

## Conflict of Interest Checklist and Disclosure Form

**Purpose of this Checklist:** This checklist is provided to assist responders in screening for potential organizational conflicts of interest. The checklist is for the internal use of responders and does not need to be submitted to MnDOT, however, the Disclosure of Potential Conflict of Interest form should be submitted in a separate envelope along with your proposal.

**Definition of “Responder”:** As used herein, the word “Responder” includes both the potential Grantee and any sub grantees.

**Checklist is Not Exclusive:** Please note that this checklist serves as a guide only, and that there may be additional potential conflict situations not covered by this checklist. If a responder determines a potential conflict of interest exists that is not covered by this checklist, that potential conflict must still be disclosed.

**Use of the Disclosure Form:** A responder must complete the attached disclosure form and submit it with their Proposal (or separately as directed by MnDOT for projects not awarded through a competitive solicitation). If a responder determines a potential conflict of interest exists, it must disclose the potential conflict to MnDOT; however, such a disclosure will not necessarily disqualify a responder from being awarded a Contract. To avoid any unfair “taint” of the selection process, the disclosure form should be provided separate from the bound proposal, and it will not be provided to selection committee members. MnDOT’s Contract Management personnel will review the disclosure and the appropriateness of the proposed mitigation measures to determine if the responder may be awarded the Contract notwithstanding the potential conflict. MnDOT’s Contract Management personnel may consult with MnDOT’s Project Manager and Department of Administration personnel. By statute, resolution of conflict of interest issues is ultimately at the sole discretion of the Commissioner of Administration.

**Material Representation:** The responder is required to submit the attached disclosure form either declaring, to the best of its knowledge and belief, either that no potential conflict exists, or identifying potential conflicts and proposing remedial measures to ameliorate such conflict. The responder must also update conflict information if such information changes after the submission of the proposal. Information provided on the form will constitute a material representation as to the award of this Contract. MnDOT reserves the right to cancel or amend the resulting Contract if the successful responder failed to disclose a potential conflict, which it knew or should have known about, or if the responder provided information on the disclosure form that is materially false or misleading.

**Approach to Reviewing Potential Conflicts:** MnDOT recognizes that responder’s must maintain business relations with other public and private sector entities in order to continue as viable businesses. MnDOT will take this reality into account as it evaluates the appropriateness of proposed measures to mitigate potential conflicts. It is not MnDOT’s intent to disqualify responders based merely on the existence of a business relationship with another entity, but rather only when such relationship causes a conflict that potentially impairs the responder’s ability to provide objective advice to MnDOT. MnDOT would seek to disqualify responders only in those cases where a potential conflict cannot be adequately mitigated. Nevertheless, MnDOT must follow statutory

guidance on Organizational Conflicts of Interest.

**Statutory Guidance:** Minnesota Statutes §16C.02, Subdivision 10 (a) places limits on state agencies ability to Contract with entities having an “Organizational Conflict of Interest”. For purposes of this checklist and disclosure requirement, the term “Vendor” includes “Responder” as defined above. Pursuant to such statute, “Organizational Conflict of Interest” means that because of existing or planned activities or because of relationships with other persons: (1) the vendor is unable or potentially unable to render impartial assistance or advice to the state; (2) the vendor’s objectivity in performing the contract work is or might otherwise be impaired; or (3) the vendor has an unfair advantage.

**Additional Guidance for Professionals Licensed by the Minnesota Board of Engineering:** The Minnesota Board of Engineering has established conflict of interest rules applicable to those professionals licensed by the Board (see Minnesota Rules Part 1805.0300) Subpart 1 of the rule provides “A licensee shall avoid accepting a commission where duty to the client or the public would conflict with the personal interest of the licensee or the interest of another client. Prior to accepting such employment the licensee shall disclose to a prospective client such facts as may give rise to a conflict of interest”.

**An organizational conflict of interest may exist in any of the following cases:**

- The responder, or its principals, own real property in a location where there may be a positive or adverse impact on the value of such property based on the recommendations, designs, appraisals, or other deliverables required by this Contract.
- The responder is providing services to another governmental or private entity and the responder knows or has reason to believe, that entity’s interests are, or may be, adverse to the state’s interests with respect to the specific project covered by this contract. **Comment:** the mere existence of a business relationship with another entity would not ordinarily need to be disclosed. Rather, this focuses on the nature of services commissioned by the other entity. For example, it would not be appropriate to propose on a MnDOT project if a local government has also retained the responder for the purpose of persuading MnDOT to stop or alter the project plans.
- The Contract is for right-of-way acquisition services or related services (e.g. geotechnical exploration) and the responder has an existing business relationship with a governmental or private entity that owns property to be acquired pursuant to the Contract.
- The responder is providing real estate or design services to a private entity, including but not limited to developers, whom the responder knows or has good reason to believe, own or are planning to purchase property affected by the project covered by this Contract, when the value or potential uses of such property may be affected by the responder’s performance of work pursuant to this Contract. “Property affected by the project” includes property that is in, adjacent to, or in reasonable proximity to current or potential right-of-way for the project. The value or potential uses of the private entity’s property may be affected by the responder’s work pursuant to the Contract when such work involves providing recommendations for right-of-way acquisition, access control, and the design or location of frontage roads and interchanges. **Comment:** this provision does not presume responders know or have a duty to inquire as to all of the business objectives of their clients. Rather, it seeks the disclosure of information regarding cases where the responder has reason to believe that its performance of work under this Contract may materially affect the value or viability of a project it is performing for the other entity.

- The responder has a business arrangement with a current MnDOT employee or immediate family member of such employee, including promised future employment of such person, or a subcontracting arrangement with such person, when such arrangement is contingent on the responder being awarded this Contract. This item does not apply to pre-existing employment of current or former MnDOT employees, or their immediate family members. **Comment:** this provision is not intended to supersede any MnDOT policies applicable to its own employees accepting outside employment. This provision is intended to focus on identifying situations where promises of employment have been made contingent on the outcome of this particular procurement. It is intended to avoid a situation where a responder may have unfair access to “inside” information.
- The responder has, in previous work for the state, been given access to “data” relevant to this procurement or this project that is classified as “private” or “nonpublic” under the Minnesota Government Data Practices Act, and such data potentially provides the responder with an unfair advantage in preparing a proposal for this project. **Comment:** this provision will not, for example, necessarily disqualify a responder who performed some preliminary work from obtaining a final design Contract, especially when the results of such previous work are public data available to all other responders. Rather, it attempts to avoid an “unfair advantage” when such information cannot be provided to other potential responders. Definitions of “government data”, “public data”, “non-public data” and “private data” can be found in Minnesota Statutes Chapter 13.
- The responder has, in previous work for the state, helped create the “ground rules” for this solicitation by performing work such as: writing this solicitation, or preparing evaluation criteria or evaluation guides for this solicitation.
- The responder, or any of its principals, because of any current or planned business arrangement, investment interest, or ownership interest in any other business, may be unable to provide objective advice to the state.

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## Disclosure of Potential Conflict of Interest

Having had the opportunity to review the Organizational Conflict of Interest Checklist, the responder hereby indicates that it has, to the best of its knowledge and belief:

\_\_\_\_\_ Determined that no potential organizational conflict of interest exists.

\_\_\_\_\_ Determined a potential organizational conflict of interest as follows:

Describe nature of potential conflict:

Describe measures proposed to mitigate the potential conflict:

Signature:

Date:

If a potential conflict has been identified, please provide name and phone number for a contact person authorized to discuss this disclosure form with MnDOT Contract personnel.

Name:

Phone:

