



**Washington State
Department of Transportation**

Organizational Conflicts of Interest Manual

M 3043.03

December 2022

Multimodal Development & Delivery Organization
Design, Construction, and Consultant Services

ENGLISH

Title VI Notice to Public

It is the Washington State Department of Transportation's (WSDOT) policy to assure that no person shall, on the grounds of race, color, national origin, as provided by Title VI of the Civil Rights Act of 1964, be excluded from participation in, be denied the benefits of, or be otherwise discriminated against under any of its programs and activities. Any person who believes his/her Title VI protection has been violated, may file a complaint with WSDOT's Office of Equity and Civil Rights (OECR). For additional information regarding Title VI complaint procedures and/or information regarding our non-discrimination obligations, please contact OECR's Title VI Coordinator at (360) 705-7090.

Americans with Disabilities Act (ADA) Information

This material can be made available in an alternate format by emailing the Office of Equity and Civil Rights at wsdotada@wsdot.wa.gov or by calling toll free, 855-362-4ADA(4232). Persons who are deaf or hard of hearing may make a request by calling the Washington State Relay at 711.

ESPAÑOL

Notificación de Título VI al Público

La política del Departamento de Transporte del Estado de Washington (Washington State Department of Transportation, WSDOT) es garantizar que ninguna persona, por motivos de raza, color u origen nacional, según lo dispuesto en el Título VI de la Ley de Derechos Civiles de 1964, sea excluida de la participación, se le nieguen los beneficios o se le discrimine de otro modo en cualquiera de sus programas y actividades. Cualquier persona que considere que se ha violado su protección del Título VI puede presentar una queja ante la Oficina de Equidad y Derechos Civiles (Office of Equity and Civil Rights, OECR) del WSDOT. Para obtener más información sobre los procedimientos de queja del Título VI o información sobre nuestras obligaciones contra la discriminación, comuníquese con el coordinador del Título VI de la OECR al (360) 705-7090.

Información de la Ley sobre Estadounidenses con Discapacidades (ADA, por sus siglas en inglés)

Este material puede estar disponible en un formato alternativo al enviar un correo electrónico a la Oficina de Equidad y Derechos Civiles a wsdotada@wsdot.wa.gov o llamando a la línea sin cargo 855-362-4ADA(4232). Personas sordas o con discapacidad auditiva pueden solicitar la misma información llamando al Washington State Relay al 711.

한국어 - KOREAN

제6조 관련 공지사항

워싱턴 주 교통부(WSDOT)는 1964년 민권법 타이틀 VI 규정에 따라, 누구도 인종, 피부색 또는 출신 국가를 근거로 본 부서의 모든 프로그램 및 활동에 대한 참여가 배제되거나 혜택이 거부되거나, 또는 달리 차별받지 않도록 하는 것을 정책으로 하고 있습니다. 타이틀 VI에 따른 그/그녀에 대한 보호 조항이 위반되었다고 생각된다면 누구든지 WSDOT의 평등 및 민권 사무국(OECR)에 민원을 제기할 수 있습니다. 타이틀 VI에 따른 민원 처리 절차에 관한 보다 자세한 정보 및/또는 본 부서의 차별금지 의무에 관한 정보를 원하신다면, (360) 705-7090으로 OECR의 타이틀 VI 담당자에게 연락해주시십시오.

미국 장애인법(ADA) 정보

본 자료는 또한 평등 및 민권 사무국에 이메일 wsdotada@wsdot.wa.gov 을 보내시거나 무료 전화 855-362-4ADA(4232)로 연락하셔서 대체 형식으로 받아보실 수 있습니다. 청각 장애인은 워싱턴주 중계 711로 전화하여 요청하실 수 있습니다.

русский - RUSSIAN

Раздел VI Общественное заявление

Политика Департамента транспорта штата Вашингтон (WSDOT) заключается в том, чтобы исключить любые случаи дискриминации по признаку расы, цвета кожи или национального происхождения, как это предусмотрено Разделом VI Закона о гражданских правах 1964 года, а также случаи недопущения участия, лишения льгот или другие формы дискриминации в рамках любой из своих программ и мероприятий. Любое лицо, которое считает, что его средства защиты в рамках раздела VI были нарушены, может подать жалобу в Ведомство по вопросам равенства и гражданских прав WSDOT (OECR). Для дополнительной информации о процедуре подачи жалобы на несоблюдение требований раздела VI, а также получения информации о наших обязательствах по борьбе с дискриминацией, пожалуйста, свяжитесь с координатором OECR по разделу VI по телефону (360) 705-7090.

Закон США о защите прав граждан с ограниченными возможностями (ADA)

Эту информацию можно получить в альтернативном формате, отправив электронное письмо в Ведомство по вопросам равенства и гражданских прав по адресу wsdotada@wsdot.wa.gov или позвонив по бесплатному телефону 855-362-4ADA(4232). Глухие и слабослышащие лица могут сделать запрос, позвонив в специальную диспетчерскую службу штата Вашингтон по номеру 711.(4232). Глухие и слабослышащие лица могут сделать запрос, позвонив в специальную диспетчерскую службу штата Вашингтон по номеру 711.

tiếng Việt – VIETNAMESE

Thông báo Khoản VI dành cho công chúng

Chính sách của Sở Giao Thông Vận Tải Tiểu Bang Washington (WSDOT) là bảo đảm không để cho ai bị loại khỏi sự tham gia, bị từ khước quyền lợi, hoặc bị kỳ thị trong bất cứ chương trình hay hoạt động nào vì lý do chủng tộc, màu da, hoặc nguồn gốc quốc gia, theo như quy định trong Mục VI của Đạo Luật Dân Quyền năm 1964. Bất cứ ai tin rằng quyền bảo vệ trong Mục VI của họ bị vi phạm, đều có thể nộp đơn khiếu nại cho Văn Phòng Bảo Vệ Dân Quyền và Bình Đẳng (OECR) của WSDOT. Muốn biết thêm chi tiết liên quan đến thủ tục khiếu nại Mục VI và/hoặc chi tiết liên quan đến trách nhiệm không kỳ thị của chúng tôi, xin liên lạc với Phó Trí Viên Mục VI của OECR số (360) 705-7090.

Thông tin về Đạo luật Người Mỹ tàn tật (Americans with Disabilities Act, ADA)

Tài liệu này có thể thực hiện bằng một hình thức khác bằng cách email cho Văn Phòng Bảo Vệ Dân Quyền và Bình Đẳng wsdotada@wsdot.wa.gov hoặc gọi điện thoại miễn phí số, 855-362-4ADA(4232). Người điếc hoặc khiếm thính có thể yêu cầu bằng cách gọi cho Dịch vụ Tiếp âm Tiểu bang Washington theo số 711.

العربية – ARABIC

العنوان 6 إشعار للجمهور

تتمثل سياسة وزارة النقل في ولاية واشنطن (WSDOT) في ضمان عدم استبعاد أي شخص، على أساس العرق أو اللون أو الأصل القومي من المشاركة في أي من برامجها وأنشطتها أو الحرمان من الفوائد المتاحة بموجبها أو التعرض للتمييز فيها بخلاف ذلك، كما هو منصوص عليه في الباب السادس من قانون الحقوق المدنية لعام 1964. ويمكن لأي شخص يعتقد أنه تم انتهاك حقوقه التي يكفلها الباب السادس تقديم شكوى إلى مكتب المساواة والحقوق المدنية (OECR) التابع لوزارة النقل في ولاية واشنطن. للحصول على معلومات إضافية بشأن إجراءات الشكاوى وأو بشأن التزاماتنا بعدم التمييز بموجب الباب السادس، يرجى الاتصال بمنسق الباب السادس في مكتب المساواة والحقوق المدنية على الرقم (360) 705-7090.

