

**Pierce Transit
Procedures and Guidelines for
Preventing Organizational Conflicts of Interest (OCOI)
In Planning, Design, and Construction**

I. Introduction and References

Pierce Transit follows pertinent state and federal laws regarding OCOI. Nothing contained herein is intended to limit, modify, or otherwise alter the applicability or effect of relevant law, rules, and regulations. All such laws, rules, and regulations shall apply in the usual course without respect to these guidelines.

Pierce Transit evaluates the following on a case-by-case basis:

1. Whether or not an OCOI exists;
2. Whether or not the OCOI can be avoided or neutralized; and
3. The appropriate steps to avoid or neutralize OCOI.

In evaluating the above, Pierce Transit relies on the following authorities:

- Washington State has adopted ethical standards set forth in RCW 42.52 that specifically address ethics in public service; though RCW 42.52 does not specifically apply to Pierce Transit, Pierce Transit looks to these laws as guidance and would use these standards in evaluating OCOI, and for purposes of addressing OCOI, these standards shall be construed to apply to all employees of Consultants and/or Sub-Consultants that perform work on Pierce Transit projects.
- RCW 18.43 addresses prohibited conduct and acts related to the practice of engineering. Conflicts of interest are referenced under RCW 18.43.105(6).
- The Board of Registration tasked with the oversight of engineers and land surveyors pursuant to RCW 18.43 has promulgated a set of rules of professional conduct and practice that addresses conflicts of interest in WAC 196-27A-020-2(i).
- The Federal Transit Administration (FTA) addresses OCOI in relation to federally-funded projects in general in the FTA Procurement Circular 4220.1F. The subject of conflicts of interest is covered in the BPPM, Section 2.6 - Organizational Conflicts of Interest. Pierce Transit relies on this guidance for use on all Pierce Transit contracts, whether federally funded or not.
- The Pierce Transit Code, adopted by the Pierce Transit Board of Commissioners, provides at Section 3.13 that all purchases be competitively procured, and without conflict of interest.

II. Scope

- 2.1 These guidelines apply to Pierce Transit's procurement and contracts and, under particular circumstances, the eligibility of professional design consultants for contract award as prime consultants or participation as sub-consultants.
- 2.2 Consultants, Sub-consultants, Contractors, and Subcontractors are encouraged to investigate and manage any potential OCOI well in advance of forming teams or

considering participating with a Submitter/Proposer on a contract. A firm or individual considering whether to enter into a contract as a Consultant or Sub-consultant on a Pierce Transit project should consider contacting Pierce Transit's Procurement Manager as to whether its proposed scope of work may create an OCOI if the firm or individual chooses to elect in the future to participate with a proposer on a contract related to the firm's or individual's work product.

III. Definitions and Underlying Principles

3.1 Organizational Conflict of Interest (OCOI) means that because of other activities, financial interests, contracts or relationships with other persons or entities, a person or entity:

1. Is unable or potentially unable to render impartial assistance or advice to Pierce Transit;
2. Is or might be otherwise impaired or might be otherwise impaired in its objectivity in performing the contract work; or
3. Has or could have an unfair competitive advantage.

An OCOI may exist due to an appearance or a perception of a conflict of interest, even if no actual or current conflict is present.

3.2 The two underlying principles for OCOI are:

1. Preventing the existence of conflicting roles that might bias a contractor's judgment; and
2. Preventing unfair competitive advantage. In addition to other situations, an unfair competitive advantage exists where a contractor competing for award:
 - a) Possesses proprietary information that was obtained without proper authorization; or
 - b) Possesses information that is relevant to the contract but is not available to all competitors, and such information would assist that contractor in obtaining the contract; or
 - c) Under a prior contract with Pierce Transit, and as a result of the work performed under the prior contract, was in a position to design or develop future work/project in such a manner that the contractor would have an unfair advantage in competing for the contract for the future work.

IV. Guidelines

4.1 Pierce Transit is required to provide full and open competition for its procurements, and avoid conflicts of interest. Pierce Transit may need to balance these two interests by restricting full and open competition to remedy an actual or potential personal or organizational conflict of interest. If a restriction is required, the restriction will be narrowly tailored, as much as reasonably possible, to remedy the conflict of interest. Pierce Transit will award the contract to the successful submitter unless Pierce Transit, in its sole discretion, determines that an actual or potential conflict of interest exists that cannot be avoided or mitigated. While Pierce Transit

staff will address each situation on a case-by-case basis, these guidelines will inform the determinations:

1. Identifying the OCOI. All respondents to procurement requests will be required to sign a OCOI Certification Statement. If a respondent self-identifies an actual or potential OCOI in the statement, Pierce Transit staff will evaluate the OCOI and work with the respondent to determine if the OCOI is one that can be remedied or if it is a disqualifying item. Pierce Transit may also independently evaluate whether an OCOI exists.
2. Addressing and/or Remediating the OCOI. Not all competitive advantages are unfair or disqualifying, and whether a competitive advantage is unfair or not depends on the circumstances. If an advantage is determined to be unfair, some situations may be remedied by further discussions with Pierce Transit and ensuring that future action is not biased by any prior relationship between Pierce Transit and the respondent. Once an OCOI has been identified or disclosed, Pierce Transit will consider whether that OCOI can be remedied or mitigated. Options for remedying or mitigating an OCOI could include: determination of whether there is a financial interest at stake by employees or agents of the proposed contractor; precluding certain staff members of the contractor from working on the Pierce Transit project; providing equal and full information to all proposers; requesting that certain Board of Commissioner members abstain from voting on a contract award; limiting the scope of work that can be awarded now or in the future; and/or or the like.
3. Proactively preventing OCOI. There may be situations in which Pierce Transit will preclude firms that have been awarded certain work from competing for subsequent work, to prevent potential OCOI. A consultant may be prohibited from competing for future work on a project when the future work is contingent upon the outcome or recommendations of the consultant's work under a prior contract. Other exclusions may occur when a consultant's work on a project provides inside information that may benefit them in bidding for future work on the same project. An example of this could be:
A consultant prepares preliminary cost estimates for a project, separate from the project design award. Preparing the cost estimates could provide the consultant advance knowledge of the potential design and project specifications that would provide an unfair advantage. The consultant would therefore be disqualified from competing for the project design award.

Approved By:



Brett Freshwaters
Executive Director of Finance

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