

INDIANA DEPARTMENT OF TRANSPORTATION CONSULTANT CONFLICT OF INTEREST POLICY

Applicability

This policy applies to all contracts for professional services related to INDOT projects including design-bid-build (DBB) contracts and design-build (DB) contracts. This policy applies 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 the same entity for the purposes of these guidelines.

INDOT maintains a separate conflict of interest policy for Public-Private Partnership (P3) projects procured under IC 8-15.7-2-14 which will take precedence over this policy for P3 projects. The P3 Conflict of Interest Policy is available in the INDOT P3 Implementation Guidelines document available at <https://secure.in.gov/indot/3186.htm>.

Goals

This policy is intended to accomplish the following goals:

- Promote integrity, competitiveness and fairness in the procurement and prosecution of consultant contract services;
- Provide guidance to enable consultants to make informed business decisions concerning participation in contracts with INDOT;
- Permit consultants to compete fairly to either work for INDOT or as part of DB construction contract team;
- Protect the interests of INDOT; and
- Permit consultants to work without actual or apparent conflicts of interest.

Responsibilities

The consultant (and any subconsultant), not INDOT, shall reasonably and in good faith anticipate, identify, and disclose to INDOT any actual or potential Conflict.

In addition to complying with the requirements of this Policy, the consultant or subconsultant shall also comply with any other professional responsibilities, ethics code of conduct or law applicable to the consultant or subconsultant.

The consultant shall include a term requiring compliance with this Policy in any agreement or arrangement with any subconsultant in furtherance of any INDOT contract.

The consultant and any subconsultant shall notify INDOT of any conflict or potential conflict according to this policy in writing (by emailing INDOT at contractsrfp@indot.in.gov), fully explaining the conflict or potential conflict and providing any recommendations or protocol to remedy the conflict prior to (as applicable):

- The completion of any INDOT consultant selection process;
- Any consultant engaging any subconsultant on an INDOT contract; or
- The consultant or subconsultant accepting any work from an entity other than INDOT.

Policy

1. Consultants and subconsultants shall provide independent and uncompromised judgment, counsel, work product and public representation, with respect to every contract with INDOT.
2. Consultants and subconsultants shall support the policies and practices of the State of Indiana.
3. Any conduct or set of facts that could or does compromise or limit the duties in Paragraphs (1) and (2) above shall be considered a Conflict of Interest ("Conflict").
4. INDOT will review conflict of interest disclosures and strictly disallow the existence of conflicts in furtherance of the above goals. Exceptions will only be considered when, in the best interest of INDOT, it is determined that the number of consultants available for a particular activity are inadequate.

Guidelines for Evaluating Conflicts of Interest

- INDOT's Consultant Selection Review Committee will consider the consultant's or subconsultant's notification of a potential Conflict with consultation from the Project Manager and INDOT's Ethics Officer or Legal Services Representative. The Committee will make a recommendation to the Commissioner on whether to object to the Conflict, waive the potential Conflict or require the consultant or subconsultant to remedy the Conflict. The Committee will include an explanation on why a waiver is appropriate for all recommendations to waive a Conflict.
- After receiving the recommendation of the Committee, INDOT's Commissioner or the Commissioner's designee, in his or her sole discretion and with the exercise of reasonableness and good faith, may object to the Conflict, waive the Conflict, or require the Consultant (or subconsultant) to remedy the Conflict to INDOT's satisfaction as a condition of INDOT awarding or continuing any contract or awarding any amendment to, extension or supplement of or additional work under any contract.

Conflict of Interest Examples

The following are activities considered to be Conflicts of Interest.

- Neither consultants nor subconsultants actively engaged in INDOT contracted responsibilities for a project shall perform concurrent services for other clients that impact or depend upon INDOT's project.
- Neither consultants nor subconsultants actively engaged in INDOT contracted responsibilities for a project shall market to perform future services for other clients that impact or depend upon INDOT's project while under contract to INDOT.
- Neither consultants nor subconsultants actively engaged in INDOT contracted responsibilities for a project shall entertain participation on a DB construction contract team for the same project.
- Neither consultants nor subconsultants who prepare engineering construction plans or construction contract bid documents for a project under contract to INDOT shall entertain participation on a DB construction contract team for the same project.
- Neither consultants nor subconsultants actively engaged on a DB construction contract team for a project shall participate in an INDOT professional services contract for the same project in a different role.
- Neither consultants nor subconsultants shall act as the Project Engineer/Supervisor

within the hierachal chain of command over construction inspection activities associated with construction plans or bid documents they prepared for INDOT Sponsored DBB projects.

- Neither consultants nor subconsultants who prepare the detailed independent labor hour estimate specified in 23 CFR 172.7(a)(1)(v)(B) to be used as the basis of negotiation for engineering services shall entertain participation in the same services.

The following activities are not considered to be Conflicts of Interest.

- A consultant or subconsultant that collects and reports environmental or geotechnical data, without engineering design recommendations, may participate on a construction contract team at the same project location so long as all contract services have been fulfilled and all work product is made available to all potential construction contract teams on an equal and timely basis such that there is no unfair competitive advantage.
- A consultant or subconsultant that performs real estate acquisition services, may participate on a construction contract team at the same project location so long as all contract services have been fulfilled prior to construction contract bid opening and all work product is made available to all potential construction contract teams on an equal and timely basis such that there is no unfair competitive advantage.
- A consultant or subconsultant contracted to perform specific planning surveys and studies such as asset management plans and biennial bridge inspections may concurrently perform or compete for project specific preliminary engineering, right-of-way and construction engineering services for projects within the study area.
- A consultant or subconsultant that prepares an engineering assessment or similar project report may compete for future project development services so long as the completed report is made publicly available to other competing teams at least four weeks prior to the RFP response due date.