معلومات قانون الأمريكيين ذوي الإعاقة (ADA)

يمكن توفير هذه المواد في تنسيق بديل عن طريق إرسال رسالة بريد إلكتروني إلى مكتب المساواة والحقوق المدنية على wsdotada@wsdot.wa.gov أو عن طريق الاتصال بالرقم المجاني: 855-362-4ADA (4232). يمكن للأشخاص الصم أو ضعاف السمع تقديم طلب عن طريق الاتصال بخدمة Washington State Relay على الرقم 711.

中文 – CHINESE

《权利法案》Title VI公告

<華盛頓州交通部(WSDOT)政策規定，按照《1964年民權法案》第六篇規定，確保無人因種族、膚色或國籍而被排除在WSDOT任何計畫和活動之外，被剝奪相關權益或以其他方式遭到歧視。如任何人認為其第六篇保護權益遭到侵犯，則可向WSDOT的公平和民權辦公室(OECR)提交投訴。如需關於第六篇投訴程式的更多資訊和/或關於我們非歧視義務的資訊，請聯絡OECR的第六篇協調員，電話(360) 705-7090。

《美国残疾人法案》(ADA)信息

可向公平和民權辦公室發送電子郵件wsdotada@wsdot.wa.gov或撥打免費電話 855-362-4ADA(4232)，以其他格式獲取此資料。听力丧失或听觉障碍人士可拨打711联系Washington州转接站。

Af-soomaaliga – SOMALI

Ciwaanka VI Ogeysiiska Dadweynaha

Waa siyaasada Waaxda Gaadiidka Gobolka Washington (WSDOT) in la xaqiijiy in aan qofna, ayadoo la cuskanaayo sababo la xariira isir, midab, ama wadanku kasoo jeedo, sida ku qoran Title VI (Qodobka VI) ee Sharciga Xaquuqda Madaniga ah ah oo soo baxay 1964, laga saarin ka qaybgalka, loo diidin faa'iidooyinka, ama si kale loogu takoorin barnaamijyadeeda iyo shaqooyinkeeda. Qof kasta oo aaminsan in difaaciisa Title VI la jebiyay, ayaa cabasho u gudbin kara Xafiiska Sinaanta iyo Xaquuqda Madaniga ah (OECR) ee WSDOT. Si aad u hesho xog dheeraad ah oo ku saabsan hanaannada cabashada Title VI iyo/ama xogta la xariirta waajibbaadkeena ka caagan takoorka, fadlan la xariir Iskuduwaha Title VI ee OECR oo aad ka wacayso (360) 705-7090.

Macluumaadka Xeerka Naafada Marykanka (ADA)

Agabkaan ayaad ku heli kartaa qaab kale adoo iimeel u diraa Xafiiska Sinaanta iyo Xaquuqda Madaniga ah oo aad ka helayso wsdotada@wsdot.wa.gov ama adoo wacaaya laynka bilaashka ah, 855-362-4ADA(4232). Dadka naafada maqalka ama maqalku ku adag yahay waxay ku codsan karaan wicitaanka Adeega Gudbinta Gobolka Washington 711.

If you have difficulty understanding English, you may, free of charge, request language assistance services by calling 360-705-7468 or email us at: mcclusa@wsdot.wa.gov

ESPAÑOL – SPANISH

Servicios de traducción

Aviso a personas con dominio limitado del idioma inglés: Si usted tiene alguna dificultad en entender el idioma inglés, puede, sin costo alguno, solicitar asistencia lingüística con respecto a esta información llamando al 360-705-7468, o envíe un mensaje de correo electrónico a: mcclusa@wsdot.wa.gov

한국어 – KOREAN

번역 서비스

영어로 소통하는 것이 불편하시다면 360-705-7468, 으로 전화하시거나 다음 이메일로 연락하셔서 무료 언어 지원 서비스를 요청하실 수 있습니다: mcclusa@wsdot.wa.gov

русский – RUSSIAN

Услуги перевода

Если вам трудно понимать английский язык, вы можете запросить бесплатные языковые услуги, позвонив по телефону 360-705-7468, или написав нам на электронную почту: mcclusa@wsdot.wa.gov

tiếng Việt – VIETNAMESE

các dịch vụ dịch thuật

Nếu quý vị không hiểu tiếng Anh, quý vị có thể yêu cầu dịch vụ trợ giúp ngôn ngữ, miễn phí, bằng cách gọi số 360-705-7468, hoặc email cho chúng tôi tại: mcclusa@wsdot.wa.gov

العَرَبِيَّةُ – ARABIC

خدمات الترجمة

إذا كنت تجد صعوبة في فهم اللغة الإنجليزية، فيمكنك مجاناً طلب خدمات المساعدة اللغوية عن طريق الاتصال بالرقم 360-705-7468 أو مراسلتنا عبر البريد الإلكتروني : mcclusa@wsdot.wa.gov

中文 – CHINESE

翻译服务

如果您难以理解英文，则请致电：360-705-7468，或给我们发送电子邮件：mcclusa@wsdot.wa.gov，请求获取免费语言援助服务。

Af-soomaaliga – SOMALI

Adeegyada Turjumaada

Haddii ay kugu adag tahay inaad fahamtid Ingiriisida, waxaad, bilaash, ku codsan kartaa adeegyada caawimada luuqada adoo wacaaya 360-705-7468 ama iimayl noogu soo dir: mcclusa@wsdot.wa.gov

Foreword

The *Organizational Conflicts of Interest Manual M 3043* is for use by Washington State Department of Transportation project engineers, project managers, Consultant Services Office, consultants, sub-consultants, contractors, subcontractors, and design-builders. It supplements the Secretary's Executive Order *Organizational Conflicts of Interest E 1059.00* by providing procedures and methods for implementing the Secretary's Executive Order.

This manual presents WSDOT's latest policy regarding conflict of interest and it is intended to be used as the primary reference in the evaluation of all Organizational Conflict of Interest (OCOI) issues on WSDOT projects. The manual contains definitions and explanations of terms and concepts that are intended to inform engineering staff sufficiently to evaluate and make determinations regarding conflicts of interest on WSDOT projects only.

Washington State has adopted ethical standards set forth in [RCW 42.52](#) that specifically address ethics in public service. These laws apply to all state employees, former state employees, and state officers. For purposes of addressing OCOI, these standards shall be construed to apply to all employees of Consultants and/or Sub-Consultants that perform project related work for WSDOT. For reference, without limitation, specific attention is drawn to the following statutes: [RCWs 42.52.020](#), [42.52.030](#), [42.52.040](#), [42.52.050](#), [42.52.080](#), and [42.52.900](#).

[RCW 18.43](#) addresses prohibited conduct and acts related to the practice of engineering. Conflicts of interest are referenced under [RCW 18.43.105\(6\)](#). Similarly, the Board of Registration tasked with the oversight of engineers and land surveyors pursuant to [RCW 18.43](#) has promulgated a set of rules of professional conduct and practice that addresses conflicts of interest in [WAC 196-27A-020-2\(i\)](#).

