

 <p style="text-align: center;"><b>DEPARTMENTAL POLICY</b> State of Tennessee Department of Transportation</p>	<b>Policy Number: 101-05</b>
	<b>Effective Date:</b> <b>February 1, 2016</b>
<b>Approved By:</b> 	<b>Supersedes: N/A</b>
<b>SUBJECT: Personal and Organizational Conflicts of Interest in Procurements, Contract Administration, and Program Administration</b>	

**RESPONSIBLE OFFICE:** Commissioner’s Office; Legal Division.

**AUTHORITY:** T.C.A. §§ 12-4-106, 12-4-114, and 12-4-115; 23 C.F.R. § 1.33 and 23 C.F.R. Part 172. If any portion of this policy conflicts with applicable state or federal laws or regulations, that portion shall be considered void. The remainder of this policy shall not be affected thereby and shall remain in full force and effect.

**RELATED POLICIES:** TDOT Policy No. 101-02, Ethics, Conflicts of Interest, and Acceptance of Gifts; TDOT Policy No. 230-17, Outside Employment Disclosure; TDOT Policy No. 301-01, Standard Procurement of Engineering and Technical Services; Central Procurement Office Policy No. 2013-009, Business Conduct and Ethics Policy and Procedures; and State Building Commission, Policy and Procedure, Item 12, Conflicts of Interest.

**PURPOSE:** In accordance with T.C.A. §§ 12-4-106, 12-4-114, and 12-4-115, and with 23 C.F.R. § 1.33 and 23 C.F.R. Part 172, the purposes of this policy are to:

1. Identify and prevent conflicts of interest among employees of the Tennessee Department of Transportation (TDOT) who perform procurement functions, contract administration functions, grant program functions, or regulatory functions (as defined in Appendix # 1) on behalf of TDOT;
2. Identify organizational conflicts of interest when outside consultants acting in a management support role, or their subcontractors, perform or assist in performing procurement functions, contract administration functions, grant program functions, or regulatory functions on behalf of TDOT; and
3. Establish procedures for managing these organizational conflicts of interest, which may include avoidance, mitigation, or waiver of the conflict, as appropriate, in the best interests of TDOT and the State.

Nothing in this policy shall be construed to amend, modify, or supersede TDOT Policy No. 101-02, Ethics, Conflicts of Interest, and Acceptance of Gifts; TDOT Policy No. 230-17, Outside Employment Disclosure; TDOT Policy No. 301-01, Standard Procurement of Engineering and Technical Services; Central Procurement Office Policy No. 2013-009, Business Conduct and Ethics Policy and Procedures; or State Building Commission, Policy and Procedure, Item 12, Conflicts of Interest.

**APPLICATION:** This policy applies to:

1. All Tennessee Department of Transportation employees who perform procurement functions, contract administration functions, grant program functions, or regulatory functions on behalf of TDOT; and
2. To any contracts under which outside consultants acting in a management support role, or their subcontractors, perform or assist in performing procurement functions, contract administration functions, grant program functions, or regulatory functions on behalf of TDOT.

**DEFINITIONS:** See Appendix # 1 for definitions of the following terms as used in this policy:

1. "Affiliate" or "affiliation"
2. "Biased ground rules"
3. "Central Procurement Office"
4. "Consultant acting in a management support role"
5. "Contract administration function"
6. "Contractor"
7. "Covered consultant employee"
8. "Covered consultant employee conflict of interest"
9. "Grantee"
10. "Grant program function"
11. "Immediate family"
12. "Impaired objectivity"
13. "Interested party"
14. "Non-public information"
15. "Organizational conflict of interest"
16. "Person"
17. "Procurement function"
18. "Regulated person"
19. "Regulatory function"
20. "State Building Commission"
21. "Unfair competitive advantage"

**POLICY:**

In accordance with T.C.A. §§ 12-4-106, 12-4-114, and 12-4-115, and with 23 C.F.R. § 1.33 and 23 C.F.R. Part 172, it is the policy of the Tennessee Department of Transportation to identify and manage conflicts of interest in procurement, contract administration, grant program administration, and regulatory activities as provided below. This policy is intended to supplement TDOT Policy No. 101-02, Ethics, Conflicts of Interest, and Acceptance of Gifts, and nothing in this policy shall be construed to amend, modify, or supersede TDOT Policy No. 101-02.

1. **Personal Conflicts of Interest of TDOT Employees.**
  - a. It is the policy of TDOT to avoid conflicts of interest when TDOT employees perform any procurement function, contract administration function, grant program function, or regulatory function on behalf of TDOT. A conflict of interest may

occur if the employee has a personal relationship with, or a financial interest in, any interested party whose interests may be affected by the employee's performance or non-performance of the procurement function, contract administration function, grant program function, or regulatory function.

- b. Accordingly, no TDOT employee shall participate in any activity involving procurement functions, contract administration functions, grant program functions, or regulatory functions on behalf of TDOT when the employee knows, or should know, with respect to the activity, that the interests of an interested party may be affected by the employee's performance or non-performance of that activity and:
  - i. The employee is also employed by the interested party, or by any of the interested party's affiliates;
  - ii. The employee's spouse or any member of the employee's immediate family holds a position such as an officer, director, trustee, partner, or the like with the interested party, or with any of the interested party's affiliates;
  - iii. The employee's spouse or any member of the employee's immediate family is employed by the interested party, or by any of the interested party's affiliates, and the spouse or family member has personal and substantial participation in the procurement, grant, contract, or regulated activity;
  - iv. The employee, employee's spouse, or any member of the employee's immediate family owns or controls an interest of more than five percent (5%) in the interested party, or in any of the interested party's affiliates;
  - v. The employee, the employee's spouse, or any member of the employee's immediate family has a financial interest arising from the procurement, contract, grant, or regulated activity; or
  - vi. The employee, the employee's spouse, or any member of the employee's immediate family is negotiating, or has an arrangement concerning, prospective employment with the interested party, or with any of the interested party's affiliates.
- c. No TDOT employee who will derive a direct benefit from a procurement, contract, grant, or regulated activity of a regulated person, shall attempt to influence any other TDOT employee who is involved in a procurement function, contract administration function, grant program function, or regulatory function related to that procurement, contract, grant, or regulated activity of the regulated person.
- d. No TDOT employee shall solicit or receive any gift, reward, or promise of reward (other than the employee's TDOT salary and benefits) in exchange for recommending, influencing, or attempting to influence:
  - i. The award of a contract or grant by TDOT;
  - ii. The award of a contract or grant by a TDOT grantee;
  - iii. Cost reimbursements or payments made by TDOT to an interested party;
  - iv. Cost reimbursements or payments made by a TDOT grantee to an interested party;

- v. The acquisition of property by TDOT;
- vi. The acquisition of property by a TDOT grantee; or
- vii. The application or enforcement of TDOT's regulatory authority with respect to a regulated person.

## **2. Organizational Conflicts of Interest.**

It is the policy of TDOT to avoid, mitigate, or waive organizational conflicts of interest, as determined to be in TDOT's best interest, when a consultant acting in a management support role performs procurement functions, contract administration functions, grant program functions, or regulatory functions on behalf of TDOT.

Accordingly, TDOT shall require consultants acting in a management support role that perform, or seek to perform, any procurement functions, contract administration functions, grant program functions, or regulatory functions on behalf of TDOT to:

- a. Identify any organizational conflicts of interest arising from any past activities, business or financial interests, contractual relationships, or affiliations of the consultant;
- b. Identify and prevent or manage covered consultant employee conflicts of interest; and
- c. Refrain from using, and prohibit covered consultant employees from using, any non-public information for private or personal gain when they have access to non-public information by reason of performing procurement functions, contract administration functions, grant program functions, or regulatory functions on behalf of TDOT.

## **PROCEDURES:**

- 1. Violations of Policy.
  - a. Bureau Chiefs, Directors, Managers, and Supervisors are responsible for maintaining the proper performance level, conduct and discipline of employees under their supervision. When corrective action is necessary resulting from violation of this policy, the violation must be reported to the higher level supervisor, and to the Commissioner as needed, and if necessary, appropriate disciplinary action shall be administered.
  - b. Employees who violate this policy may be subject to disciplinary action under the authority of T.C.A. §§ 8-30-315 and 8-30-316, and as described in the Rules of the Tennessee Department of Human Resources, Chapter 1120-10, Disciplinary Action.
  - c. Otherwise, this policy does not create any right to administrative or judicial review, or any other right or benefit, substantive or procedural, enforceable at law or equity by a party against the State of Tennessee, its agencies or instrumentalities, its officers or employees, or any other person.
- 2. Procurements and Contracts Subject to the Central Procurement Office or State Building Commission.

