

**EUGENE CONFLICT OF INTEREST GUIDELINES**  
**(COI GUIDELINES)**  
**Public Improvement Procurements**  
(ORS 279C and Eugene Purchasing Regulations Division 49)  
City of Eugene (Agency)

Follow these COI Guidelines when submitting any Proposal in response to an Agency Procurement, when entering into any Contract with Agency, and throughout the period during which the Contract is in effect. Provide the COI Guidelines and associated COI Disclosure Form to all Subcontractors at any tier of a Proposal or Contract and ensure that the Firm and each Subcontractor makes any disclosures required by these guidelines or as required by a specific Procurement or Contract. The Agency will follow and apply these COI Guidelines when conducting Agency procurements.

**1. Definitions**

The definitions that apply to these COI Guidelines and the Agency's COI Disclosure Form are at the end of this document.

**2. Required Disclosures**

Submittal of a correct and signed COI Disclosure Form is required with each project proposal. The Disclosure Form shall be updated and resubmitted during the term of the Contract if there are any changes to the firm or its staffing that would result in a different response to the questions than previously submitted. Note that the term "Public Official" includes all Agency employees.

The COI Disclosure Form includes details on the following:

- A Firm or any of its Associates have any Apparent, Potential or Actual Conflicts Of Interest per these COI guidelines or per the criteria of any COI Form included as part of a Procurement or Contract;
- A Firm has any changes to its staffing or organization (whether before or after entering into a Contract) that result in an Apparent, Potential or Actual Conflict Of Interest per these guidelines or per the criteria of any COI form associated with a particular Procurement or Contract. Any such changes shall be disclosed within 10 business days via submittal of a complete and signed COI Disclosure Form.
- The response to any of the following questions is "yes" (with respect to a Procurement or current Contract with Agency):
  1. Is any Associate of the Firm a former employee of Agency within the last two years?
  2. Is any Associate of the Firm a Relative or Member of the Household of a current employee of Agency who had or may have a role in this Procurement, Authorization of the Contract, Contract administration, or oversight of the Contractor's performance?
  3. Does the Firm or any Associate of the Firm have an Actual, Apparent or Potential Conflict Of Interest ("Individual" or "Organizational") with regard to any member of an Agency Procurement evaluation or selection team?
  4. Has the Firm or an Associate of the Firm offered to a Public Official, or is the Firm aware of any Public Official that has solicited or received, directly or indirectly, any pledge or promise of employment or other benefit based on the understanding that the Public Official's vote, official action or judgment would be influenced thereby?

5. Has (or will) the Firm or an Associate of the Firm provided a direct beneficial financial interest to any person within two years after the person ceased to hold a position as a Public Official who was involved in the Procurement or Authorization for the Contract, or is the Firm aware of any such person or Public Official who has or will receive a direct beneficial financial interest within the two year period?

6. Is the Firm aware of any current or former Public Official that has an Actual, Apparent or Potential Conflict Of Interest with respect to the Procurement or award of this Contract or performing the work for Agency?

If none of the foregoing apply, provide a written and signed certification that the Firm has read and complied with these COI Guidelines and the COI Disclosure Form and did not answer "Yes" to any of the questions.

Incorporate in each required COI Disclosure Form any COI disclosure information provided by the firm's staff and attach COI Disclosure Forms from each Subcontractor (that have required disclosures of conflicts or potential conflicts of interest), prior to such Firm performing any services under a Contract.

### **3. Governing Standards**

Both Oregon and federal laws govern disclosure and management of conflicts of interest in the contracting processes. The disclosure requirements of these COI Guidelines apply to all Agency contracting activities without regard to which particular federal or Oregon laws govern the activity.

#### Agency Code of Conduct Policy Regarding Former Agency Employees

City of Eugene Administrative Policy Manual (APM) 4.1:

Policy Statement: Public trust plus organizational and employee credibility are the basis for the City's relationship and ability to serve the community. All City employees will act in the interest of the public good. City employees demonstrate this by remaining neutral in all activities that may give rise to a real or perceived conflict of interest. The resources used and the decisions made by City employees should be in the best interest of the public and ensure that employees are not acting for their own personal benefit or for any other private interest.

When employees of firms which compete for or have Contracts with the Agency come to work for the Agency, and when Agency employees go to work for firms which compete for or have Contracts with the Agency, a Potential Conflict of Interest may exist.

