



**Washington State  
Department of Transportation**

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# **Organizational Conflicts of Interest Manual**

**M 3043.02**

January 2020

**Multimodal Development & Delivery Organization**  
Design, Construction, and Consultant Services

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# Foreword

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

The integrated nature of the design-build project delivery method increases the potential for Organizational Conflicts of Interest. Similarly, recent developments in the design-bid-build contracting method increase exposure to potential conflicts of interest. Design Build creates a situation where firms may be in a position to provide both design and construction services for the same project. WSDOT uses contractors for Cost Estimating Validation Process (CVEP), Cost Risk Assessment (CRA), value engineering studies, constructability reviews that also creates a potential OCOI. Disclosure, evaluation, and management of these conflicts is in the best interest of everyone involved.

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**Robert E. Christopher, P.E.**  
Director of Construction Division  
State Construction Engineer

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**Steve Roark, P.E.**  
Director of Development Division  
State Design Engineer

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## I. Definitions

For purposes of this manual, the following terms are defined as follows:

1. **Consultant** – An entity that provides professional services to WSDOT or a Constructor.
2. **Constructor** – A construction contractor, subcontractor, design-builder, or construction manager.
3. **General Engineering Consultant (GEC)** – An engineering firm under contract to WSDOT to help manage the overall development of a project.
4. **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, including but not limited to surveying, traffic fieldwork, utility identification, or drilling and testing associated with geotechnical or environmental investigations completed prior to completion of Conceptual Design. Low-Level Documents may include designs and reports created to assist in obtaining permits.
5. **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:
  - a. Management of the development of the PS&E for a design-bid-build construction contract;
  - b. Management of the development of a Request for Qualifications (RFQ) or Request for Proposal (RFP) for a design-build (DB) contract; or
  - c. Assisting WSDOT in the management of the overall development of a project.
6. **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).
7. **Organizational Conflict of Interest (OCOI)** means that because of other activities or relationships with other persons or entities, a person or entity:
  - a. Is 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.
8. **Perceived Conflict of Interest** - A situation where a person's official duties or entity's official duties are in a circumstance where interests have the appearance of being influenced or conflicted.

9. **Potential Conflict of Interest** - A situation where a person's official duties or entity's official duties may cause a conflict in the future.
10. **Proposal** - The document submitted by the Design-Builder in response to the Request for Proposal, which includes price information, technical approach, clarifications and supplements thereto.
11. **Real/Actual Conflict of Interest** - A situation where a person's official duties or entity's official duties are in a circumstance where their interests are conflicted.
12. **Request for Proposal (RFP)** - The document package developed and issued by WSDOT requesting submittal of Proposals for the project and providing information relevant to the preparation and submittal of Proposals.
13. **Request for Qualifications (RFQ)** - The document package developed and issued by WSDOT requesting submittal and providing information relevant to the preparation of Statements of Qualifications.
14. **Statements of Qualifications (SOQ)** - The document submitted by the Design-Builder in response to the Request for Qualifications and all clarifications and supplements thereto.
15. **Sub-consultant** - An entity that provides professional services to a Consultant or to a sub-consultant at any tier.
16. **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. These projects include design-bid-build (DBB) contracts, Design Build (DB) contracts, including Request For Qualifications (RFQ) and Request For Proposal (RFP), 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 applies to entities resulting from acquisitions and mergers. An entity with an actual, potential, or perceived conflict of interest carries that actual, potential, or perceived conflict of interest with them to the newly formed entity after an acquisition or merger.

The guidelines applies to employees of consultants who move from one firm to another. A consultant employee with an actual, potential, or perceived conflict of interest carries that 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. WSDOT's determinations are with regard to WSDOT's interests but cannot protect against challenges from outside interested parties.

Nevertheless, WSDOT retains 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, potential or perceived conflict. It is understood that any determination by WSDOT with regard to the existence of an actual, potential or perceived OCOI or with regard to whether the OCOI may be avoided, neutralized, or mitigated 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 may necessitate a re-evaluation of the original conclusion. Risks and costs 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 concerns with OCOI must be weighed against the need to promote competition in the procurement process. With that, these guidelines purport neither to address every situation that may arise in the context of a project nor to mandate a particular decision, determination or mitigation by WSDOT.

### IV. Guidelines for Evaluating OCOI

#### A. General

WSDOT is obligated to follow applicable state and federal laws regarding OCOIs. Nothing contained in this manual is intended to limit, modify, or otherwise alter the applicability or effect of federal and state law, rules, and regulations.

WSDOT in its sole discretion evaluates the following for WSDOT purposes on a case-by-case basis.