TDOT employees participating in procurement functions or contract administration functions subject to the Central Procurement Office or State Building Commission shall comply with the applicable rules, policies, procedures, and guidelines of the Central Procurement Office or State Building Commission, including Central Procurement Office Policy No. 2013-009, Business Conduct and Ethics Policy and Procedures, and State Building Commission, Policy and Procedure, Item 12, Conflicts of Interest.

3. Solicitation and Award of Engineering and Technical Services Contracts.

TDOT employees participating in the evaluation and selection of consultants submitting letters of interest and/or proposals pursuant to TDOT Policy No. 301-01, Standard Procurement of Engineering and Technical Services, shall complete and sign the Conflict of Interest Disclosure Statement and Certification of Confidentiality, as set forth in Appendix # 2 of this policy. If any employee identifies a possible conflict of interest, the employee shall not participate in the evaluation or selection process with respect to that consultant unless, upon review of the Disclosure Statement, the employee's supervisor determines that the employee does not have a conflict of interest.

4. Solicitation, Award, and Administration of Contracts with Consultants Acting in a Management Support Role.

In addition to the requirements in paragraph 3 above, TDOT employees having responsibility for soliciting, evaluating, or recommending the award of a contract to a consultant acting in a management support role who will perform or assist in performing procurement functions, contract administration functions, grant program functions, or regulatory functions on behalf of TDOT, and TDOT employees having any responsibility to administer such consultant contracts, shall identify and manage organizational conflicts of interest as follows:

- a. Potential organizational conflicts of interest shall be considered in the preparation of solicitation documents, in the evaluation of responses, and in the award of any contract for the performance of procurement functions, contract administration functions, grant program functions, or regulatory functions on behalf of TDOT.
- b. All respondents to a solicitation shall be required to disclose the existence of any organizational conflict of interest that is known or discovered at any time during the consultant selection process, and upon request the respondent shall disclose all facts relevant to the organizational conflict of interest. Respondents shall complete and sign the Organizational Conflict of Interest Disclosure Statement, as set forth in Appendix # 3 of this policy, and submit it with their responses to the solicitation.
- c. All consultants acting in a management support role who perform procurement functions, contract administration functions, grant program functions, or regulatory functions on behalf of TDOT shall be required to disclose the existence of any organizational conflict of interest that becomes known or discovered at any time during the term of any contract.
- d. Solicitation documents, including advertisements for letters of interest or requests for proposals, and contract documents shall be submitted to the TDOT Legal Division for review and verification that appropriate solicitation and contract provisions are being used.

- e. When an organizational conflict of interest is disclosed by a consultant acting in a management support role, or a TDOT employee otherwise becomes aware of any organizational conflict of interest, the employee shall promptly notify his or her Director, or higher level supervisor as appropriate, and the Director or higher level supervisor shall submit to the Commissioner a plan to address the organizational conflict of interest, as provided in paragraph 7 below.

For procurements and contracts subject to the oversight of the Central Procurement Office, as provided in T.C.A. § 12-3-101, et seq., the plan shall also be submitted in writing to the Chief Procurement Officer, as provided in Central Procurement Office Policy No. 2013-009 (or as amended).

For procurements and contracts subject to the oversight of the State Building Commission, as provided in T.C.A. § 4-15-101, et seq., the plan shall also be submitted in writing to the State Architect, as provided in State Building Commission, Policy and Procedure, Item 12, Conflicts of Interest.

For procurements and contracts for engineering and design related services where Federal funds are used, the organizational conflict of interest shall be reported to the Federal Highway Administration as provided in 23 C.F.R. § 172.7(b)(4)(vi).

5. Contractual Obligations of a Consultant Acting in a Management Support Role.

TDOT employees having responsibility for drafting or administering contracts with consultants acting in a management support role who perform or assist in performing procurement functions, contract administration functions, grant program functions, or regulatory functions on behalf of TDOT shall include in the contract a conflict of interest clause substantially in the form set forth in Appendix 4 of this policy (attached hereto), or some other similar conflict of interest clause approved by the TDOT Legal Division, to address the following requirements:

- a. The consultant shall have procedures in place to screen covered consultant employees for potential covered consultant employee conflicts of interest by:
  - i. Obtaining and maintaining from each covered consultant employee, when the employee is initially assigned to any task under the contract, a disclosure of interests that might be affected by the task to which the employee has been assigned, as follows:
    - A. Financial interests of the covered consultant employee, of immediate family members, or of other members of the covered consultant employee's household;
    - B. Other employment or financial relationships of the covered consultant employee (including seeking or negotiating for prospective employment or business);
    - C. Gifts, including travel; and
  - ii. Requiring each covered consultant employee to update the disclosure statement whenever the employee's personal or financial circumstances change in such a way that a new covered consultant employee conflict of interest might occur because of the task the covered consultant employee is performing.

- b. For each covered consultant employee, the consultant shall:
    - i. Prevent covered consultant employee conflicts of interest, e.g., by not assigning or allowing a covered consultant employee to perform any task under the contract for which the consultant has identified a covered consultant employee conflict of interest that the consultant or employee cannot satisfactorily prevent or mitigate in consultation with TDOT;
    - ii. Prohibit the use of non-public information for personal gain when the non-public information has been accessed through performance of a TDOT contract; and
    - iii. Obtain a signed non-disclosure agreement to prohibit disclosure of non-public information accessed through performance of a TDOT contract.
  - c. The consultant shall inform covered consultant employees of their obligation:
    - i. To disclose and prevent covered consultant employee conflicts of interest;
    - ii. Not to use non-public information accessed through performance of a TDOT contract for personal gain; and
    - iii. To avoid even the appearance of any conflict of interest.
  - d. The consultant shall maintain effective oversight to verify compliance with covered consultant employee conflict of interest safeguards.
  - e. The consultant shall take appropriate disciplinary action in the case of covered consultant employees who fail to comply with policies established pursuant to this section.
  - f. The consultant shall report to TDOT any covered consultant employee conflict of interest violation as soon as it is identified. This report shall include a description of the violation and the proposed actions to be taken by the consultant in response to the violation, with follow-up reports of corrective actions taken, as necessary.
  - g. If a consultant reports a covered consultant employee conflict of interest violation to TDOT in accordance with the contract clause set forth in Appendix 4, Organizational Conflicts of Interest, the Director of the TDOT Division or Region administering the consultant contract shall:
    - i. Review the actions taken by the consultant;
    - ii. Determine whether any action taken by the consultant has resolved the violation satisfactorily; and
    - iii. If the Director determines that the consultant has not resolved the violation satisfactorily, take any appropriate action in consultation with TDOT legal counsel.
6. Mitigation or Waiver.
- a. In exceptional circumstances, if a consultant acting in a management support role cannot satisfactorily prevent a conflict of interest as required under the contract set forth in Appendix 4, Organizational Conflicts of Interest, the consultant may

submit a request through the Director of the TDOT Division or Region administering the consultant contract to:

- i. Agree to a plan to mitigate the conflict of interest; or
  - ii. Waive the requirement to prevent the conflict of interest.
- b. If the Director of the TDOT Division or Region administering the consultant contract determines in writing that such action is in the best interest of TDOT, the Director may recommend additional conditions that provide mitigation of a conflict of interest or grant a waiver.
7. Approval of Plan to Address an Organizational Conflict of Interest.

