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Department of Transportation

DIRECTIVE EXPIRES:
October 16, 2018

CONFLICT OF INTEREST PROCEDURE FOR SCRAP, SCOP, AND CIGP GRANT PROJECTS

PURPOSE:

The purpose of this procedure is to provide conflict of interest guidance for professional services projects designated for grant funding under the Small County Road Assistance Program (SCRAP), Small County Outreach Program (SCOP), or County Incentive Grant Program (CIGP).

In order to safeguard the public trust and avoid the appearance of impropriety, it is the expectation of the Department of Transportation ("Department") that grant recipients and consultants take measures to avoid, neutralize or mitigate conflicts of interest on Department funded contracts.

Grantees may utilize professional services consultants to accomplish delivery of planning services; project development and environmental studies; preliminary engineering services; design; project management; engineering support; oversight monitoring; and construction phase services/construction administration/consultant engineering inspection services for Department funded projects. Consultants performing work on Department funded grant projects must be able to impartially carry out their contract responsibilities in a manner free of conflicting professional or personal interests that may hinder or are perceived to compromise objective decision making. Additionally, steps must be taken by the grantee to ensure fair and open contract procurements. An unfair competitive advantage may exist when a consultant has access to information not available to the public and all competing firms, which may create an un-level field of competition.

Where questions arise concerning a consultant's eligibility to pursue a solicitation due to a potential conflict of interest, it is the responsibility of the consultant to seek an eligibility determination prior to responding to a Request for Qualification (RFQ) or other solicitation. Consultant eligibility determinations must be obtained in writing from the grantee. An undisclosed conflict of interest may result in a non-responsiveness

determination for a consultant pursuing a solicitation, or may result in termination of an awarded contract.

AUTHORITY:

Sections 20.23(3)(a) and 334.048(3), Florida Statutes (F.S.)

REFERENCES:

Sections 287.055, 287.057, 337.107, 337.1075, 337.14, 337.164, 339.2816, 339.2819, 339.2819, F.S.; Chapter 61G15-30, Florida Administrative Code

SCOPE:

This procedure applies to all SCRAP, SCOP, and CIGP grant funded professional services projects.

1. DEFINITIONS

Affiliates: For purposes of this procedure, the term "affiliate" shall mean a predecessor or successor of a consultant firm or contractor under the same, or substantially the same, control or a group of business entities which are connected or associated so that one entity controls or has the power to control each of the other business entities. The term "affiliate" includes the officers, directors, executives, shareholders active in management, employees, and agents of the affiliate. The ownership by one business entity of a controlling interest in another business entity or a pooling of equipment or income among business entities shall be prima facie evidence that one business entity is an affiliate of another.

Consultant (Professional Services Consultant): An individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice professional services as defined in Sections 287.055, 337.107, and 337.1075, F.S. Hereafter referred to as consultant.

Prime Consultant: Consultant that proposes to be the lead on a contract. Prime consultants compete for selection on contracts, and if successful, will enter into an agreement with the grantee. For purposes of this procedure, the contracting eligibility restrictions referenced herein shall be applicable only to the prime consultant for a professional services contract or the lead design consultant on a design-build contract.

Subconsultant: Consultant(s) that are included on a prime consultant's team to perform subcontracted services on a grantee's contract. Subconsultants do not enter into a contract directly with the grantee. The contracting eligibility

restrictions referenced herein will not applied to the subconsultant'(s) role on the project.

Engineer of Record (EOR): Florida professional engineer who is in responsible charge for the preparation, signing, dating, sealing and issuing of any engineering document(s) for any engineering service or creative work.

Grantee: County or municipality receiving state funding or appropriations (grants) in whole or part from the Department, in support of a transportation facilities project.

Professional Services: Means those services within the scope of practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, pursuant to s. 287.055, F.S. Contracts for right of way services and planning services may also be performed using the professional services procurement process, pursuant to s. 337.107 and 337.105, F.S., respectively.

2. PRELIMINARY ENGINEERING

2.1. Restrictions on Consultant that Develops RFP or other Solicitation Documents

A consultant, or its affiliate, that developed the Request for Proposal (RFP) or other solicitation documents for a particular project phase is ineligible to compete for that phase of the project for which they developed the documents.

A consultant, or its affiliate, that developed the RFP or other solicitation documents for a design-build project is ineligible to compete for construction administration or construction engineering and inspection (CEI) services for that design-build project.

A consultant, or its affiliate, that developed the RFP or other solicitation documents for a design project is eligible for construction administration or CEI services for that same project.

2.2 Restrictions on Preliminary Engineering Activities

A consultant who only performed Project Development and Environmental (PD&E) services on a project is eligible to compete for work on other phases of the project, if the PD&E services have been completed.

A consultant who performed a safety or traffic operations study is eligible to perform design services for the same project.

A consultant who provided services during the environmental review and/or preliminary design phase is eligible to be awarded a contract for final design services. A consultant

who performed a corridor analysis or pre-design analysis (concept study) is eligible to perform design services for the same project.

3. CONSULTANT CEI CONTRACTS

3.1 Restrictions on EOR as Prime Consultant

A consultant, or its affiliate, that is the EOR on a project is ineligible to provide CEI, construction engineering/management, construction administration, and/or inspection services on that same project.

4. GENERAL ENGINEERING CONSULTANT

Professional services of a General Engineering Consultant (GEC) include the administration, support and management of engineering, architectural, surveying; planning, or right of way appraisal, acquisition and property management activities. These activities may involve a number of different projects.

A consultant serving as the GEC or Owner's representative is precluded from review of their own work, including design plan submittals on Department funded contracts; or review or authorization of payments for their own Department funded contracts.

The GEC or its affiliate is not eligible to pursue any project for which the GEC developed the solicitation documents or RFP. This eligibility restriction also applies to all consultant support contracts (e.g., continuing contracts).

No person or entity (or affiliate) engaged in the procurement, management, administration of Department funded contracts or subcontracts, nor any person or entity performing services for a contracting entity related to a Department funded contract shall have, directly or indirectly, any financial or other personal interest in connection with such contract or subcontract.

5. DESIGN-BUILD

A consultant or its affiliate is ineligible for CEI, construction/engineering/management, construction administration, and/or inspection services for a design-build contract on which the same consultant is the EOR.

The GEC or its affiliate is not eligible to pursue any project for which the GEC developed the solicitation documents, or RFP.

6. EXCEPTION FOR PROJECTS NOT ON THE STATE HIGHWAY SYSTEM

For Small County Road Assistance Program (SCRAP), Small County Outreach Program (SCOP), or County Incentive Grant Program (CIGP) projects that are not on the State Highway System, or such projects that do not cross the State Highway System or right of way, the county or municipality may use its own measures and/or procedures to neutralize or mitigate conflicts of interest related to consultant contracts. Such projects are excluded from the requirements of this procedure.

7. EFFECTIVE DATE

This procedure shall only apply prospectively to projects initiated and funded by the Department after the effective date. This procedure shall not apply retroactively to projects funded by the Department prior to the effective date of this procedure, nor to Agreements between the Department and the grantee prior to the effective date.

8. TRAINING

None

9. FORMS

None