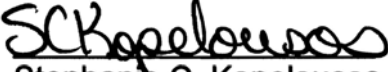


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Stephanie C. Kopelousos  
Secretary

## **RESTRICTION ON CONSULTANTS' ELIGIBILITY TO COMPETE FOR DEPARTMENT CONTRACTS**

### **PURPOSE:**

An objective of the Department of Transportation's contracting program is to procure contracts in a fair, open, and competitive manner. Additionally, consultant firms representing the Department must be free of conflicting professional or personal interests. Such competing interests could potentially make it difficult for consultant firms to discharge their contractual obligations impartially. A conflict of interest can create the appearance of impropriety, even where none exists, that can undermine confidence in the Department's contracting program. In order to prevent potential conflicts, the following procedure will be adhered to when contracting for professional services. It is the responsibility of the consultant firm to recuse itself from submitting Letters of Interest, Letters of Response, or technical proposals (for low bid design-build) for a project if a conflict of interest exists. Subconsultants are responsible for disclosing potential conflicts of interest to the prime consultant firm, and recusing themselves accordingly where conflicts exist. Where the procedure allows District approval, it is the responsibility of the consultant firm with the potential conflict of interest (whether prime or subconsultant) to request a determination on eligibility prior to submittal of Letters of Interest, Letters of Response, or technical proposals (for low bid design-build). Approval must be obtained from the District Secretary prior to submittal of Letters of Interest, Letters of Response, or technical proposals. An undisclosed, later discovered conflict of interest may cause a Letter of Interest, Letter of Response, or technical proposal to be considered non-responsive.

### **AUTHORITY:**

Sections 20.23(3)(a) and 334.048(3), Florida Statutes

### **SCOPE:**

This procedure will apply to all Department offices involved in contracting for professional services and will also apply to professional services consultant contracts.

## REFERENCES:

Section 287.055, Florida Statutes  
Section 337.105, Florida Statutes  
Section 337.14, Florida Statutes  
Section 337.164, Florida Statutes

## 1. DEFINITIONS

### 1.1 Affiliate

For the purpose of this procedure, the term "affiliate" shall mean a predecessor or successor of a consultant firm or contractor under the same, or substantially the same, control or a group of business entities which are connected or associated so that one entity controls or has the power to control each of the other business entities. The term "affiliate" includes the officers, directors, executives, shareholders active in management, employees, and agents of the affiliate. The ownership by one business entity of a controlling interest in another business entity or a pooling of equipment or income among business entities shall be prima facie evidence that one business entity is an affiliate of another.

## 2. ALL PROFESSIONAL SERVICES CONTRACTS

### 2.1. Restrictions on Consultant Firms that Develop Project Scopes

Any consultant firm, or its affiliate, that developed the scope of services, the Request for Proposal (RFP) or other solicitation documents for a particular project phase is ineligible to compete for that phase of the project for which they developed the documents.

Any consultant firm, or its affiliate, that developed the RFP or other solicitation documents for a design-build project will not be eligible to compete for construction engineering and inspection (CEI) for that design-build project. A consultant firm, or its affiliate, that developed the scope of services, the RFP, or other solicitation documents for a design project is eligible for CEI services for that same project.

## 3. CONSULTANT CEI CONTRACTS

### 3.1 Restrictions on Qualifications

A construction contractor, or its affiliate, qualified by the Department under **Rule Chapter 14.22, Florida Administrative Code (F.A.C.)**, may not also qualify under **Rule Chapter 14.75, F.A.C.** to provide either CEI services or testing services.

### 3.2 Restrictions on Engineer of Record as Prime Consultant

A consultant firm, or its affiliate, that is the Engineer of Record (EOR) on a project shall not be considered eligible to compete as a prime consultant for CEI services on that same project.

### 3.3 Restrictions on Engineer of Record or Subconsultant as CEI

A consultant firm, or its affiliate, that is the EOR on a project may only be considered eligible to compete as a subconsultant for CEI services upon approval of the District Secretary.

A consultant firm, or its affiliate, that was a subconsultant to the EOR on a project may only be considered as a prime for CEI services on the same project, with the approval of the District Secretary.

A consultant firm, or its affiliate, that was a subconsultant to the EOR on a project may only be considered as subconsultant for CEI services with the approval of the District Secretary.

The District Secretary's approval shall be based on the extent of the firm's involvement in the design of the project or CEI services, as the case may be, and the potential of hindrance of any objective decision making.