The Federal Highway Administration (FHWA) addresses OCOI in relation to federally funded highway projects in general at 23 CFR §1.33, DB projects under 23 CFR §636.116 and §636.117, and the NEPA process as it relates to DB at 23 CFR §636.109(b) 6 & 7. Use of consultants is addressed in 23 CFR Part 172. WSDOT adopts these rules for use on all WSDOT DB contracts, whether federally funded or not.

Comments about the manual are always welcome and will be considered in future updates as part of the continuous improvement process.

Robert E. Christopher, P.E.
Director of Construction Division -
State Construction Engineer

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I. Definitions

Avoidance – Preventing the occurrence an action in order to nullify the effectiveness of the action.

Consultant – An Entity that provides professional services to WSDOT or a Constructor.

Constructor – A construction contractor, subcontractor, design-builder, or construction manager.

Enduring Liability – Liability for defective design or professional services which is discovered by WSDOT, its agents, employees, subcontractors or sub consultants, within six years after substantial completion of construction of the project for which the designs were rendered, or during the period within six years after the termination of the design services, whichever is later. WSDOT is not limited by time constraints to assert claims for defective design if such defect is discovered within the appropriate six-year period described above ([RCW 4.16.160](#), [RCW 4.16.300](#)).

Entity – A person (individual) or firm (Consultant, General Engineering Consultant, Major Consultant, Sub-consultant)

Exemption – A circumstance or set of circumstances that causes an OCOI to not exist.

General Engineering Consultant (GEC) – An engineering firm under contract to WSDOT to help manage the overall development of a project.

Impaired Objectivity – A situation that exists when the interests of an Entity would be harmed through the free and unbiased exercise of judgement (i.e. evaluating performance of services within the same Entity).

Biased Assistance or Advice – A situation that exists when the impartiality of an Entity would be compromised by assisting in the preparation of procurement and/or contractual documents for a contract and then participating on a DB team related to the same contract.

Low-Level Document – As used in 23 CFR §636, Low-Level Documents shall be interpreted to mean documents that are defined as program or project-related documents that provide a basic understanding of a specific aspect of the program or project. Low-Level Documents generally include engineering or technical work, including but not limited to surveying, traffic fieldwork, utility identification, or drilling and testing associated with geotechnical or environmental investigations completed prior to completion of Conceptual Design. Low-Level Documents may include designs and reports created to assist in obtaining permits.

Major Consultant – An engineering firm that, as a consultant or sub-consultant to WSDOT, has a scope of work that includes any of the following:

- Management of the development of the PS&E for a design-bid-build construction contract;

- Management of the development of a Request for Qualifications (RFQ) or Request for Proposal (RFP) for a design-build (DB) contract; or

- Assisting WSDOT in the management of the overall development of a project.

Merger / Acquisition – Transactions in which the ownership of companies, other business organizations, or their operating units are transferred or consolidated with other entities.

Merger: a legal consolidation of two entities into one. **Acquisition:** when one Entity takes ownership of another Entity's stock, equity interests, or assets.

Mitigation – Making the effect of an action less severe

NEPA Document – Any one of the following: Environmental Assessment (EA), Environmental Impact Statement (EIS), Finding of No Significant Impact (FONSI), Record of Decision (ROD), or Categorical Exclusion (CE).

Neutralize – Counteracting the effect of an action in order to make it ineffective or harmless

On Call Contract – A contract awarded to an Entity with general provisions for the services to be rendered. As services are to be rendered, specific task orders are initiated that are to be completed by the contracting Entity.

Organizational Conflict of Interest (OCOI) means that because of other activities or relationships with other entities, an Entity:

Is unable or potentially unable to render unbiased assistance or advice to WSDOT;

Is or might be otherwise impaired in its objectivity in performing the contract work; or

Has an unfair competitive advantage.

Perceived Conflict of Interest – A situation where Entity’s official duties are in a circumstance where interests have the appearance of being influenced or conflicted.

Potential Conflict of Interest – A situation where an Entity’s official duties may cause a conflict in the future.

Preliminary Hydraulic Design (PHD) Authoring – Having direct knowledge of the preferences, interpretations, and compromises that are discussed with the tribes and resource agencies for location(s) where fish barrier correction is anticipated and having responsibility to assemble such information into the PHD document.

Preliminary Hydraulic Design (PHD) Oversight – Supervision of the entities involved in PHD development, including but not limited to work assignments and prioritization, schedule accountability, and development, implementation and administration of the QA/QC process for each PHD.

Preliminary Hydraulic Design (PHD) Review – The assessment of a PHD by an Entity other than the author or oversight Entity, in the form of comments, that is limited to determination of compliance with the PHD review checklist developed by WSDOT. If a change is suggested as a result of the review, WSDOT shall determine if the change is necessary and if it will be allowed.

Project Stakeholder – An Entity with an interest in one or more elements of the scope of work of a project.

Proposal – The document submitted by a Design-Builder in response to the Request for Proposal, which includes price information, technical approach, clarifications, and supplements thereto.

Real/Actual Conflict of Interest – A situation where an Entity’s official duties are in a circumstance where their interests are conflicted.

Request for Proposal (RFP) – The document package developed and issued by WSDOT, consisting of the Instructions to Proposers, General Provisions, Technical Requirements, and Appendices, requesting submittal of Proposals for the project and providing information relevant to the preparation and submittal of Proposals.

Request for Qualifications (RFQ) – The document package developed and issued by WSDOT requesting submittal and providing information relevant to the preparation of Statements of Qualifications.

Statements of Qualifications (SOQ) – The document submitted by a Design- Builder in response to the Request for Qualifications and all clarifications and supplements thereto.

Sub-consultant – An Entity that provides professional services to a Consultant or to a sub-consultant at any tier.

Submitter/Proposer – A submitter on an RFQ for a DB contract, or a proposer on an RFP for a DB contract.

Unfair Competitive Advantage – a situation that exists when an Entity has access to information not available to the public and that would assist a design-build team, which the Entity may join, in obtaining a contract.

II. Introduction

An organizational conflict of interest (OCOI) arises when an Entity's performance for a client compromises its ability to pursue or perform a WSDOT contract in a fair way. Therefore, an OCOI can pose significant implications for an Entity, including disclosure of OCOI, and possibly disqualification from pursuing certain contracts with WSDOT.

WSDOT in its sole discretion evaluates the following for WSDOT purposes on a case-by-case basis.

- Whether or not an OCOI exists.
- Whether or not the OCOI can be avoided, neutralized, or mitigated.
- Whether or not an exemption is granted.
- Reasonable and acceptable steps to avoid, neutralize, or mitigate OCOI.

III. Applicability

The requirements of this manual apply to all contracts for professional services related to WSDOT projects. These projects include design-bid-build (DBB) contracts, including Consultant agreements, and Design Build (DB) contracts, including Request For Qualifications (RFQ) and Request For Proposal (RFP), unless specifically stated otherwise.

Joint Ventures

The requirements apply to the individual entities that make up a joint venture in the same manner as they apply to the joint venture. Parent and subsidiary entities shall be considered as the same Entity for purposes of these guidelines.

Mergers

The requirements apply to entities resulting from acquisitions and mergers. WSDOT will not distinguish between mergers and acquisitions or the variants of each of these transactions in application of these guidelines. An Entity with an actual, potential, or perceived conflict of interest carries that actual, potential, or perceived conflict of interest with them to the newly formed Entity after an acquisition or merger.

