



## **Purpose**

Provide additional draft guidance and solicit input on this guidance for identification, evaluation, and management of “perceived” conflicts of interest. The current *Organizational Conflicts of Interest Manual* is clear in its description of “real” conflicts of interest (those that cannot be avoided or neutralized) and “potential” conflicts of interest (those that can be avoided or neutralized) but does not adequately describe, define or provide management guidance for “perceived” conflicts of interest.

## **Guidance**

Proposed changes to the current *Organizational Conflicts of Interest Manual* include the following:

- Additional definitions to include “Real/Actual Conflict of Interest”, “Potential Conflict of Interest”, and “Perceived Conflict of Interest”.
- Descriptions of situations that can create Perceived Conflicts of Interest.
- Management/neutralization of Perceived Conflicts of Interest.

## **Background**

The current version (2009) of the *Organizational Conflicts of Interest Manual* M 3043.01, which supplements the Secretary of Transportation’s Executive Order *Organizational Conflicts of Interest* E 1059.00, describes responsibilities, guidelines, and procedures for WSDOT staff, consultants, sub-consultants, and contractors to follow in managing organizational conflicts of interest. The procedures are based on the premise that conflicts of interest will be identified by the Design-Builder prior to forming teams and again during submittal of the SOQ and Proposal.

This bulletin, via proposed changes to the *Organizational Conflicts of Interest Manual*, discusses how to identify, evaluate, and manage a previously unidentified type of conflict of interest.

## **Resources**

WAC 196-27A-020-2(i)

23 CFR 636.116(b)

Secretary’s Executive Order E 1059.00(II)(3)

## **Contact Information**

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Construction Division

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## **Comments**

Please submit comments on these proposed changes to Art by 03/23/2017. The Construction Division will review all comments received, make updates to the guidance as needed, and then publish the updated OCOI Manual.



# Organizational Conflicts of Interest Manual

M 3043.01

~~July 10, 2009~~

**Environmental and Engineering Programs**  
Design, Construction, and Consultant Services

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

The integrated nature of the design-build project delivery method creates the potential for Organizational Conflicts of Interest. Similarly, recent developments in the design-bid-build contracting method, such as (1) WSDOT's use of contractors for CVEP, CRA, value engineering studies, and constructability reviews, and (2) firms with the ability to provide both design and construction services, has created the need to establish a policy governing Organizational Conflicts of Interest. Disclosure, evaluation, 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.

~~/s/ Jeff~~

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Director of Construction Division, State  
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~~/s/ Paseo Bakotich~~ Jeff Carpenter

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Director of Development Division, State  
Design Engineer

~~/s/ Marilyn S. Bowman~~ Erik Jonson

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~~Marilyn Bowman~~ **Erik Jonson**  
Consultant Services ~~Director~~ **Manager**

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## I. Definitions

For purposes of this manual, the following terms have the meaning as shown:

- A. Consultant – An entity that provides professional services to WSDOT or a Constructor.
- B. Constructor – A construction contractor, subcontractor, design-builder, or construction manager.
- C. General Engineering Consultant (GEC) – An engineering firm under contract to WSDOT to help manage the overall development of a project.
- D. 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 completed prior to completion of 30 percent design, and may include designs and reports created to assist in obtaining permits.
- E. 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:
  - 1. Manage the development of the PS&E for a design-bid-build construction contract;
  - 2. Manage the development of an RFQ or RFP for a design-build contract; or
  - 3. Assist WSDOT in the management of the overall development of a project.
- F. 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).
- G. Organizational Conflict of Interest (OCOI) 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;
  - 2. Is or might be otherwise impaired in its objectivity in performing the contract work; or
  - 3. Has an unfair competitive advantage.
- H. Sub-consultant – An entity that provides professional services to a Consultant or to a sub-consultant at any tier.
- I. Submitter/Proposer – A submitter on an RFQ for a DB contract, or a proposer on an RFP for a DB contract.



## **II. Applicability**

These guidelines apply to all contracts for professional services related to WSDOT projects, design-bid-build (DBB) contracts, design-build (DB) contracts, including Requests for Qualifications (RFQ) and Instructions to Proposers (ITP), unless specifically stated otherwise. The guidelines 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.

