

ORGANIZATIONAL CONFLICT OF INTEREST

1. Policy

Miami-Dade County (the “County”), adopts the provisions of this section to govern potential organizational conflicts of interest in its procurement of consultants for Professional Services as defined by [Florida Statute \(F.S.\) 287.055](#). It is the policy of the County, implemented through this section, to identify, analyze and address organizational conflicts of interest that might otherwise exist in order to maintain the public’s trust in the integrity and fairness of the County’s contracting for Professional Services and to protect the business interests of the County thereby safeguarding public dollars. This policy shall be supplemental to and not in derogation of the requirements of law relating to conflicts of interest including, but not limited to, the County’s Code of Ethics.

2. Definitions

For purposes of this Section:

- a) “Client Department” means County department requesting the procurement of Professional Services.
- b) “Consultant” means Architect, Engineer, the County or its authorized representatives identified in the Notice-to-Proceed letter, including but not limited to the resident Architect/Engineer, the Construction Manager, the County’s representatives and the Architect/Engineer of Record. In the event an Architect/Engineer is not employed on the Project, the term “County” may be substituted for Architect/Engineer.
- c) “Contractor” means the individual, Firm, partnership, or corporation, or combination thereof, private, municipal, or public, including joint ventures, duly licensed under Florida Statutes, which, as an independent Contractor, has entered into a Contract with Miami-Dade County, who is referred to throughout the Contract Documents by singular in number and masculine in gender.
- d) “Organizational Conflict of Interest” (OCI) describes a situation in which a Consultant/Contractor: (a) under the contract, or any part thereof, including a particular work order or defined task, is required to exercise judgment to assist the County in a matter such as in drafting specifications or assessing another consultant’s or contractor’s proposal or performance and the consultant has a direct or indirect financial or other interest at stake in the matter, so that a reasonable person might have concern that when performing work under the contract, the Consultant/Contractor may be improperly influenced by its own interests rather than the best interest of the County, or (b) would have an unfair competitive advantage in a County competitive solicitation as a result of having performed work on a County contract that put the consultant in a position to influence the result of the solicitation.
- e) “Project” as defined by [F.S. 287.055](#).
- f) “Professional Services” as defined by [F.S. 287.055](#).

3. Certification of no organizational conflict of interest

The Consultant’s: (a) execution of the contract or any agreement to perform any work under a work order or (b) making a claim for payment under the contract,

constitutes the Consultant's certification to the County that the Consultant or its sub-consultants do not have knowledge of any organizational conflicts of interest to exist in performing the work under the contract. False certifications may be considered a material breach of the contract and the Consultant may be liable to the County for a false claim under the County's false claim ordinance. At any time in anticipation of awarding the contract, or during the performance of the contract, the County may require the Consultant to execute an express written certification that, after diligent inquiry, the Consultant does not have knowledge of any OCI. The County may also require the Consultant to set forth in writing the scope of the inquiry conducted to make the express certification. Failure to make diligent inquiry, to disclose a known conflict or potential conflict, or to execute the documents required to be produced may be considered, if pre-award, a reason for disqualification of the proposal, and following award, a material breach of the contract.

4. Identification of organizational conflict of interest

The Consultant and sub-consultants shall be obligated to disclose to the County any OCI, or the potential for the same to occur, immediately upon its discovery. The disclosure shall be in writing, addressed to the assigned Contracting Officer identified in the advertising document or the Contract Manager identified in the contract specifications. The disclosure shall identify the OCI with sufficient detail for the County's analysis and shall propose a method to address the same. Such disclosure shall also be reported to the Office of the Inspector General (OIG) and the Commission on Ethics and Public Trust (COE) by the County. The consultant's/sub-consultants' failure to identify a potential OCI, or to disclose the same to the County in the manner set forth in this Section, may be considered a material breach of the contract. Each solicitation shall also require respondents to address the methodology proposed to identify and address any potential OCI, particularly in those instances where the proposer offers to use the same sub-consultants which may be primes or sub-consultants in other Project contracts where such use is not specifically prohibited by the advance restrictions set forth in this policy. The potential for organizational conflicts of interest may be evaluated by the County to determine any participation restrictions as set forth in the applicable competitive solicitation documents.