The Director of the Division or Region administering a contract with a consultant acting in a management support role shall submit a plan to address any identified organizational conflict of interest to the Commissioner, and the Central Procurement Officer or State Architect, if applicable, for approval. The plan shall include actions or agreements necessary to avoid, mitigate, or waive the conflict, as follows:

- a. Avoidance may involve not selecting the consultant to provide procurement functions, contract administration functions, grant program functions, or regulatory functions on behalf of TDOT, or the termination of any existing contract to perform such functions.
  - b. Mitigation may involve specific actions by the consultant to limit the effect of an organizational conflict of interest.
  - c. The Commissioner, or Central Procurement Office or State Architect, as applicable, may waive the requirement to resolve an organizational conflict of interest if the Commissioner, or the Central Procurement Office or State Architect, as applicable, determines that resolution is not feasible or is not in the best interests of TDOT or the State. Such determination must be documented in writing and maintained by the Director of the Division or Region administering the consultant contract.
  - d. The Director shall not commence with implementation of the plan to avoid, mitigate, or waive the organizational conflict of interest until the Director has documented the basis in writing and has received written approval of the plan from the Commissioner, and from the Central Procurement Office or State Architect, if applicable. A copy of the approved plan shall be provided to the TDOT General Counsel.
8. Violations.

If the Division or Region administering the consultant contract suspects a violation by the consultant of any contractual obligation required under paragraph 5 of this Procedures section, the Director of the Division or Region shall contact the TDOT Legal Division for advice and/or recommendations on a course of action, subject to the approval of the Commissioner.

9. Reporting.

The TDOT Legal Office shall maintain a record of the documented plans to address any identified organizational conflicts of interest, and such plans shall be reported annually,

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on or before June 30 of each year, to the Speaker of the House of Representatives, the Speaker of the Senate, and the Comptroller of the Treasury.

## APPENDIX # 1

**DEFINITIONS:** For purposes of this policy, the following terms shall have the meanings described below:

1. **“Affiliate” or “affiliation”** means, with respect to a consultant acting in a management support role, contractor, or any person other than a governmental agency, public institution, or similar publicly owned or operated organization:
  - a. Any member, partner, or joint venture member;
  - b. Any shareholder of the consultant, contractor, or other person having an interest of at least ten percent (10%) in any class of stocks;
  - c. Any person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, the consultant, contractor, or other person, or any of its shareholders, members, partners or joint venture members; or
  - d. Any entity for which ten percent (10%) or more of the equity interest in such entity is held directly or indirectly, beneficially or of record by:
    - i. The consultant, contractor, or other person,
    - ii. Any of the shareholders, members, partners or joint venture members of the consultant, contractor, or other person, or
    - iii. Any affiliate of the consultant, contractor, or other person.
2. **“Biased ground rules”** means the requirements for a contract or prerequisites for competition for a contract that have been written by a person who, as part of the person’s performance of a TDOT contract, directly or indirectly participates in writing statements of work or specifications for another contract for which the person who established the requirements or prerequisites, or any of its affiliates, seeks to compete.
3. **“Central Procurement Office”** means the state agency established under T.C.A. § 4-56-101, et seq., and having authority under T.C.A. § 12-3-101, et seq., to oversee the process for the purchase of goods and services by state agencies, except that the following TDOT procurements and contracts are exempt from Central Procurement Office oversight:
  - a. Construction and engineering contracts entered into by TDOT for the planning, surveying, design, construction, maintenance, or operation of highway or transportation facilities;
  - b. Contracts for appraisal, relocation or acquisition services related to the acquisition of land for highway or transportation purposes; and
  - c. Administrative contracts for specific service (Logo Program) signs.
4. **“Consultant acting in a management support role”** means any person, other than an employee of TDOT, that performs, or seeks to perform, procurement functions, contract administration functions, grant program functions, or regulatory functions on behalf of TDOT; provided, however, that this shall not include legal representation, advice, or recommendations, or expert witness services, provided to TDOT by or through the State of Tennessee Office of the Attorney General and Reporter.

5. **“Contract administration function”** means performing, supporting, or providing advice or recommendations for or on behalf of TDOT with regard to contract administration activities, including without limitation:
  - a. Administering, managing, or overseeing contracts for the provision of goods, materials, or services to TDOT that are performed by or for a TDOT contractor, or administering, managing, or overseeing contracts with, or activities performed by, outside parties to accommodate TDOT projects, including without limitation:
    - i. Ordering changes or giving technical direction in contract performance or contract quantities;
    - ii. Accepting or rejecting contractor products or services;
    - iii. Accepting or rejecting materials;
    - iii. Managing contract compliance;
    - iv. Making recommendations regarding contract modifications or change orders;
    - vi. Approving payments to the contractor or outside party;
    - vii. Evaluating contractor performance;
    - viii. Determining whether contract costs are reasonable, allocable, and allowable; or
    - ix. Recommending whether to extend, renew, or terminate a contract;

provided, however, that contract administration functions do not include ancillary or ministerial roles, such as paying approved contract invoices or providing administrative support functions;

  - b. Examples of contract administration functions that may be performed by a consultant acting in a management support role include without limitation:
    - i. Construction engineering and inspection services;
    - ii. Materials supplier inspection services;
    - iii. Utility coordination and relocation services; and
    - iv. Oversight, management or evaluation of contract services performed by other TDOT contractors, including consultants performing engineering services or other professional or technical services.
6. **“Contractor”** means any person that provides, or seeks to provide, goods or services to TDOT, including engineering services or other professional or technical services, other than procurement functions, contract administration functions, grant program functions, or regulatory functions to be performed by a consultant acting in a management support role.
7. **“Covered consultant employee”** means an individual person who performs a procurement function, contract administration function, grant program function, or regulatory function on behalf of TDOT and is:
  - a. An employee of a consultant acting in a management support role that is under contract with TDOT; or
  - b. An employee of any subcontractor to the consultant acting in a management support role that is under contract with TDOT.
8. **“Covered consultant employee conflict of interest”** means a situation in which a covered consultant employee has a financial interest, personal activity, or relationship that could impair the

covered consultant employee's ability to act impartially and in the best interest of TDOT when performing services for a consultant acting in a management support role.

- a. Among the sources of such conflicts of interest are:
    - i. Financial interests of the covered consultant employee, of immediate family members, or of other members of the covered consultant employee's household;
    - ii. Other employment or financial relationships (including seeking or negotiating for prospective employment or business); and
    - iii. Gifts, including travel.
  - b. For example, financial interests referred to in the preceding subparagraph may arise from:
    - i. Compensation, including wages, salaries, commissions, professional fees, or fees for business referrals;
    - ii. Consulting relationships (including commercial and professional consulting and service arrangements, scientific and technical advisory board memberships, or serving as an expert witness in litigation);
    - iii. Services provided in exchange for honorariums or travel expense reimbursements;
    - iv. Research funding or other forms of research support;
    - v. Investment in the form of stock or bond ownership or partnership interest (excluding diversified mutual fund investments);
    - vi. Real estate investments;
    - vii. Patents, copyrights, and other intellectual property interests; or
    - viii. Business ownership and investment interests.
9. **“Grantee”** means any person who receives, or seeks to receive, state or federal-aid funding from or through TDOT pursuant to any TDOT grant program.
10. **“Grant program function”** means performing, supporting, or providing advice or recommendations for or on behalf of TDOT with regard to the administration, management, or oversight of grants made to any person under a TDOT grant program, including without limitation:
- a. Developing any grant proposal solicitation or contract documents, including requests for proposals, proposal evaluation criteria, or grant contract terms and conditions;
  - b. Evaluating grant proposals;
  - c. Awarding or making recommendations for award of a grant;
  - d. Determining whether grant reimbursement requests are reasonable, allocable, and allowable; or
  - e. Extending, renewing, or terminating a grant contract, or making any recommendation to extend, renew, or terminate a grant contract;
- provided, however, that grant program functions do not include ancillary or ministerial roles, such as paying approved reimbursement requests or providing administrative support functions.
11. **“Immediate family”** means a spouse, any dependent children or stepchildren, or relatives related by blood or marriage.
12. **“Impaired objectivity”** means any circumstance where a person evaluates proposals or contract performance for that person’s own products or services or for the products or services of that

person's competitors. Impaired objectivity can exist where a contract requires the exercise of judgment, and the economic interests of the person may be harmed through the free and unbiased exercise of that judgment.