The guidelines also apply to entities resulting from acquisitions and mergers. An entity with an actual or potential conflict of interest carries that actual or potential conflict of interest with them to the newly formed entity after an acquisition or merger.

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

## **III. Responsibilities**

The responsibility to avoid or neutralize Organizational Conflicts of Interest (OCOI), ultimately rests with the person or firm potentially conflicted.

Nevertheless, WSDOT retains the 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 or potential conflict or the appearance of any such conflict. It is understood that any determination by WSDOT regarding the existence of an actual or potential OCOI or whether the OCOI may be avoided or neutralized 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 can necessitate a re-evaluation of the original conclusion. Risks 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 its concern with OCOI must be balanced against the need to promote competition in the ~~DBB or~~ DB procurement process. With that, these guidelines neither purport to address every situation that may arise in the context of a project nor to mandate a particular decision or determination by WSDOT when faced with facts similar to those described herein.

## **IV. Perceived Conflict of Interest**

Perceived conflicts of interest must be considered when evaluating whether an entity or person is (a) unable or potentially unable to render impartial assistance or advice to WSDOT, (b) is or might be otherwise impaired in its objectivity in performing the contract work, or (c) has an unfair competitive advantage. The following definitions shall be included in Section VI of the OCOI to differentiate this type of conflict from those considered “real”, “actual”, or “potential”:

**Real/Actual Conflict of Interest.** A situation where a person's or entity's official duties can be influenced.

**Potential Conflict of Interest.** A situation where a person's or entity's official duties may be influenced in the future.

**Perceived Conflict of Interest.** A situation where a person's or entity's official duties appear to be influenced.

Perceived conflicts of interest will be managed by avoidance of the situation(s) that create the conflicts. A perceived conflict of interest cannot be neutralized.

Certain actions of Design-Build teams, individual entities of Design-Build teams (firms or persons), individual Consultants, Sub-consultants, or Sub-contractors (firms or persons) that may join Design-Build teams, will create perceived conflicts of interest that must be identified and managed by WSDOT staff. These actions include, but are not limited to, the following:

Meetings, discussions, presentations, seminars, workshops, or any medium where design-build policy modification are directly suggested to WSDOT staff.

Meetings, discussions, presentations, seminars, workshops, or any medium where design-build policy modification are suggested to WSDOT staff through examples of past practice or lessons learned.

Meetings, discussions, presentations, seminars, workshops, or any medium where the content is intended to deliver design-build training information.

WSDOT co-chairs the WSDOT/AGC/ACEC Design-Build Committee which meets several times during the year to obtain industry review/comment on design-build policy and document modifications. This is the only format where input for industry input will be utilized to potentially change on the Department's design-build policy.

### **III.V. Guidelines for Evaluating OCOI**

WSDOT follows the pertinent state and federal laws regarding OCOI. Nothing contained in this manual is intended to limit, modify, or otherwise alter the applicability or effect of relevant (federal and state) law, rules, and regulations. All such laws, rules, and regulations shall apply in their normal manner irrespective of these guidelines.

WSDOT evaluates the following on a case-by-case basis

1. Whether or not an OCOI exists
2. Whether or not the OCOI can be avoided or neutralized

### 3. The appropriate steps to avoid or neutralize OCOI

In evaluating the above, WSDOT uses the following in making such determinations.

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 work on WSDOT projects. 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. WSDOT adopts these rules for use on all WSDOT DB contracts, whether federally funded or not.

The following situations are considered to result in OCOI that cannot be avoided or neutralized. These restrictions apply only to the circumstances described.

