

## Engineering Involvement Restrictions Guidelines

A Consultant cannot be given the opportunity to provide work and services which may result in the Consultant's reviewing or having contractual control over the review of its own work and services. The Consultant, also, cannot be given the opportunity to shield and/or protect its work and services from evaluation and potential liabilities.

The ***Engineering Involvement Restrictions*** matrix (p. 2-3B) summarizes the guidelines to determine if a potential conflict of interest exists. The "Project Involvement" columns of the Matrix indicates the activity a Consultant is or was involved with and the "Restrictions" column lists activities that cannot be performed by that Consultant.

**Any questionable Consultant involvements regarding the application of these guidelines must be presented to the CAS Chief on the Request for Consideration for Engineering Involvement Restrictions form on Page H-1 in the Appendix for coordination with the Office of Chief Counsel, FHWA, and the appropriate Highway Administration Bureau Director.** Any exceptions to these guidelines must be approved prior to Shortlisting under standard selection procedures or Final Ranking under modified/enhanced modified selection procedures or submission of bid package or technical proposal for design-build projects.

In addition to this matrix, the following guidelines should be considered when determining if there is a potential conflict of interest:

1. A Prime Consultant that provided or is providing any work and services to the Department for a design-build project will **not** be eligible to provide any work and services to the contractor design-build team for that project. Engineering Districts may use the Department Consultant that developed the conceptual design for Consultation During Construction, Department Review, or Construction Inspection.
2. Any Consultant providing work or services for the contractor design-build team, such as Final Design or Peer Review, is not eligible for any involvement under a Department Agreement on that project.
3. A Consultant providing work or services to a developer, where the work or services directly or indirectly affect the Department's project (including the review of a Highway Occupancy Permit), will be restricted from any involvement under a Department Agreement on that project.
4. A Consultant providing work and services to a local government agency as its Municipal Engineer will be restricted from project involvement within that Municipality under a Department Agreement.
5. A Consultant under Agreement to a Municipality, or to a Municipal authority, to provide work or services for a Municipal project will not be restricted from project involvement under a Department Agreement, provided that the Consultant's involvement with the Municipality does not require that it advise the Municipality in the Municipality's review of the Department's project and the projects are not related and no conflicts of interest exist between projects.

**ENGINEERING INVOLVEMENT RESTRICTIONS**

PROJECT INVOLVEMENT (PennDOT Agreement)	PROJECT INVOLVEMENT (Contractor Design-Build Team)	RESTRICTIONS
Feasibility Studies, Traffic Studies, Mapping Services		<ul style="list-style-type: none"> <li>- No restrictions. However,                             <ul style="list-style-type: none"> <li>• Constructability Reviews should be performed by personnel not directly involved with the project design to assure an independent, objective review.</li> <li>• No recommendations, in accordance with Adverse Interest Act.</li> </ul> </li> </ul>
Preliminary Engineering, Preliminary Engineering Constructability Reviews, and Environmental Studies Anticipating a CEE		<ul style="list-style-type: none"> <li>- Not eligible for Preliminary Engineering Design Management.</li> <li>- A Consultant providing Preliminary Engineering services is eligible for either the Department Review OR the Construction Inspection, but not both.</li> <li>- Not eligible to perform <b>any</b> work or services for the contractor design-build team.                             <ul style="list-style-type: none"> <li>• Exception – A Subconsultant working on a Department Agreement containing multiple “projects,” which are let under separate construction contracts, can be part of the contractor design-build team provided that the design-build work is for a “project” in which the Subconsultant did not participate in ANY work for the Department. See “Department Agreements Containing Multiple Projects for Subconsultant” Table Below.</li> </ul> </li> </ul>

PROJECT INVOLVEMENT (PennDOT Agreement)	PROJECT INVOLVEMENT (Contractor Design-Build Team)	RESTRICTIONS
Preliminary Engineering, Preliminary Engineering Constructability Reviews, and Environmental Studies Anticipating an EA/ EIS		<ul style="list-style-type: none"> <li>- Same Restrictions as “Preliminary Engineering, Preliminary Engineering Constructability Reviews, and Environmental Studies Anticipating a CEE” <b>and</b> the following:</li> <li>- May be considered for all other work and services, but may not enter into a specific Agreement, or a Work Order for other work and services, prior to the date of a Finding of No Significant Impact (FONSI) or Record of Decision (ROD).</li> </ul>
Conceptual Design / Bid Package Preparation for Design-Build Project		<ul style="list-style-type: none"> <li>- Not eligible to perform <b>any</b> work or services for the contractor design-build team.                             <ul style="list-style-type: none"> <li>• Exception – A Subconsultant working on a Department Agreement containing multiple “projects,” which are let under separate construction contracts, can be part of the contractor design-build team provided that the design-build work is for a “project” in which the Subconsultant did not participate in ANY work for the Department. See “Department Agreements Containing Multiple Projects for Subconsultant” Table Below.</li> </ul> </li> </ul>
Final Design		<ul style="list-style-type: none"> <li>- Not eligible for Construction Management, Construction Inspection, Constructability Review, or the Design Management services of reviewing work, services or deliverables from Consultant’s Final Design Agreement (Consultant may provide other Design Management services).                             <ul style="list-style-type: none"> <li>• Exceptions to the <u>Department</u> Final Design Consultant:                                     <ul style="list-style-type: none"> <li>○ Constructability Reviews are permitted if included in the Scope of Work of the Final Design Agreement.</li> <li>○ Construction Inspection may be considered if criteria meet those specified in Strike-off Letter 433-05-01.</li> </ul> </li> </ul> </li> </ul>