13. **"Interested Party"** means any person having a financial or other interest that may be affected by the exercise of a procurement function, contract administration function, grant program function, or regulatory function, and may include without limitation as follows:
  - a. Any person that is responding, or intends to respond, to a solicitation by TDOT for a contract or grant, or to a solicitation by a TDOT grantee for a contract or grant funded by TDOT;
  - b. Any person that has been awarded a TDOT contract or grant, or who has been awarded a contract or grant by a TDOT grantee;
  - c. Any person that is performing activities for which the person will seek or receive cost reimbursements or payments from TDOT or a TDOT grantee;
  - d. Any person from whom TDOT or a TDOT grantee may acquire property; or
  - e. Any regulated person.
14. **"Non-public information"** means any TDOT or third-party information that:
  - a. Is exempt from disclosure under the Tennessee Public Records Act, T.C.A. § 10-7-501, et seq., or is otherwise protected from disclosure by law; or
  - b. Has not been disseminated to the general public and TDOT has not yet determined whether the information can or will be made available to the public.
15. **"Organizational conflict of interest"** means, with respect to a consultant acting in a management support role, or proposing to act in such a role, a circumstance arising out of the consultant's or any subcontractor's existing or past activities, business or financial interests, familial relationships, contractual relationships, or organizational structure (i.e., parent entities, subsidiaries, affiliates, etc.) that results in:
  - a. Impaired objectivity of the consultant or subcontractor;
  - b. An unfair competitive advantage for any bidder or proposer with respect to a TDOT procurement or grant;
  - c. Biased ground rules; or
  - d. Impropriety, or the appearance of impropriety, as determined by the Commissioner of TDOT, with respect to any of TDOT's procurements, contracts, or programs.
16. **"Person"** means any individual, corporation, limited liability company, partnership (general or limited), joint venture, association, joint stock company, trust, government (or any agency or political subdivision thereof), other business entity, or other organization recognized by law.
17. **"Procurement function"** means performing, supporting, or providing advice or recommendations for or on behalf of TDOT with regard to any procurement activities, including without limitation:
  - a. Planning acquisitions;
  - b. Determining or recommending the supplies or services to be procured by TDOT, including developing product specifications, a scope of services, or a statement of work;
  - c. Developing any procurement or contract documents, including invitations to bid, requests for qualifications, requests for proposals, evaluation criteria, contract specifications, or contract terms and conditions;

- d. Evaluating contract proposals;
- e. Negotiating a contract;
- f. Awarding a contract; or
- g. Activities related to the evaluation and acquisition of real property interests, including without limitation:
  - i. Appraisal services;
  - ii. Acquisition and relocation services; or
  - iii. Closing and title services;

provided, however, that procurement functions do not include ancillary or ministerial roles, such as paying approved contract invoices or providing administrative support functions.

- 18. **“Regulated person”** means any person (as defined herein) whose activities or rights and privileges are regulated by TDOT pursuant to rules promulgated under the Uniform Administrative Procedures Act, T.C.A. § 4-5-101, et seq., but which does not include statements or directives relating to the use of highways that are made known to the public by means of signs or signals.
- 19. **“Regulatory function”** means performing, supporting, or providing advice or recommendations for or on behalf of TDOT with regard to the implementation, application, or enforcement of TDOT rules promulgated under the Uniform Administrative Procedures Act, T.C.A. § 4-5-101, et seq., that govern the activities or rights and privileges of persons outside of TDOT. Regulatory functions include, without limitation:
  - a. Drafting or making recommendations for proposed legislation affecting TDOT’s regulatory authority;
  - b. Drafting or making recommendations for the adoption or amendment of TDOT rules;
  - c. Making decisions or recommendations for decisions regarding the issuance, denial, renewal, or revocation of any permit issued to any regulated person;
  - d. Making decisions or recommendations for decisions regarding any other enforcement actions taken or proposed to be taken regarding any regulated person; or
  - e. Making decisions or recommendations for decisions regarding the initiation, prosecution, settlement, or appeal of any administrative hearings or judicial proceedings involving any regulated person.
- 20. **“State Building Commission”** means the public body established under T.C.A. § 4-15-101, et seq., and having authority under T.C.A. § 4-15-102 to approve and supervise all contracts relating to any improvement to real property, including the construction, renovation, or major maintenance of buildings, and the authority to approve and supervise all contracts related to the demolition of any building located on real property, where the State or any state agency has an interest in the real property, whether the project is funded by public or private funds or both; provided, however, that the following TDOT procurement activities and contracts are excluded from State Building Commission approval or supervision:
  - a. The acquisition of any interest in real property by TDOT for highway rights-of-way;
  - b. Contracts for the demolition of any building or structure acquired by TDOT for highway rights-of-way; and

- c. Contracts relating to the planning, surveying, design and construction of transportation projects pursuant to Title 54, chapter 5, of the Tennessee Code.
21. **“Unfair competitive advantage”** means a situation that exists when a person responding to a solicitation for the award of a contract or grant has obtained:
- a. Access to proprietary or non-public information that would assist the person in responding to the solicitation or in obtaining the contract or grant but which is not available to other respondents to the solicitation; or
  - b. Scoring criteria or points allocation information, or other source selection information, that would assist the person in responding to the solicitation or in obtaining the contract or grant but which is not available to other respondents to the solicitation.

**APPENDIX # 2**

**CONFLICT OF INTEREST DISCLOSURE STATEMENT  
 AND CERTIFICATION OF CONFIDENTIALITY  
 REGARDING EVALUATION OF RESPONDENTS TO SOLICITATION  
 FOR ENGINEERING CONSULTANT SERVICES**

Type of Services: \_\_\_\_\_

For Project(s): \_\_\_\_\_ (Attach list as needed),

OR On-Call Contract(s): \_\_\_\_\_ (Attach list as needed)

**INSTRUCTIONS FOR THE STATEMENT SIGNATORY:**

Complete the spaces provided above with the type of services and identification of the project number or on-call contract applicable to this statement.

**EMPLOYEES INTENDING TO PARTICIPATE IN EVALUATION OF RESPONDENTS—**

	<p><b>INSTRUCTIONS FOR THE STATEMENT SIGNATORY:</b>                  Initial each space provided below to indicate affirmation of the corresponding statement. <u>A response is required for each statement.</u> Notify your supervisor if you do not understand your obligations under TDOT Policy #101-05.</p>
	<p>I am familiar with TDOT Policy #101-05, Personal and Organizational Conflicts of Interest in Procurements, Contract Administration, and Program Administration, and I have reviewed the attached excerpt from TDOT Policy #101-05 as it pertains to my participation in the evaluation of Respondents to the Solicitation referenced above.</p>
	<p>I hereby certify and assure that I shall maintain the confidentiality of all information regarding the evaluation of Respondents to the referenced Solicitation and that I shall not disclose any such information to any Respondent or to the public generally until after award of the contract is communicated in writing or electronic transmission to all Respondents.</p>
	<p><b>INSTRUCTIONS FOR THE STATEMENT SIGNATORY:</b>                  Complete each space provided below by either initialing the statement (to indicate an affirmation of the corresponding statement) <u>OR</u> by writing "N/A" (to indicate that the corresponding statement is not applicable).                  If a possible conflict of interest is identified, a description of such should be attached to this document.</p>
	<p>I have reviewed the attached listing of prospective Respondents expressing an interest in the subject Solicitation, and I did not identify any potential conflict of interest – personal, financial or otherwise – regarding my ability to fairly evaluate or assist with the evaluation of all responses and proposals.</p>
	<p>I have reviewed the attached listing of prospective Respondents expressing an interest in the subject Solicitation, and I did identify a possible conflict of interest, detailed and attached hereto, which might adversely reflect on my ability to fairly evaluate or assist with the evaluation of all responses and proposals. <u>I will not participate in the subject Solicitation where I have identified a possible conflict of interest unless my supervisor determines that there is no conflict.</u> (See Notes attached hereto.)</p>

**Employee's Signature:** \_\_\_\_\_

**Printed Name:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Excerpt from TDOT Policy #101-05, Personal and Organizational Conflicts of Interest in Procurements, Contract Administration, and Program Administration:**