A consultant firm, or its affiliate, that performs geotechnical services for the EOR on the project will not be eligible as the CEI to perform the same types of geotechnical services, or to provide testing of the same types of materials tested or evaluated for the EOR on the same project. A consultant firm, or its affiliate, responsible for performing or evaluating core borings for structures shall not be considered eligible to perform inspection of pile driving or drilled shaft construction on the same project.

#### Design-Bid-Build

Current relationship/Future relationship (on the same project)	Requires District Secretary approval	Will not be considered for approval
Prime EOR/Prime CEI		X
Prime EOR/Sub CEI	X	
Sub EOR/Prime CEI	X	
Sub EOR/Sub CEI	X	
Sub Geotech to EOR/Sub CEI performing the same type of services		X

#### **4. CONSULTANT FIRM / CONTRACTOR RELATIONSHIPS**

A consultant firm, or its affiliate, that is the Designer or EOR is precluded from bidding on the same project as the construction contractor.

A consultant firm, or its affiliate, that performed any type of service for the EOR on a project will not be eligible to act as the Quality Control (QC) Manager for the contractor on that same project.

A contractor that performs a constructability review on a design contract is prohibited from pursuing the construction contract.

It is a conflict of interest for a consultant firm to receive compensation on a single project from both the Department and the construction contractor, either directly or indirectly, except as noted herein.

A consultant firm, or its affiliate, that performed geotechnical services or materials testing services for the EOR on a project is eligible to perform work for the contractor on the project, if the geotechnical services or materials testing services to be performed for the contractor are not the same type of services or materials tested for the EOR.

#### **5. GENERAL ENGINEERING CONSULTANTS**

Professional services of a General Consultant (GC) include the administration, support and management of engineering; architectural; surveying; planning; or right of way appraisal, acquisition and property management activities. These activities may involve a number of different projects in the work program.

Neither the GC nor its affiliate is eligible to pursue any project for which the GC developed the solicitation documents, scope of services, or RFP.

This eligibility criterion also applies to all consultant support contracts. This criterion does not prohibit a task authorization where a GC is to be the EOR on a project, or the prime CEI on a project. Any such assignment is limited to a fee of \$50,000.

#### **6. DESIGN-BUILD**

The lead contractor and lead design professional on a design-build team are restricted from submitting on multiple proposals for a given project. The secondary member (i.e., designer or contractor) of the design-build team cannot change teams after award, without the written approval of the District Secretary.

A consultant firm shall not be considered for CEI services, either as a prime or a subconsultant, for a design-build contract on which the same firm, or its affiliate, is the EOR or is sub to the EOR.

A consultant firm, its affiliate, or subconsultant that developed the RFP for a design-build contract cannot be part of a design-build team proposing on that contract as a prime or a subconsultant. A consultant firm that hires the engineer who developed the RFP cannot be a part of a design-build team proposing on that contract as a prime or as a subconsultant. A consultant firm, its affiliate, or subconsultant that is under contract with the Department to provide CEI services on the design-build contract cannot be part of a design-build team proposing on that contract as a prime or subconsultant.

Any consultant firm, or its affiliate, that developed the RFP for a design-build contract will not be eligible to compete as a prime for CEI services on that project. A consultant firm, or its affiliate, that developed the RFP may be considered as a subconsultant for CEI services only with the approval of the District Secretary.

A consultant, or its affiliate, that is the prime EOR on a design-bid-build project, where the project is switched to design-build, may participate on the design-build team with the approval of the District Secretary. The District Secretary shall consider level of design (% completed) by the EOR, the number of component design plans by different EOR's, etc.

The prime EOR is eligible to compete for CEI services on Design-Bid-Build project switched to design-build, if the prime EOR was not involved in the design-build RFP development.

A consultant firm performing Project Development and Environmental Studies for the Department is not precluded from being a member of the design-build team on the same project, if the consultant firm had no direct role in development of the design-build RFP document.

### Design-Build Projects

Current relationship/Future relationship (on the same project)	Requires District Secretary approval	Will not be considered for approval
Prime EOR/Prime CEI		X
Prime EOR/Sub CEI		X
Sub EOR/Prime CEI		X
Sub EOR/Sub CEI		X
Develop RFP for DB contract/DB prime		X
Develop RFP for DB contract/DB sub		X
Develop RFP for DB contract/CEI prime		X
Develop RFP for DB contract/CEI sub	X	

Prime DB firm/Prime CEI		X
Prime DB firm/Sub CEI		X
Sub DB firm/Prime CEI		X
Sub DB firm/Sub CEI		X
Prime EOR on Design-Bid-Build switched to DB contract/Prime DB	X	
Prime EOR on Design-Bid-Build switched to DB contract/Sub DB	X	

## 7. TRAINING

None required.

## 8. FORMS

None required.