

## Conflict of Interest Disclosure Form for LPAs for Local Federal-aid Transportation Projects

**Project Owner (LPA):** City of York

**Project Name:** Project Access York

**Project Number:** DPS-93 (15)

**Project Control Number:** 43010

As LPA's Responsible Charge (RC) person for the above local Federal-aid transportation project, I have:

1. Reviewed the Conflict of Interest Guidance Document found on the NDOR website; and
2. Reviewed the Conflict of Interest laws, including 23 CFR § 1.33, 49 CFR 18.36 and Neb. Rev. Stat. §§ 49-1401 to 1444 and 49-1493 to 14,104, and in particular, 49-14,101 to 14,103.07; and
3. Reviewed the reverse side of this form, "How Do I Determine Whether I Have a Conflict of Interest?"

And, to the best of my knowledge, determined that, for myself, any official, employee or agent of LPA, including family members and personal interests of the above persons, involved with consultant procurement and management of the project there are:

No real or potential conflicts of interest

If no conflicts have been identified, complete and sign this form and submit to NDOR

Real conflicts of interest or the potential for conflicts of interest

If a real or potential conflict has been identified, describe on an attached sheet the nature of the conflict, including the information requested on the reverse side of this form for the type of conflict being reported, and provide a detailed description of LPA's proposed mitigation measures (if possible). Complete and sign this form and send it, along with all attachments, to NDOR.

**Print Name:** James Paul II

**Title:** Director Public Works, PL

  
\_\_\_\_\_  
Signature  
  
10/14/2022  
\_\_\_\_\_  
Date

### **How Do I Determine Whether I Have a Conflict of Interest?**

The following Sections are provided as guidance to LPA in determining whether a real or potential Conflict of Interest (COI) exists and in disclosing details concerning potential conflicts of interest. Please also review “The Law” and “Definitions” sections of the Guidance Document.

#### **Section 1 – LPA Officer, Employee or Agent COI**

Are there any officials, employees or agents of your LPA who are employed, on a full or part-time basis, by any **Private Business that Provides Goods or Services for Transportation Projects**, or who may currently have, or within the last two years did have, a **Personal Interest, Financial Interest** or any **other interest** in such Private Business, as those terms are defined in the Conflict of Interest Guidance Document?

If yes, please list on an attached sheet; (1) the name, address and phone number of the person(s); (2) the title and detailed job description of the position(s) held with LPA, including whether they have any duties concerning the negotiating, approving, accepting or **administering** of any contract or subcontract for LPA’s federal-aid transportation project; (3) the name, address and phone number of the person(s) employing or interested Private Business(s); (4) the title and detailed job description of the position(s) held with that/those Private Business(s); and/or (5) all information known about the personal, financial and/or other interest of the person(s) in that/those Private Business(s). (For this document, **administering** includes any duties of oversight, contract compliance, evaluation or enforcement, but does not include the duties of paying or processing invoices that are reviewed and approved by others with LPA.)

#### **Section 2 – Persons Associated with LPA, Financial or Personal Interest COI**

Section 49 CFR 18.36(b)(3) Procurement, extends the potential for conflicts of interest to persons **associated with** an LPA official, employee or agent. There may be a conflict of interest on a federal-aid transportation project if a person associated with an LPA official, employee or agent has a **Financial Interest** or **Personal interest** in a **Private Business that Provides Goods or Services for Transportation Projects**. These indirect conflicts of interest can extend to the following persons associated with an LPA official, employee or agent; (a) any member of his [or her] **Immediate Family**; (b) his [or her] partner; or (c) an organization or Private Business which employs, or is about to employ, the LPA official, employee or agent, their Immediate Family or partner. Are there any officials, employees or agents of your LPA who have **persons associated with them** (as listed in the preceding sentence) who are employed, on a full or part-time basis, by any **Private Business that Provides Goods or Services for Transportation Projects**, or who may currently have, or within the last two years did have, a **Personal Interest, Financial Interest** or any **other interest** in such Private Business, as those terms are defined in the Conflict of Interest Guidance Document?

If yes, please list on an attached sheet; (1) the name, address and phone number of the person(s) associated with the LPA official, employee or agent; (2) a detailed description of their relationship to LPA, including the name, address, phone number and LPA position held by the official, employee or agent of LPA; (3) a detailed description of the duties of the official, employee or agent of LPA, including whether that person(s) has any duties for the LPA concerning the negotiating, approving, accepting or **administering** of any contract or subcontract for the LPA’s federal-aid transportation project; (4) the name, address and phone number of the Private Business(s); (5) the title and detailed job description of the position(s) held with Private Business(s); and/or (6) all information known about the personal, financial and other interest in that/those Private Business(s).