**1. Personal Conflicts of Interest of TDOT Employees.**

- a. It is the policy of TDOT to avoid conflicts of interest when TDOT employees perform any procurement function, contract administration function, grant program function, or regulatory function on behalf of TDOT. A conflict of interest may occur if the employee has a personal relationship with, or a financial interest in, any interested party whose interests may be affected by the employee's performance or non-performance of the procurement function, contract administration function, grant program function, or regulatory function.
- b. Accordingly, no TDOT employee shall participate in any activity involving procurement functions, contract administration functions, grant program functions, or regulatory functions on behalf of TDOT when the employee knows, or should know, with respect to the activity, that the interests of an interested party may be affected by the employee's performance or non-performance of that activity and:
  - i. The employee is also employed by the interested party, that is responding or intending to respond to the solicitation for a TDOT contract or grant, by the person that has been awarded a TDOT contract or grant, or by a regulated person, or by any of the interested party's affiliates;
  - ii. The employee's spouse or any member of the employee's immediate family holds a position such as an officer, director, trustee, partner, or the like with the interested party, or with any of the interested party's affiliates;
  - iii. The employee's spouse or any member of the employee's immediate family is employed by the interested party, or by any of the interested party's affiliates, and the spouse or family member has personal and substantial participation in the procurement, grant, contract, or regulated activity;
  - iv. The employee, employee's spouse, or any member of the employee's immediate family owns or controls an interest of more than five percent (5%) in the interested party, or in any of the interested party's affiliates;
  - v. The employee, the employee's spouse, or any member of the employee's immediate family has a financial interest arising from the procurement, contract, grant, or regulated activity; or
  - vi. The employee, the employee's spouse, or any member of the employee's immediate family is negotiating, or has an arrangement concerning, prospective employment with the interested party, or with any of the interested party's affiliates.
- c. No TDOT employee who will derive a direct benefit from a procurement, contract, grant, or regulated activity of a regulated person, shall attempt to influence any other TDOT employee who is involved in a procurement function, contract administration function, grant program function, or regulatory function related to that procurement, contract, grant, or regulated activity of the regulated person.
- d. No TDOT employee shall solicit or receive any gift, reward, or promise of reward (other than the employee's TDOT salary and benefits) in exchange for recommending, influencing, or attempting to influence:
  - i. The award of a contract or grant by TDOT;
  - ii. The award of a contract or grant by a TDOT grantee;
  - iii. Cost reimbursements or payments made by TDOT to an interested party;
  - iv. Cost reimbursements or payments made by a TDOT grantee to an interested party;
  - v. The acquisition of property by TDOT;
  - vi. The acquisition of property by a TDOT grantee; or
  - vii. The application or enforcement of TDOT's regulatory authority with respect to a regulated person.

**NOTES**

**Identification of Possible Conflict(s) of Interest**

**Explanation of Supervisor's Decision (as needed)**

**Supervisor's signature:** \_\_\_\_\_

**Printed Name:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**APPENDIX # 3**

**ORGANIZATIONAL CONFLICT OF INTEREST DISCLOSURE STATEMENT  
 BY RESPONDENT TO SOLICITATION FOR SERVICES  
 OF CONSULTANT ACTING IN A MANAGEMENT SUPPORT ROLE**

**Advertisement Date:** \_\_\_\_\_

**Type of Services:** \_\_\_\_\_

**For Project #** \_\_\_\_\_ **Or, For On-Call Contract:** \_\_\_\_\_

	<p><i>INSTRUCTIONS FOR THE DISCLOSURE STATEMENT SIGNATORY:</i>                  Initial each space provided below to indicate affirmation of the corresponding statement. <i>A response is required for each statement.</i> Contact the Tennessee Department of Transportation Legal Office at (615) 741-2941 if you do not understand your obligations under TDOT Policy #101-05.</p>
	<p>I am familiar with TDOT Policy #101-05, Personal and Organizational Conflicts of Interest in Procurements, Contract Administration, and Program Administration, and I have reviewed the attached excerpts from TDOT Policy #101-05 as these pertain to my firm’s participation as a Respondent to the Solicitation referenced above.</p>
	<p>I have reviewed the referenced Solicitation, including the proposed scope of services, and I certify that neither my firm nor any of my firm’s affiliates has participated in writing the scope of work or any proposed specifications for the contract that is anticipated in this Solicitation (defined as “biased ground rules” in Policy #101-05).</p>
	<p>I have reviewed the referenced Solicitation, including the proposed scope of services, and I certify that neither my firm nor any of my firm’s affiliates has obtained proprietary or non-public information, or any scoring criteria or other contract selection information, that would assist in responding to this Solicitation but which is not available to other Respondents to this Solicitation (defined as an “unfair competitive advantage” in Policy #101-05).</p>
	<p><i>INSTRUCTIONS FOR THE DISCLOSURE STATEMENT SIGNATORY:</i>                  Complete each space provided below by either initialing the statement (to indicate an affirmation of the corresponding statement) OR by writing “N/A” (to indicate that the corresponding statement is not applicable).                  If a possible organizational conflict of interest is identified, a description of such should be attached to this document.</p>
	<p>I have reviewed the referenced Solicitation, including the proposed scope of services, and <u>I have not identified any potential organizational conflict of interest</u> – based on my firm’s existing or past activities, business or financial interests, family relationships, or those of any of my firm’s affiliates – that could result in the “impaired objectivity” (as this term is defined in Policy #101-05) of my firm in performing the scope of work under the contract that is anticipated in this Solicitation.</p>
	<p>I have reviewed the referenced Solicitation, including the proposed scope of services, and <u>I have identified one or more potential organizational conflicts of interest</u> – based on my firm’s existing or past activities, business or financial interests, family relationships, or those of any of my firm’s affiliates – that could result in the “impaired objectivity” (as this term is defined in Policy #101-05) of my firm in performing the scope of work under the contract that is anticipated in this Solicitation. An explanation of the potential organizational conflict(s) of interest is attached.</p>

**Name of Respondent Firm:** \_\_\_\_\_

**Signed by:** \_\_\_\_\_

**Printed Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Excerpts from TDOT Policy #101-05, Personal and Organizational Conflicts of Interest in Procurements, Contract Administration, and Program Administration:**

**POLICY:**

In accordance with T.C.A. §§ 12-4-106, 12-4-114, and 12-4-115, and with 23 C.F.R. § 1.33 and 23 C.F.R. Part 172, it is the policy of the Tennessee Department of Transportation to identify and manage conflicts of interest in procurement, contract administration, grant program administration, and regulatory activities as provided below. This policy is intended to supplement TDOT Policy No. 101-02, Ethics, Conflicts of Interest, and Acceptance of Gifts, and nothing in this policy shall be construed to amend, modify, or supersede TDOT Policy No. 101-02.

...

**2. Organizational Conflicts of Interest.**

It is the policy of TDOT to avoid, mitigate, or waive organizational conflicts of interest, as determined to be in TDOT's best interest, when a consultant acting in a management support role performs procurement functions, contract administration functions, grant program functions, or regulatory functions on behalf of TDOT.

Accordingly, TDOT shall require consultants acting in a management support role that perform, or seek to perform, any procurement functions, contract administration functions, grant program functions, or regulatory functions on behalf of TDOT to:

- a. Identify any organizational conflicts of interest arising from any past activities, business or financial interests, contractual relationships, or affiliations of the consultant;
- b. Identify and prevent or manage covered consultant employee conflicts of interest; and
- c. Refrain from using, and prohibit covered consultant employees from using, any non-public information for private or personal gain when they have access to non-public information by reason of performing procurement functions, contract administration functions, grant program functions, or regulatory functions on behalf of TDOT.

**PROCEDURES:**

...

**4. Solicitation, Award, and Administration of Contracts with Consultants Acting in a Management Support Role.**

... TDOT employees having responsibility for soliciting, evaluating, or recommending the award of a contract to a consultant acting in a management support role who will perform or assist in performing procurement functions, contract administration functions, grant program functions, or regulatory functions on behalf of TDOT, and TDOT employees having any responsibility to administer such consultant contracts, shall identify and manage organizational conflicts of interest as follows:

- a. Potential organizational conflicts of interest shall be considered in the preparation of solicitation documents, in the evaluation of responses, and in the award of any contract for the performance of procurement functions, contract administration functions, grant program functions, or regulatory functions on behalf of TDOT.
- b. All respondents to a solicitation shall be required to disclose the existence of any organizational conflict of interest that is known or discovered at any time during the consultant selection process, and upon request the respondent shall disclose all facts relevant to the organizational conflict of interest. Respondents shall complete and sign the Organizational Conflict of Interest Disclosure Statement, as set forth in Appendix # 3 of this policy, and submit it with their responses to the solicitation.
- c. All consultants acting in a management support role who perform procurement functions, contract administration functions, grant program functions, or regulatory functions on behalf of TDOT shall be required to disclose the existence of any organizational conflict of interest that becomes known or discovered at any time during the term of any contract.