5. Addressing organizational conflicts of interest

The County will analyze and address organizational conflicts of interest on a case-by-case basis, because such conflicts arise in various, and often unique, factual settings. The Director of the Client Department or his/her designee shall make the decision of how to address an OCI which shall be forwarded to the Executive Director of the Commission on Ethics or his designee for prompt determination to avoid impacting the Project. In the event that the Client Department disagrees with the decision of the Executive Director of the Commission on Ethics or his designee, the Director of the Client Department may submit an appeal of such decision to the Commission on Ethics. The County shall consider the specific facts and circumstances of the contracting situation and the nature and potential extent of the risks associated with an OCI when determining what method or methods of

addressing the conflict will be appropriate. When an OCI is such that it risks impairing the integrity of the Project, then the County must take action to substantially reduce or eliminate those risks. If the only risk created by an OCI is a performance risk relating to the County's business interests, then the County shall have broader discretion in accepting some or all of the performance risk, but only when the potential harm to the County's interest is outweighed by the expected benefit from having the conflicted Consultant perform the contract. The County shall balance risks created by any organization conflict of interest against potential impacts to the Small Business Enterprise and/or Disadvantaged Business Enterprise community in analyzing the appropriate method of addressing any OCI.

6. Measures to address organizational conflicts of interest

The measure, or combination of measures, which may be appropriate to address an OCI, if any, shall be initially analyzed and decided by the Director of the Client Department or his/her designee and include, but are not limited to: (a) avoidance of risk through reduction of subjectivity in the analysis or by defining work tasks and deliverables with specificity, (b) requiring the prime and/or its subs to implement structural barriers (firewalls) and internal corporate controls, (c) limiting sub-consultants or personnel to be involved in a work assignment, (d) employing specific hourly limits on defined tasks, (e) limiting or prohibiting certain pass through fees and markups, (f) executing a mitigation plan which will define specific Consultant and sub-consultant duties to mitigate organizational conflicts of interest, (g) requiring sub-consultants who are conflict free to perform identified areas of work, (h) requiring the Consultant or its sub-consultants to adopt, disseminate and instruct staff on conflict of interest identification and remediation procedures and (i) relying on more than one source or on objective or verifiable data or information.

7. Documentation and evaluation

The Director of the Client Department or his/her designee will set forth in the contract file a written explanation of the methodology used to address an identified OCI. The County shall periodically evaluate the effectiveness of the methodology in the protection of the Project. Upon the rendering of a decision regarding the resolution of a reported OCI, a copy of such finding shall be forwarded to the OIG and the COE.

8. Organizational conflicts of interest which are not remedied

If in the sole discretion of the County there is no measure or combination of measures which protect the County against the OCI, then the Consultant may not perform the subject work. The County may in its discretion, if pre-award, decide not to award the contract to the affected Consultant, and following award, terminate the contract, or portion of the contract, which the Consultant has materially breached because of such inability to perform.

9. Commission on Ethics and Public Trust

Questions regarding potential OCI by any bidder, proposer, contractor, or subcontractor, pertaining to the Project shall be submitted to the assigned

Contracting Officer identified in the advertising document prior to the submittal date and will be addressed in accordance with the Commission on Ethics and Public Trust (COE) [Amended Letter of Instruction Organizational Conflict of Interest](#). Per the aforementioned document, the Client Department shall identify, disclose to the COE, analyze, and submit a specific methodology to address any potential existing or future OCI by the bidder, proposer, contractor, or subcontractor. Provided that an OCI is identified by the Client Department, the Executive Director of the Ethics Commission or his/her designee, will approve or disapprove the measures implemented by the County to resolve the OCI. Disapproval of such measures by the COE Executive Director or his/her designee may be appealed to the COE Board by the Client Department.