Use of a former Agency employee by a Firm on the same, or substantially similar Procurement, for which the employee performed a role or function for the Agency, unless mitigated to the satisfaction of the Agency, is prohibited for a period of one year following separation of employment with the Agency. Roles and functions of particular concern include drafting specifications or statements of work, reviewing or scoring a bid or proposal, authorizing service or assigning work, awarding a Contract, administering a Contract, or overseeing Contractor's performance. The Agency may determine that the role or Procurement is not substantially similar because of differences in location of the Project or work, because of the type and method of Procurement, or because the role performed was minor in nature such as a technical sufficiency review. Examples of mitigation that may, in appropriate situations, be acceptable to the Agency include separation of certain decision-making functions concerning the Project, not using the employee in preparation of proposals but allowing them to perform work on the Project, and not having the employee have direct contact with Agency staff formerly under his/her supervision.

For each Procurement, Firms shall disclose to Agency any employee(s) that had been employed by Agency within the last one-year period. Each Firm's disclosure shall include a signed statement by the former Agency employee of their

proposed role for the Firm in the particular Procurement and any resulting Contract. Failure of a Firm to disclose such relationship or to remedy such potential violation will result in the rejection of the Firm's bid or cancellation of the Contract with the Agency as well as being grounds for cancellation of a Firm's prequalification or designation of a Firm as ineligible for future Procurements as not being a responsible bidder. (Also see below regarding the ORS 244.047 two-year ban on any direct beneficial interest.)

### Oregon State Standards

The current Oregon statutory framework, as generally applied, addresses conflicts of interest in public contracting by emphasizing the need for open and impartial Procurement methods and by prohibiting certain conflicts of interest involving public officials. The following statutes and administrative rules establish Oregon's general policies and the restrictions and prohibitions regarding conflicts of interest for public contracts and Public Officials:

- The policies of the Public Contracting Code (ORS 279A.015) encourage public contracting competition that supports openness and impartiality to the maximum extent possible, while recognizing that the nature of effective and meaningful competition depends upon the service being procured.
- According to ORS 279A.015(2) a sound and responsive public contracting system should instill public confidence through ethical and fair dealing, honesty and good faith on the part of government officials and those who do business with the government.
- ORS Chapter 244 prohibits conflicts of interest of Public Officials. Among the prohibitions are offering a public employee a pledge of future employment based on an understanding that the offer would influence the public employee's official action or judgment.
- ORS 244.025 specifically prohibits a public official (which includes all City employees as well as their close relatives and members of their households) from soliciting or receiving gifts with a value in excess of \$50 in any calendar year from any single source that could reasonably be known to have a legislative or administrative interest. A "legislative or administrative interest" is defined as "an economic interest, distinct from that of the general public, in any matter subject to the decision or vote of the public official acting in the public official's capacity as a public official." For example, the \$50-per-year gift limit would cover a gift or gifts to any city employee who has decision-making authority for purchasing, choosing of vendors or contractors, inspection functions, or regulatory enforcement, if the gifts come from any single source with an economic interest in the employee's decisions. (Also see Eugene APM 4.6)
- ORS 244.047(2) and (3) provide the following:
  - (2) "Except as provided in subsection (3) of this section, a person may not, for two years after the person ceases to hold a position as a public official, have a direct beneficial financial interest in a public contract that was authorized by:
    - (a) The person acting in the capacity of a public official; or
    - (b) A board, commission, council, bureau, committee or other governing body of a public body of which the person was a member when the contract was authorized.
  - (3) Subsection (2) of this section does not apply to a person who was a member of a board, commission, council, bureau, committee or other governing body of a public body when the contract was authorized, but who did not participate in the authorization of the contract."
- The Oregon Government Ethics Commission also has administrative rules for public officials in OAR 199 Division 5.

Agency's COI Guidelines embody the intent of encouraging competition through openness, impartiality, and public disclosure of relevant information (and the avoidance of conflicts of interest) as described in ORS 279A.015, ORS Chapter 244, and Agency's Code of Conduct Policy.

The two-year prohibition against a Public Official having a direct beneficial financial interest in a public contract as provided in ORS 244.047 would generally preclude the person from working under the public contract and from representing the Firm in dealings with the public agency for whom the person had worked. Sharing in the general profits of the Firm (such as a year-end bonus for overall corporate profits) is likely not a direct beneficial financial interest, however, a bonus or other compensation paid just on the basis of the public contract would be subject to the prohibition.