## APPENDIX # 1

**DEFINITIONS:** For purposes of this policy, the following terms shall have the meanings described below:

1. **“Affiliate” or “affiliation”** means, with respect to a consultant acting in a management support role, contractor, or any person other than a governmental agency, public institution, or similar publicly owned or operated organization:
  - a. Any member, partner, or joint venture member;
  - b. Any shareholder of the consultant, contractor, or other person having an interest of at least ten percent (10%) in any class of stocks;
  - c. Any person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, the consultant, contractor, or other person, or any of its shareholders, members, partners or joint venture members; or
  - d. Any entity for which ten percent (10%) or more of the equity interest in such entity is held directly or indirectly, beneficially or of record by:
    - i. The consultant, contractor, or other person,
    - ii. Any of the shareholders, members, partners or joint venture members of the consultant, contractor, or other person, or
    - iii. Any affiliate of the consultant, contractor, or other person.
2. **“Biased ground rules”** means the requirements for a contract or prerequisites for competition for a contract that have been written by a person who, as part of the person’s performance of a TDOT contract, directly or indirectly participates in writing statements of work or specifications for another contract for which the person who established the requirements or prerequisites, or any of its affiliates, seeks to compete.  
...
4. **“Consultant acting in a management support role”** means any person, other than an employee of TDOT, that performs, or seeks to perform, procurement functions, contract administration functions, grant program functions, or regulatory functions on behalf of TDOT; provided, however, that this shall not include legal representation, advice, or recommendations, or expert witness services, provided to TDOT by or through the State of Tennessee Office of the Attorney General and Reporter.
5. **“Contract administration function”** means performing, supporting, or providing advice or recommendations for or on behalf of TDOT with regard to contract administration activities, including without limitation:
  - a. Administering, managing, or overseeing contracts for the provision of goods, materials, or services to TDOT that are performed by or for a TDOT contractor, or administering, managing, or overseeing contracts with, or activities performed by, outside parties to accommodate TDOT projects, including without limitation:
    - i. Ordering changes or giving technical direction in contract performance or contract quantities;
    - ii. Accepting or rejecting contractor products or services;
    - iii. Accepting or rejecting materials;
    - iii. Managing contract compliance;
    - iv. Making recommendations regarding contract modifications or change orders;
    - vi. Approving payments to the contractor or outside party;

- vii. Evaluating contractor performance;
- viii. Determining whether contract costs are reasonable, allocable, and allowable; or
- ix. Recommending whether to extend, renew, or terminate a contract;

provided, however, that contract administration functions do not include ancillary or ministerial roles, such as paying approved contract invoices or providing administrative support functions;

- b. Examples of contract administration functions that may be performed by a consultant acting in a management support role include without limitation:
  - i. Construction engineering and inspection services;
  - ii. Materials supplier inspection services;
  - iii. Utility coordination and relocation services; and
  - iv. Oversight, management or evaluation of contract services performed by other TDOT contractors, including consultants performing engineering services or other professional or technical services.
- 6. **“Contractor”** means any person that provides, or seeks to provide, goods or services to TDOT, including engineering services or other professional or technical services, other than procurement functions, contract administration functions, grant program functions, or regulatory functions to be performed by a consultant acting in a management support role.
- 7. **“Covered consultant employee”** means an individual person who performs a procurement function, contract administration function, grant program function, or regulatory function on behalf of TDOT and is:
  - a. An employee of a consultant acting in a management support role that is under contract with TDOT; or
  - b. An employee of any subcontractor to the consultant acting in a management support role that is under contract with TDOT.
- 8. **“Covered consultant employee conflict of interest”** means a situation in which a covered consultant employee has a financial interest, personal activity, or relationship that could impair the covered consultant employee's ability to act impartially and in the best interest of TDOT when performing services for a consultant acting in a management support role.
  - a. Among the sources of such conflicts of interest are:
    - i. Financial interests of the covered consultant employee, of immediate family members, or of other members of the covered consultant employee's household;
    - ii. Other employment or financial relationships (including seeking or negotiating for prospective employment or business); and
    - iii. Gifts, including travel.
  - b. For example, financial interests referred to in the preceding subparagraph may arise from:
    - i. Compensation, including wages, salaries, commissions, professional fees, or fees for business referrals;
    - ii. Consulting relationships (including commercial and professional consulting and service arrangements, scientific and technical advisory board memberships, or serving as an expert witness in litigation);
    - iii. Services provided in exchange for honorariums or travel expense reimbursements;

- iv. Research funding or other forms of research support;
  - v. Investment in the form of stock or bond ownership or partnership interest (excluding diversified mutual fund investments);
  - vi. Real estate investments;
  - vii. Patents, copyrights, and other intellectual property interests; or
  - viii. Business ownership and investment interests.
9. **“Grantee”** means any person who receives, or seeks to receive, state or federal-aid funding from or through TDOT pursuant to any TDOT grant program.
10. **“Grant program function”** means performing, supporting, or providing advice or recommendations for or on behalf of TDOT with regard to the administration, management, or oversight of grants made to any person under a TDOT grant program, including without limitation:
- a. Developing any grant proposal solicitation or contract documents, including requests for proposals, proposal evaluation criteria, or grant contract terms and conditions;
  - b. Evaluating grant proposals;
  - c. Awarding or making recommendations for award of a grant;
  - d. Determining whether grant reimbursement requests are reasonable, allocable, and allowable; or
  - e. Extending, renewing, or terminating a grant contract, or making any recommendation to extend, renew, or terminate a grant contract;
- provided, however, that grant program functions do not include ancillary or ministerial roles, such as paying approved reimbursement requests or providing administrative support functions.
11. **“Immediate family”** means a spouse, any dependent children or stepchildren, or relatives related by blood or marriage.
12. **“Impaired objectivity”** means any circumstance where a person evaluates proposals or contract performance for that person’s own products or services or for the products or services of that person’s competitors. Impaired objectivity can exist where a contract requires the exercise of judgment, and the economic interests of the person may be harmed through the free and unbiased exercise of that judgment.
13. **“Interested Party”** means any person having a financial or other interest that may be affected by the exercise of a procurement function, contract administration function, grant program function, or regulatory function, and may include without limitation as follows:
- a. Any person that is responding, or intends to respond, to a solicitation by TDOT for a contract or grant, or to a solicitation by a TDOT grantee for a contract or grant funded by TDOT;
  - b. Any person that has been awarded a TDOT contract or grant, or who has been awarded a contract or grant by a TDOT grantee;
  - c. Any person that is performing activities for which the person will seek or receive cost reimbursements or payments from TDOT or a TDOT grantee;
  - d. Any person from whom TDOT or a TDOT grantee may acquire property; or
  - e. Any regulated person.

14. **“Non-public information”** means any TDOT or third-party information that:
- a. Is exempt from disclosure under the Tennessee Public Records Act, T.C.A. § 10-7-501, et seq., or is otherwise protected from disclosure by law; or
  - b. Has not been disseminated to the general public and TDOT has not yet determined whether the information can or will be made available to the public.
15. **“Organizational conflict of interest”** means, with respect to a consultant acting in a management support role, or proposing to act in such a role, a circumstance arising out of the consultant’s or any subcontractor’s existing or past activities, business or financial interests, familial relationships, contractual relationships, or organizational structure (i.e., parent entities, subsidiaries, affiliates, etc.) that results in:
- a. Impaired objectivity of the consultant or subcontractor;
  - b. An unfair competitive advantage for any bidder or proposer with respect to a TDOT procurement or grant;
  - c. Biased ground rules; or
  - d. Impropriety, or the appearance of impropriety, as determined by the Commissioner of TDOT, with respect to any of TDOT’s procurements, contracts, or programs.
16. **“Person”** means any individual, corporation, limited liability company, partnership (general or limited), joint venture, association, joint stock company, trust, government (or any agency or political subdivision thereof), other business entity, or other organization recognized by law.
17. **“Procurement function”** means performing, supporting, or providing advice or recommendations for or on behalf of TDOT with regard to any procurement activities, including without limitation:
- a. Planning acquisitions;
  - b. Determining or recommending the supplies or services to be procured by TDOT, including developing product specifications, a scope of services, or a statement of work;
  - c. Developing any procurement or contract documents, including invitations to bid, requests for qualifications, requests for proposals, evaluation criteria, contract specifications, or contract terms and conditions;
  - d. Evaluating contract proposals;
  - e. Negotiating a contract;
  - f. Awarding a contract; or
  - g. Activities related to the evaluation and acquisition of real property interests, including without limitation:
    - i. Appraisal services;
    - ii. Acquisition and relocation services; or
    - iii. Closing and title services;

provided, however, that procurement functions do not include ancillary or ministerial roles, such as paying approved contract invoices or providing administrative support functions.

