

2.9 Conflict of Interest and Unfair Competitive Advantage

The work related to this project may, at any time, raise questions about real or perceived conflicts of interest because of proposer's or prospective team member's relationship to other entities or individuals. The Proposer's attention is directed to 23 CFR Part 636 Subpart A and Connecticut General Statutes 1-101nn which set forth the federal and state law, respectively, regarding conflicts of interest and unfair competitive advantages (collectively called Conflict Situations).

Conflict of Interest

The Proposer's attention is directed to 23 CFR Section 636.116 regarding organizational conflicts of interest and to Section 636.103 which defines "organizational conflict of interest" under federal law as follows:

Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the owner, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair advantage.

With regard to Connecticut General Statutes §1-101nn, the Department issued a guidance document on March 2, 2006 to all prequalified consultants and contractors. That guidance letter and the frequently asked questions attached to it (together "guidance document") remain in full force and effect, and are posted on the Department's website at:

<http://www.ct.gov/dot/lib/dot/documents/dconsultantoffice/consulltr2.pdf>

In addition to the foregoing, the Department has identified other situations and occurrences which may be considered a conflict of interest for proposers on this project, including without limitation:

- (1) consultants and/or sub-consultants who assisted the Department in the preparation of the RFQ or RFP documents will not be allowed to participate as a Proposer or join a team submitting a proposal in response to the RFP;
- (2) firms under contract with the Department for the construction of a project elsewhere in the State of Connecticut, and firms under contract with the Department for the construction oversight (CE&I) on the same project, are excluded from participating on the same design-build team (this exclusion does not apply to subcontractors and sub consultants); and
- (3) firms or individuals employed by owners of properties or businesses that abut or may be affected by the project will not be allowed to participate as a Proposer or join a team submitting a proposal in response to the RFP,

Barring any other conflict resulting from state or federal law or the Department's March 2, 2006 guidance document, firms and individuals not subject to items (1) through (3) above may work for the design-build contractor and its subcontractors, or the Department and its consultants, but may not work for both simultaneously.

Proposers and lead design firms should consider that conflicts may arise during and after the BVDB procurement that may preclude firms from pursuing Department work on which other participants in the design-build proposal are already under contract with the Department.

Unfair Competitive Advantage

The BVDB procurement will be conducted using a fair and impartial procurement process. It is essential that a level playing field be maintained during the procurement phase. The Proposers are advised that the following prohibitions, restrictions, and requirements will apply to this BVDB procurement:

- (1) firms and individuals may not materially participate (defined as holding a financial interest, assisting in the preparation of a proposal, or providing one or more of the key personnel described in Section 2.3.2) in more than one proposal in response to this RFQ or RFP;
- (2) firms and individuals may not solicit, review, or receive BVDB criteria weighting or evaluation materials prepared by the Department or its consultants during the procurement phase, either directly or through an intermediary;
- (3) Proposers (including subcontractors, employees, or representatives) shall not communicate with or attempt to influence the Qualifications Review Committee, the Technical Review Committee, or other Department representatives involved in the BVDB selection process, except as allowed by this RFQ, and subsequently by the RFP;
- (4) Proposers may not engage or employ current or former employees of the Department or its consultants involved in preparing this RFQ or RFP.

An Unfair Competitive Advantage may exist if a Proposer is not in full compliance with Nos. (1) through (4) above.

2.9.1 Conflict of Interest and Unfair Competitive Advantage Certification

Proposers should evaluate for itself, and the Proposer's key personnel, its subcontractors and any other individuals associated with their Proposal should evaluate for themselves whether they have a Conflict Situation. Thereafter, the Proposer (each respective participant, as described in Chapter 1) shall complete and submit a Conflict of Interest and Unfair Competitive Advantage Certification (Certification Form) for itself, and a separate set of forms for each of its key personnel. Any other individuals or subcontractors participating in the Proposer's team, who are aware of an existing or potential Conflict Situation, shall make a disclosure on the Certification Form and forward it to the Proposer for submittal to the Department. Failure of the Proposer, Key Personnel, or those with known Conflict Situations to submit the Certification Form(s) may result in the disqualification of the Proposer.

Whenever a Proposer, its key personnel, any subcontractor or any individual associated with a Proposer is found to have a Conflict Situation, it shall be disclosed on the Certification Form and the attachments. The Department will review the Proposer's suggested actions to be taken to avoid, neutralize, or mitigate such Conflict Situation, and if found acceptable, the matter will be considered resolved and the Proposer will be permitted to continue in the BVDB procurement process with the suggested actions. If, the Department does not find the Proposer's suggested actions acceptable or sufficient to avoid, neutralize or mitigate a Conflict Situation, then the Department will communicate to the Proposer that an unresolved Conflict Situation may exist. The Proposer may offer additional measures to resolve the matter or appeal the decision in accordance with Section 2.9.3. Proposers unable to resolve a Conflict Situation finding will not be permitted to continue in the BVDB procurement.

