



U.S. Department
of Transportation
**Federal Highway
Administration**

NEBRASKA DIVISION

September 8, 2009

100 Centennial Mall North
Room 220
Lincoln, NE 68508
(402)437-5765

In Reply Refer To:
HDA-NE

Monty Fredrickson
Director
Nebraska Department of Roads
P.O. Box 94759
Lincoln, NE 68509-4759

Dear Mr. Fredrickson:

Thank you for the Nebraska Department of Roads' (NDOR) March 27 letter proposing to allow the same consulting firm to provide both design and construction engineering services on the same Federal-aid project for a 2-year evaluation period.

After careful review and consideration of your request, the Federal Highway Administration (FHWA) is unable to approve NDOR's proposal at this time. We can support and would reconsider this approach once NDOR has in place additional oversight mechanisms to mitigate the potential for conflict of interest and ensure the public interest is protected. At a minimum, NDOR needs to establish and fully implement policies, procedures, and practices that provide the necessary controls to ensure State and local procurement practices comply with State and Federal law.

Through a series of program reviews, FHWA documented substantial deficiencies and violations of Federal law and regulations involving projects administered by local public agencies (LPAs). Additionally, we found a lack of State and local controls to adequately address consultant engineering contracting and mitigate potential conflicts of interest.

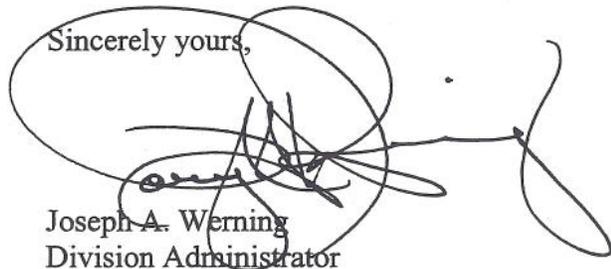
At the same time, FHWA recognizes that NDOR is making important changes to procedures and practices that will significantly improve the administration of Federal-aid highway program funding on local projects. Much effort continues to be expended in implementing the newly developed LPA manual and training program for individuals who will serve as responsible charge. Currently, efforts remain ongoing in developing a comprehensive quality assurance and quality control program to monitor the local projects.



In the enclosed table, FHWA has outlined several conditions that NDOR must establish and implement to ensure compliance with State and Federal law and regulations. Specifically, NDOR should be prepared to evaluate and demonstrate that the procurement, management, and administration of specific contracts for consultant services and LPA oversight are being conducted in a manner that complies.

We look forward to working with you to implement the enclosed compliance conditions to move beyond the cited material weakness and put conflict of interest controls in place. At such time as NDOR satisfactorily meets the compliance conditions, FHWA will reconsider allowing the same consulting firm to provide engineering services in both the design, construction management and/or inspection services on the same Federal-aid project. The FHWA stands ready to work in partnership with NDOR and other pertinent parties to fully implement these compliance conditions and develop an interim transition plan for consultant procurement.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Joseph A. Werning', is written over the typed name. The signature is stylized and somewhat illegible due to overlapping loops and lines.

Joseph A. Werning
Division Administrator

Enclosure

Compliance Conditions

- 1. Development of a comprehensive State procurement manual. Manual will meet the requirements of 23 USC 112, 23 CFR 1.9, 1.11, 1.33, 172, and 49 CFR 18.**
- 2. NDOR must develop and fully demonstrate the execution of a state monitoring program that provides continuing assurance that Federal and state laws and regulations are being met.**
- 3. Review and approve all sub-grantee written procurement procedures prior to authorizing funds on a Federal-aid project.**
- 4. Full implementation of NDOR policy prohibiting a consulting firm from serving as city/county/highway superintendent “engineer of record” and also performing subsequent work phases.**
- 5. Develop and implement annual ethics training module for all personnel (state and local) responsible for contract management/monitoring. This module should include a section on recognizing and addressing organizational conflict of interest.**
- 6. Develop and implement training for NDOR, local authorities, and consultants on conflict of interest, LPA program administration requirements, LPA project management requirements, and consultant services procurement, management, and administration requirements.**
- 7. Develop a NDOR staffing plan detailing how NDOR will accomplish items 1-6 above in addition to its current program delivery responsibilities. The plan should identify the number of staff dedicated to establishing, monitoring and revising procurement policies and procedures and individuals roles and responsibilities.**