Appendix 3
Conflicts of Interest Policy
Procurement / Contracting Process

EAST-WEST GATEWAY
Council of Governments
Creating Solutions Across Jurisdictional Boundaries

A. Policy & Purpose

Actual and perceived objectivity will be an important part of successfully completing any project for East-West Gateway Council of Governments (the Council) including the St. Louis Area Regional Response System (STARRS). Moreover, the Council is committed to ensuring a fair, competitive procurement process. The Council's policy is to award contracts to only those firms whose objectivity or ability to perform the project work is not impaired because of any prior, present, or planned activities, relationships, contracts, or financial interests. Additionally, the Council must ensure that a firm competing for a contract award does not have or will not gain an unfair competitive advantage due to the firm's prior, present, or planned activities, relationships, contracts, or financial interests.

B. Organizational Conflicts of Interest

1. General

The Council is concerned about organizational conflicts of interest that exist, appear to exist, or may arise in the future with respect to the firms participating in the Council's procurement / contracting process (e.g. responding to an invitation for bid or a request for proposals).

2. Conflicts, Occur When

An organizational conflict of interest can occur when a firm has activities, relationships, contracts, or financial interests that:

(a) render the firm unable to provide impartial assistance or advice to the Council,

(b) limit the firm's ability to perform its work objectively,

(c) provide the firm with an unfair competitive advantage, or

(d) appear to do (a), (b), or (c).

3. Prior, Present, or Planned

An organizational conflict of interest can arise due to the firm's prior, present, or planned activities, relationships, contracts, or financial interests that are directly related to the Council's project. In the context of organizational conflicts of interest, the terms prior, present, or planned have the following meanings:

(a) *Prior* - Refers to one of two situations:

  (i) those activities, relationships, or contracts that the firm undertook or financial interests that the firm had within one year preceding the date the Council's solicitation was issued, or

  (ii) those activities, relationships, contracts, or financial interests that were conducted / engaged in as a prior part or phase of the Council's project no matter when it occurred (*i.e. the firm, under a prior and separate contract, developed specifications for the current project*).

(b) *Present* - Refers to those activities, relationships, or contracts that the firm is engaged in / committed to or financial interests that the firm had at the time the solicitation was issued or at any time during the procurement / contracting process.

(c) *Planned* - Refers to those activities, relationships, contracts, or financial interests that the firm has taken steps towards undertaking / engaging in or intends to undertake / engage in but had not yet initiated at the time the solicitation was issued.

4. Bias and Unfair Competitive Advantage

Organizational conflicts of interest create two issues for the Council: bias and unfair competitive advantage. These terms have the definitions provided in Part B, #4(a).

(a) *Definitions.*

  (i) *Bias* - Occurs when a firm's prior, present, or planned activities, relationships, contracts, or financial interests:

    (1) render the firm unable to provide impartial advice,

    (2) prevent the firm from objectively performing work for the Council, or

    (3) appear to do either of (1) or (2).

(i) *Unfair Competitive Advantage* - Occurs when a firm has gained access to information that meets both of the following criteria:

(1) the information is non-public, meaning it is information to which other firms competing for the contract award did not have access and it could not have been obtained during the course of the firm's normal course of business, and

(2) the information would unfairly disadvantage other firms during the competitive procurement process.

(b) *Bias, Can Arise When* - The potential for bias usually arises when a firm has, or appears to have, substantial obligations to both the Council and another organization that may have interests that are different from or compete with the Council's interests. In these situations, a firm may have an incentive to distort its advice or recommendations to the Council in order to benefit a competing interest of the firm's other client(s). The firm may also perform its work for the Council in such a way that it would benefit the firm's other client rather than in a way that best achieves the Council's goals for the project.

(c) *Unfair Competitive Advantage, Can Arise When* - A firm may gain access to non-public information in several ways including, but not limited to:

(i) The firm's current or past relationship with the Council / STARRS or with organizations that are expected to benefit from the Council's project.