18. **“Regulated person”** means any person (as defined herein) whose activities or rights and privileges are regulated by TDOT pursuant to rules promulgated under the Uniform Administrative Procedures Act, T.C.A. § 4-5-101, et seq.,

but which does not include statements or directives relating to the use of highways that are made known to the public by means of signs or signals.

19. **“Regulatory function”** means performing, supporting, or providing advice or recommendations for or on behalf of TDOT with regard to the implementation, application, or enforcement of TDOT rules promulgated under the Uniform Administrative Procedures Act, T.C.A. § 4-5-101, et seq., that govern the activities or rights and privileges of persons outside of TDOT. Regulatory functions include, without limitation:
  - a. Drafting or making recommendations for proposed legislation affecting TDOT’s regulatory authority;
  - b. Drafting or making recommendations for the adoption or amendment of TDOT rules;
  - c. Making decisions or recommendations for decisions regarding the issuance, denial, renewal, or revocation of any permit issued to any regulated person;
  - d. Making decisions or recommendations for decisions regarding any other enforcement actions taken or proposed to be taken regarding any regulated person; or
  - e. Making decisions or recommendations for decisions regarding the initiation, prosecution, settlement, or appeal of any administrative hearings or judicial proceedings involving any regulated person.
  
21. **“Unfair competitive advantage”** means a situation that exists when a person responding to a solicitation for the award of a consultant contract or grant has obtained:
  - a. Access to proprietary or non-public information that would assist the person in responding to the solicitation or in obtaining the contract or grant but which is not available to other respondents to the solicitation; or
  - b. Scoring criteria or points allocation information, or other source selection information, that would assist the person in responding to the solicitation or in obtaining the contract or grant but which is not available to other respondents to the solicitation.

#### APPENDIX # 4

##### **Organizational Conflict of Interest Clause for Consultant Acting in a Management Support Role**

As prescribed in paragraph TDOT Policy No. 101-05, Personal and Organizational Conflicts of Interest in Procurements, Contract Administration, and Program Administration at Procedures, paragraph 5, insert the following contract clause (or a substantially similar clause as approved by the TDOT Legal Division) in any contract where a consultant acting in a management support role, or the consultant's subcontractors, will perform procurement functions, contract administration functions, grant program functions, or regulatory functions on behalf of TDOT:

( ) Organizational Conflicts of Interest.

( ) Definitions. As used in this clause [insert or omit the following definitions as appropriate to the contract]:

1. "Affiliate" or "affiliation" means, with respect to a consultant acting in a management support role, contractor, or any person other than a governmental agency, public institution, or similar publicly owned or operated organization:
  - a. Any member, partner, or joint venture member;
  - b. Any shareholder of the consultant, contractor, or other person having an interest of at least ten percent (10%) in any class of stocks;
  - c. Any person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, the consultant, contractor, or other person, or any of its shareholders, members, partners or joint venture members; or
  - d. Any entity for which ten percent (10%) or more of the equity interest in such entity is held directly or indirectly, beneficially or of record by:
    - i. The consultant, contractor, or other person,
    - ii. Any of the shareholders, members, partners or joint venture members of the consultant, contractor, or other person, or
    - iii. Any affiliate of the consultant, contractor, or other person.
2. "Biased ground rules" means the requirements for a contract or prerequisites for competition for a contract that have been written by a person who, as part of the person's performance of a TDOT contract, directly or indirectly participates in writing statements of work or specifications for another contract for which the person who established the requirements or prerequisites, or any of its affiliates, seeks to compete.
3. "Consultant acting in a management support role" means any person, other than an employee of TDOT, that performs, or seeks to perform, procurement functions, contract administration functions, grant program functions, or regulatory functions on behalf of TDOT under this contract.

4. "Contract administration function" means performing, supporting, or providing advice or recommendations for or on behalf of TDOT with regard to contract administration activities, including without limitation:
  - a. Administering, managing, or overseeing contracts for the provision of goods, materials, or services to TDOT that are performed by or for a TDOT contractor, or administering, managing, or overseeing contracts with, or activities performed by, outside parties to accommodate TDOT projects, including without limitation:
    - i. Ordering changes or giving technical direction in contract performance or contract quantities;
    - ii. Accepting or rejecting contractor products or services;
    - iii. Accepting or rejecting materials;
    - iii. Managing contract compliance;
    - iv. Making recommendations regarding contract modifications or change orders;
    - vi. Approving payments to the contractor or outside party;
    - vii. Evaluating contractor performance;
    - viii. Determining whether contract costs are reasonable, allocable, and allowable; or
    - ix. Recommending whether to extend, renew, or terminate a contract;

provided, however, that contract administration functions do not include ancillary or ministerial roles, such as paying approved contract invoices or providing administrative support functions.

  - b. Examples of contract administration functions that may be performed by a consultant acting in a management support role include without limitation:
    - i. Construction engineering and inspection services;
    - ii. Materials supplier inspection services;
    - iii. Utility coordination and relocation services; and
    - iv. Oversight, management or evaluation of contract services performed by other TDOT contractors, including consultants performing engineering services or other professional or technical services.
5. "Contractor" means any person that provides, or seeks to provide, goods or services to TDOT, including engineering services or other professional or technical services, other than procurement functions, contract administration functions, grant program functions, or regulatory functions to be performed by a consultant acting in a management support role.

6. "Covered consultant employee" means an individual person who performs a procurement function, contract administration function, grant program function, or regulatory function on behalf of TDOT and is:
  - a. An employee of a consultant acting in a management support role that is under contract with TDOT; or
  - b. An employee of any subcontractor to the consultant acting in a management support role that is under contract with TDOT.
  
7. "Covered consultant employee conflict of interest" means a situation in which a covered consultant employee has a financial interest, personal activity, or relationship that could impair the covered consultant employee's ability to act impartially and in the best interest of TDOT when performing services for a consultant acting in a management support role.
  - a. Among the sources of such conflicts of interest are:
    - i. Financial interests of the covered consultant employee, of immediate family members, or of other members of the covered consultant employee's household;
    - ii. Other employment or financial relationships (including seeking or negotiating for prospective employment or business); and
    - iii. Gifts, including travel.
  - b. For example, financial interests referred to in the preceding subparagraph may arise from:
    - i. Compensation, including wages, salaries, commissions, professional fees, or fees for business referrals;
    - ii. Consulting relationships (including commercial and professional consulting and service arrangements, scientific and technical advisory board memberships, or serving as an expert witness in litigation);
    - iii. Services provided in exchange for honorariums or travel expense reimbursements;
    - iv. Research funding or other forms of research support;
    - v. Investment in the form of stock or bond ownership or partnership interest (excluding diversified mutual fund investments);
    - vi. Real estate investments;
    - vii. Patents, copyrights, and other intellectual property interests; or
    - viii. Business ownership and investment interests.

