

**Notice to Offerors**  
**IRFP No. 2522H059**

The Department of Transportation & Public Facilities (Department) issues this Notice in response to an inquiry touching upon the subject of Organizational Conflict of Interest.

As used in this Notice:

*Community Partner* means a local government, tribe, or non-governmental entity that may seek an infrastructure grant under the Infrastructure Investment and Jobs Act in connection with the Contract.

*Contract* means the contract that the Department intends to award in response to IRFP No. 2522H059.

*Contractor* means the entity awarded the Contract in response to IRFP No. 2522H059.

*Mitigation* means any action taken to reduce the risk that: an Organizational Conflict of Interest exists; an offeror will gain an unfair competitive advantage on a public solicitation; and the public's trust in Alaska's public procurement process is undermined.

*Nonpublic Information* means any Department or Community Partner information, whether oral or documentary, that Contractor acquires through its performance of the Contract and that is not readily accessible to others.

*Organizational Conflict of Interest* includes instances in the public procurement process where an entity has an unfair competitive advantage over another bidder or offeror.

In rendering services under the Contract, Contractor will, among other things, assist the Department in assessing surface transportation proposals of Community Partners and identifying those that warrant grant consideration under the Infrastructure Investment and Jobs Act (Act). Performance of these services may cause the Contractor to acquire Nonpublic Information.

Later, a Community Partner may receive a grant under the Act and develop, advertise, and implement a capital project (Project). Contractor may wish to compete on the advertised Project, either individually or as a member of a proposal team. However, Contractor's acquisition of Nonpublic Information during its preceding Contract performance may give rise to an actual or perceived Organizational Conflict of Interest.

If offerors responding to IRFP No. 2522H059 wish to do so, they might consider proactive measures to help guard against Organizational Conflict of Interest. One such measure might be adoption of a Mitigation plan. The details of any Mitigation plan are case-specific and depend upon the complexity of the Organizational Conflict of Interest. The author of such a plan must base its choice of specific barriers or controls on an analysis of the facts and circumstances at issue.

Without endorsing any particular barrier or control, or assuring their success, the Department offers the following examples of Mitigation measures for purpose of illustration:

- (1) Adoption of a binding resolution by Contractor's board of directors that prohibits certain directors, officers, or employees, or parts of the company from any involvement concerning the Community Partner's Project solicitation and ensuing contract.
- (2) Contractor's written agreement with the Department that it will:
  - (a) Use the Nonpublic Information only for the purposes of performing the services specified in the Contract, and not for any other purpose;
  - (b) Safeguard the Nonpublic Information from unauthorized use and disclosure;
  - (c) Limit access to the Nonpublic Information to only those persons who need it to perform services under the Contract;
  - (d) Inform persons who may have access to Nonpublic Information about their obligations to use it only to perform the services specified in the Contract and to safeguard it from unauthorized use and disclosure;
  - (e) Obtain a signed nondisclosure agreement that includes language substantially similar to that found in section (2)(a) through (d), from each person who may have access to the Nonpublic Information;
  - (f) Provide a copy of any such nondisclosure agreement to the Department's contracting officer or the relevant Community Partner upon request; and
  - (g) Report to the contracting officer or the relevant Community Partner any violations of requirements of section 2(a) through (f) as soon as the violation is identified. This report shall include a description of the violation and Contractor's proposed actions to be taken in response to the violation, with follow-up reports of corrective actions taken as necessary.
- (3) Creation of an ethical wall within Contractor's organization that prevents sharing of Nonpublic Information within the organization and with affiliated entities.
- (4) Designation of an Organizational Conflict of Interest compliance official at a senior level within Contractor's organization to oversee implementation of any Mitigation plan.