Individuals

The requirements apply to employees of consultants who move from one firm to another. A consultant employee with an actual, potential, or perceived conflict of interest carries that actual, potential, or perceived conflict of interest with them to the new employer after changing firms.

IV. Responsibilities

The responsibility to avoid or neutralize Organizational Conflicts of Interest (OCOI) ultimately rests with the person or firm potentially conflicted. WSDOT's determinations are with regard to WSDOT's interests but cannot protect against challenges from outside interested parties.

Nevertheless, WSDOT retains sole discretion to determine on a case-by-case basis whether an OCOI exists and whether actions may be appropriate to avoid or neutralize any actual, potential, or perceived conflict. It is understood that any determination by WSDOT with regard to the existence of an actual, potential, or perceived OCOI or with regard to whether the OCOI may be avoided, neutralized, or mitigated is based solely on the facts made available at the time the determination is made. Unknown facts or a change in the facts over time may necessitate a re-evaluation of the original conclusion. Risks and costs associated with a successful legal challenge to an OCOI are the sole responsibility of the person or firm potentially conflicted. WSDOT reserves the right to reassess and revise any determination made regarding an OCOI at any time.

WSDOT recognizes that concerns with OCOI must be weighed against the need to promote competition as well as diversity, equity, and inclusion in the procurement process. With that, these guidelines purport neither to address every situation that may arise in the context of a project nor to mandate a particular decision, determination, or mitigation by WSDOT.

V. Evaluating OCOI

In addition to applicable state and Federal laws, the existence of an OCOI is based on the **"reasonable person test"** – i.e. whether a reasonable person with all the material facts would believe there is a conflict. The reasonable person test helps ensure that determinations are reasoned, founded in fact, and able to stand up to the scrutiny of external parties.

OCOI's will fall into one or more of the following criteria: **(1) Impaired Objectivity, (2) Biased Assistance or Advice, and (3) Unfair Competitive Advantage**. Each has an individual section below that contains an explanation, applicable exemptions, and mitigation/neutralization. The term "exemption" represents a situation where an OCOI does not exist. Exemptions are granted only by WSDOT, and they are not the same as avoidance or neutralization/mitigation.

Entities will identify potential OCOI's and proposed exemptions and mitigation/neutralization by submitting an *Organizational Conflict of Interest Disclosure and Avoidance/Neutralization/Mitigation Plan* to the WSDOT Engineer. When evaluating a potential OCOI, the WSDOT Engineer should review each of the criteria below. If the potential OCOI meets one or more of the criteria without an acceptable exemption, then an OCOI exists that may prevent an Entity from participating in a WSDOT contract. It may be possible to neutralize or mitigate the conflict, but the measures must be satisfactory to WSDOT. The WSDOT Engineer will consult with State Construction Office regarding the assessment and acceptance of mitigation measures.

A. Impaired Objectivity

An Entity may have Impaired Objectivity when its work under one contract is subject to evaluation or assessment under another contract. Impaired Objectivity may exist due to the (a) preparation of a professional work product, (b) a financial interest on both sides of a contract dispute, or (c) involvement with a project stakeholder.

- (a) Impaired Objectivity due to a professional or environmental work product exists if:
- The Entity provided a professional work product that is not a low-level document **or**;
 - The professional work product is a part of the contract such that it carries an Enduring Liability that falls within a legally defined liability timeframe ([RCW 4.16.160](#), [RCW 4.16.310](#)).

Exemptions: An Entity may receive an exemption from an Impaired Objectivity OCOI due to a professional or environmental work product if the legally defined liability timeframe presents a low risk of an issue in WSDOT's opinion and there is no other basis for a conflict of interest.

Mitigation/Neutralization: None

- (b) Impaired Objectivity due to a **financial interest on both sides of a dispute** exists if:
- The Entity holds a separate contract with a non-WSDOT party that is also a project stakeholder on the WSDOT project **or**;
 - The Entity prepared a professional work product that is a part of the WSDOT project such that it carries an Enduring Liability that falls within a legally defined liability timeframe ([RCW 4.16.160](#), [RCW 4.16.310](#)).

Exemptions: An Entity may receive an exemption from an Impaired Objectivity based OCOI due to having a financial interest on both sides of a dispute if:

- The Entity provided a professional work product that is a low-level document **or**;
- The Entity's financial interests present a low risk in WSDOT's opinion.

Mitigation/Neutralization:

- The Entity can demonstrate that the financial interest on one side of the dispute has been managed (e.g. Entity discloses the conflict and issues a notice to the project stakeholder that they are unable to execute any task orders through the on-call contract associated with the WSDOT contract in question)

- (c) Impaired Objectivity due to an Entity's **involvement with a project stakeholder** (such as a Local Agency, Utility, or Tribe) exists if:
- The Entity has performed or is performing work for a project stakeholder within the last three years and that work is found to be incompatible (examples of work that would be considered incompatible include work associated with selection of alignment or bridge type on behalf of a project stakeholder, or engagement with a stakeholder regarding the stakeholder's preferences or compromises with respect to a project) **or**;
 - An Entity holds an on-call contract with a project stakeholder.

Exemptions: An Entity may receive an exemption from an Impaired Objectivity based OCOI due to work performed for, or having involvement with, project stakeholders if:

- The Entity created a low-level document

Mitigation/Neutralization:

- The Entity declares the existence of their on-call contract with a project stakeholder and mitigates the conflict.

B. **Biased Assistance or Advice**

An Entity may be unable to provide impartial assistance or advice to WSDOT due to their involvement under a separate contract. The Entity may have assisted with the development of contract specifications and requirements that will be subject to evaluation during the life of the project. This is also known as a “Biased Ground Rules” conflict. This circumstance creates the opportunity for the Entity to skew the rules in their favor, whether it is done intentionally or not.

A Biased Assistance or Advice OCOI can arise when (a) the Entity acted as a General Engineering Consultant or Major Consultant, (b) the Entity was involved in the preparation of NEPA documents or environmental permits.

- (a) **An Entity that has acted as the General Engineering Consultant (GEC) or Major Consultant** on a project has a Biased Assistance or Advice based conflict and shall not participate in any capacity on a Design-Builder’s team working on a contract developed under the Entity’s supervision for that project.

For DBB projects, entities that act as WSDOT’s GEC or Major Consultant shall not participate as a Constructor, or as a Consultant or Sub-consultant on a Constructor’s team performing work governed by a contract developed under the Entity’s supervision.

Exemptions: An Entity may receive an exemption from a Biased Assistance or Advice based OCOI if the Entity’s role was *support* to the GEC or Major Consultant **and**; the Entity is not identified in the RFQ as WSDOT technical support.

Mitigation/Neutralization: None

- (b) A Biased Assistance or Advice based conflict exists when an Entity has had involvement in the **preparation of NEPA documents or environmental permitting activities** for the subject project.

Exemptions: An Entity may receive an exemption from a Biased Assistance or Advice OCOI related to NEPA documents or environmental permitting activities provided:

- The Entity created a low-level document **or**;
- If the NEPA process or environmental permitting has been completed prior to RFQ publication **and**; WSDOT has released the Entity that had responsibility to prepare the NEPA document or environmental permitting applications from their contract prior to RFQ publication **or**;
- An Entity that assisted the preparer of a NEPA Document may be allowed to participate on a DB team provided WSDOT has released the Entity from their contract from their contract prior to RFQ publication **and**; The Entity has no other OCOI.