- Whether or not an OCOI exists
- Whether or not the OCOI can be avoided, neutralized, or mitigated
- Reasonable and acceptable steps to avoid, neutralize, or mitigate OCOI, again we are not in a position to warrant the effectiveness of such steps

In evaluating the above, WSDOT uses the following in making 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 project related work for WSDOT. 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.

In addition to all state and Federal laws mentioned above, interpretations of all OCOIs shall be evaluated in consideration of the following:

1. Evaluate whether the Consultant (person or firm) or Sub-consultant (person or firm) has provided WSDOT with a professional work product. The tests for an OCOI are as follows:
  - a. Is that work product a part of the contract such that it carries an enduring liability? (i.e. a stamped or sealed report prepared for WSDOT.) If so, that entity may be called on later to defend their work product as a licensed professional. This creates an OCOI and the entity may not participate on a DB team for that project.
  - b. Was the work in question associated with the preliminary design, preparing preliminary plans, or preparing environmental documents. If so, then:
    - i. Consultants may join a DB team after the contract award, or
    - ii. Consultants will be allowed to join a DB team if the Consultant can demonstrate to WSDOT's satisfaction that there will be no competitive advantage and (A) or (B) as follows must be satisfied:
      - A. The Consultant completed the contract work one year prior to submission the SOQs and is under no further material obligation to WSDOT under the contract. And one of the following is true;
        - The Consultant demonstrates that the project scope or requirements have significantly changed since the Consultant completed its work or,
        - The work is irrelevant to the procurement.
      - B. The Consultant may join the DB team if they demonstrate that their Work product consisted of Low Level Documents.
2. Evaluate whether the Consultant (person or firm) or Sub-consultant (person or firm) could potentially have a financial interest on both sides of a construction dispute. This creates an OCOI and the entity may not participate on a DB team for that project.
3. OCOIs shall apply to a firm (Consultant or Sub-consultant) as well as to any employee of such firm. If such employee leaves the firm's employment, the OCOI shall follow such an employee in the same manner as it applies to the firm. However, the individual's new employer will not be considered to have an OCOI provided:



- a. The new employer adopts and implements safeguards and mitigation measures satisfactory to WSDOT or,
  - b. Two years have passed since the employee performed work associated with the OCOI created at the previous firm.
4. Consultant or Sub-consultant requesting to join a DB team who has performed or is performing work for a project stakeholder (such as a Local Agency) within the last three years should be tested for the existence of an OCOI.
    - a. An example of work that would be considered incompatible includes, but is not limited to, work associated with selection of alignment or bridge type on behalf of a stakeholder.
  5. The existence of an OCOI is based on the “reasonable person test” – i.e. whether a reasonable person with all the material facts would believe there is a conflict.
  6. All relevant information produced as part of investigating an OCOI shall be available/ distributed to all interested parties.

## B. Example Situations

1. The following situations result in an OCOI that cannot be avoided or neutralized.
  - a. For DB projects, firms that act as the General Engineering Consultant (GEC), Major Consultant, or key staff employed by the GEC or Major Consultant, shall not participate on a DB team, which submits on a contract where the entity acted in the capacity of a GEC, Major Consultant, or key staff.
  - b. For DB projects, a Consultant (person or firm) and/or Sub-consultant (person or firm) who assisted WSDOT in preparing the RFQ, RFP, or SOQ/Best Value selection criteria shall not participate on a DB team related to the same contract.
  - c. For DB projects, a Consultant (person or firm) and/or Sub-consultant (person or firm) that is identified in the RFQ as WSDOT technical support shall not participate on a DB team related to the same contract.
  - d. For DB projects, Consultants and/or Sub-consultants (persons) shall not perform scoring of a Statement of Qualifications (SOQ) or Proposal. Consultants and/or Sub-consultants (persons) may act as discipline-specific experts in an advisory capacity to identify the strengths and weakness of a SOQ or Proposal.
  - e. 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 on a DB team related to the same contract.
  - f. A Sub-consultant to the preparer of a NEPA Document may be allowed to participate on a DB team provided;
    - i. The department releases the Sub-consultant from their contract no later than the date the RFQ is issued and;
    - ii. There is no other basis for an OCOI with said Sub-consultant.

- g. The situation described in Section IV(A)(2) with regard to having conflicting financial interests.
  - h. 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 constructing a contract developed under the entity's supervision.
2. The following situations are considered to result in OCOI that may be avoided, neutralized, or mitigated, depending on the specific circumstances submitted by the participant and as evaluated by WSDOT.
- a. For Example Situation Section IV B(1)(a), an OCOI does not exist for a Sub-consultant (person or firm) that provides Low-Level Documents to a GEC or Major Consultant unless such Sub-consultant is identified in the RFQ as described in Example Situation B(1)(c).
  - b. For Example Situation Section IV B(1)(b), an OCOI does not exist if Low-Level Documents are involved or as the result of a favorable determination under Section IV(A)(1)(b).
  - c. A situation which has been evaluated in accordance with Section IV(A) and deemed by WSDOT to be capable of avoidance, neutralization, or mitigation.

