Qualifications

A construction contractor, or its affiliate, qualified by the Department under **Rule Chapter 14-22, F.A.C.**, may not also qualify under **Rule Chapter 14-75, F.A.C.** to provide either CEI services or testing services. This limitation does not apply to any design-build prequalification and does not apply when the Assistant Secretary otherwise determines in writing at least 30 days before advertisement that the limitation is not in the best interests of the public with respect to a particular contract for testing services or CEI services.

3.2 Restrictions on Engineer of Record as Prime Consultant

A consultant firm, or its affiliate, that is the Engineer of Record (EOR) on a project shall be considered ineligible to compete as a prime consultant for CEI services on that same project. However, a consultant firm, or its affiliate, that performed design services is able to compete for CEI contracts where the consultant firm will only provide inspectors, and the contracts will be administered by Department staff (i.e., CEI hybrid contracts).

3.3 Restrictions on Engineer of Record or Subconsultant as CEI

A consultant firm, or its affiliate, that is the EOR on a project may only be considered eligible to compete as a subconsultant for CEI services upon approval of the District Secretary.

A consultant firm, or its affiliate, that was a subconsultant to the EOR on a project may only be considered eligible as a prime for CEI services on the same project, with the approval of the District Secretary.

A consultant firm, or its affiliate, that was a subconsultant to the EOR on a project may only be considered eligible as subconsultant for CEI services with the approval of the District Secretary.

The District Secretary's approval shall be based on the extent of the firm's involvement

in the design of the project or CEI services, as the case may be, and the potential of hindrance of any objective decision making.

A consultant firm, or its affiliate, that performs geotechnical services for the EOR on the project will not be eligible as the CEI to perform the same types of geotechnical services, or to provide testing of the same types of materials tested or evaluated for the EOR on the same project. A consultant firm, or its affiliate, responsible for performing or evaluating core borings for structures shall be considered ineligible to perform inspection of pile driving or drilled shaft construction on the same project.

Design-Bid-Build

Current relationship/Future relationship (on the same project)	Requires District Secretary approval	Ineligible for approval	Not a conflict
Prime EOR/Prime CEI		X	
Prime EOR/Sub CEI	X		
Prime Geotech/Prime CEI performing different type of services			X
Sub EOR/Prime CEI	X		
Sub EOR/Sub CEI	X		
Sub EOR for survey services/Sub CEI for survey services	X		
Sub Geotech to EOR/Sub CEI performing the same type of services		X	
Sub Geotech to EOR/Sub CEI performing different type of services			X

4. CONSULTANT FIRM / CONTRACTOR RELATIONSHIPS

A consultant firm or its affiliate that is the Designer or EOR, or a subconsultant to the EOR, is ineligible to bid on the same project as the construction contractor or as a subconsultant to the construction contractor. It is a conflict of interest for a consultant firm to receive compensation on a single design-bid-build project from both the Department and the construction contractor, either directly or indirectly, except as noted herein. A consultant firm that has only performed preliminary pavement coring activities as part of the design process is permitted to act as the Quality Control (QC) Manager for a contractor on the same project, or provide geotechnical or other engineering services on the same project.

A contractor that performs a constructability review on a design contract is prohibited from pursuing the construction contract. A contractor who participates in a value engineering study workshop or cost risk analysis workshop is prohibited from pursuing the construction contract.

A construction contractor qualified with the Department may only provide testing services or CEI services if the Department determines it is in the best interest of the public. The construction contractor must request approval to provide testing services or CEI services at least 60 days in advance of a contract advertisement. The request must be submitted in writing to the Assistant Secretary who will provide a response in writing at least 30 days prior to advertisement.

Under no circumstances shall a contractor be authorized to provide testing services or provide CEI services to the Department in connection with a construction contract under which the contractor is performing any work.

5. GENERAL ENGINEERING CONSULTANTS

Professional services of a General Engineering Consultant (GEC) include the administration, support and management of engineering; architectural; surveying; planning; or right of way appraisal, acquisition and property management activities. These activities may involve a number of different projects in the work program.

