



NDOR CONFLICT OF INTEREST AND DISCLOSURE FORM

LOCAL PUBLIC AGENCIES

Purpose

This checklist provides assistance to consultants in screening for potential organizational conflicts of interest. The checklist must be completed and signed by the consultant and LPA and submitted to the Nebraska Department of Roads (NDOR) prior to or with the signed consultant Local Public Agency (LPA) agreement.

Please note that this checklist serves as a guide only, and that there may be additional potential conflict situations not covered by this checklist. If a consultant determines a potential conflict of interest exists that is not covered by this checklist, that potential conflict must still be disclosed.

Conflict of Interest

No official or employee of a State or any other governmental instrumentality who is authorized in his official capacity to negotiate, make, accept or approve, or to take part in negotiating, making, accepting or approving any contract or subcontract in connection with a project shall have, directly or indirectly, any financial or other personal interest in any such contract or subcontract. No engineer, attorney, appraiser, inspector or other person performing services for a State or a governmental instrumentality in connection with a project shall have, directly or indirectly, a financial or other personal interest, other than his employment or retention by a State or other governmental instrumentality, in any contract or subcontract in connection with such project. No officer or employee of such person retained by a State or other governmental instrumentality shall have, directly or indirectly, any financial or other personal interest in any real property acquired for a project unless such interest is openly disclosed upon the public records of the State highway department and of such other governmental instrumentality, and such offer, employee or person has not participated in such acquisition for an in behalf of the State.

Use of the Disclosure Form

The consultant and LPA must complete the attached disclosure form and submit it to NDOR/LPA with their proposal. If potential conflict of interest exists, they must be disclosed on the form. A disclosure will not necessarily disqualify a consultant from being awarded a contract. The disclosure form must be provided separate from the bound proposal, and it will not be provided to selection committee members. NDOR/LPA representatives will review the disclosure and the appropriateness of the proposed mitigation measures to determine if the consultant may be awarded the contract despite the potential conflict.

Material Representation

The consultant is required to submit the attached disclosure form either declaring to the best of its knowledge and belief, either that no potential conflict exists, or identifying potential conflicts and proposing remedial measures to ameliorate such conflicts. The consultant must also update conflict information if such information changes after the submission of the proposal. Information provided on the form will constitute a material representation as to the award of this contract. NDOR/LPA reserves the right to cancel or amend the resulting contract if the selected consultant failed to disclose a potential conflict, which it knew or should have known about, or if the consultant provided information on the disclosure form that is materially false or misleading.

Reviewing Potential Conflicts

NDOR/LPA recognizes that consultants must maintain business relations with other public and private sector entities in order to continue as viable businesses. This fact will be taken into account as the appropriateness of proposed measures to mitigate potential conflicts is evaluated. It is not the intent of NDOR/LPA to disqualify consultants based merely on the existence of a business relationship with another entity, but rather only when such relationships causes a conflict that potentially impairs the consultant's ability to provide objective advice to NDOR/LPA. Consultants would be disqualified only in those cases where a potential conflict cannot be adequately mitigated.

An organizational conflict of interest may exist in any of the following cases:

- The consultant, or its principals, own real property in a location where there may be a positive or adverse impact on the value of such property based on the recommendations, designs, appraisals, or other deliverables required by this contract.
- The consultant is providing other services to a governmental or private entity and the consultant knows or has reason to believe, that entity's interests are, or may be, adverse to the client's interests with respect to the specific project covered by this contract. **Comment:** The existence of a business relationship with another entity would not ordinarily need to be disclosed. Rather, this focuses on the nature of services commissioned by the other entity. For example, it would not be appropriate to proposed on a NDOR project if a local government has also retained the consultant for the purpose of persuading NDOR to stop or alter the project plans.
- The contract is for right-of-way acquisition services or related services (e.g. geotechnical exploration) and the consultant has an existing business relationship with a governmental or private entity that owns property to be acquired pursuant to the contract.
- The consultant is providing real estate or design services to a private entity, including but not limited to, developers, whom the consultant knows or has good reason to believe, own or are planning to purchase property affected by the project covered by this contract, when the value or potential uses of such property may be affected by the consultant's performance of work pursuant to this contract. "Property affected by the project" includes property that is in, adjacent to, or in reasonable proximity to current or potential right-of-way for the project. The value or potential uses of the private entity's property may be affected by the consultant's work pursuant to the contract when such work involves providing recommendations for right-of-way acquisition, access control, and the design or location of frontage roads and interchanges. **Comment:** This provision does not presume consultants know or have a duty to inquire as to all information regarding cases where the consultant has reason to believe that its viability of a project it is performing for the other entity.
- The consultant has a business arrangement with a current NDOR/LPA employee or immediate family member of such an employee, including promised future employment of such a person, or a subcontracting arrangement with such a person, when such arrangements are contingent on the consultant being awarded this contract. This item does not apply to pre-existing employment of current or former NDOR/LPA employees, or their immediate family members. **Comment:** This provision is not intended to supersede any NDOR/LPA policies applicable to its own employees accepting outside employment. This provision is intended to focus on identifying situations where promises of employment have been made contingent on the outcome of this particular procurement. It is intended to avoid a situation where a consultant may have unfair access to "inside" information.
- The consultant has, in previous work for the state/LPA, been given access to information relevant to this procurement or this project that is classified as "private" or "nonpublic" and such data potentially provides the consultant with an unfair advantage in preparing a proposal for this project. **Comment:** This provision will not, for example, necessarily disqualify a consultant who performed some preliminary work from obtaining a final design contract, especially when the results of such previous work are public data available to all other consultants. Rather, it attempts to avoid an "unfair advantage" when such information cannot be provided to other potential consultants.
- The consultant has, in previous work for the state/LPA, helped create the solicitation by performing work such as: writing this solicitation, or preparing evaluation criteria or evaluation guides for this solicitation.
- The consultant, or any of its principals, because of any current or planned business arrangement, investment interest, or ownership interest in any other business, may be unable to provide objective advice to the state/LPA.

DISCLOSURE OF POTENTIAL CONFLICT OF INTEREST

Having had the opportunity to review the Organizational Conflict of Interest Checklist, the consultant hereby indicates that it has, to the best of its knowledge and belief:

- Determined that no potential organizational conflict of interest exists.
- Determined a potential organizational conflict of interest as follows:

Describe nature of potential conflict:

Describe measures proposed to mitigate the potential conflict:

Consultant Signature

Date

LPA Signature

Date

If a potential conflict has been identified, please provide name and phone number for a contact person authorized to discuss this disclosure form with NDOR personnel.

Consultant Name

Phone

LPA Name

Phone