## V. 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 participation with or as a Submitter/Proposer on a contract. An entity considering whether to act as a Consultant or Sub-consultant for WSDOT should discuss with WSDOT whether the entity's proposed scope of work may create an OCOI if the firm or individual chooses later to join a DB team proposing on a contract they worked on.

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

1. In advance of submitting an SOQ or Proposal on a DB contract all Submitters/Proposers shall conduct a review of its current affiliations and require all its team members to identify potential, real, or perceived OCOIs relative to the anticipated procurement. Potential Submitter/Proposers shall acknowledge that prior and existing contractual obligations related to the proposed procurement may present an OCOI that requires avoidance, neutralization, or mitigation.
2. If a potential, real, or perceived OCOI is identified the potential Submitter/Proposer shall submit an [Exhibit A Organizational Conflict of Interest Disclosure and Avoidance/Neutralization/Mitigation Plan](#) along with relevant information to the WSDOT Project Engineer.

3. The Project Engineer will evaluate [Exhibit A](#) using the factors in Section IV of this manual and forward a draft response with comments to the Assistant Regional Administrator (ARA) Construction for review. See [Exhibit B](#) for an example of the written response.
4. The ARA Construction, in consultation with the Assistant State Construction Engineer (ASCE) and the Assistant State Design Engineer (ASDE), will review, finalize and submit the response letter to the Deputy State Construction Engineer for concurrence.
5. The Deputy State Construction Engineer will consult, as necessary, with the ASCE and Deputy State Design Engineer and review the documents resulting in one of two determinations.
  - a. Determine that an actual, potential, or perceived OCOI exists that cannot be avoided, neutralized, or mitigated. The ARA Construction shall direct the project engineer to respond to the submitter 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 declared nonresponsive at WSDOT's sole discretion.
  - b. Determine that the actual, potential, or perceived OCOI may be avoided, neutralized, or mitigated. The ARA Construction shall direct the project engineer to respond to the individual or firm indicating concurrence or that corrections and resubmittal of the *Disclosure and Avoidance/Neutralization/Mitigation Plan* is required.
  - c. The entity may appeal the determination one time to the State Construction Engineer whose decision shall be final.

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

1. Each Submitter/Proposer on a DB 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, real, or perceived OCOI's will have been identified and reviewed by the department prior to submission of the SOQ or Proposal.
3. Provided a potential, real, or perceived OCOI is identified after submission of the SOQ or Proposal the potential Submitter/Proposer shall submit an [Exhibit A](#) *Organizational Conflict of Interest Disclosure and Avoidance/Neutralization/Mitigation 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 associated department response. These documents will be evaluated as described in the RFQ or ITP.
4. The department will evaluate the [Exhibit A](#) plans pursuant to the process described above in Sections V(B)(3), (B)(4), and (B)(5). Scoring of the OCOI [Exhibit D-3](#) and [Exhibit A](#) will be in accordance with the RFQ or ITP.

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

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

## **VI. Contract Provisions/Forms**

### **A. General**

All Professional Service Agreements and DB RFQs and RFPs 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 [Exhibit 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.

The latest version of the forms discussed in Exhibits E-1, E-2, and E-3 can be obtained at the Design-Build Resources page of the Design-Build Program SharePoint site or by contacting the Headquarters Design-Build team at [DesignBuild@wsdot.wa.gov](mailto:DesignBuild@wsdot.wa.gov).

## **VII. Who to Contact**

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

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

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

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

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

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

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

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

\_\_\_\_\_  
**SECTION II - Plan for Managing Conflicts Of Interest**

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

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

# Sample of Written Response to Disclosure and Avoidance/ Neutralization/Mitigation Plan

(Sample written response from WSDOT Project Engineer or project manager regarding OCOI)



**Washington State  
Department of Transportation**

**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](http://www.wsdot.wa.gov)

John Doe, President

Dear Mr. Doe:

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

## OCOI Acknowledgement for Consultant Contracts

(For WSDOT to insert in all 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 all Design-Build RFQs and ITPs)

### **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 Disclosure and Avoidance/Neutralization/Mitigation 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, neutralize, or mitigate 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.



## Exhibit D-2 DB Identification of Conflicted Firms

(For WSDOT to include in all Design-Build 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.

# Exhibit D-3 Design Builder OCOI Certification

(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/Mitigation Plan*" forms are attached, as listed below, for all potential, real or perceived 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 conflicted:

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

## Exhibit E-1 DB Evaluation, Confidentiality, and Non-Disclosure Process

(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 Conflicts of Interest**

*(attach additional pages as necessary)*

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

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