

## UDOT/ACEC Liaison Group - Sub-Committee

### Local Government Evaluation of Potential Conflict of Interest Guidance

#### Purpose

Utah Department of Transportation (UDOT)/Local Government projects are unique in that there are multiple project sponsors including UDOT and a local government, typically a municipality or county government. These projects usually involve the use of Federal funds. Consulting engineering firms working on these projects often have relationships, business or otherwise, that could represent or be perceived to be a conflict of interest. This subcommittee, comprised of ACEC member firms and UDOT staff, met to talk about various scenarios that may occur and to develop guidelines to be used by UDOT, local governments and the consulting community when selecting consultants or executing projects. The group evaluated the following items:

- Potential or perceived conflicts of interest on Federal Aid projects where the City/County Engineer's firm is a paid consultant working on the project.
- How conflicts of interest are discovered and is a defined process needed to identify them?
- Develop a guide for Local Governments and UDOT project managers for use in selecting consultants and developing projects.

#### Definitions

The following definitions are relevant:

- Engineer(s) of Record – An Engineer of Record (EOR) is a consulting firm that has been selected through a FHWA approved competitive process for the purposes of performing Federal-aid projects funded through the Federal Highway Administration (FHWA). Firms are typically selected for a five-year period and can perform services specified in the selection for any project funded through the FHWA.
- City/County Engineer – For the purposes of this document, this is understood to be a consulting firm who is hired by a city or county to function as their engineer. There are many contractual arrangements that can occur and their level of responsibility might vary from a firm being on-call for work as assigned to serving as a full-time engineer for the city or county.
- Consultant Project Manager(s) (on Local Government Projects) – For the purposes of this document, this is understood to be the consultant's representative assigned as the manager for a given project. This role can be assigned through a project specific selection process or through an EOR Process.

#### Evaluation

The Sub-Committee evaluated situations where a consulting firm acted as the City/County Engineer and was also selected as an EOR or a Consultant Project Manager on a Local Government Project. There can be many benefits to a consulting firm performing both roles such as that firm possessing technical knowledge or knowledge of the local government and their constituents. While there are situations

where conflicts of interest could occur, a consulting firm serving in both functions does not in itself represent a conflict of interest. The Sub-Committee evaluated various scenarios and two main topics arose: 1) situations where approvals or policies are conducted for the local government: and 2) when disclosure of roles and relationships are needed.

### Approvals and Policies

Situations where a consulting firm functions as a City/County Engineer and also functions as an EOR or a Consultant Project Manager on a Local Government Project is not a conflict of interest when that firm's role is advisory to the Local Government. A conflict of interest would exist if the consulting firm is in either an approval or a decision-making/policy role with regard to the project on the local government's behalf. Some areas where conflicts of interest would occur include:

- Approving plan sets on behalf of the local government when the same firm prepared those plans as the EOR or consultant.
- Serving as a consultant selection committee member when their firm is proposing.
- Approving invoices when their firm is the EOR or consultant on the project.
- Approving contracts when their firm is the Engineer of Record or consultant on the project.

### Disclosures

Disclosure of all situations where there is the potential of a real or perceived conflict of interest relationship, business or otherwise, is necessary for transparent decision-making. If there is a potential for conflict of interest, formal disclosure is the best way to: identify real or perceived conflicts; evaluate benefits and risks of various roles or relationships; and make informed decisions in the light of all relevant information. Some examples of instances where disclosure is necessary include:

- Firms submitting proposals should disclose their role(s) and relationship(s) that might have a bearing on the project at the time they submit their proposal.
- In the instance where there may be a difference of opinion about the project goals and objectives between different agencies or interests on a project, disclose any relevant relationships or roles.
- When speaking at a public meeting, disclose roles and who the firm is representing.

### Resolution

When a conflict of interest is encountered, there are several alternative courses of actions that can be taken.

1. The consultant may withdraw from the situation; or,
2. The consultant will fully disclose all potential conflicts of interest and receive acceptance in writing by all parties to either:
  - a. continue to participate but recuse themselves from any approval process(es); or
  - b. participate only in role(s) approved by all parties.

Note: Approval by UDOT must be obtained from the UDOT Conflict of Interest Review Team (Team). The Consultant Services Manager acts as the administrator for obtaining approval from the Team.