PROJECT INVOLVEMENT (PennDOT Agreement)	PROJECT INVOLVEMENT (Contractor Design-Build Team)	RESTRICTIONS
	Final Design	<ul style="list-style-type: none"> <li>- Consultant for contractor design-build team providing Final Design services is not eligible to perform Peer Reviews for the contractor design-build team.                             <ul style="list-style-type: none"> <li>• Exception – A Subconsultant working on a Department Agreement containing multiple “projects,” which are let under separate construction contracts, can be part of the contractor design-build team provided that the design-build work is for a “project” in which the Subconsultant did not participate in ANY work for the Department. See “Department Agreements Containing Multiple Projects for Subconsultant” Table Below.</li> </ul> </li> <li>- Contractor design-build team participants are restricted from any future involvement under a Department Consultant Agreement for that contract.</li> </ul>
<p>Preliminary Engineering-Design Management, Review</p> <p>Note: This includes Consultants performing reviews for a District or Central Office Agreement, including an Open End Agreement.</p>		<ul style="list-style-type: none"> <li>- Not eligible for Preliminary Engineering Design or environmental work and services.</li> <li>- Not eligible to perform any work or services for the contractor design-build team.                             <ul style="list-style-type: none"> <li>• Exception – A Subconsultant working on a Department Agreement containing multiple “projects,” which are let under separate construction contracts, can be part of the contractor design-build team provided that the design-build work is for a “project” in which the Subconsultant did not participate in ANY work for the Department. See “Department Agreements Containing Multiple Projects for Subconsultant” Table Below.</li> </ul> </li> </ul>
<p>Final Design Management, Review</p> <p>Note: This includes Consultants</p>		<ul style="list-style-type: none"> <li>- Not eligible for Preliminary Engineering, Environmental Studies or Final Design.</li> <li>- Not eligible to participate as a Consultant for the contractor design-</li> </ul>

PROJECT INVOLVEMENT (PennDOT Agreement)	PROJECT INVOLVEMENT (Contractor Design-Build Team)	RESTRICTIONS
performing reviews for a District or Central Office Agreement, including an Open End Agreement.		build team.
	Final Design Peer Review	- Contractor design-build team participants are restricted from any involvement under a Department Agreement including Department Review, Construction Management, and Construction Inspection services.
Department Review (Any design review completed as a representative of PennDOT, including Owner’s Perspective)		- Not eligible for Construction Inspection or Construction Management services.
Construction Management Support (Any construction activity completed as a representative of PennDOT other than Construction Inspection, or Services During Construction)		- Eligible for Construction Inspection, <b>except</b> no involvement in: <ul style="list-style-type: none"> <li>• Development or procurement of Construction Inspection Agreements.</li> <li>• Approval of Payrolls of Consultant Construction Inspection.</li> <li>• Establishment or adjustment of Construction Inspection resources.</li> </ul> - Not eligible for Constructability Reviews unless the work and services are included in the Scope of Work of the Construction Management contract.                     - Not eligible to participate as a Consultant for the contractor design-build team.
Services during Construction (Any design support services/reviews conducted during construction)		- Not eligible for Construction Inspection.                     - Not eligible Construction Management Support
Construction Inspection		- Eligible for Construction Management, <b>except</b> no involvement in: <ul style="list-style-type: none"> <li>• Development or procurement of Construction Inspection Agreements.</li> <li>• Approval of Payrolls of Consultant</li> </ul>

PROJECT INVOLVEMENT (PennDOT Agreement)	PROJECT INVOLVEMENT (Contractor Design-Build Team)	RESTRICTIONS
		<p>Construction Inspection.</p> <ul style="list-style-type: none"> <li>• Establishment or adjustment of Construction Inspection resources.</li> <li>- Not eligible for Constructability Reviews unless the work and services are included in the Scope of Work of the construction inspection contract.</li> <li>- Not eligible to participate as a Consultant for the contractor design-build team.</li> </ul>

**Department Agreement Containing Multiple Projects  
for Subconsultant Table**

Work Subconsultant Performed Only on Project A		Project A				Project B			
		Final Design	Peer Review	Dept. Review	CM/CI	Final Design	Peer Review	Dept. Review	CM/CI
Project A	<i>Preliminary Engineering Activities (Does not include Bid Package Prep)</i>	N	N	Y *	Y *	Y'	Y'	Y'	Y'
	<i>Conceptual Design/Bid Package Prep</i>	N	N	Y *	Y *	Y'	Y'	Y'	Y'
	Final Design	X	N	N	N	Y**	Y**	N	N
	Peer Review	X	X	N	N	Y**	Y**	N	N
	Dept. Review	X	X	X	N	N	N	Y***	Y***

Note: Project A and Project B represent multiple projects under one Engineering Agreement that were let under **separate** construction contracts.

N - Subconsultant is not eligible to perform service.

Y\*- A Subconsultant, working on the Preliminary Design or Conceptual Design/Bid Package Prep for Project A, can work on **EITHER** the Department Review for Project A **OR** the Construction Inspection for Project A, but not both.

Y\*\*- A Subconsultant firm, that worked on the Final Design or Peer Review on Project A, can work on **EITHER** the Final Design for Project B **OR** the Peer Review for Project B, but not both.

Y\*\*\*- A Subconsultant firm, that worked on the Department Review for Project A, can work on **EITHER** the Department Review for Project B **OR** the Construction Inspection for Project B, but not both

Y' - A Subconsultant firm, that worked on the Preliminary Design or the Conceptual Design/Bid Package Prep for Project A, can only work **on one** of the following: Final Design, Peer Review, Department Review, or CM/CI for Project B.

Shading represents work for the contractor design-build team

Additional information concerning design-build projects or procedures can be found in PennDOT Pub 448, Innovative Bidding Toolkit.