



RESOLUTION 22-18

A RESOLUTION OF THE NORTHWESTERN INDIANA REGIONAL PLANNING COMMISSION FOR THE APPROVAL OF A COMPREHENSIVE CONFLICT OF INTEREST POLICY

September 15, 2022

WHEREAS, Northwest Indiana's citizens require a safe, efficient, effective, resource-conserving regional transportation system that maintains and enhances regional mobility and contributes to improving the quality of life in Northwest Indiana; and

WHEREAS, the Northwestern Indiana Regional Planning Commission, hereafter referred to as "the Commission", being designated the Metropolitan Planning Organization (MPO) for the Lake, Porter and LaPorte County area, has established a regional, comprehensive, cooperative, and continuing (3-C) transportation planning process to develop the unified planning work program, a transportation plan, and a transportation improvement program to facilitate federal funding for communities, counties, and transit operators, and to provide technical assistance and expertise to regional transportation interests; and

WHEREAS, the Commission performs the above activities to satisfy requirements of the Infrastructure Investment & Jobs Act of 2021 and the Bipartisan Infrastructure Law of 2022 (PL 114-94), applicable portions of all prior federal transportation program authorizing legislation, as well as other federal, state, and local laws mandating or authorizing transportation planning activities; and

WHEREAS, the Marquette Greenway Trail is a multi-use trail which extends from Chicago, Illinois to New Buffalo, Michigan, through many scenic parts of Northwest Indiana. The trail has many sections that are not yet completed.

WHEREAS, the United States Department of Transportation has awarded the Commission a grant under the Rebuilding American Infrastructure with Sustainability and Equity (RAISE) program for several major portions of the Marquette Greenway Trail.

WHEREAS, the Commission wishes to put out several Requests for Qualifications and Requests for Proposals for professional services like project management, trail design, right of way engineering, among others. These services require professionals to follow a code of ethics and disclose if there is or will be any conflict of interest.

WHEREAS, the Finance and Personnel Committee (F&P) has recommended that the Northwestern Indiana Regional Planning Commission adopt a Consultant Conflict of Interest Policy and Form P308-2 Consultant Conflict of Interest Statement form.

NOW, THEREFORE, BE IT RESOLVED that the Northwestern Indiana Regional Planning Commission hereby adopts the Consultant Conflict of Interest Policy attached

Duly adopted by the Northwestern Indiana Regional Planning Commission this fifteenth day of September 2022.



Justin Kiel
Chairperson

ATTEST:





NORTHWESTERN INDIANA REGIONAL PLANNING COMMISSION CONSULTANT CONFLICT OF INTEREST POLICY

Applicability

This policy applies to all contracts for professional services related to NIRPC 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.

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 NIRPC;
- Permit consultants to compete fairly to either work for NIRPC or as part of construction contract team;
- Protect the interests of NIRPC; and
- Permit consultants to work without actual or apparent conflicts of interest.

Responsibilities

The consultant (and any subconsultant), not NIRPC, shall reasonably and in good faith anticipate, identify, and disclose to NIRPC 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 NIRPC contract.

The consultant and any subconsultant shall notify NIRPC of any conflict or potential conflict according to this policy in writing (by emailing NIRPC's Procurement Coordinator), 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 NIRPC consultant selection process;
- Any consultant engaging any subconsultant on an NIRPC contract; or
- The consultant or subconsultant accepting any work from an entity other than NIRPC.

Policy

1. Consultants and subconsultants shall provide independent and

uncompromised judgment, counsel, work product and public representation, with respect to every contract with NIRPC.

2. Consultants and subconsultants shall support the policies and practices of NIRPC and 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. NIRPC 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 NIRPC, it is determined that the number of consultants available for a particular activity are inadequate.