(1) ***Relationships*** - The relationships referred to in Part B, #4(c)(i) are most likely formed through prior contract work that the firm has completed for the Council / STARRS or the organizations that are expected to benefit from the Council's project, but can also arise through the non-paid activities of the firm.

(ii) The firm has employees that serve / have served on any one of the Council's / STARRS' committees or sub-committees.

(1) ***Committees & Sub-Committees*** - The Council and STARRS have many committees and sub-committees, some of which make decisions regarding the approval of projects, expenditure of funds, and other matters that may directly affect the project that is the subject of the solicitation. A firm may gain an unfair competitive advantage if a firm participates in non-public meetings or has an employee that serves in any capacity on one of these committees or sub-committees. Through the committees or sub-committees the firm may gain access to not only information regarding the project but also the Council's preferences and other information that may not be publicly available.

5. Real, Apparent, or Potential

The Council's policy regarding conflicts of interest applies to those conflicts that are real, apparent, or potential. Each of these terms is defined below.

(a) *Real* - Refers to a conflict that exists in fact.

(b) *Apparent* - Refers to a conflict that appears to exist based on the circumstances when examined under a reasonable person standard.

(i) *Reasonable Person Standard* - Under the reasonable person standard, the Council will consider how the situation will appear if covered by the news media, how it will appear to the Council's Board of Directors, stakeholders, members, or funding agencies, or how it will appear to the general public.

(c) *Potential* - Refers to a conflict that may not currently exist, but that could arise if the Council does not take steps to mitigate or eliminate the circumstances that may lead to a conflict of interest.

(d) *Examples* - Examples of the various conflicts are provided in Part I.

C. Disclosing Conflicts of Interest

1. Firm Responsibility Certification / Questionnaire & Disclosure Statement

Based on this policy, each firm that participates in the Council's procurement process is required to disclose conflicts of interests when it completes it Firm Responsibility Certification (see Attachment B, Form #3). The information contained on the Firm Responsibility Certification must be sufficient to alert the Council about conflicts of interest with respect to both the procurement process and the contract award. A firm that is selected for a contract award may also be required to provide a signed Conflicts of Interest Questionnaire & Disclosure Statement that provides the Council with sufficient information to determine if a conflict of interest exists, appears to exists, or could arise with regard to the firm.

2. Council Review

The Council will review the information provided by the firm on its Firm Responsibility Certification and its Conflicts of Interest Questionnaire & Disclosure Statement, as applicable, and may seek additional information from the firm. This information will be used to determine whether a contract award to the firm constitutes a real, apparent, or potential conflict of interest. The Council will also review this information to determine if the firm made any material misstatements on its Firm Responsibility Certification.

3. Failure to Disclose

A firm that is competing for a Council contract or that has been selected for a contract award has an obligation to disclose a conflict of interest (as it is described in this policy).

(a) *Definition* - A firm's failure to disclose a conflict can occur when the firm:

(i) does not provide the required conflicts of interest information described in the Firm Responsibility Certification (see Attachment B, Form #3),

(ii) does not provide the required signed Conflict of Interest Questionnaire & Disclosure Statement,

(iii) refuses or fails to provide additional information the Council has requested, or

(iv) misrepresents the information provided in the Firm Responsibility Certification or the Conflicts of Interest Questionnaire & Disclosure Statement.

(b) *Disqualification / Contract Termination* - A firm's failure to disclose may result in the Council taking any of the actions described in Part D. If the failure to disclose is discovered during the contract negotiations, the Council may immediately cease negotiations with the firm and deem the firm ineligible for the contract award. If the failure to disclose is discovered after the contract is executed, the Council may immediately terminate the contract without penalty to the Council.

D. Conflict Found

If a conflict of interest is found to exist during the procurement / contracting process, the Council will undertake a course of action that is in the best interest of the Council, which includes, but is not limited to any one or combination of the following actions:

1. disqualifying the firm from the procurement process,
2. deeming the firm ineligible for a contract award,
3. ceasing contract negotiations with the selected firm,
4. terminating the contract without penalty to the Council,
5. continue with the procurement or contracting process and will include, in the awarded contract, appropriate provisions to mitigate or avoid the conflict, or
6. pursuing other remedies available to the Council.

