

**This document is not intended to be and should not be construed as legal advice. If you are unsure if a conflict of interest exists, or if you are unsure how to mitigate a conflict of interest, please consult your attorney.**

### **Conflict of Interest Guidelines**

The Metropolitan Council (“Council”) strives to provide full and open competition that is free of real or perceived unfair competitive advantage or conflict of interest. This document is intended to provide guidance on when a conflict of interest may exist, and how Offerors may propose to mitigate conflicts to contract with the Council. In this document, “Offeror” means the person(s) or entity submitting a bid or proposal to any solicitation, any subcontractors, and all related entities including parent companies, subsidiaries, and companies owned, controlled, or owned and controlled by the same or closely related people.

#### When does a conflict of interest exist?

An organizational conflict of interest occurs when any of the following circumstances arise:

- a. Lack of Impartiality or Impaired Objectivity. When the Offeror is unable, or potentially unable, to provide impartial or objective assistance or advice to the Council due to other activities, relationships, contracts, or circumstances.
- b. Unequal Access to Information. The Offeror has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.
- c. Biased Ground Rules. During the conduct of an earlier procurement, the Offeror has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.

Conflicts of interest may exist at an organizational level, and at a personal level. Conflicts of interest may be “actual,” meaning they currently exist, or they may be “perceived,” meaning a reasonable person with all the material facts believes there appears to be a conflict, *whether or not* the organizations or individuals involved are in relationships that actually create or experience bias or unfair advantage. Actual, potential, and perceived conflicts of interest are collectively referred to as “conflicts of interest” in this document.

Please note that the information provided serves as a guide only, and a conflict may arise in other situations not described in this document.

For federally funded procurements, please see: 49 C.F.R. 19.43; 2 C.F.R. 200.319(b)(5); and the Federal Transit Administration Circular 4220.1F Chapter VI paragraph 2.a(4)(h), Rev. 4, 3/18/2013, for additional information.

### **Disclosure of Conflict of Interest**

An Offeror shall either: (1) disclose all conflicts of interest and propose a plan to mitigate the conflicts to successfully perform work for the Council; or (2) certify that the Offeror is unaware of any facts or circumstances which would give rise to a conflict of interest in performing work under this solicitation. (See Disclosure Form p. 3). A disclosure will not automatically disqualify the Offeror from being awarded a contract.

#### Failure to disclose

If, in the Council’s sole discretion, a conflict is discovered after award or execution of a contract, the Council may cancel the contract. In the event the Offeror was aware of a conflict of interest prior to the award of the contract and did not disclose the conflict to the Council, the Council, in its sole discretion, may terminate the contract for default whether the conflict can be mitigated or not.

### Instructions for Preparation of Disclosure and Certification Regarding Conflict of Interest form

The Offeror must determine if a conflict of interest exists. Offerors and their subcontractors or subconsultants must complete and submit a Disclosure and Certification Regarding Conflict of Interest form as part of the bid or proposal, including forms for all proposed first-tier subcontractors. If the Offeror determines that a conflict of interest exists, it must provide the required supplemental information under the Mitigation Plan. Offerors may disclose a potential conflict of interest at any time by submitting the Disclosure of Conflict of Interest form to the IFB or RFP Administrator named in the solicitation package. The Council, in its sole discretion, will make the final determination as to whether a conflict of interest exists and whether the Offeror's Mitigation Plan is sufficient.

### **Mitigation Plan**

An Offeror that has a conflict of interest shall submit a Mitigation Plan. A Mitigation Plan is an Offeror's proposed plan for avoiding, neutralizing or mitigating the negative effects of a conflict of interest, to allow the Council to consider whether to contract with the Offeror. The Council encourages all Offerors to tailor the mitigation to their circumstances as appropriate. The submission by an Offeror of a mitigation plan does not require the Council to accept the plan; the Council may in its discretion reject a Mitigation Plan, accept a Mitigation Plan or negotiate potentially acceptable changes with the Offeror.

### Instructions for Preparation of a Mitigation Plan

Each Mitigation Plan should be thorough, detailed, and substantive, to allow the Council to adequately evaluate whether it avoids, neutralizes or mitigates a conflict of interest or any situation that would affect the Offeror's ability to properly and appropriately perform work for the Council without any adverse or inappropriate influence. A Mitigation Plan should, at a minimum, include the following:

- A description of the nature of the conflict, including all facts and information pertaining to the conflict and any supporting documentation which may be necessary.
- Applicable contract numbers or other data that will allow identification of any related contracts with the Council or any other entity.
- A description of the difference between the work performed on a prior contract for the Project and the work to be performed under this solicitation.
- A description of any other factors, including (without limitation) the personnel involved, the nature and extent of their involvement, or the amount of time that has passed between the end of the original contract or subcontract and this solicitation.
- A description of the measures proposed to avoid, neutralize or mitigate the conflict(s).
- Contact information for (1) the individual responsible for oversight and administration of the mitigation plan, and (2) a contact person authorized to discuss this disclosure form with Council personnel.

### Council Review of Mitigation Plan

The Council reserves the right to negotiate or require additional mitigation prior to award if the Council deems additional or different mitigation steps are necessary in its sole discretion. The Council is not required to negotiate the conflict mitigation plan. If, in the Council's sole discretion, a conflict of interest is determined to exist which cannot be adequately mitigated, the Council may find the Offeror not responsive or not responsible, as applicable.

## Disclosure and Certification Regarding Conflict of Interest

Name: \_\_\_\_\_ (the "Offeror")

Relationship: \_\_\_\_\_  
(i.e. contractor, consultant, subcontractor, etc.)

**1. Certification.** The Offeror hereby acknowledges that it has read the Conflict of Interest Guidelines included in the solicitation and has, to the best of its knowledge and belief:

(Choose One)

\_\_\_\_\_ Determined that there are no relevant facts or circumstances which could give rise to conflicts of interest. (Offeror may provide an explanation or any supporting documentation).

OR

\_\_\_\_\_ Determined that one or more conflicts of interest exists. (Offeror must provide a Mitigation Plan).

**2. Flow-Down.** The Offeror must include a signed copy of this certification form for each of its subcontractors and subconsultants with the terms "contract," "Offeror," and "Council" modified appropriately to preserve the Council's rights. The Offeror must submit all subcontractor forms to the Council with its proposal.

**3. Continuing Obligations.** The Offeror has a continuing obligation to the Council to disclose conflicts of interest to the Council during the solicitation phase or, if awarded a contract, throughout the duration of the contract. During the solicitation, the Disclosure and Certification Regarding Conflict of Interest Form(s) and any related mitigation plan(s) must be submitted to the RFP Administrator. After the Council issues a Notice to Proceed, all documents must be submitted to the Contract Manager designated by the Council.

By signing below, the Offeror certifies that the information contained in this form is accurate to the best of its knowledge, and that the Offeror agrees to comply with the requirements herein. The Offeror has a continuing obligation to the Council to disclose conflicts of interest to the Council during the solicitation phase or, if awarded a contract, throughout the duration of the contract.

Signed:

\_\_\_\_\_

Name:

Title:

Date: