

# UDOT Project Development

REVISED: November 7, 2011

## ***Issue***

Consultant performing both design and construction engineering management on the same project for UDOT projects\*

## ***Conflict of Interest***

The Department wishes to avoid conflicts of interest whenever possible. Equally important is the need to avoid the appearance of conflicts of interest.

FHWA states in the Consultant Services Procurement, Management, and Administration of Engineering and Design Related Services - Questions and Answers, Section VIII. Conflicts of Interest,

“ . . . A firm performing construction engineering/management and/or inspection services on the same project on which the firm also performed design services provides the firm an opportunity to influence or affect project decisions on scope changes, design changes, construction revisions, contract change orders, and other related issues. Essentially, the firm serving as the designer or project manager, on behalf of the contracting agency, has a vested financial interest in the successful construction of the project. Thus, performing construction engineering/management and/or inspection services provides the firm an opportunity to minimize or potentially ignore any design errors, omissions, or influence actions to positively benefit their firm and not the interest of the public agency, and as such, is a potential conflict of interest (as defined in 23 CFR 1.33 for States and State subgrantees, and as defined in 49 CFR 18.36(b)(3) for other direct (non-State) grantees and subgrantees of these direct grantees). . . ”

The Department recognizes there are times when having the same Consultant perform both design and construction engineering management is advantageous. However, it is aware there may be a perception of negative influence when a Consultant performing construction engineering management for a project also performs the design services for the same project.

The Department has decided effective January 1, 2012 to require the UDOT Project Management Team to consider and evaluate possible conflicts of interest when selecting a consultant Resident Engineer. Should the UDOT Project Management Team consider selecting a Resident Engineer employed by the same design consultant team, they shall be required to submit documentation with an explanation of benefits to the Director of Project Development or the Engineer for Preconstruction for approval prior to selection.

This decision will be incorporated into the Consultant Services Manual of Instructions during the next revision scheduled for this fiscal year.

*\*This does not apply to Local Government projects. Local governments will be advised of the Department's concerns and allowed to determine their own practices.*