E. After-Discovered Conflicts

1. ***Definition*** - An after-discovered conflict of interest is one that a firm discovers after: (a) the Council receives the firm's submittal; (b) the firm is selected for a contract award; (c) the contract negotiations have begun; or (d) the contract has been executed.

2. ***Process*** - If an after-discovered conflict arises, the firm must make an immediate, written, full disclosure to the Council. This disclosure must include a full description of the conflict and a description of the action that the firm has taken, or proposes to take, to avoid or mitigate such conflict. The disclosure must be sent to the person listed in Part H.

3. ***Council Review*** - In the event of an after-discovered conflict, the Council will review the information provided and, if a conflict is found to exist, will undertake a course of action that is in the best interest of the Council, this may include, but is not limited to the actions described in Part D.

F. Subcontractors / Joint Venture Partners

The requirements described in this policy apply equally to subcontractors and joint venture partners. A firm's subcontractors / joint venture partners are required to complete both the Firm Responsibility Certification (see Attachment B, Form #3) and the Conflicts of Interest Questionnaire & Disclosure Statement, as applicable. If the Council determines that a subcontract / joint venture partner has a conflict of interest, then the Council may take any of the actions described in Part D.

G. Conflicts of Interest Questionnaire & Disclosure Statement

Based on this policy, a firm that is selected for a contract award may be required to provide a signed Conflicts of Interest Questionnaire & Disclosure Statement that provides the Council with sufficient information to determine if a conflict of interest exists, appears to exists, or could arise with regard to the firm. When completing the questionnaire, the following definitions / requirements apply:

1. ***"Organizations that are expected to benefit from the project / solicitation"*** are those organizations that are listed in Section V, Part E of the solicitation documents.
2. ***"Employees"*** include all personnel of the firm, including part-time, contract, or temporary employees.
3. ***"Committees" or "sub-committees"*** refer to every committee or sub-committee of the Council or STARRS including the Board of Directors of each organization. These references also include those committees set-up to monitor, oversee, or coordinate specific projects. Membership on any committee or sub-committee includes non-voting or ex officio membership.
4. ***An "interest"*** includes those prior, present, or planned interest that involve the Council itself, STARRS, or the organizations that are expected to benefit from the project / solicitation.
5. ***"Communicate"*** includes any communication, including oral discussions and e-mails or other written correspondence. A communication must be disclosed **IF** it: (i) was in regard to the project / solicitation; (ii) was with any person other than the person identified in Section IX, Part A of the solicitation documents; **AND** (iii) did not occur at a pre-submittal or similar meeting hosted / conducted by the Council for the solicitation.
6. ***"Assist with the development of the specifications / scope of work for the project / solicitation"*** includes providing any information that was used to create the specifications / scope of work for the project / solicitation. Assistance must be disclosed if it was provided: (i) directly to the Council itself; (ii) to STARRS; (iii) to any of the organizations that are expected to benefit from the project / solicitation; or (iv) any member of Council or STARRS committees or sub-committees **AND** the information was **NOT** provided as part of a request for information or similar formal process initiated by the Council.

H. Point of Contact

Questions regarding this policy and any information that must be submitted pursuant to this policy must be directed to:

Stacia Alvarez
Director of Administration
East-West Gateway Council of Governments
1 S. Memorial Drive, Suite 1600
St. Louis, MO 63102
(314) 421-4220 ext. 204
staci.alvarez@ewgateway.org

I. Examples of Conflicts of Interest

The Council has provided the examples below to illustrate various situations in which an organizational conflict of interest may exist, appear to exist, or could arise. In each situation, the firm must disclose its activities, relationships, contracts, or financial interests. The examples below are not exhaustive; there are many situations that may create a real, apparent, or potential conflict of interest.