1. For DB projects, firms that act as the General Engineering Consultant (GEC), Major Consultant, or key staff employed by the GEC or Major Consultant, will not be allowed to join a DB team which submits on a contract that is part of the project for which the person or firm acted in the capacity of a GEC, Major Consultant, or key staff employed by the GEC or Major Consultant.
2. For DB projects, a Consultant (person or firm) and/or Sub-consultant (person or firm) that assists WSDOT in preparing a RFQ, ITP, or selection criteria shall not participate in any capacity on a DB team related to the same contract.
3. For DB projects, Consultants and/or Sub-consultants (persons) will not be allowed to do the actual scoring of a Statement of Qualifications (SOQ) or Proposal. Consultants and/or Sub-consultants (persons) may be allowed to act as discipline-specific advisory experts to identify the strengths and weakness of a SOQ or Proposal.
4. For DB projects, if the NEPA process has not been completed prior to issuing the RFP, a Consultant and/or Sub-consultant that has responsibility to prepare the NEPA Document shall not participate in any capacity on a DB team for the same project. A Sub-consultant to the preparer of a NEPA Document may be allowed to participate on a DB team provided (a) the

department releases the Sub-consultant from further responsibility on the NEPA Document not later than issuing the RFQ, and (b) there is no other basis for an OCOI with said Sub-consultant.

5. For DBB projects, firms that act as WSDOT's GEC or as WSDOT's Major Consultant shall not participate as a Constructor, or as a Consultant or Sub-consultant on a Constructor's team, on a construction contract developed under its supervision.

## **IV.VI. Procedures**

### **A. General**

Consultants, Sub-consultants, and Constructors are encouraged to investigate and manage any potential OCOI well in advance of forming teams or considering participating with a Submitter/Proposer on a contract. A firm or individual considering whether to enter into a contract as a Consultant or Sub-consultant on a WSDOT project should consider contacting WSDOT as to whether its proposed scope of work may create an OCOI if the firm or individual chooses to elect in the future to participate with a proposer on a contract related to the firm's or individual's work product.

WSDOT will apply the following procedures in accordance with the law and on a project specific basis.

### **B. Design-Builders: Prior to Forming Teams**

1. Prior to submitting an SOQ or Proposal on a DB contract, each Submitter/Proposer shall conduct an internal review of its current affiliations and shall require its team members to identify potential, real, or perceived OCOI relative to the anticipated procurement. Potential Submitter/Proposers are notified that prior and existing contractual obligations relative to the proposed procurement may present an OCOI and these may require avoidance or neutralization.
2. If a potential, real, or perceived OCOI is identified or if there is any question regarding an OCOI, the potential Submitter/Proposer shall submit an **Exhibit A** Organizational Conflict of Interest *Disclosure and Avoidance/Neutralization Plan*, along with other pertinent information, to the WSDOT ~~pProject manager~~**Engineer**.
3. The ~~pProject manager~~**Engineer** will evaluate **Exhibit A** using the factors in part III of this manual, propose changes as appropriate, and forward a recommended draft response to the ~~State Construction Engineer~~**Regional Administrator** for review. See **Exhibit B** for an example written response.
4. The ~~State Construction Engineer~~**Regional Administrator**, in consultation with the Consultant Services ~~Director~~**Manager**, will review the recommended draft response letter and send comments or concurrence to the ~~pProject manager~~**Engineer**.
  - a. WSDOT, in its sole discretion, will make a determination relative to potential OCOI and the entity's ability to avoid or neutralize such a conflict.

- b. If the ~~State Construction Engineer~~ **Regional Administrator** determines that an actual or potential OCOI exists and cannot be avoided or neutralized, the ~~pProject manager~~ **Engineer** will respond in writing, and the individual or firm determined to have the OCOI shall not be allowed to participate as a team member for that particular contract. Failure to abide by WSDOT's determination in this matter may result in a SOQ or proposal being declared nonresponsive.
  - c. If the ~~State Construction Engineer~~ **Regional Administrator** determines that the actual or potential OCOI can be avoided or neutralized, the project ~~manager~~ **engineer** shall send a letter indicating concurrence or that corrections and resubmittal of the Disclosure and Avoidance/Neutralization Plan is required.
5. The ~~State Construction Engineer's~~ **Regional Administrator's** determination, reflected in the response sent from the ~~pProject manager~~ **Engineer**, may be appealed to the ~~Assistant Secretary for Engineering and Regional Operations~~ **WSDOT Construction Division Director** whose decision shall be final subject to further review only as provided for by state law.

