

RESOLUTION

A RESOLUTION OF THE NORTHWEST ARKANSAS REGIONAL PLANNING COMMISSION TO ESTABLISH THE CONFLICT OF INTEREST WRITTEN CODE OF STANDARDS AND CONDUCTS FOR FEDERAL PROCUREMENTS

WHEREAS, the Northwest Arkansas Regional Planning Commission (NWARPC) is a designated recipient of federal grant funding for federal projects; and

WHEREAS, NWARPC conducts procurements for itself and its subrecipients; and

WHEREAS, NWARPC needs to establish a written code of conduct for all federally funded procurements; and

WHEREAS, the U.S. Department of Transportation prohibits organizational conflicts of interest that are restrictive of competition as discussed in 49 CFR § 18.36(c)(v) and 49 CFR § 19.43; and Federal Transit Administration, Circular 4220.1F, Chapter 3.1, requires that grant recipients must maintain a written code of standards and conduct governing the performance of employees engaged in the award and administration of contracts; and 40 CFR § 30.42 states that the U.S. Environmental Protection Agency shall maintain written standards of conduct governing the performance of employees engaged in the award and administration of contracts; and

BE IT FURTHER RESOLVED by NWARPC that the Conflict of Interest Written Code of Standards and Conducts for Federal Procurements is hereby adopted as official policy to be followed by the NWARPC and its designated subrecipients for all federal procurements.

Signature

Date

NORTHWEST ARKANSAS REGIONAL PLANNING COMMISSION

Conflict of Interest Written Code of Standards and Conducts for Federal Procurements

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1. REGULATIONS

49 CFR § 18.36(b)(3) establishes for the U.S. Department of Transportation the government-wide requirement that state and local government grant recipients must have written standards of conduct for procurement personnel. Northwest Arkansas Regional Planning Commission (NWARPC) agrees to adhere to the following Standards and Conducts for all federal procurements:

A. 49 CFR § 18.36(c)(v) and 49 CFR § 19.43 U.S. Department of Transportation

49 CFR § 18.36(c)(v) and 49 CFR § 19.43 for the U.S. Department of Transportation prohibits organizational conflicts of interest as restrictive of competition. Section 19.43 further states as follows:

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The grant recipient shall be alerted to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

B. Federal Transit Administration Circular 4220.1F, Chapter 3.1

FTA Circular 4220.1F implements this requirement that Federal Transit Administration (FTA) grant recipients shall maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer, agent, immediate family member, or board member of grant recipients shall participate in the selection, award, or administration of a contract supported by FTA funds if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when any of the following has a financial or other interest in the firm selected for award:

1. The employee, officer, agent, or board member, committee member,
2. Any member of his/her immediate family,
3. His or her partner, or
4. An organization that employs, or is about to employ, any of the above.

Grant recipients, officers, employees, agents, or board members will neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements. Grant recipients may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic

value. To the extent permitted by state or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary action for violation of such standards by the grantee's officers, employees, or agents, or by contractors or their agents.

C. Section 3(a) FTA Master Agreement

As an ethics requirement, Section 3(a) of the FTA Master Agreement requires the written standards of conduct to encompass both personal and organizational conflicts of interest and defines them as follows:

1. *Personal Conflicts of Interest.*

The recipient's code or standards of conduct shall prohibit the grant recipient's employees, officers, board members, or agents from participating in the selection, award, or administration of a third-party contract or sub-agreement supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when any of the following parties has a financial or other interest in the entity selected for award: (a) an employee, officer, board member, or agent; (b) any member of his or her immediate family; (c) his or her partner; or (d) an organization that employs, or intends to employ, any of the above.

2. *Organizational Conflicts of Interest.*

The grant recipient's code or standards of conduct must include procedures for identifying and preventing real and apparent organizational conflicts of interest. An organizational conflict of interest exists when the nature of the work to be performed under a proposed third party contract or sub-agreement may, without some restrictions on future activities, result in an unfair competitive advantage to the third-party contractor or sub-recipient or impair its objectivity in performing the contract work.

3. *Gifts*

Gifts include gratuities, favors, or anything of monetary value. The grant recipient's officers, employees, board members, or agents may not solicit or accept anything of monetary value (gifts) from a present or potential third party participant of any type. The grant recipient may permit its officers, employees, board members, or agents to accept a gift, however, provided that:

1. The financial value of the gift is insubstantial, or
2. The gift is an unsolicited item of nominal intrinsic value

D. 40 CFR § 30.42 U.S. Environmental Protection Agency (EPA)

The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm

selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to sub-agreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

2. OUTLINE OF STEPS TO PREVENT AND RESOLVE A CONFLICT OF INTEREST.

The following is an outline of the steps that NWARPC will take before and during the procurement process and during project administration.

