



Public Contracts Conflict of Interest

Policy No. FIN-0102

City Manager Administrative Policy

Bend Code Chapter 1.30.005 provides for 'City Manager Authority to Adopt Administrative Regulations, Policies and Guidelines.' All regulations, policies and guidelines adopted by the City Manager shall be consistent with the City of Bend Charter, the Bend Code, and Council ordinances.

The following policy conforms to the above stated standards.

Authorized by City Manager:

Signed by:

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Eric King, City Manager

Dated: 11/26/2025

Reviewed by Legal Counsel:

Signed by:

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Ian Leitheiser, City Attorney

Dated: 11/26/2025

I. Purpose

To provide City staff with clear, practical guidance for procuring Public Contracts in a way that reflects the City’s commitment to fairness, transparency, and accountability and avoids or mitigates an offeror’s actual or potential conflicts of interest. This policy builds on state law, administrative rule, and Bend Code by offering more detailed direction to support consistent and informed procurement practices. In addition to the general authority granted to the City Manager by **Bend Municipal Code (BMC) 1.30.005**, the City Manager has the authority to adopt purchasing policies pursuant to **BMC 1.55.050(B)**.

II. Policy Statement

The City is committed to an open, fair, and competitive procurement program that encourages competition and avoids or mitigates conflicts of interest in offerors, contractors, and vendors. This policy provides additional administrative guidance to support consistent and informed Public Contracting practices across the City. The provisions of this policy are in addition to the requirements of state and federal law regarding Public Contracts, including but not limited to Oregon Revised Statutes (ORS) 244.047 and 279C.307, and Oregon Administrative Rules (OAR) 137-048-0130.

III. Scope

This policy applies to all Public Contracting activities with an estimated value (or Contract Price, as defined in **BMC 1.55.005(B)**) exceeding \$250,000, when otherwise required by law, or where required by external funding sources.

IV. Definitions

Actual Conflict of Interest: A situation in which an individual or Firm has a conflict that will occur or presently exists due to financial interests, relationships, or other circumstances that impair the individual or Firm’s objectivity or creates an unfair competitive advantage in Public Contracting activities.

Affiliate (of the Firm): A person or entity that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the Firm.

Apparent Conflict of Interest: A situation in which an individual or Firm may be perceived to have an Actual or Potential Conflict of Interest.

Associate (of the Firm): An employee, executive, director, officer, owner, key personnel, consultant, contractor, or subcontractor of the Firm, or any immediate family member thereof. This includes employees of consultants, contractors, or subcontractors.

Firm: Any proposer, bidder, contractor, consultant, or subcontractor at any tier, including their partners, members, or Affiliates, regardless of legal structure.

Individual Conflict of Interest: A conflict arising from an individual’s direct and indirect financial interest, receipt of gifts, or other activities or relationships, including business, familial, or household connections. This does not include benefits arising solely from performing the contract.

Organizational Conflict of Interest: A situation in which a Firm or its Associates have financial interests or relationships with a parent company, affiliate, or subsidiary organization—past, present, or planned—that may impair their ability to provide impartial, objective, or technically sound services under a City contract, or by the nature of work presently or previously performed for the City on a project, may result in an unfair competitive advantage for future work on that project under a new solicitation. This does not include benefits arising solely from performing the contract.

Potential Conflict of Interest: A situation in which an individual or Firm may reasonably be expected to have an Actual Conflict of Interest based on current plans or circumstances.

Public Contract: An agreement for the purchase, lease, rental, or other acquisition of personal property, services (including personal services), public improvements, public works, and related activities. Public Contracts do not include grants, intergovernmental agreements, or real property transactions.

Public Contracting: The planning, solicitation, award, modification, and administration of Public Contracts by the City.

Preliminary Project Document: Early-stage program or project-related materials—such as preliminary designs, reports, or technical studies—that provide foundational understanding of a specific aspect of the project.

V. Policy Terms & Provisions

A. Previous Work on Projects

1. Except as provided herein or as otherwise allowed by state or federal law, any Firm that has previously performed services on behalf of the City for a particular project may not propose, bid, or participate in the preparation of a proposal or bid, on another solicitation for that same project. This prohibition applies to any participation as an equity owner, team member, or subcontractor of a proposing Firm as well as to those who have a financial interest in any of the foregoing entities with respect to the project.
2. The City may, in its sole discretion, through the Procurement & Public Contracts Manager, in consultation with the City Attorney’s Office, allow a Firm otherwise

disqualified by the preceding section from proposing or bidding, or participating in a proposal or bid, if the City is satisfied that:

- a. Such services were completed prior to initiation of the procurement for the project (exceptions may apply for services related to the National Environmental Policy Act (NEPA) on a case-by-case evaluation of the project specifics against applicable law),
 - b. Such services included only Preliminary Project Documents and did not include development of project specifications, or other documents included in a request for proposals or invitation to bid, including instructions to offerors or evaluation criteria for the later solicitation,
 - c. Such services did not provide the Firm with access to or knowledge of City confidential or non-public information that could provide an unfair competitive advantage with respect to the procurement,
 - d. The prior contract and information provided to the Firm in the performance of its services are either irrelevant to the procurement or are available on an equal and timely basis to all proposers or bidders, and
 - e. The work product from the Firm incorporated into or relevant to the procurement is available through public disclosure on an equal and timely basis to all potential proposers.
3. In such instances where the City is satisfied in the manner described above, the City may still, in its sole discretion, restrict the scope of procurement services for which the Firm is eligible to perform in order to further the intent and goals of this Policy.
 4. For federally funded projects, the City must comply with the most restrictive set of regulations applicable to the project. For most federally funded projects, to ensure objective contractor performance and eliminate unfair competitive advantage, the City will exclude contractors that develop or draft specifications, requirements, statements of work, or invitations for bids, other than Preliminary Project Documents, from competing on those procurements. See 2 C.F.R. § 200.319.
 5. Disclosure of any Conflicts of Interest is still required, as set forth in this Policy, whether or not the City has made a determination of a Firm's ability to propose under this section.

B. Disclosure; Review; Mitigation

1. **Disclosure:**

- a. Any City employee who becomes aware of an Organizational Conflict of Interest, including Apparent or Potential Conflicts of Interest, shall notify the Procurement & Public Contracts Manager as soon as reasonably possible.
- b. All City solicitations shall include a requirement that bidders and proposers disclose any Organizational Conflict of Interest or Individual Conflict of Interest of any individual identified in the proposal or bid, including any Apparent or Potential Conflict of Interest, along with or prior to offer submission.
- c. All conflict of interest disclosures must be saved in the procurement file for the solicitation in which the conflict was disclosed, and may be required to be sent to a funding agency, if any.

2. **Review and Mitigation:** The Procurement & Public Contracts Manager, in consultation with the City Attorney's Office, will assess the disclosed situation and determine whether mitigation is possible or if the Firm must be excluded. The determination and any applicable mitigation must be saved in the procurement file. Mitigation may include:

- a. Public disclosure of relevant documents (Preliminary Project Documents are made available to all prospective proposers or bidders as part of the solicitation process; this ensures transparency and provides equal access to information that may influence offer development);
- b. Firewalls between conflicting roles (internal controls or structural separations put in place that prevent individuals or teams within a Firm from accessing or influencing parts of a project where they may have a conflict of interest); or
- c. Limiting scope of work (reducing or modifying the tasks assigned to a Firm to avoid areas where a conflict of interest may arise).

3. **Examples:**

- a. A Firm that assists in drafting any document included in a Request for Proposals (RFP) may not submit a proposal in response to that RFP unless its involvement was limited to preparing Preliminary Project Documents and all such documents are made equally available to all prospective proposers in the RFP. A Potential Conflict of Interest exists for the Firm because the Preliminary Project Documents are not yet publicly available. To mitigate, the City will publish the Preliminary Project Documents in the RFP so they are available to

all prospective proposers and the City must direct the Firm to suspend further work on the Preliminary Project Documents during the solicitation period.

- b. A Firm with an Affiliate or Associate providing oversight or compliance services on a project may not submit a proposal for the construction work on the same project, as this creates a conflict between oversight and execution roles.
- c. A Firm who previously worked on a project and has access to confidential or non-public information related to that project may be excluded from future related procurements to prevent unfair advantage or impaired objectivity.

C. Escalation.

If a conflict of interest decision by the Procurement & Public Contracts Manager is disputed, the matter may be referred to a joint decision of the Chief Financial Officer and the Department Head overseeing the project. If a decision cannot be reached between the Chief Financial Officer and the Department Head, the matter will be referred to the City Manager for review. Such determination(s) will be shared with involved parties and documented in the procurement file. After exhausting all opportunities for appeal under this policy or applicable law, a party aggrieved by the decision may protest the City's intent to award a contract in accordance with the applicable procedures of law.

D. Responsibility Determination.

If a Firm is prohibited from proposing or bidding on a subsequent solicitation pursuant to this Policy, that Firm is not "legally qualified to contract with the City" on that particular project. See ORS 279B.110(2)(d) (setting forth responsibility criteria); ORS 279C.375(3)(c) (same); OAR 137-047-0640(1)(c)(F)(iv) (same); OAR 137-049-0390(2)(d) (same).



Language Assistance Services & Accommodation Information for People with Disabilities

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Servicios de asistencia lingüística e información sobre alojamiento para personas con discapacidad

Puede obtener esta información en formatos alternativos como Braille, formato electrónico, etc. También disponemos de servicios gratuitos de asistencia lingüística. Póngase en contacto con Justin Sweet en jsweet@bendoregon.gov o 541-385-6677 . Los usuarios del servicio de retransmisión deben marcar el 7-1-1.