Mitigation/Neutralization:

- The Entity responsible for preparation of the NEPA document or environmental permitting applications may join a DB team after the WSDOT construction contract is executed **or**;
- The Entity responsible for preparation of the NEPA document or environmental permitting applications may join a DB team after publication of the decision document such as a Record of Decision, Categorical Exclusion, or Finding Of No Significant Impact **or**;
- The Entity that assisted the preparer of a NEPA document may join a DB team after the WSDOT construction contract is executed

C. **Unfair Competitive Advantage**

An Unfair Competitive Advantage OCOI arises when an Entity has unequal access to information because of the Entity's performance under another contract. For example, an Entity may have access to project data or correspondence that is not publicly available to their competitors in a construction contract procurement. This information may give the Entity an advantage not afforded to other firms.

Unfair Competitive Advantages may exist through one or more of the following: (a) the development of professional work products for WSDOT, (b) when the Entity acts as a General Engineering Consultant or Major Consultant, (c) the Entity is identified in an RFQ as a technical support firm, (d) the Entity assists WSDOT in the development of the RFQ or RFP or assists WSDOT with procurements, (e) an Entity employee had access to information that is not publicly available., (f) the Entity has authored, or provided oversight of a PHD for a project, or (g) the Entity assisted WSDOT with the preparation of NEPA documents or environmental permits..

- (a) **Development of professional work products** for a WSDOT project creates an Unfair Competitive Advantage when the professional work product is associated with the preliminary design, preparation of preliminary plans, or preparation of environmental documents.

Exemptions: An Entity may receive an exemption from an Unfair Competitive Advantage based OCOI due to a professional work product if:

- The Entity created a low-level document **or**;
- The Entity completed the contract work one year prior to submission of the SOQs **and** there is no further material obligation to WSDOT under the contract **and** one of the following is true:
 - The Entity demonstrates that the project scope or requirements have significantly changed since the Entity completed its work **or**;
 - The work is no longer relevant to the procurement.

Mitigation/Neutralization:

- The Entity may join a DB team after the WSDOT construction contract is executed

- (b) An **Entity that acts as a General Engineering Consultant or Major Consultant** are assumed to have an Unfair Competitive Advantage and therefore shall not participate in any capacity on a Design-Builder's team working on a contract developed under the Entity's supervision.

For DBB projects, entities that act as WSDOT's GEC or Major Consultant shall not participate as a Constructor, or as a Consultant or Sub-consultant on a Constructor's team performing work governed by a contract developed under the Entity's supervision.

Exemptions: An Entity may receive an exemption from an Unfair Competitive Advantage based OCOI if the Entity's role was *support* to the GEC or Major Consultant **and**; the Entity is not identified in the RFQ as WSDOT technical support.

Mitigation/Neutralization: None

- (c) An Entity that is **identified in an RFQ as technical support for WSDOT** is assumed to have an Unfair Competitive Advantage and shall not participate on Constructor's team or a Design Builder's team on the project.

Exemptions: None

Mitigation/Neutralization: None

- (d) An Entity that assists WSDOT in the **development of the RFQ, RFP, or SOQ/Best Value selection criteria** is assumed to have an Unfair Competitive Advantage and shall not participate on a Constructor's team or a Design Builder's team.

Exemptions: An Entity may receive an exemption from an Unfair Competitive Advantage based OCOI due to assisting WSDOT in preparing the RFQ, RFP, or SOQ/Best Value selection criteria if the Entity created a low-level document.

Mitigation/Neutralization: None

- (e) An Entity may have an Unfair Competitive Advantage OCOI if it **hires an employee that possesses an unfair competitive advantage** arising out of work performed on a separate WSDOT contract.

Exemptions: An Entity may receive an exemption from an Unfair Competitive Advantage based OCOI due to an employee that has an Unfair Competitive Advantage if:

- A minimum of two years has passed since the employee has performed any work associated with the conflict created at the previous Entity

Mitigation/Neutralization:

- The Entity who hires an employee that carries the unfair competitive advantage conflict adopts and implements safeguards and mitigation measures satisfactory to WSDOT (refer to the Mitigation Requirements section of this manual) **and**;
- The proposed safeguards and mitigation are in place from the time the employee is hired by the Entity

- (f) Fish Passage Barrier Removal Projects require extensive coordination with external partners and resource co-managers. An Entity's knowledge of discussions between those parties creates an Unfair Competitive Advantage. Therefore, an Entity that has **authored a PHD** or provided **oversight of the development of a PHD**, has an Unfair Competitive Advantage OCOI.

An Entity that has authored, or provided oversight of a PHD for a project shall not participate on a Constructor's team or a Design Builder's team for the same project.

Exemptions: An Entity may receive an exemption from an Unfair Competitive Advantage based OCOI due to involvement in the preparation of Preliminary Hydraulic Design (PHD) documents **if**;

- The Entity provided professional services such as location survey, biological assessment, landscape architecture, geomorphology, CADD support **or**;
- The Entity's involvement in PHD preparation was limited solely to reviewing the PHD, as defined in this manual.

Mitigation/Neutralization:

- The Entity responsible for authorship of a PHD or oversight of the PHD development, may join a Design Builder's team after the WSDOT construction contract is executed.

- (g) An Entity that assisted WSDOT with the **preparation of NEPA documents or environmental permits** is assumed to have an Unfair Competitive Advantage OCOI and shall not participate on a Constructor's Team or a Design Builder's team on the same project.

Exemptions: An Entity may be exempt from an Unfair Competitive Advantage based OCOI due to work performed related to environmental permitting or preparation of NEPA documents if:

- The Entity created a low-level document **or**;
- If the NEPA process or environmental permitting has been completed prior to RFQ publication **and**; WSDOT has released the Entity that had responsibility to prepare the NEPA document or environmental permitting applications from their contract prior to RFQ publication **or**;
- An Entity that assisted the preparer of a NEPA Document may be allowed to participate on a DB team provided;
 - WSDOT has released the Entity from their contract from their contract prior to RFQ publication **and**; the Entity has no other OCOI.

Mitigation/Neutralization:

- The Entity responsible for preparation of the NEPA document or environmental permitting applications may join a DB team after the WSDOT construction contract is executed **or**;
- The Entity responsible for preparation of the NEPA document or environmental permitting applications may join a DB team after publication of the decision document such as a Record of Decision, Categorical Exclusion, or Finding Of No Significant Impact **or**;
- The Entity that assisted the preparer of a NEPA document joins a DB team after the WSDOT construction contract is executed.

D. Mitigation Requirements

FIREWALLS

Many OCOI are created as a result of unequal access to information. One strategy for mitigating OCOIs of this nature is the implementation of a firewall – a combination of procedures and physical security that restricts the flow of confidential information between certain business units of an Entity and employees. The purpose of these restrictions is to ensure that the employees who are members of a DB team do not have access to nonpublic information that the Entity obtained in the performance of a related contract for WSDOT. A firewall may mitigate the harm associated with “unequal access to information” OCOIs because an Entity will not place a DB team at an unfair competitive advantage by information that could be used to enhance the DB team’s chances of success in obtaining a contract with WSDOT.

