

Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation Commission
Chapter 24—Design-Build Project Contracts

7 CSR 10-24.080 Organizational Conflicts of Interest

PURPOSE: This rule describes the conflict of interest policy applicable to design-build projects.

(1) State statutes, regulations or policies concerning organizational conflict of interest will be specified or referenced in the design-build Request for Qualification (RFQ) or Request for Proposal (RFP) document as well as any contract for engineering services, inspection or technical support in the administration of the design-build contract. All design-build solicitations will address the following situations as appropriate:

(A) Consultants and sub-consultants who assist the commission in the preparation of a RFP document will not be allowed to participate as a proposer or join a team submitting a proposal in response to the RFP. However, the commission may determine there is not an organizational conflict of interest for a consultant or sub-consultant where:

1. The role of the consultant or sub-consultant was limited to provision of preliminary design, reports, or similar “low-level” documents that will be incorporated into the RFP, and did not include assistance in development of instructions to proposers or evaluation criteria; or
2. Where all documents and reports delivered to the commission by the consultant or sub-consultant are made available to all offerors.

(B) All solicitations for design-build contracts, including related contracts for inspection, administration or auditing services, ~~must~~ will include a provision which:

1. Directs proposers attention to this section;
2. States the nature of the potential conflict as seen by the commission;
3. States the nature of the proposed restraint or restrictions, and duration, upon future contracting activities, if appropriate;
4. Depending on the nature of the acquisition, states whether or not the terms of any proposed clause and the application of this section to the contract are subject to negotiation; and
5. Requires proposers to provide information concerning potential organizational conflicts of interest in their proposals. The apparent successful proposers must disclose all relevant facts concerning any past, present or currently planned interests that may present an organizational conflict of interest. Such firms must state how their interests, or those of their chief executives, directors, key project personnel, or any proposed consultant, contractor or subcontractor may result, or could be viewed as, an organizational conflict of interest. The information may be in the form of a disclosure statement or a certification.

(C) Based upon a review of the information submitted, the commission will make a written determination of whether the proposer’s interests create an actual or potential organizational conflict of interest and identify any actions that must be taken to avoid, neutralize, or mitigate such conflict. There should be an award of the contract to the apparent successful proposer unless an organizational conflict of interest is determined to exist that cannot be avoided, neutralized, or mitigated, in the judgment of the commission.

(2) The organizational conflict of interest provisions in this section provide minimum standards for the commission to identify, mitigate or eliminate apparent or actual organizational conflicts of interest. To the extent that state developed organizational conflict of interest standards are less stringent than those contained in any applicable federal statute, regulation or policy, the latter standards prevail.

(3) State laws and procedures governing improper business practices and personal conflicts of interest will apply to the commission selection team members. In the absence of such state provisions, the requirements of 48 CFR Part 3, Improper Business Practices and Personal Conflicts of Interest, will apply to selection team members. Title 48 CFR Chapter 3, Subchapter A, Part 303, Improper Business Practices and Personal Conflicts of Interest, is incorporated by reference into and made a part of this rule as published by the United States Superintendent of Documents, 732 N Capitol Street NW, Washington, D.C. 20402-0001, website: <http://bookstore.gpo.gov> on January 1, 2012. This rule does not incorporate any subsequent amendments or additions to the Code of Federal Regulation in 48 CFR Ch.3, Subch. A, Pt. 303.

AUTHORITY: sections 226.020, RSMo 2000 and 226.030 and 227.107, RSMo Supp. 2004.
Original rule filed Aug. 15, 2005, effective Feb. 28, 2006.*

**Original authority: 226.020, RSMo 1939; 226.030, RSMo 1939, amended 1965, 2003, 2004; and 227.107, RSMo 2002.*