8. "Grantee" means any person who receives, or seeks to receive, state or federal-aid funding from or through TDOT pursuant to any TDOT grant program.
9. "Grant program function" means performing, supporting, or providing advice or recommendations for or on behalf of TDOT with regard to the administration, management, or oversight of grants made to any person under a TDOT grant program, including without limitation:
  - a. Developing any grant proposal solicitation or contract documents, including requests for proposals, proposal evaluation criteria, or grant contract terms and conditions;
  - b. Evaluating grant proposals;
  - c. Awarding or making recommendations for award of a grant;
  - d. Determining whether grant reimbursement requests are reasonable, allocable, and allowable; or
  - e. Extending, renewing, or terminating a grant contract, or making any recommendation to extend, renew, or terminate a grant contract;

provided, however, that grant program functions do not include ancillary or ministerial roles, such as paying approved reimbursement requests or providing administrative support functions.
10. "Immediate family" means a spouse, any dependent children or stepchildren, or relatives related by blood or marriage.
11. "Impaired objectivity" means any circumstance where a person evaluates proposals or contract performance for that person's own products or services or for the products or services of that person's competitors. Impaired objectivity can exist where a contract requires the exercise of judgment, and the economic interests of the person may be harmed through the free and unbiased exercise of that judgment.
12. "Interested Party" means any person having a financial or other interest that may be affected by the exercise of a procurement function, contract administration function, grant program function, or regulatory function, and may include without limitation as follows:
  - a. Any person that is responding, or intends to respond, to a solicitation by TDOT for a contract or grant, or to a solicitation by a TDOT grantee for a contract or grant funded by TDOT;
  - b. Any person that has been awarded a TDOT contract or grant, or who has been awarded a contract or grant by a TDOT grantee;
  - c. Any person that is performing activities for which the person will seek or receive cost reimbursements or payments from TDOT or a TDOT grantee;
  - d. Any person from whom TDOT or a TDOT grantee may acquire property; or

- e. Any regulated person.
13. “Non-public information” means any TDOT or third-party information that:
- a. Is exempt from disclosure under the Tennessee Public Records Act, T.C.A. § 10-7-501, et seq., or is otherwise protected from disclosure by law; or
  - b. Has not been disseminated to the general public and TDOT has not yet determined whether the information can or will be made available to the public.
14. “Organizational conflict of interest” means, with respect to a consultant acting in a management support role, or proposing to act in such a role, a circumstance arising out of the consultant’s or any subcontractor’s existing or past activities, business or financial interests, familial relationships, contractual relationships, or organizational structure (i.e., parent entities, subsidiaries, affiliates, etc.) that results in:
- a. Impaired objectivity of the consultant or subcontractor;
  - b. An unfair competitive advantage for any bidder or proposer with respect to a TDOT procurement or grant;
  - c. Biased ground rules; or
  - d. Impropriety, or the appearance of impropriety, as determined by the Commissioner of TDOT, with respect to any of TDOT’s procurements, contracts, or programs.
15. “Person” means any individual, corporation, limited liability company, partnership (general or limited), joint venture, association, joint stock company, trust, government (or any agency or political subdivision thereof), other business entity, or other organization recognized by law.
16. “Procurement function” means performing, supporting, or providing advice or recommendations for or on behalf of TDOT with regard to any procurement activities, including without limitation:
- a. Planning acquisitions;
  - b. Determining or recommending the supplies or services to be procured by TDOT, including developing product specifications, a scope of services, or a statement of work;
  - c. Developing any procurement or contract documents, including invitations to bid, requests for qualifications, requests for proposals, evaluation criteria, contract specifications, or contract terms and conditions;
  - d. Evaluating contract proposals;
  - e. Negotiating a contract; or

f. Awarding a contract;

provided, however, that procurement functions do not include ancillary or ministerial roles, such as paying approved contract invoices or providing administrative support functions.

[Or:

16. "Procurement function" means performing, supporting, or providing advice or recommendations for or on behalf of TDOT with regard to any procurement activities related to the evaluation and acquisition of real property interests, including without limitation:

- a. Appraisal services;
- b. Acquisition and relocation services; or
- c. Closing and title services;

provided, however, that procurement functions do not include ancillary or ministerial roles, such as paying approved contract invoices or providing administrative support functions.]

17. "Regulated person" means any person (as defined herein) whose activities or rights and privileges are regulated by TDOT pursuant to rules promulgated under the Uniform Administrative Procedures Act, T.C.A. § 4-5-101, et seq., but which does not include statements or directives relating to the use of highways that are made known to the public by means of signs or signals.

18. "Regulatory function" means performing, supporting, or providing advice or recommendations for or on behalf of TDOT with regard to the implementation, application, or enforcement of TDOT rules promulgated under the Uniform Administrative Procedures Act, T.C.A. § 4-5-101, et seq., that govern the activities or rights and privileges of persons outside of TDOT. Regulatory functions include, without limitation:

- a. Drafting or making recommendations for proposed legislation affecting TDOT's regulatory authority;
- b. Drafting or making recommendations for the adoption or amendment of TDOT rules;
- c. Making decisions or recommendations for decisions regarding the issuance, denial, renewal, or revocation of any permit issued to any regulated person;
- d. Making decisions or recommendations for decisions regarding any other enforcement actions taken or proposed to be taken regarding any regulated person; or
- e. Making decisions or recommendations for decisions regarding the initiation, prosecution, settlement, or appeal of any administrative hearings or judicial proceedings involving any regulated person.

19. "Unfair competitive advantage" means a situation that exists when a person responding to a solicitation for the award of a contract or grant has obtained:
- a. Access to proprietary or non-public information that would assist the person in responding to the solicitation or in obtaining the contract or grant but which is not available to other respondents to the solicitation; or
  - b. Scoring criteria or points allocation information, or other source selection information, that would assist the person in responding to the solicitation or in obtaining the contract or grant but which is not available to other respondents to the solicitation.

( ) The consultant shall have procedures in place to screen covered consultant employees for potential covered consultant employee conflicts of interest by:

1. Obtaining and maintaining from each covered consultant employee, when the employee is initially assigned to any task under the contract, a disclosure of interests that might be affected by the task to which the employee has been assigned, as follows:
  - i. Financial interests of the covered consultant employee, of immediate family members, or of other members of the covered consultant employee's household;
  - ii. Other employment or financial relationships of the covered consultant employee (including seeking or negotiating for prospective employment or business);
  - iii. Gifts, including travel; and
2. Requiring each covered consultant employee to update the disclosure statement whenever the employee's personal or financial circumstances change in such a way that a new covered consultant employee conflict of interest might occur because of the task the covered consultant employee is performing.

( ) For each covered consultant employee, the consultant shall:

1. Prevent covered consultant employee conflicts of interest, e.g., by not assigning or allowing a covered consultant employee to perform any task under this contract for which the consultant has identified a covered consultant employee conflict of interest that the consultant or employee cannot satisfactorily prevent or mitigate in consultation with TDOT;
2. Prohibit the use of non-public information accessed through this contract for personal gain; and
3. Obtain a signed non-disclosure agreement to prohibit disclosure of non-public information accessed through this contract.

( ) The consultant shall inform covered consultant employees of their obligation:

1. To disclose and prevent covered consultant employee conflicts of interest;

2. Not to use non-public information accessed through this contract for personal gain; and
  3. To avoid even the appearance of any conflict of interest.
- ( ) The consultant shall maintain effective oversight to verify compliance with covered consultant employee conflict of interest safeguards.
- ( ) The consultant shall take appropriate disciplinary action in the case of covered consultant employees who fail to comply with policies established pursuant to this section.
- ( ) The consultant shall report to TDOT any covered consultant employee conflict of interest violation as soon as it is identified. This report shall include a description of the violation and the proposed actions to be taken by the consultant in response to the violation, with follow-up reports of corrective actions taken, as necessary.
- ( ) Mitigation or waiver.
1. In exceptional circumstances, if the consultant cannot satisfactorily prevent a covered consultant employee conflict of interest as required by paragraph ( ) of this clause, the consultant may submit a request for:
    - a. An agreement to a plan to mitigate the personal conflict of interest; or
    - b. A waiver of the requirement.
  2. The Consultant shall include in the request any proposed mitigation of the covered consultant employee conflict of interest.
  3. The Consultant shall:
    - a. Comply, and require compliance by the covered consultant employee, with any conditions imposed by TDOT as necessary to mitigate the personal conflict of interest; or
    - b. Remove the covered consultant employee from performance of the contract or terminate the applicable subcontract.
- ( ) Subcontract flowdown. The consultant shall include the substance of this clause, including this paragraph ( ), in subcontracts under which subcontractor employees will perform procurement functions, contract administration functions, grant program functions, or regulatory functions on behalf of TDOT.