### **C. Design-Builders: Documents Submitted with RFQ and RFP**

1. Each Submitter/Proposer on a design-build 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 or real OCOI's will have been identified and reviewed by the department prior to submission of the SOQ or Proposal. Nevertheless, if a potential, real, or perceived OCOI is identified or if there is any question regarding an OCOI, the potential Submitter/Proposer shall submit an **Exhibit A Organizational Conflict of Interest Disclosure and Avoidance/Neutralization 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 department response, as an attachment to **Exhibits D-3**. These will be evaluated as described in the RFQ or ITP.
3. The department will evaluate the Exhibit A plans pursuant to the process described above in Sections IV B3, B4, and B5. Scoring of the OCOI **Exhibits D-3** and **Exhibit A** will be in accordance with the RFQ or ITP.

### **D. Design-Bid-Builders**

1. In regards to DBB contracts, WSDOT will address OCOI issues in compliance with pertinent state and federal law.

## **V.VII. Contract Provisions/Forms**

### **A. General**

All Professional Service Agreements, and design-build requests for qualifications and proposals 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 [Exhibits 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.

## **~~VII. Definitions~~**

~~For purposes of this manual, the following terms have the meaning as shown:~~

~~A. Consultant — An entity that provides professional services to WSDOT or a Constructor.~~

~~B.A. — Constructor — A construction contractor, subcontractor, design-builder, or construction manager.~~

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

~~D.A. — 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 completed prior to completion of 30 percent design, and may include designs and reports created to assist in obtaining permits.~~

~~E.A. — 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:~~

~~1. Manage the development of the PS&E for a design-bid-build construction contract;~~

~~2.1. Manage the development of an RFQ or RFP for a design-build contract; or~~

~~3.1. Assist WSDOT in the management of the overall development of a project.~~

~~F.A. — 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).~~

~~G.A. Organizational Conflict of Interest (OCOI) 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;~~

~~2.1. Is or might be otherwise impaired in its objectivity in performing the contract work; or~~

~~3.1. Has an unfair competitive advantage.~~

~~H.A. Sub-consultant An entity that provides professional services to a Consultant or to a sub-consultant at any tier.~~

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

**VII.VIII. Who to Contact**

For more information contact the Headquarters Construction Office at 360-705-7820, Web site <http://www.wsdot.wa.gov/biz/construction/>, or email at [DesignBuild@wsdot.wa.gov](mailto:DesignBuild@wsdot.wa.gov)

# **Organizational Conflict of Interest**

## **Exhibit A Disclosure and Avoidance/Neutralization Plan**

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

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

This disclosure statement outlines potential organizational conflicts of interest, either real or apparent, 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 potential 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 or neutralizing the potential 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 potential conflicts of interest described in SECTION I of this disclosure statement.

**SECTION Ia – Name of Person or Firm Potentially Conflicted**

\_\_\_\_\_

**SECTION Ib – Current Project Name and Scope of Work**

\_\_\_\_\_

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

\_\_\_\_\_

**SECTION II - Plan for Managing Potential Conflicts Of Interest**

\_\_\_\_\_

Signed \_\_\_\_\_ Date \_\_\_\_\_

Printed Name and Title \_\_\_\_\_



# Exhibit B *Sample of Written Response to Disclosure and Avoidance/Neutralization Plan*

(Sample written response from WSDOT Project ~~Manager~~Engineer regarding OCOI)



**Washington State  
Department of Transportation**  
~~Paula J. Hammond,~~  
**P.E. Roger Millar,**  
Secretary 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

John Doe, President

Dear Mr. Doe:

We have reviewed your Organizational Conflicts of Interest Disclosure and Avoidance/Neutralization 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 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 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 or neutralized. 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,

---

John Q. Manager  
Project Manager  
I-999 Corridor Program

(For WSDOT to insert in 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 (design-build RFQ) or (design-build ITP))

### **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 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 or neutralize 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.

(For WSDOT to include in 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.

(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 Plan*" forms are attached, as listed below, for all real or potential organizational conflicts of interest as defined in WSDOT Organization 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 potentially conflicted:

\_\_\_\_\_  
\_\_\_\_\_  
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(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 E1059.00 and the Organizational Conflicts Manual M3042. 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 Potential Conflicts of Interest**

*(attach additional pages as necessary)*

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\_\_\_\_\_  
\_\_\_\_\_

**SECTION II - Plan for Managing Potential 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 \_\_\_\_\_