1. The Project Coordinator or qualified personnel will identify potential conflicts at all stages of the procurement process.
2. Once a conflict is identified, the Project Coordinator will review the conflict and determine a resolution.
 - a. Mitigating measures may include:
 - i. Recusal
 - ii. Limit on scope of participation
 - b. Typical situations that may warrant measures:
 - i. Situations that may warrant advance restrictions
 - A contract for procurement evaluation services;
 - A contract for advice on competing approaches;
 - A contract for technical review and project oversight services; or
 - ii. Situations that may warrant other conflict-mitigation measures, or even a possible waiver, rather than a prohibition against a contractor's participation in the project
 - Complex design of integrated elements of a structure, piece of equipment, or system; or
 - Successive development/design phases of innovative equipment or systems.
 - iii. Signed Conflict of Interest Certification with a Request for Conflict of Interest Determination
3. The Project Coordinator or qualified personnel will resolve and approve the conflict resolutions.

3. NWARPC PROCEDURES TO PREVENT AND RESOLVE A CONFLICT OF INTEREST FOR FEDERAL PROCUREMENTS

A. The Pre-Contracting Phase

1. Prepare Written Codes of Standards of Conduct

NWARPC requires that each of its subrecipients maintain a written code of standards of conduct applicable to its employees (including contractor employees), officers, board members, and agents (including outside consultants) involved in the selection, award or administration of federal funded procurements. The NWARPC code of conduct complies with all requirements as set forth in Section 1 of this document. These federal requirements are incorporated into the NWARPC policies and procedures, including the Conflict of Interest Written Code of Standards and Conduct.

2. Conflict of Interest Certifications

NWARPC is an oversight agency and requires evaluation and awarding committee's members (officers, board members, etc., as applicable) to submit a "Conflict of Interest" Certification on a project-by-project basis before that person commences work on the selection, award or administration of a contract. This certification states that neither the committee member (etc.) nor any member of his or her immediate family has a financial or employment interest in any of the relevant bidders, offerors, or contractors for the procurement in question. If the employee identifies a real or apparent conflict of interest, then NWARPC will take action to mitigate it.

3. Prepare Written Procedures for Addressing Personal and Organizational Conflicts of Interest.

Once a personal conflict has been identified, mitigating measures to allow the committee member back into the process, may include creation of blind trusts, recusal or limit on scope of participation.

B. The Proposal Stage

1. Define the Project to Avoid Potential Conflicts.

NWARPC attempts to recognize and anticipate potential conflicts in procurements.

- a. NWARPC does not allow a company that prepares the specifications for procurement to supply the products.
- b. NWARPC attempts to structure all projects as to avoid conflicts among contractors and subcontractors.

2. Advance Restrictions.

When the grantee awards separate contracts on related procurements, the grantee might consider placing notice of an advance restriction in the solicitation where a conflict may arise. Prime contractors are required to inform prospective

subcontractors (and to give evidence that they have done so) that the subcontractors also could be subject to the restrictions in future contracting. When an advance restriction is desired, the solicitation will include:

- An explanation of the conflict or potential conflict;
- The nature of the proposed restriction upon future contractor activities; and
- The terms of any proposed clause and whether those terms are negotiable, depending on the nature of the acquisition.

3. For Environmental Impact Statement Contracts, Comply with CEQ Regulations.

Regulations promulgated by the Council on Environmental Quality require each contractor who develops an environmental impact statement to sign a disclosure statement certifying that it has no financial or other interests in the outcome of the proposed project. This requirement is intended to prevent contractors who are hired to study alternatives and potential environmental impacts of proposed projects from presenting and profiting from biased recommendations. Pursuant to the regulations, grantees must require the submission of a disclosure statement in request for proposals for consulting services so that such conflicts can be identified early in the contracting process. The grantee also must comply with 40 CFR § 1506.5 and "Guidance Regarding NEPA Regulations," 48 Fed. Reg. 34263 (July 18, 1983).

4. Consult with Legal Counsel.

When necessary, before defining the scope of a project or publishing any document describing the project, such as a statement of work, NWARPC shall ask its counsel to review the project and any descriptive documentation for compliance with conflict rules.

C. The Selection and Award Phase

1. Obtain Conflict of Interest Certifications from employees, board members, agency personnel, evaluation and awarding committee members, as required.

Each committee member who will be assigned to work on the procurement should submit his or her certification to the NWARPC Project Coordinator before the selection process begins. If a committee member fails to submit the required no-conflict certification, then NWARPC should direct the Project Coordinator to evaluate and resolve the committee member's ability to sit on the committee.

D. The Administration Phase

1. Monitor Contract Staff/Contractor Compliance with Conflicts Rules.

During the administration phase of a project, NWARPC should require each of its employees (etc.) involved in the project to report any changes in his or her financial holdings or other interests that might cause a conflict of interest. Similarly, NWARPC should require the contractor to report any changes in the company's financial holdings, newly developed contractual or other relationships, or those of its parents, subsidiaries, and affiliates. In this way, the grantee can monitor the situation and address personal or organizational conflicts that might arise during the administration phase of the project.