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

No Firm that has previously performed services on behalf of Agency for a Project may be a Proposer or participate as an equity owner, team member, Subcontractor of or to a Proposer on the Project, or have a financial interest in any of the foregoing entities with respect to the Project, unless Agency is satisfied in its sole discretion that:

- (a) Such services were completed prior to initiation of the Procurement for the Project (exceptions may apply for NEPA services on a case-by-case evaluation of the project specifics against the applicable CFRs);
- (b) Such services included only Low Level Documents and did not include development of instructions to offerors or evaluation criteria for the RFP;
- (c) Such services did not provide the Firm with access to or knowledge of Agency confidential or inside information that could provide an unfair competitive advantage with respect to the Procurement;
- (d) The prior Contract and information provided to the Firm in the performance of its services are either irrelevant to the Procurement or are available on an equal and timely basis to all Proposers;
- (e) The work product from the Firm incorporated into or relevant to the Procurement is available through Public Disclosure on an equal and timely basis to all Proposers; and
- (f) Any environmental documents prepared by the Firm have been determined to be objective, and that the Agency demonstrated independent decision-making authority during the environmental process.

In such instances where Agency is satisfied in the manner described above, Agency may still, in its sole discretion, restrict the scope of Procurement services for which the Firm shall be eligible to perform in order to further the intent and goals of these COI Guidelines.

Public Disclosure of services or products is an important consideration in determining if an Organizational Conflict Of Interest exists. All COI Disclosure Forms will be considered public records.

#### **5. COI Disclosure Process**

A Firm shall certify its conformance with these COI Guidelines at the time of submitting a proposal to Agency or entering into a Contract with Agency and shall represent the correctness of a completed COI Disclosure Form. If a Firm has any changes to its staffing or organization (whether before or after entering a Contract) that result in an Actual, Apparent or Potential Conflict Of Interest (Individual or Organizational) per these COI Guidelines or per the criteria of any COI form associated with a particular Procurement or Contract, any such changes shall be disclosed within 10 business days via submittal of a Correct and signed COI Disclosure Form.

A Firm shall assure that any COI Disclosure Form it submits includes any information required to be disclosed by its Subcontractors and other Associates, on behalf of the Firm. A Firm may submit either the Subcontractors' separate COI Disclosure Forms or incorporate Subcontractor information into its own COI Disclosure Form. The disclosure required

with the proposal applies to the prime and all proposed Subcontractors that are identified or anticipated at the time of proposal submission.

The identification, assessment, and management of Actual or Potential Conflicts Of Interest are joint tasks among Agency, the Firm and the Firm's team. A Firm must work together with Agency in an atmosphere of candor and accountability during the period of negotiation or performance of the Contract with Agency. Agency makes the final determination as to the adequacy of any COI disclosures or COI management plan offered by the Firm.

Agency's COI determination is based on a number of factors such as:

- Situational Facts – description of the situation and all known facts specific to the actual or perceived COI
- Type of Work - specific product or service and Contract(s) involved
- Relationship to Management - specific interactions with Agency decision-makers
- Public Disclosure - timing and availability of product or service

The specific facts disclosed in any COI situation will be unique to that situation. Therefore, the decisions and conclusions reached in one situation may or may not be directly applicable to another. For example, the definition of "low-level" documents does not isolate a Firm producing them from a potential COI situation. The ultimate determination will take into account the other factors described above.

## **Definitions**

The following definitions apply to these COI Guidelines and the Agency's COI Disclosure Form:

"Actual Conflict Of Interest" - An individual or Firm is unable to render impartial assistance or advice to Agency, has impaired objectivity in performing the Project work, or has an unfair competitive advantage. For purposes of ORS Chapter 244, and as defined in ORS 244.020(1), "Actual Conflict of Interest" means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit or detriment of the person or the person's relative or any business with which the person or a relative of the person is associated unless the pecuniary benefit or detriment arises out of the circumstances described in the ORS Chapter 244 definition for "Potential Conflict of Interest" (see definition below).

"Affiliate" (of the Firm) - A person or entity that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control of the Firm.

"Apparent Conflict Of Interest" - An individual or Firm may reasonably be perceived to have an Actual Conflict of Interest or a Potential Conflict Of Interest.

"Associate" (of the Firm) - An employee, executive, director, key project personnel, consultant, contractor or Subcontractor, or any immediate family member of the foregoing. "Authorization" (of the Contract). A public contract is authorized by a Public Official if the Public Official performed a significant role in the selection of a Firm or the execution of the Contract. A significant role includes recommending approval or signing of the Contract, including serving as a reference, recommending selection or serving on a selection committee or team, or having the final authorizing authority for the Contract.