Firewalls are applicable to individuals in the same manner they are applicable to business units. **For maximum effectiveness, a firewall shall be established before access to non-public information has occurred.**

The components of a firewall strategy that must be implemented and enforced by the Entity include:

- Conflict of interest training program for affected employees.
- All employees currently engaged in WSDOT work, or who will be engaged in WSDOT work in the future, must be trained on conflicts of interest, and in particular, the WSDOT OCOI Manual.
- A continuous education program to apprise affected employees of their obligations under the proposed plan.
- A log must be kept to track who has received the training and when the training was given.

Written and signed nondisclosure agreements with enforceable consequences, including;

- A process for addressing violations.
- Document control strategies.
- Internal audits to ensure compliance and a certification from the Entity regarding effectiveness of the firewall and information security measures. The details of the internal audit will be at the discretion of the Entity.

The certification shall be as follows:

I, _____ [Name], am the _____ [Company Officer's Title] of _____ [Company Name], and am authorized to provide this certification.

I represent and warrant on behalf of _____ [Company Name] that the firewall and other information security measures adopted for this project have been fully implemented and will continue to be implemented until contract execution, and the information such measures are designed to segregate and render unavailable has not been divulged to any unauthorized employee of, or to any Entity outside of _____ [Company Name]

I declare under penalty of perjury the foregoing is true and correct to the best of my knowledge.

DATED this _____ [Day] day of _____ [Month], _____ [Year] at _____ [City], _____ [State], Washington.

_____ [Name of Officer Signing Certification]

The individual certifying the implementation and effectiveness of the firewall must have direct knowledge of the execution and performance of all the firewall components

RELEASE OF INFORMATION

Where the business unit(s) of an Entity associated with a DB team already has received relevant nonpublic information, the effectiveness of a firewall as a successful mitigation strategy is reduced. In such cases, WSDOT may mitigate the resulting OCOI by releasing such information to all Submitters/Proposers, as an Unfair Competitive Advantage cannot result from information that all Submitters/Proposers possess. WSDOT reserves the right to require a firewall, in addition to releasing information, on a case-by case basis.

VI. Procedures

A. General

All records produced as part of investigating an OCOI shall be maintained in the project files and made available to all interested parties. For DB projects, the WSDOT Engineer is responsible OCOI records, including dissemination to interested parties. For non-DB OCOI situations, the design Project Engineer is the individual responsible OCOI records.

Entities, Design-Builders, and Constructors are encouraged to investigate and manage any potential OCOI well in advance of forming teams or considering participation with or as a Submitter/Proposer on a WSDOT contract. An Entity considering whether to act as a Consultant or Sub-consultant for WSDOT should discuss with WSDOT, through a region consultant liaison office and the Headquarters Consultant Services Office, whether the Entity's proposed scope of work may create an OCOI if the Entity chooses later to join a DB team proposing on a contract they worked on. The responsibility to recognize, disclose, and propose methods to avoid, neutralize, or mitigate OCOI rests with the Entity potentially conflicted.

B. WSDOT: Prior to publication of the RFQ

WSDOT will provide a list of entities that are anticipated to be named in the RFQ as "WSDOT Consultant/Technical Support", who are prohibited from joining any Submitter's team or assisting any Submitter in connection with the procurement process, as early as practical prior to publication of the RFQ.

If WSDOT anticipates hiring an Entity after publication of the preliminary list of entities classified as "WSDOT Consultant/Technical Support" mentioned above, then WSDOT shall discuss with the Entity the potential for OCOI before the Entity is hired.

C. Design-Builders: Prior to Forming Teams

In advance of submitting an SOQ or Proposal on a DB contract all Submitters/Proposers shall conduct a review of its current affiliations and require all its team members to identify potential, real, or perceived OCOIs relative to the anticipated procurement as well as all applicable exemptions. Potential Submitter/Proposers shall acknowledge that prior and existing contractual obligations related to the proposed procurement may present an OCOI that requires avoidance, neutralization, or mitigation.

If a potential, real, or perceived OCOI is identified the potential Submitter/Proposer shall submit an [Exhibit A Organizational Conflict of Interest Disclosure and Avoidance/ Neutralization/Mitigation Plan](#) along with relevant information to the WSDOT Engineer for review and determination. Any exemptions described in this manual that the Submitter/Proposer considers applicable should be described in detail in this document.

D. WSDOT: Review of OCOI Documentation Submissions

The WSDOT Engineer should make every effort to send a formal response letter to the Entity regarding the *Organizational Conflict of Interest Disclosure and Avoidance/ Neutralization/Mitigation Plan* within 30 days of receipt. If more time is needed to respond to a complex *Organizational Conflict of Interest Disclosure and Avoidance/ Neutralization/ Mitigation Plan*, the WSDOT Engineer should inform the Entity, the ARA for Construction, and the ASCE.

If a project listed on the WSDOT public website does not contain contact information for a WSDOT Engineer, the Entity seeking an OCOI determination should contact the WSDOT Assistant Regional Administrator (ARA) Construction in the region or the Program Administrator for the megaprogram.

1. The WSDOT Engineer will evaluate [Exhibit A](#) using the factors in Section V of this manual and forward a draft response with comments to the Assistant Regional Administrator (ARA) Construction, for review. See [Exhibit B](#) for an example of the written response. The WSDOT Engineer's draft response will recommend one of the following determinations:
 - (a) An actual, potential, or perceived OCOI exists that cannot be avoided, neutralized, or mitigated, and the Entity shall not be allowed to participate as a team member for that particular contract.
 - (b) The actual, potential, or perceived OCOI may be avoided, neutralized, or mitigated in accordance with the Entity's *Disclosure and Avoidance/Neutralization/Mitigation Plan*, and/or WSDOT accepts the exemptions requested by the Entity that indicate that an actual, potential, or perceived OCOI does not exist. The WSDOT Engineer may need to provide comments and/or recommended corrections to the *Disclosure and Avoidance/Neutralization/Mitigation Plan*.
2. The ARA Construction, in consultation with the Assistant State Construction Engineer (ASCE) and the Assistant State Design Engineer (ASDE), will review, finalize and submit the response letter to the Deputy State Construction Engineer for concurrence.
3. The Deputy State Construction Engineer will consult, as necessary, with the ASCE and the Deputy State Design Engineer. The Deputy State Construction Engineer will either concur with the response letter or recommend revisions to the Region.
4. With the Deputy State Construction Engineer's written concurrence, the WSDOT Engineer will send the final response letter to the Entity.

The Entity may appeal the WSDOT Engineer's determination one time to the State Construction Engineer.

1. The Entity must submit the appeal in writing, including supporting information to address the deficiencies identified in the WSDOT Engineer response letter. The appeal should be sent to the WSDOT Engineer for routing to the State Construction Engineer.
2. The State Construction Engineer will conduct a review meeting with the State Design Engineer, the Deputy State Construction Engineer, the Deputy State Design Engineer, and other staff as deemed necessary.
3. The State Construction Engineer will make a final determination *Organizational Conflict of Interest Disclosure and Avoidance/ Neutralization/Mitigation Plan* and respond to the Entity in writing through the WSDOT Engineer within 10 business days of the receipt of the appeal. **The determination of the State Construction Engineer is final.**

E. Design-Builders: Documents Submitted with RFQ and RFP

1. Each Submitter/Proposer on a DB RFQ and/or RFP shall be required to include [Exhibit D-3](#), Organizational Conflicts of Interest Certification, with their SOQ and Proposal.
2. It is expected that most, if not all, potential, real, or perceived OCOI's will have been identified and reviewed by the department prior to submission of the SOQ or Proposal.
3. Provided a potential, real, or perceived OCOI is identified after submission of the SOQ or Proposal the potential Submitter/Proposer shall submit an [Exhibit A Organizational Conflict of Interest Disclosure and Avoidance/Neutralization/Mitigation Plan](#), along with other pertinent information, as attachments to [Exhibit D-3](#). If previously submitted and approved [Exhibit A](#) plans are still applicable, they should be included, along with the associated department response. These documents will be evaluated as described in the RFQ or ITP.
4. The department will evaluate the [Exhibit A](#) plans pursuant to the process described above in Section V.