#### **Section 3 – Real Estate COI**

Are there any officials, employees or agents of LPA, or persons associated with the officials, employees or agents, who have an ownership interest in land that may be needed, directly or indirectly, temporarily or permanently, for the construction of a proposed or active federal-aid transportation project (including land that may be needed for contractor’s use or for materials to be used on the project, such as fill material, sand or gravel)?

If yes, please list on an attached sheet; (1) the name, address and phone number of the owner(s); (2) a detailed description of the owner(s) relationship to LPA, including the name, address and phone number of the official, employee or agent of LPA; (3) the address, legal description, and a map or aerial photo identifying the location of the property; (4) a description of the potential need or use of this property for the federal-aid transportation project; and (5) a declaration by the LPA official, employee or agent that they will comply with the third sentence of 23 CFR Section 1.33.



## NDOR

# CONFLICT OF INTEREST GUIDANCE DOCUMENT for LPA OFFICIALS, EMPLOYEES & AGENTS for LOCAL FEDERAL-AID TRANSPORTATION PROJECTS

With this document, NDOR intends to provide an explanation of its understanding of the issues related to conflicts of interest and to provide guidance that will assist the Local Public Agency (LPA) in disclosing actual and potential conflicts, so that they can be eliminated or mitigated where possible.

Federal conflict of interest provisions prohibit a public official, employee or agent, who negotiates, approves, accepts or administers any contract, from having a direct or indirect financial interest, real or apparent, in such contract with the public entity for which he or she is a public official, agent or is employed. Conflicts of interest may occur when (1) LPA is planning on completing any work related to a federal-aid project using the services of a Private Business that Provides Goods or Services for Transportation Projects, or (2) any official, employee or agent of LPA owns real estate that may be needed for any upcoming or active federal-aid project. An example of a prohibited financial interest would be a situation involving a part-time County Highway Superintendent making the award of a county professional engineering contract to a firm in which the Superintendent is presently a partner. Many other less obvious situations may also represent improper conflicts of interest.

### A. The Law

Federal law prohibits “conflicts of interest” of local public agency officials, employees or agents in federal-aid transportation projects. One way that federal law prohibits conflicts of interest is by prohibiting certain local public agency officials, employees or agents from having a financial or other interest in a contract entered into by the public entity that they serve. The first sentence of 23 CFR 1.33, Conflicts of Interest, states: “No official or employee of ... any governmental instrumentality who is authorized in his [or her] official capacity to negotiate, make, accept or approve, or to take part in negotiating, making, accepting or approving any contract or subcontract in connection with a project shall have, **directly or indirectly**, any financial interest in any such contract or subcontract.” Similarly, the second sentence of 49 CFR 18.36(b)(3) Procurement, states: “No employee, officer or agent of the grantee or sub grantee [LPA] shall participate in selection, or in the award or administration of a contract supported by federal funds if a conflict of interest, **real or apparent**, would be involved. Such a conflict would arise when: (i) The employee, officer or agent, (ii) Any member of his [or her] immediate family, (iii) His or her partner, or (iv) An organization which employs, or is about to employ, any of the above, has



a financial or **other interest** in the firm selected for award.” This section makes clear that there can be a conflict of interest when a family member or business partner of an employee or official benefits from a contract with an LPA. This section also prohibits “apparent” conflicts of interest.

Federal law also prohibits others involved in federal-aid projects from having conflicts of interest. The second sentence of 23 CFR 1.33 states: “No engineer, attorney, appraiser, inspector or other person performing services for a ... governmental instrumentality in connection with a project shall have, **directly or indirectly**, a financial or **other personal interest**, other than his [or her] employment or retention by a ... governmental instrumentality, in any contract or subcontract in connection with such project.”

Federal conflict of interest provisions have been interpreted by FHWA to prohibit both consultants and local officials, employees or agents from having interests in **real property** acquired for a project, unless certain conditions are met. The third sentence of 23 CFR 1.33 states: “No officer or employee of such person retained by a ... governmental instrumentality shall have, directly or indirectly, any financial or other personal interest in any real property acquired for a project **unless** such interest is openly disclosed upon the public records of the State highway department and of such other governmental instrumentality, and such officer, employee or person has not participated in such acquisition for and in behalf of the State.”

Additionally, Nebraska State law prohibits public officials, employees or agents from having certain personal interests in contracts entered into by an employee or official’s governmental entity. See, for example, Neb. Rev. Stat. § 39-1509 (County Highway Superintendent), Neb. Rev. Stat. § 23-3113 (County Purchasing Agent), and the Nebraska Political Accountability and Disclosure Act, Neb. Rev. Stat. §§ 49-1401 to 1444 and 49-1493 to 14,104, in particular 49-14,101 to 14,103.07.