2. Obtain Certifications from Contractor Personnel Governed by Professional Codes of Responsibility.

Before a contractor begins work on a project, NWARPC may request a written statement from any contractor personnel working on the project whose conduct is governed by a professional code of responsibility, in each case identifying any relevant code and certifying that he or she will comply with its rules on all grantee-related work.

3. Disciplinary Action for Violation of Conflict of Interest

Any NWARPC employee (including contractor employee) that knowingly violates the Conflict of Interest Written Code of Standards and Conducts for Federal Procurements shall be disciplined according to the NWARPC employee handbook.

E. Throughout the Entire Process

1. Consult with Legal Counsel.

NWARPC will work with legal counsel throughout the entire process, as deemed necessary, to review all situations that appear to have the potential for a conflict of interest. Counsel may also suggest that involvement by FTA Regional Counsel would be appropriate and solicit FTA Regional Counsel's advice when necessary.

2. Mitigate Conflicts.

As potential conflicts arise during the procurement process, NWARPC will take steps to avoid the conflict or, if that avoidance is not possible, mitigate its effects.

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4. CONFLICT OF INTEREST CERTIFICATION

CONFLICT OF INTEREST CERTIFICATION

Northwest Arkansas Regional Planning Commission

PART I: INSTRUCTIONS

In accordance with the Northwest Arkansas Regional Planning Commission Conflict of Interest Written Code of Standards and Conducts, you are required to complete this certification if you are designated as an evaluation and/or selection committee member for any federal procurements. Failure to complete this certification form as required will preclude you from serving as an evaluation and/or selection committee member. Please carefully review and consider all statements before signing this document. Print this form and review all statements. If you have NO conflict of interest, sign and date Part II and return the certification to the Project Coordinator at Northwest Arkansas Regional Planning Commission.

Return signed documents to dlange@nwarpc.org or mail to:

Northwest Arkansas Regional Planning Commission
 1311 Clayton St.
 Springdale, AR, 72762
 Attn: Donna Lange

This signed form MUST be received by the Project Coordinator before you can participate in any way regarding this procurement.

If you have determined that you may have a conflict of interest, please complete Part III of this form and return it immediately for review to the above-mentioned email or address.

PART II: CERTIFICATION

A) NAME (Last, First, Middle Initial)	B) TELEPHONE NUMBER
C) AGENCY/ORGANIZATION	D) EMAIL ADDRESS
E) NAME OF SOLICITATION/PROJECT	F) SOLICITATION NUMBER

I understand that the Northwest Arkansas Regional Planning Commission (NWARPC) Conflict of interest written Code of Standards and Conducts implements this requirement for federal grant recipients as follows:

No employee, officer, agent, immediate family member, or committee member of the grantee or benefitting agency shall participate in the selection, award, or administration of a contract supported by the federal funds if a conflict of interest, real or apparent would be involved.

Such a conflict would arise when any of the following has a financial or other interest in the firm selected for award:

1. The employee, officer, agent, or committee member
2. Any member of his/her immediate family
3. His or her partner, or
4. An organization that employs, or is about to employ, any of the above.

The grantee's or benefitting agency officers, employees, agents, or committee members will neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements. Grantees or benefitting agency may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal value. To the extent permitted by state or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary action for violation of such standards by the grantee's officers, employees, or agents, or by contractors or their agents.

BY SIGNING BELOW, I CERTIFY THAT I HAVE REVIEWED THE FOREGOING AND UNDERSTAND THAT MY PERFORMANCE OF EVALUATION OR SELECTION COMMITTEE DUTIES FOR THIS PROCUREMENT COULD RESULT IN A CONFLICT OF INTEREST IN CIRCUMSTANCES SUCH AS THOSE DESCRIBED ABOVE. I CERTIFY THAT I DO NOT HAVE A CONFLICT OF INTEREST.

(Signature)

(Date)

PART III: REQUEST FOR CONFLICT OF INTEREST DETERMINATION

IF YOU HAVE A CONFLICT OF INTEREST BASED ON THE PRECEDING DOCUMENTED REGULATIONS, PLEASE PROVIDE A DETAILED EXPLANATION OF YOUR CONFLICT OF INTEREST FOR AGENCY DETERMINATION.

(Signature)

(Date)

PART IV: AGENCY DETERMINATION: (FOR AGENCY USE ONLY)

No Conflict

Conflict

Corrective action required as follows:

(Title of NWARPC Representative)

(Signature)

(Date)

5. FEDERAL PROCUREMENTS CONFLICT OF INTEREST AGREEMENT

Procedures Overview:

Federal Procurements Conflict of Interest Agreement:

I hereby certify as a representative of the _____ (subrecipient), that by signing below, all federal procurements will comply with the Conflict of Interest Written Code of Standards and Conducts. These requirements are incorporated into the Northwest Arkansas Regional Planning Commission's policies and procedures whereby being adopted by Resolution Number _____. The Resolution shall be in full force and effect from and after its adoption.

Passed on this _____ day of _____, 2017.

Signature Title

Print Name Date