Neither the GEC nor its affiliate is eligible to pursue any project for which the GEC developed the solicitation documents, scope of services, or RFP.

This eligibility restriction also applies to all consultant support contracts.

6. DESIGN-BUILD

The lead or prime contractor and lead or prime design consultant with a design-build firm are restricted from submitting as lead or prime on more than one proposal for a given project. The lead or prime design consultant may serve in a non-lead role as a subconsultant/subcontractor on one or more design-build teams, but must inform all affected teams of the additional participation. The lead member (i.e., design consultant or contractor) with the design-build firm cannot change teams after award, without the written approval of the Chief Engineer.

A consultant firm is ineligible for CEI services, either as a prime or a subconsultant, for a design-build contract on which the same firm, or its affiliate, is the EOR or is sub to the EOR.

A consultant firm, its affiliate, or subconsultant that developed the RFP for a design-build contract cannot be part of a design-build team proposing on that contract as a prime or a subconsultant. A consultant firm that hires the engineer who developed the RFP cannot be a part of a design-build team proposing on that contract as a prime or as

a subconsultant. A consultant firm, its affiliate, or subconsultant that is under contract with the Department to provide CEI services on the design-build contract cannot be part of a design-build team proposing on that contract as a prime or subconsultant.

Any consultant firm, or its affiliate, that developed the RFP for a design-build contract will not be eligible to compete as a prime for CEI services on that project. A consultant firm, or its affiliate, that developed the RFP may be considered eligible as a subconsultant for CEI services only with the approval of the District Secretary. A consultant firm or its affiliate that performed PD&E services would be eligible to participate on the design-build contract unless the consultant firm participated in developing the RFP or scope of services for the design-build contract.

A consultant, or its affiliate, that is the prime EOR on a design-bid-build project, where the project is switched to design-build, may participate on the design-build team with the approval of the District Secretary. The District Secretary shall consider level of design (% completed) by the EOR, the number of component design plans by different EOR's, etc.

The prime EOR is eligible to compete for CEI services on Design-Bid-Build project switched to design-build, if the prime EOR was not involved in the design-build RFP development.

A consultant firm performing PD&E studies for the Department is eligible to be a member of the design-build team on the same project, if the consultant firm had no direct role in development of the design-build RFP document.

Design-Build Projects

Current relationship/Future relationship (on the same project)	Requires District Secretary approval	Ineligible for approval	Not a conflict
Prime PD&E/DB prime			X
Prime PD&E/DB sub			X
Prime EOR/Prime CEI		X	
Prime EOR/Sub CEI		X	
Sub EOR/Prime CEI		X	
Sub EOR/Sub CEI		X	
Sub EOR for movable bridge project/Prime CEI		X	
Sub EOR for movable bridge project where electrical/mechanical work is minor/Sub CEI	X		
Develop RFP for DB contract/DB prime		X	

Current relationship/Future relationship (on the same project)	Requires District Secretary approval	Ineligible for approval	Not a conflict
Develop RFP for DB contract/DB sub		X	
Perform Value Engineering Review of RFP/DB prime			X
Perform Value Engineering Review of RFP/DB sub			X
Perform soil borings for DB project/DB Geotech sub	X		
Develop Design-Criteria package/CEI prime		X	
Develop Design-Criteria package/CEI sub	X		
Develop RFP for DB contract/CEI prime		X	
Develop RFP for DB contract/CEI sub	X		
Perform hydraulic reports and scour evaluations/Prime DB			X
Perform hydraulic reports and scour evaluations/Sub DB			X
Minor involvement in concept plans/Prime DB	X		
Minor involvement in concept plans/Sub DB	X		
Prime DB firm/Prime CEI		X	
Prime DB firm/Sub CEI		X	
Sub DB firm/Prime CEI		X	
Sub DB firm/Sub CEI		X	
Sub DB firm performing preliminary estimating services/Prime CEI		X	
Prime EOR on Design-Bid-Build switched to DB contract/Prime DB	X		
Prime EOR on Design-Bid-Build switched to DB contract/Sub DB	X		

7. FORMS

None required.