Guidelines for Evaluating Conflicts of Interest

- NIRPC’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 agency Contracting Officer. 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, NIRPC’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 NIRPC’s satisfaction as a condition of NIRPC 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 NIRPC contracted responsibilities for a project shall perform concurrent services for other clients that impact or depend upon NIRPC’s project.
- Neither consultants nor subconsultants actively engaged in NIRPC contracted responsibilities for a project shall market to perform future services for other clients that impact or depend upon NIRPC’s project while under contract to NIRPC.
- Neither consultants nor subconsultants actively engaged in NIRPC contracted responsibilities for a project shall entertain participation on a 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 NIRPC shall entertain participation on a construction contract team for the same project.
- Neither consultants nor subconsultants actively engaged on a construction contract team for a project shall participate in an NIRPC professional services contract for the same project in a different role.
- Neither consultants nor subconsultants shall act as the Project Engineer/Supervisor within the hierarchal chain of command over construction inspection activities associated with construction plans or bid documents they prepared for NIRPC Sponsored construction 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.
- Neither consultants nor subconsultants acting in a management support role shall participate in providing services for projects, activities, or contracts under its oversight. These services include performance of work and review, or evaluation of work done by their firm or firms with which they have a financial relationship.

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.

CONSULTANT IN MANAGEMENT SUPPORT ROLE CONFLICT OF INTEREST AND Confidentiality Statement

RFP/RFQ PROCUREMENT NUMBERS (if applicable): _____

PROJECT NAME (and Project Number, if applicable)²: _____

APPLICABILITY: To be filled out by contracting agency consultants in management support role.

I am an employee of a consultant under contract to the contracting agency that is responsible for the procuring and administering of one or more consultant contracts containing either Federal or State funds.

I am in a management position with the contracting agency, my title is listed below and I have attached my duty statement and scope of work.

I hereby certify as follows:

1. I recuse myself from all potential conflicts of interest.
2. I will not directly or indirectly participate in, manage, or oversee any consultant selection procurement process in which the consulting firm of which I am employed is competing as a consultant or subconsultant.
3. I will not directly or indirectly influence any employee, staff member, or other individual participating in any consultant selection procurement process in which the consulting firm of which I am employed is as a consultant or subconsultant.
4. I will not directly or indirectly participate in, manage, or oversee any contracting agency contract that is with the consulting firm of which I am employed, regardless of whether the involvement of my employer in the contract is as a consultant or subconsultant. Among other things, this includes my not being involved in approving changes in the schedule, scope, deliverables or invoices.
5. I understand that if I am involved in any contracting agency contract that is with the consulting firm of which I am employed, in violation of 1. or 2. above, that local agency contract will no longer be eligible for Federal or State reimbursement because of my involvement.

I certify that I have read and understand my responsibilities per **23 CFR 172.7(b)(5)**

I fully understand that it is unlawful for a person to utilize any organization name (i.e. State, local, or contracting agency) or auxiliary organization information, which is not a matter of public record, for personal gain.

¹ Each consultant staff working in a management support role shall complete a separate form.

² For on-call contracts or contracts for multiple projects, indicate accordingly.

I have read and fully understand all of the above.

Date: _____

Signature: _____

Name: _____

Title: _____

Consultant Firm/Sole Proprietor: _____

REVIEWED BY AUTHORIZED CONTRACTING AGENCY REPRESENTATIVE

I have reviewed the foregoing "Conflict of Interest and Confidentiality Statement" and will ensure:

That the foregoing named contracting agency consultant who is under contract and in a management support role with our contracting agency, abides by the foregoing terms and conditions;

That should the foregoing named contracting agency consultant, who is under contract and in a management support role with our local agency, violate any of the foregoing terms and conditions, the Caltrans DLAE will be notified and such violation will be considered a breach of ethics and could be a basis for ineligibility of State or Federal project funds.

The procedures followed to procure and execute the contract, between my contracting agency and the consulting firm of which I am employed, comply with all federal and state requirements. Also this contract has a specific date from _____ to _____.

Date: _____

Signature: _____

Name: _____

Title: _____

Department/Contracting Agency: _____

REVIEWED/CONCURRENCE BY FEDERAL HIGHWAY ADMINISTRATION

I have reviewed the foregoing "Conflict of Interest and Confidentiality Statement" and supervisor's statement.

I concur that the consultant, who is under contract and in a management support role with the contracting agency, does not appear to present a conflict of interest. The contracting agency and the consultant should be considered eligible for federal reimbursement.

I do not concur as I believe that the consultant, who is under contract and in a management support role with the contracting agency, does appear to present a conflict of interest.

Date: _____

Signature: _____

Name: _____

Position: _____

Distribution: 1) Copy to: NIRPC for each Federal/State funded project
2) Copy to be returned to Contracting Agency by NIRPC with FHWA approval