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Federal-aid Program Overview Consultant Services Organizational and Consultant Conflicts of Interest

www.fhwa.dot.gov/federal-aidessentials

Defining conflicts of interest and how to prevent and mitigate them



When the Federal government entrusts its funds to the care of your agency, you are responsible for ensuring their proper use, including taking all the steps necessary to prevent fraud, waste and abuse.

Your State and your agency should have internal policies and practices designed to prevent conflicts of interest and help you comply with Federal regulations.



A conflict of interest occurs when one's private interests and one's public duties and responsibilities diverge or are not consistent.

The Federal government, through its regulations, focuses on three primary sources of conflict:

- The independence of the people associated with the procurement, management and administration of consultants or vendors
- The independence of the people providing engineering or other professional services
- The independence of the people involved in matters related to the acquisition of real property for a project.



Furthermore, Federal regulations and guidance address both direct and indirect conflicts of interest, as well as the concerns regarding an appearance of a conflict of interest or bias.

To illustrate, let's look at a few examples.

In the first example, an agency employee asks to be involved in a decision related to the hiring of a family member as an environmental consultant. If she participates in the decision, a potential conflict of interest would arise because of her personal interest in the procurement.



In the second example, a consulting engineering firm is under contract to serve as the city engineer to provide oversight of engineering functions and the work of engineering consultants procured by the city. A large Federal-aid roadway project is planned and the same consulting firm serving as city engineer would like to compete to provide project-related design services for the project. Although a full-time, public agency employee must be in responsible charge of the project and would oversee the consulting firm serving as city engineer, a potential conflict of interest would arise if the consulting firm were awarded the project-related design services. In addition, the firm would have an unfair advantage in competing for the work and would be in the position to review and accept its own work and invoices for payment.



Our final example involves a project engineer who is selected to manage an upcoming project in which he owns property that may be in the right-of-way. If he accepts the project engineer position, his financial interest in the property would constitute a conflict of interest.



As a leader in your organization, it's critical that you establish a business culture mindful of the potential for conflicts of interest. This culture includes having comprehensive policies and procedures to address conflicts of interests, as well as providing qualified, full-time agency employees to provide project oversight.

Make certain that everyone in your agency reads and understands the written policies and procedures that are designed to avoid or mitigate conflicts of interest. If you are in a position to influence a procurement or right-of-way decision, seek proper guidance to recognize potential sources of conflict.

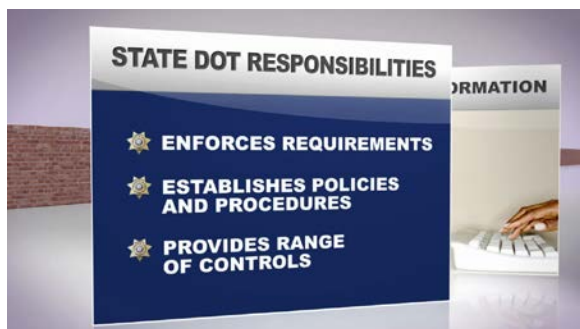
Providing a separation of public- and private-sector roles allows for independence in decisions and actions to protect public funds from fraud, waste and abuse.

A conflict of interest – direct or indirect – violates Federal regulations. Your State or local agency may have additional conflict of interest laws, regulations or policies. Violating these Federal, State, or local requirements has serious consequences for the project sponsors. Additionally, the appearance of a conflict of interest or lack of impartiality should be avoided as it may undermine public trust if not sufficiently mitigated.



The State DOT is an excellent source of information to answer your questions regarding conflicts of interest. Additional resources and guidance information concerning conflicts of interest are also available on the Federal Highway Administration's Consultant Services Web site. You will find a link to it on the Federal-aid Essentials for LPAs Web site.

Federal regulations establish the framework for project stewardship and oversight, but the State department of transportation, the State DOT, is responsible for enforcing the requirements of these regulations. The State DOT is also responsible for establishing procurement policies and procedures that address conflicts of interest.



If you are using or planning to use consultants on a Federal-aid project, the State DOT can provide or assist with the development of a range of controls to prevent or mitigate the potential for conflicts.

Web Resources

- Information on procurement, management, and administration of consultant services
<http://www.fhwa.dot.gov/programadmin/consultant.cfm>
- FHWA's conflicts of interest regulations
<http://www.ecfr.gov/cgi/t/text/text-idx?c=ecfr&sid=df7972764d951c0b011fa11eb3f88f07&rgn=div8&view=text&node=23:1.0.1.1.1.0.1.13&idno=23>
- Conflicts of interest requirements for engineering- and design-related consultant services
<http://www.fhwa.dot.gov/programadmin/172ga.cfm>
- Requirements of an "employee in responsible charge" of a Federal-aid project
<http://www.fhwa.dot.gov/federalaid/110804.cfm>

The content of this document is not a substitute for information obtained from State departments of transportation, appropriate FHWA Division Offices, and applicable laws. Scenarios have been simplified for emphasis and do not necessarily reflect the actual range of requirements applicable to the scenario or this topic. This document was created under contract number DTFH61-11-D-00025 by the Federal Highway Administration, U.S. Department of Transportation, and is offered to the public to heighten and focus awareness of Federal-aid requirements within the local public agencies community and reinforces the importance of these necessary policies, procedures, and practices.

This companion resource is the script content for the video production of the same name.