

Office of the State Architect  
Policy and Procedure Number \_\_\_  
Organizational Conflicts of Interest

**A. Purpose:** Pursuant to Section 12.02.D (the “SBC Policy”) of the By-laws, Policy and Procedure of the State Building Commission (the “By-laws”), to provide additional policies and procedures to further define the requirements to fulfill the Organizational Conflicts of Interest Policy set forth in Item 12 of the By-laws.

**B. Policy:**

1. Definitions. All capitalized but undefined terms used in this policy shall have the meanings ascribed in the SBC Policy. The following definitions supplement those set forth in Section 12.02.C of the By-laws.
  - i. “Discovered” means the actual knowledge, after reasonable investigation, of (A) as to a State Procurement Agency (“SPA”), the procurement coordinator; the director or assistant director of the group, team or division within SPA for which the services are being procured or provided; or the Commissioner, Deputy Commissioner, or any other personnel of the SPA who are aware of or involved in the procurement; or (B) as to a Contractor/Consultant, the individual responsible for coordinating the response of the Contractor/Consultant to the procurement solicitation or managing the services provided to the State; or the President, Vice President, or any other leadership personnel of the Contractor/Consultant involved in responding to the procurement or providing services under the resulting contract.
  - ii. “Known” means the actual knowledge of (A) as to an SPA, the procurement coordinator; the director or assistant director of the group, team or division within SPA for which the services are being procured or provided; or the Commissioner, Deputy Commissioner, or any other personnel of the SPA who are aware of or involved in the procurement; or (B) as to a Contractor/Consultant, the individual responsible for coordinating the response of the Contractor/Consultant to the procurement solicitation or managing the services provided to the State; or the President, Vice President, or any other leadership personnel of the Contractor/Consultant involved in responding to the procurement or providing services under the resulting contract.
2. Clarification of a Definition. The definition of Impaired Objectivity is clarified with the following: Impaired Objectivity is not limited to circumstances where a Person evaluates proposals or contract performance for its own products or services or for the products of services of its competitors, but extends to circumstances where the contract requires judgment, and the economic interests of the Person could be impacted by the exercise of that judgment. For example, if a contract requires that “Party A” (i) determine whether or not the State should pay “Party B” funds for products and services or (ii) make a recommendation to the State of whether to engage Party B to provide goods or services to the State, and Party A and Party B have a history of direct contractual relationships or a significant business relationship, then Party A may be determined to have Impaired Objectivity. Direct contractual relationships include joint ventures and partnerships. Significant business relationships can be

demonstrated through ownership structure and interests, Control and volume of projects on which “Party A” and “Party B” have worked together.

3. Record Keeping.

i. Each SPA must maintain a written documentation evidencing satisfaction of the requirements of Section 12.02.B.2 of the By-laws. Such written documentation shall include the names and titles of the persons performing or participating in the analysis of procurement to determine that no potential Organizational Conflicts of Interest (“OCIs”) exist, or if one or more OCIs exist, setting forth the SPA’s plan to address such potential OCIs; a copy of all disclosure and notification statements; a copy of all written communication discussing identified potential OCIs; and a copy of all approvals of the plan to address such potential OCIs. Satisfaction of the requirements of Section 12.02.B.2 of the By-laws requires that the SPA conduct a reasonable investigation prior to and during each procurement and resulting contract to determine if potential OCIs exist or may exist.

ii. The Office of the State Architect shall maintain records of all (a) OCI disclosure notification statements received from the SPAs, (b) plans received from the SPAs to address known or discovered OCIs, and (c) approved plans to address known or discovered OCIs. In the event that the Office of the State Architect participated in the procurement or contract involving an OCI, the Office of the State Architect shall maintain all documentation evidencing satisfaction of the requirements of Section 12.02.B.2 of the By-laws and all documentation produced by the State Building Commission in reviewing such documentation.

4. Plan Documentation. Plans should include all information necessary or desirable to allow the State Architect, or the State Building Commission or its designee, if applicable, to evaluate the plan, such as: purpose and goal of the procurement; factors considered by the SPA in evaluating the known or discovered OCI; time considerations; previous experience of bidder(s), proposer(s) or vendor; subject matter expertise of bidder(s), proposer(s) or vendor; industry practice; projected magnitude of the risk of an OCI; and range of potential harm or potential benefit to the State. If circumstances permit, the plan may include alternative resolutions to the OCI and may include a mixture of avoidance and mitigation components.

5. Review Principles. The State Architect, or State Building Commission or its designee, if applicable, shall promptly review all plans to address known or discovered OCIs submitted by a SPA. The review of a plan to address a known or discovered OCI by the State Architect, or by State Building Commission or its designee, if applicable, shall be pursuant to the guiding principles set forth below.

i. Avoidance and mitigation are the preferred resolutions to known or discovered OCIs. Avoidance will often be the preferred resolution to an OCI resulting from Biased Ground Rules. Mitigation, by providing to the other proposers or the public, the information that has been treated as confidential or proprietary, will often be the resolution to an OCI resulting from an Unfair Competitive Advantage.

- ii. If an OCI is known or discovered by the SPA after publication of the procurement documents, but before offers or proposals have been received by the SPA, the plan should include a requirement that the SPA make all offerors and proposers aware of the OCI and any actions the SPA intends to take in response to such OCI.
  - iii. If an OCI is discovered by the SPA after offers or proposals in response to the procurement documents have been received by the SPA, but before the contract has been awarded, then the plan should include a requirement that, prior to awarding a contract, the SPA issue a supplement to the procurement solicitation notifying all offerors and proposers of the OCI and the actions that the SPA intends to take in response to such OCI and offering such offerors and proposers an opportunity to modify or withdraw their offers or proposers in response to the same.
  - iv. Any plan to address a known or discovered OCI after contract execution shall take into account the State's desire to continue existing contracts procured in accordance with Commission policy; waiver of the OCI or termination of an existing contract being a last resort if no other resolution to the OCI can be approved by the State Architect.
6. Specific Circumstances. After discussions with the SPAs regarding certain contractual relationships, the State Architect has concurred with the SPAs that, pursuant to Section 12.02B.4.d(ii) of the By-laws, no OCI exists with respect to the following: (i) change orders to construction contracts procured pursuant to the By-laws; (ii) amendments, supplements and task orders to agreements with designers selected pursuant to the State Architect Designer Selection Process; (iii) agreements for additional services to be provided by designers selected pursuant to the State Architect Designer Selection Process; and (iv) task orders issued under consultant contracts procured pursuant to the By-laws. Furthermore, no documentation pursuant to Section 12.02B.4.d(ii) of the By-laws need be filed with the State Architect for the above referenced contractual relationships, it being acknowledged by the State Architect that the By-laws or Office of the State Architect Policies and Procedures adequately ensure that resulting contracts or transactions are fair to the State.