#1 - The Council is seeking a consultant to perform engineering / architecture work for one of its transportation projects. The transportation project will focus on making bicycle / pedestrian improvements to Street A. Street A is owned and maintained by the City of Z. The Firm has a current contractual relationship with City of Z to perform certain architecture / engineering services with respect to Street A roadway improvements and the intersecting Street B. In this situation Firm may have a conflict of interest which may cause or appear to cause the Firm to be biased. The Firm may be put in the position to choose between the competing obligations it has to the Council and its other client, City of Z. The Firm may have an incentive to provide the Council biased recommendations or may be unable to objectively perform its work for the Council. On its Conflicts of Interest Questionnaire & Disclosure Statement, the Firm must disclose its contractual relationship with City of Z.

#2 - The Council is seeking a consultant to perform planning services for Project X. The planning services are related to improving the walkability of Corridor N in R-City. Corridor N is owned and maintained by R-City. R-City is planning to hire a consultant to complete architecture / engineering services as part of a major construction project at a location along Corridor N and within the Project X planning area. R-City is planning to issue a solicitation for these services sometime after Project X has begun. The Firm is aware of R-City's construction project and plans to compete for the architecture / engineering contract. In this situation, the Firm's planned activities may create a conflict of interest which may cause or appear to cause the Firm to be biased. The Firm's planned activities with regard to the architecture / engineering project may affect its ability to objectively perform services for Project X and to provide impartial recommendations for improvements to Corridor N. The Firm may have also an incentive to perform its services in such a way as to put itself in a better competitive position for the construction project. Moreover, a potential conflict may arise if the Firm is selected for the future project and will have competing obligations to the Council and R-City. On its Conflicts of Interest Questionnaire & Disclosure Statement, the Firm must disclose its plan to compete for the R-City contract.

#3 - The Council is seeking a vendor to build and deliver Truck B. Truck B is being purchased by the Council / STARRS for City of Q Police Department ("QPD"). Prior to the Council issuing the solicitation, a QPD employee contacts the Firm and asks for assistance in preparing specifications for Truck B. The Firm complies and helps QPD put together the specifications for Truck B. In addition, the Firm's personnel attends a couple of meetings of the STARRS Sub-Committee D to discuss the Truck B project and provide the sub-committee with information about Responding Firm's products. The sub-committee meeting is not a public meeting and the information provided to the Firm about the project is not publicly available. In this situation, the Firm may have a conflict of interest which may or appears to provide the Firm with an unfair competitive advantage. First, the Firm helped write the specifications for the solicitation which enhances the Firm's position during the procurement process. Second, the Firm gained access to non-public information by communicating with QPD personnel and attending the Sub-Committee D meetings and this information could not have been obtained during the normal course of the Firm's business. The Firm must disclose each of the following on its Conflicts of Interest Questionnaire & Disclosure Statement: (A) its role in developing the specifications for Truck B, (B) its communications with the QPD employee, and (C) its participation in the Sub-Committee D meetings.

#4 - STARRS Sub-Committee C decided at its last meeting to allocate a portion of its budget to fund a professional services contract to provide training for local first responders. Sub-Committee C's meeting is not a public meeting and the information shared at the meeting is not publicly available. The Firm provides this type of training as part of its business and it decides to submit a proposal in response to the solicitation. The Firm proposes to hire Individual F as a subcontractor for the project. Individual F will serve as the lead trainer in the event that the contract is awarded to the Firm. Individual F does not assist the Firm with the preparation of the Firm's proposal; however, Individual F is a member of Sub-Committee C and attends the sub-committee meetings, including the meeting at which the decision was made regarding the professional services contract. In this situation the Firm may have a conflict of interest which may or appears to provide the Firm with an unfair competitive advantage. Individual F, and by extension, the Firm, had access to non-public information regarding the project and the solicitation and this information could not have been obtained during the normal course of the Firm's business. The Firm and its subcontractor must disclose, on each Conflicts of Interest Questionnaire & Disclosure Statement, Individual F's membership on Sub-Committee C and Individual F's participation in Sub-Committee C meetings.