F. Design-Bid-Builders

With regard to DBB contracts, WSDOT will address OCOI issues in compliance with pertinent state and federal law.

VII. Contract Provisions/Forms

A. General

All Professional Service Agreements and DB RFQs and RFPs shall include a reference to and require compliance with the Secretary's Executive Order [E 1059.00](#) and this manual.

B. Professional Services Agreements

The provision contained in [Exhibit C](#) to this manual shall be included in all Professional Service Agreements entered into between WSDOT and its Consultants.

C. Design-Build Request for Qualifications and Proposals

The form contained in [Exhibit A](#) and [Exhibit D-3](#) shall be included in all Requests for Qualifications and Instructions to Proposers on DB projects.

The provisions contained in Exhibits [D-1](#) and [D-2](#) shall be included in all Requests for Qualifications and Instructions to Proposers on DB projects.

The provision contained in [Exhibit E-1](#) along with the forms in Exhibits [E-2](#) and [E-3](#) shall be included in WSDOT's evaluation manuals for all DB projects.

The latest version of the forms discussed in Exhibits [E-1](#), [E-2](#), and [E-3](#) can be obtained at the Design-Build Resources page of the Design-Build Program SharePoint site or by contacting the Headquarters Design-Build team at DesignBuild@wsdot.wa.gov.

VIII. Who to Contact

For more information, contact the Headquarters Construction Office at 360-705-7820, Website <https://wsdot.wa.gov/engineering-standards/all-manuals-and-standards/manuals/organizational-conflicts-interest-manual>, or email at DesignBuild@wsdot.wa.gov.

IX. Exhibits

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Exhibit A

**Organizational Conflict of Interest Disclosure and Avoidance/
Neutralization/Mitigation Plan**

(To be inserted in all Design-Build RFQs and ITPs; for use by
consultant or constructor: Submit to WSDOT Project Engineer)

**Organizational Conflict of Interest Disclosure
and Avoidance/Neutralization/Mitigation Plan**

This disclosure statement outlines potential organizational conflicts of interest, either real, potential, or perceived, which as a result of activities or relationships with other persons or entities, such person or Entity:

1. Is unable or potentially unable to render impartial assistance or advice to WSDOT; or
2. Is or might be otherwise impaired in its objectivity in performing the contract work; or
3. Has an unfair competitive advantage.

SECTION I of this disclosure statement describes the Organizational Conflict of Interest, as defined in Secretary’s Executive Order [E 1059.00](#). SECTION II of this disclosure statement describes the management plan for avoiding, neutralizing, or mitigating the Organizational Conflicts of Interest as described in SECTION I of this disclosure statement. I acknowledge that the Washington State Department of Transportation (WSDOT) may require revisions to the management plan described in SECTION II of this disclosure statement prior to approving it, and that WSDOT has the right, in its sole discretion, to limit or prohibit my involvement in the Project as a result of the conflicts of interest described in SECTION I of this disclosure statement.

SECTION Ia – Name of Person or Firm Conflicted

SECTION Ib – Current Project Name and Scope of Work

SECTION Ic – Future Project Name and Description of Conflict Of Interest

SECTION II - Plan for Managing Conflicts Of Interest

Signed _____ Date _____

Printed Name and Title

Exhibit B

Sample of Written Response to Disclosure and Avoidance/ Neutralization/Mitigation Plan

(Sample written response from WSDOT Project Engineer or project manager regarding OCOI)



**Washington State
Department of Transportation**

Transportation Building
310 Maple Park Avenue S.E.
P.O. Box 47300
Olympia, WA 98504-7300
360-705-7000
TTY: 1-800-833-6388
www.wsdot.wa.gov

[name], President

Dear [name]:

We have reviewed your Organizational Conflicts of Interest *Disclosure and Avoidance/Neutralization/Mitigation Plan* (“Disclosure”) regarding your firm, ABC Engineering, its involvement in preparation of the right of way drawings as a subconsultant to WSDOT’s GEC on the I-999 Corridor project, and your desire to be allowed to team with a design- builder as the lead designer on the A Project that is part of the I-999 Program.

Based on the attached *Disclosure and Avoidance/Neutralization/Mitigation Plan*, WSDOT has determined that the identified conflicts, in our opinion, do not preclude your firm from joining a team to Propose on the A Project. WSDOT’s determination is based on the following conditions:

1. This determination is based on the scope of work you have described in your disclosure statement.
2. This determination may be invalidated if you performed or perform expanded or additional scope on the I-999 Corridor project not identified in the Disclosure.
3. You are expected to implement the *Avoidance/Neutralization/Mitigation Plan* identified in your disclosure with the following recommended revisions:
 - a.
 - b.
4. This determination does not apply to future behaviors of your firm or employees, which may necessitate a rescission of this letter if organizational conflicts of interest occur in the future.
5. Your firm and its employees are ultimately responsible to ensure that organizational conflicts of interest, as defined in WSDOT Secretary’s Executive Order E 1059.00 and the Project RFQ are avoided, neutralized, or mitigated. Failure to do so may result in your firm and its team’s proposal being considered non-responsive for the A Project. Risks, if any, associated with a successful legal challenge regarding the OCOI remain solely the responsibility of ABC Engineering.
6. WSDOT reserves the right to reassess and revise any determination made herein at any time.

Sincerely,

[name]
Project Manager

(For WSDOT to insert in all Professional Service Agreements)

Organizational Conflicts of Interest

Consultant acknowledges that WSDOT has a policy on Organizational Conflicts of Interest that is implemented by Secretary’s Executive Order [E 1059.00](#) and the *Organizational Conflicts of Interest Manual* M 3043. Consultant agrees to abide by WSDOT’s policies as described therein on this contract and any project or contract related to this contract. This provision shall be required to be implemented in all sub-consultant agreements, at all tiers.

(For WSDOT to insert in all Design-Build RFQs and ITPs)

Organizational Conflicts of Interest

Organizational conflict of interest means that because of other activities or relationships with other persons or entities, a person or Entity:

1. Is unable or potentially unable to render impartial assistance or advice to WSDOT; or
2. Is or might be otherwise impaired in its objectivity in performing the contract work; or
3. Has an unfair competitive advantage.

The integrated nature of the design-build project delivery method creates the potential for Organizational Conflicts of Interest. Disclosure, evaluation, neutralization, and management of these conflicts and of the appearance of conflicts, is in the interests of the public, WSDOT, and the consulting and construction communities.

WSDOT will take steps to ensure that individuals involved in the preparation of the procurement package, evaluation of (SOQs) (Proposals), and Design-Builder selection are not influenced by organizational conflicts of interest, and that no (Submitter) (Proposer) is given an unfair competitive advantage over another.

Attention is directed to the requirement for disclosure of organizational conflicts of interest set forth in 23 CFR Section 636.116(a)(2), WSDOT Secretary's Executive Order [E 1059.00](#), and WSDOT *Organizational Conflicts of Interest Manual M 3043*.