It is the responsibility of each proposer to police itself related to Conflict Situations. The Proposer agrees that if, at any time during the procurement process, or even after award

of the contract, an individual or organizational Conflict Situation develops or is discovered, the Proposer shall make an immediate and full disclosure to the Department using the prescribed form. Such disclosure shall include a description of the action that the Proposer has taken or proposes to take to avoid or mitigate the conflict or potential conflict.

2.9.2 Violation of Disclosure Requirements

The Department, in its sole discretion, reserves the right to make a determination relative to real or potential Conflict Situations and the Proposer's ability to mitigate such situations. An organization or individual determined to have a Conflict Situation relative to this procurement or project that cannot be mitigated, shall not be allowed to participate as part of the Proposer or Contractor for the Project. A conflict arising under Connecticut General Statute 1-101nn, as determined by the Office of State Ethics, cannot be mitigated.

If a Conflict Situation is discovered during the procurement process or even during the performance of the Contract, the Department reserves the right to:

- Mitigate the conflict by disclosing information to all proposers. If the documents or work product are considered proprietary under Connecticut law, the Proposer will be given the opportunity to waive this protection from disclosure. If a Proposer elects not to waive protection, then the Proposer may be disqualified;
- Disqualify any prospective Proposer team member or reject any proposal at any time solely on the grounds that a real or perceived Conflict Situation is presented;
- Require any prospective Proposer or Proposer team member to take any action or supply any information necessary to determine the extent of the Conflict Situation, including without limitation, obtaining an opinion from the Office of State Ethics, and/or;
- Terminate any contract arising out of this solicitation if, in the opinion of the Department, any such relationship would constitute or have the potential to create a real or perceived Conflict Situation that cannot be resolved to the satisfaction of the Department.

2.9.3 Appeal Procedure

If the Department finds that an unresolved Conflict Situation exists, the Proposer may appeal such finding to the Commissioner of Transportation. (Note: When the Office of State Ethics has found a situation will violate Conn. Gen. Stat. §1-101nn, Department appeals will not be considered.) Proposers shall promptly forward their appeal to the Commissioner of Transportation, in writing. The appeal must include all Certification Forms submitted to date and present the reasoning and foundation for the firm's position that a Conflict Situation does not exist or that the Conflict Situation may be mitigated by the time it may have an effect on the process or project. Due to the nature of the process and the time it may take to resolve such issues, the existence of an appeal will not delay the BVDB procurement process.

Findings made by the Commissioner of Transportation regarding these appeals will be considered final.

All proposers agree by submitting SOQs or Proposals that the Department is in no way responsible for: costs associated with an appeal; costs incurred to resolve or mitigate an existing or potential Conflict Situation; or costs associated with a Proposal that is not

considered due to the existence of a perceived or actual Conflict Situation. All such risks and burdens rest with the Proposer, firm or individual related to that Proposal.

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Conflict of Interest and Unfair Competitive Advantage Certification

Identify any conflicts of interest or unfair competitive advantages (collectively called Conflict Situations) by completing this Certification under penalty of false statement (Conn. Gen. Stat. §53a-157b) by checking either Box No. 1 (Individuals) or Box No. 2 (Firms) below, and Box No. 3 as necessary. If there is a known or potential Conflict Situation, Box No. 3 should be checked and the required supplementary information provided.

1. Individuals

- I certify that I do not have a potential or known Conflict Situations as specified in the Request for Qualifications documents, State of Connecticut Law, and Federal Regulations, for the subject project, except as disclosed in Box No. 3 and the attachments to this Certification.

2. Firms

- My signature certifies that I am authorized to sign as a Representative for the Firm and to the best of my knowledge, information and belief, and after thorough review of the firm's books and records and after reasonable inquiry with knowledgeable persons within the firm, this firm:
- a) Has no business or personal relationships with any other companies or persons that could be considered as a conflict of interest or potential conflict of interest to the Department,
 - b) Has no principals, officers, agents, employees, or representatives of this firm that have any business or personal relationships with any other companies or persons that could be considered as a conflict of interest or a potential conflict of interest to the Department,
 - c) Has no unfair competitive advantage resulting from work that this firm, its current staff, any key personnel or subconsultants have done to date, pertaining to any and all work or services to be performed as a result of this request and any resulting contract with the Department,
- except as disclosed in Box No. 3 and the attachments to this Certification.

3. Disclosure

- I am notifying the Department of the existence of one or more potential or actual Conflict Situation(s). I have attached to this Certification a document (limited to three pages) with (a) all relevant facts and (b) identified proposed actions to be taken to avoid, neutralize, or mitigate such Conflict Situation (e.g. communications barriers, restraint or restriction upon future contracting activities, or other precaution).

I understand that if at any time I learn of a previously unknown potential or actual conflict of interest or perceived unfair competitive advantage, I will submit a new Certification to the appropriate Department contact person for that phase of the project, updating my previous statements and certifications.

Completed and signed under penalty of false statement per Conn. Gen. Stat. §53a-157b.

Signature: _____ **Date:** _____

Name (type/print): _____ **Title:** _____

Legal Name of Firm: _____

Address: _____

Telephone: (_____) _____ **Project Number:** _____

Name of Proposer: _____