"Bidder" - A legally operating business entity submitting a bid in response to a Procurement.

"Conflict Of Interest" or "COI" - An Individual Conflict Of Interest or Organizational Conflict Of Interest and includes an Actual, Potential, or Apparent Conflict Of Interest.

“COI Disclosure Form” - A manually signed disclosure of any Actual Conflict Of Interest, Apparent Conflict Of Interest or Potential Conflict Of Interest documented in the form of Agency’s COI Disclosure Form.

“COI Guidelines” - Refers to this document and all references herein.

“Correct ” - In the context of determining the accuracy of a COI Disclosure Form, that the form, in all material respects, is complete, accurate, not misleading, and does not omit any material information.

“Firm” - A Proposer or Bidder under a Procurement, a consultant or contractor under a Contract, or a Subcontractor at any tier of a Proposer, consultant, or contractor, and any partner or member of any of the foregoing. A Firm includes all persons, individual or corporate, without regard to form of legal entity, and any partner or member of any of the foregoing.

“Member of the Household” (of the Public Official) - any person who resides with the Public Official.

“Individual Conflict Of Interest” - An individual has a conflict of interest because of a financial interest, gift, or other activities or relationships with other persons including but not limited to individuals with whom the individual has business, familial or household relationships. “Interest” (in the context of a conflict of interest) means a direct or indirect interest and includes a personal as well as financial interest.

“Low-Level Document” - A&E, non-A&E and IT program or Project related documents which provide a basic understanding of a specific aspect of the program or Project. As referred to in 23CFR 636.116 with regard to A&E and related services, “the role of the consultant or subconsultant was limited to provision of preliminary design, reports, or similar “low-level” documents that will be incorporated into the RFP, and did not include assistance in development of instructions to offerors or evaluation criteria”.

"Organizational Conflict Of Interest" - A relationship or situation exists whereby a Firm or any of its Associates has past, present, or currently planned interests or activities that either directly or indirectly (through a client, contractual, financial, organizational or other relationship) may relate to the work to be performed under the proposed Contract with Agency and which (a) diminish the Firm’s or an Associate’s capacity to give impartial, technically sound, objective assistance or advice, (b) may impair the Firm’s or an Associate’s objectivity in performing the Contract, (c) may impair Agency’s objectivity in oversight of the Contractor’s performance, or (d) may result in an unfair competitive advantage. It does not include the normal flow of benefits from the performance of the Contract.

“Potential Conflict Of Interest” - An individual or Firm, as a result of current plans, may reasonably be expected to have an actual conflict of interest. For purposes of ORS Chapter 244, and as defined in ORS 244.020(11), “Potential Conflict of Interest” means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which could be to the private pecuniary benefit or detriment of the person or the person’s relative, or a business with which the person or the person’s relative is associated, unless the pecuniary benefit or detriment arises out of the following: (a) an interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position; (b) any action in the person’s official capacity which would affect, to the same degree, a class consisting of all inhabitants of the state or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person’s relative or business with which the person or the person’s relative is associated, is a member or is engaged; or (c) membership in or membership on the board of directors of a nonprofit corporation that is tax-exempt under section 501(c) of the Internal Revenue Code.

“Procurement” - A Request for Proposals (RFP), Request for Qualifications (RFQ), Request for Information (RFI), Invitation to Bid (ITB), or any other form of solicitation or Procurement by Agency.

“Proposal” - A bid, proposal, or other submission appropriate to a Procurement.

“Proposer” - A legally operating business entity submitting a Proposal in response to a Procurement.

“Public Disclosure” - The work product or service (in connection with the preparation of a Procurement) is available for public review and analysis for a reasonable amount of time, typically at least thirty (30) calendar days.

“Public Official” - Any person who is serving the State of Oregon or any of its political subdivisions or any other public body as defined in ORS 174.109 as an elected official, appointed official, employee, agent or otherwise, irrespective of whether the person is compensated for the services. (All Agency employees are Public Officials.)

"Relative" (of a Public Official) -

- The Public Official’s spouse or domestic partner;
- The children, siblings, spouses of siblings or parents of the Public Official or the Public Official’s spouse; or
- Any individual for whom the Public Official has a legal support obligation or for whom the Public Official provides benefits arising from the Public Official’s public employment or from whom the Public Official receives benefits arising from that individual’s employment.

“Subcontractor” - A subcontractor or subconsultant at any tier.