(Submitters) (Proposers) are required to disclose all relevant facts concerning any past, present or currently planned interests, activities, or relationships which may present an organizational conflict of interest. Submitters shall state how their interests, activities, or relationships, or those of the chief executives, directors, key project personnel, or any proposed Consultant, Sub-Consultant at any tier, Contractor, or Subcontractor at any tier may result, or could be viewed as, an organizational conflicts of interest prior to or in the (SOQ) (Proposal), in accordance with Secretary's Executive Order [E 1059.00](#) and WSDOT *Organizational Conflicts of Interest Manual M 3043*. Submit the *Organizational Conflict of Interest Certification* and *Organizational Conflict of Interest Disclosure and Avoidance/Neutralization/Mitigation Plans* (forms contained in Appendix *****) as described elsewhere in this (RFQ)(ITP).

If an Organizational Conflict of Interest is determined to exist, WSDOT may, at its sole discretion: offer the (Submitter) (Proposer) the opportunity to avoid, neutralize, or mitigate the Organizational Conflict of Interest; disqualify the (Submitter)(Proposer) from further participation in the procurement; cancel this procurement; or, if award has already occurred, declare the Proposer not responsible and award the contract to the next responsible Proposer, or cancel the Contract. If the (Submitter) (Proposer) was aware of an Organizational Conflict of Interest prior to award of a Contract and did not disclose the conflict to WSDOT, WSDOT may terminate the Contract for default.

Exhibit D-2 DB Identification of Conflicted Firms

(For WSDOT to include in all Design-Build RFQs, and ITPs.)

WSDOT Consultant/Technical Support

WSDOT has retained the consulting firms of _____

to provide guidance in preparing and evaluating the RFQ, and/or the RFP, and/or to provide advice on related financial, contractual, and technical matters. Each of these firms is prohibited from joining any Submitter's or Proposer's team or otherwise assisting any Submitter or Proposer in connection with the procurement process.

Exhibit D-3 Design Builder OCOI Certification

(To be inserted in all Design Build RFQs and ITPs; for use by Submitter or Proposer)

Organizational Conflict of Interest Certification

To be signed by authorized signatory of (Submitter) (Proposer)

(Name of Submitter)

My signature below certifies that, prior to submitting this (SOQ) (Proposal), I have conducted an internal review of (Submitter's) (Proposer's) current affiliations and have required (Submitter's) (Proposer's) team members to identify potential, real, or perceived Organizational Conflicts of Interest relative to the anticipated procurement, in accordance with the Secretary's Executive Order [E 1059.00](#) and WSDOT *Organizational Conflict of Interest Manual M 3043*.

I further certify that "*Organizational Conflict of Interest Disclosure and Avoidance/Neutralization/Mitigation Plan*" forms are attached, as listed below, for all potential, real or perceived organizational conflicts of interest as defined in WSDOT *Organizational Conflict of Interest Manual M 3043* for all (Submitter) (Proposer) team members.

Signed _____ Date _____

Printed Name and Title _____

List Attachments by name of person or firm conflicted:

Exhibit E-1 DB Evaluation, Confidentiality, and Non-Disclosure Process

(For WSDOT use in the WSDOT Plan for Evaluating SOQs and Proposals)

Confidentiality and Non-disclosure Agreement and No-Conflicts of Interest Affidavit

A Confidentiality and Non-Disclosure Agreement and No-Conflicts of Interest Affidavit (see Appendices E-2 and E3) will be executed by Chairpersons, Advisors, and Overseers (the “Evaluation Team”) (see the Evaluation Committee Organizational Chart) prior to commencement of the Proposal evaluation process, or during the Proposal Evaluation kick-off meeting, and provide them to the Project Engineer. The Agreements and Affidavits will be retained as part of the Proposal evaluation record. Any person who fails to execute the required Confidentiality and Non-Disclosure Agreement and No-Conflicts of Interest Affidavit will not participate in the Proposal evaluation. As part of the Proposal Evaluation kick-off meeting, prior to the start of the evaluation, the Project Engineer will inform the Evaluation Team of the importance of confidentiality safeguards and verify that a Confidentiality and Non-Disclosure Agreement and No-Conflicts of Interest Affidavit has been collected from each Evaluation Team member. The Overseers will review all Confidentiality and Non-Disclosure Agreements and No-Conflicts of Interest Affidavits.

Indications of real, apparent, or possible conflicts of interest will be resolved by the Executive Team. If the conflict cannot be resolved, the individual involved will be removed from the Proposal evaluation process. After the kick-off meeting, all individuals involved in the Proposal evaluation process will be responsible for maintaining confidentiality.

(For WSDOT use in WSDOT Plan for Evaluating SOQs and Proposals)

Design-Build Project No-Conflicts of Interest Affidavit for Design-Builder Evaluations

I, _____, in agreeing to participate as a member of a team reviewing the (SOQs) (Proposals) for the design and construction of the _____ (the "Project"), make the following representations:

1. I have reviewed a copy of Secretary's Executive Order [E 1059.00](#) and the *Organizational Conflicts Manual M 3042*. Except as set forth in the Attachment to this No Conflicts of Interest Affidavit, I have no real or potential Organizational Conflict of Interest as defined and described therein.
2. Except as set forth in the Attachment to this No-Conflicts of Interest Affidavit, neither I nor any member of my immediate family has a financial interest in any Entity pursuing this Project;
3. Except as set forth in the Attachment to this No-Conflicts of Interest Affidavit, no business or organization with which I am associated has a financial interest in any Entity pursuing this Project;
4. Except as set forth in the Attachment to this No-Conflicts of Interest Affidavit, no member of my immediate family or other person, business, or organization with which I am associated is negotiating or has an arrangement concerning prospective employment relating to any Entity pursuing this Project; and
5. I will not solicit or accept, directly or indirectly, any gift, favor, gratuity, entertainment, food, lodging, loan, or other item from any firm that has submitted an (SOQ) (Proposal) in response to the Request for Proposal if it tends to influence me in the discharge of my duties.

Signed _____

Date _____

Printed Name and Title _____

(For WSDOT use in the WSDOT Plan for Evaluating SOQs and Proposals)

Attachment to the No-Conflicts of Interest Affidavit Design-Builder Evaluations

This disclosure statement outlines potential conflicts of interest, either real or apparent, as a result of a direct or indirect financial interest on my part or that of any member of my immediate family, or of my employer, partners, or joint venturers, in any firm under consideration for the design-build contract associated with *****INSERT PROJECT NAME***** (the "Project"). SECTION I of this disclosure statement describes the potential conflicts of interest. SECTION II of this disclosure statement describes the management plan for dealing with the potential conflicts of interest as described in SECTION I of this disclosure statement. I acknowledge that the Washington State Department of Transportation (WSDOT) may require revisions to the management plan described in SECTION II of this disclosure statement prior to approving it, and that WSDOT has the right, in its sole discretion, to limit or prohibit my involvement in the Project as a result of the potential conflicts of interest described in SECTION I of this disclosure statement.

SECTION I - Description of Conflicts of Interest

(attach additional pages as necessary)

SECTION II - Plan for Managing Conflicts of Interest

(attach additional pages as necessary)

Signed _____ Date _____

Printed Name and Title _____

Approved by Washington State Department of Transportation

Signed _____ Date _____

Printed Name and Title _____