



COLORADO
Department of Transportation
Division of Project Support

4201 East Arkansas Avenue
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MEMORANDUM

TO: REGION STAFF AND PROJECT SUPPORT UNITS
FROM: SCOTT MCDANIEL, DIRECTOR OF PROJECT SUPPORT *mg*
DATE: MARCH 25, 2015
SUBJECT: DIVISION OF PROJECT SUPPORT MEMO 2015-01 / CONFLICT OF INTEREST POLICY

The purpose of this Memo is to provide a master set of guidelines to incorporate and compliment the current conflict of interest (COI) requirements, guidelines, forms, etc. related to CDOT's construction and engineering contracts. This document is to be adhered to by all Colorado Department of Transportation employees, consultants, contractors, and any other entity which may be providing services related to said contracts.

This document is intended to provide guidance for most COI related issues. This document does not specifically address all potential conflicts of interest, nor does it mandate any specific decision regarding any specific situation.

Nothing in this document is intended to modify or take precedence over existing state or federal laws, rules, or regulations.

Definition:

A conflict of interest is a set of circumstances that creates a risk that judgment or actions regarding a primary interest will be unduly influenced by a secondary interest.

Responsibilities:

The responsibility to avoid, make known, address, and alleviate a COI relies with the person(s) or firm potentially conflicted.

Nevertheless, CDOT retains the sole discretion to determine on a case-by-case basis whether a COI exists, as well as how the COI need be addressed.

Existing COI Guidance:

Guidance and methods to address COI already exist for CDOT related to engineering and construction contracts. Below is a compilation of these efforts and entities to work with in conjunction with this document:

Non CDOT Specific:

1. *FHWA* address COI in general terms through 23 CFR S1.33, Design Build projects through 23 CFR S636.116 and S636.1117, and the NEPA process as related to Design Build through 23 CFR S636.109(b) 6 & 7. CDOT adopts these rules for projects which are federally funded or not.
2. *Colorado Revised Statute* (CRS) 24-18-104 and 24-18-109 covers COI that a Government employee may have.



CDOT Specific:

1. Design Build (DB) and Construction Manager General Contractor (CMGC) have specific requirements regarding proposers and COI. Contact CDOT's Innovative Contracting Program Manager for more information.
2. Consulting contracts have a general statement in the contract regarding COI.

Procedure:

All CDOT employees should remain mindful of the potential for COI throughout the establishment and duration of a contract and should follow the guidance below when addressing a perceived or real COI:

1. Upon realization of a potential COI, determine which existing policies and contracting documents apply. Read and understand those policies and contract documents.
2. If it is determined a COI exists which has not already been addressed, bring this to the attention of the Project Manager.
3. The Project Manager should, in writing, address the potentially conflicted party, making the party aware of the potential COI and ask the party how they intend to (or have already) addressed the COI.
4. If the party's response is acceptable to the Project Manager, then the Project Manager shall work with the party to resolve the potential COI, as well as make the Chief Engineer aware of the effort to resolve the COI.
5. If the Project Manager and the conflicted party cannot resolve the COI, the Chief Engineer will make the final decision on what action, if any, to take.
6. In items 4 and 5 the decisions which need to be made by the Project Manager and Chief Engineer include the following:
 - a. Does a COI really exist?
 - b. If a COI exists, how did the party address the COI? Or how does the party intend to address the COI?
 - c. Is CDOT confident that the proposed plan from the conflicted party will satisfactorily mitigate the COI?
 - d. Decide what it will take the satisfactorily mitigate the COI. The answer to this may be to terminate the contract with the party which is causing the COI.
7. The Chief Engineer has the final decision regarding any of the questions and actions regarding COI.

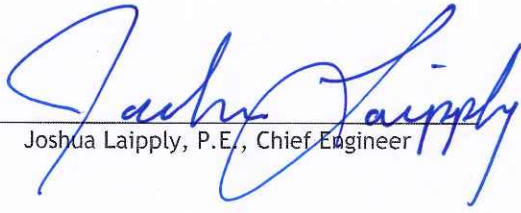
SCENARIOS:

Below are common COI scenarios where a potential for COI can exist:

- A. Consultant ABC teams up with Contractor XYZ for a Design Build project. Later, Consultant ABC obtains or is a subcontractor on a NPS contract to perform construction management/ administration. Under the NPS contract Consultant ABC provides construction management services for CDOT on a design-bid-build project which Contractor XYZ is awarded the project.
- B. A proposer, 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 or other deliverable required by this contract.
- C. A consultant is hired to generate contract requirements for a CDOT project. The same consultant teams up with Contractor XYZ to later bid on the project. This could be a design-bid-build project, design-build project, or CMGC project.
- D. A proposer, 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 Department.



I concur


Joshua Laipply, P.E., Chief Engineer

3/23/2015
Date