It is the responsibility of the LPA, its officials, employees and agents to be familiar with federal, state and local conflict of interest laws that apply to federal-aid projects. The laws and statutes identified above (August, 2010) serve only as a guide. The LPA must adhere to any local laws and policies, and any new or revised federal or state laws.

## B. Definitions

**Financial Interest** in a private Business is generally understood to mean, but is not limited to, receiving income or benefits from, having an ownership interest in (including but not limited to owner, partner, shareholder, member), is employed by or has any other economic or financial stake or interest in the success or failure of the Business.

**Local Public Agency** or **LPA** means a county, municipality, political subdivision, Native American Tribe, school district, or other entity that is either designated by statute as public or quasi-public; or an entity that is otherwise eligible to serve as a sub-grantee of federal transportation funds under federal or state law.

**Immediate Family** means a child residing in an individual's household, a spouse of an individual, or an individual claimed by that individual or that individual's spouse as a dependent for federal income tax purposes. (Source, Neb. Rev. Stat. § 49-1425.) Importantly, other familial relationships can cause real or potential conflicts of interest and may require disclosure and appropriate mitigation, if possible.

**Business** means any corporation, partnership, limited liability company, sole proprietorship, firm enterprise, franchise, association, organization, self-employed individual, holding company, joint-stock company, receivership, trust, activity or entity. (Source, Neb. Rev. Stat. § 49-1407.)

**Personal Interest** in a Private Business is generally understood to mean, but is not limited to, a previous (within the past two years) or promised future employment relationship with, or having a member of your present or past Immediate Family who is employed by, or who has a Financial, Personal or other Interest in a Private Business.

**Private Business that Provides Goods or Services for Transportation Projects** means a Private Business that has contracted with or provided, or is capable of providing, goods or services to an LPA for an LPA transportation project or activity, including project development, right-of-way activities, construction, operation or maintenance. **For services**, the following non-exclusive list is of the types of activities of a Private Business that are covered by this definition: feasibility studies, corridor or location studies; environmental studies and documents; surveys; preliminary engineering; design engineering; construction; construction engineering; testing of materials; geotechnical testing and engineering; right-of-way design, appraisal, or negotiations; or for any other project related service. **For goods**, the following non-exclusive list is of the types of goods of a Private Business that are covered by this definition: construction or road materials, such as soil, sand, gravel, rock, asphalt, concrete, sod, erosion control materials; construction or earth-moving equipment; and, supplies. Engineering and architectural firms and Construction Contractors are expressly covered by this definition.

**Public Employee** means a full or part time employee of an LPA or the state, a political subdivision, or any other entity that is eligible to receive federal-aid funds for a transportation project. (Source, Neb. Rev. Stat. § 49-1442.) This includes the LPA's Responsible Charge (RC) even if such person is on loan from another LPA through an inter-local agreement.

**Public Official** means an elected or appointed official of an LPA, the state or a political subdivision, or any other entity that is eligible to receive federal-aid funds for a transportation project. (Source, Neb. Rev. Stat. § 49-1443.)

## C. Instructions

LPA should review and understand this document, as well as the conflict of interest laws and statutes, and make a good faith effort to determine whether any official, employee or agent of LPA has a real or potential conflict of interest on an active or proposed federal-aid project.

LPA must complete and sign the **Conflict of Interest Disclosure Form for LPAs** for each project. The guidance on the reverse side of the Disclosure Form can also be used to help LPA make a conflict of interest determination. The Disclosure Form must be used for self-reporting and disclosure of all real, apparent and potential conflicts of interest. A detailed and factual account of the nature of any conflict, along with proposed mitigation measures, where possible, must be attached to the form. LPA must email the completed Disclosure Form, and all attachments to the NDOR Local Projects Division (LPD) Project Coordinator (PC) assigned to the project prior to initiating any contract for goods, services or right-of-way for the project.

NDOR, in cooperation with FHWA as needed, will evaluate all reported real or potential conflicts of interest, as well as LPA's proposed mitigation measures, and advise LPA as to the adequacy of the proposed mitigation strategy. NDOR must formally concur with all conflict of interest mitigation proposals, or prescribe appropriate alternative mitigation methods, where possible. NDOR's concurrence or response will be emailed to the LPA applicant by the LPD PC.

If the LPA applicant or Responsible Charge (RC) is unsure whether there is a conflict of interest, and wants to present the circumstances or situation to NDOR, the RC may seek a determination as to whether LPA has an actual or potential conflict of interest on a project. RC should email all conflict of interest inquiries to the LPD PC assigned to the project.

**The LPA shall have the duty to notify the LPD PC and submit a revised Conflict of Interest Disclosure Form for LPAs for any changes in circumstances, or discovery of any additional facts, that could result in LPA officials, employees or agents having a real or potential conflict of interest on an LPA federal-aid transportation project.**

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