This summary paper, with excerpts from relevant federal and state agencies, is intended only as a discussion document from which the TF will develop a policy and define a process to identify and manage Conflict/s of Interest. I do not advocate inclusion in its entirety! I hope, however, that it will provide guidance on deliberations of our COI policy and process.

[U.S. Code](https://www.law.cornell.edu/uscode/text)/[Title 42](https://www.law.cornell.edu/uscode/text/42) › [Chapter 23](https://www.law.cornell.edu/uscode/text/42/chapter-23) › [Division A](https://www.law.cornell.edu/uscode/text/42/chapter-23/division-A) › [Subchapter XIII](https://www.law.cornell.edu/uscode/text/42/chapter-23/division-A/subchapter-XIII) › § 2210a -

The Commission (the Nuclear Regulatory Commission) shall, by rule, require any person proposing to enter into a contract, agreement, or other arrangement, whether by competitive bid or negotiation ,,, to provide the Commission, prior to entering into any such contract, agreement, or arrangement, with all relevant information, as determined by the Commission, bearing on whether that person has a possible conflict of interest with respect to ... being given an unfair competitive advantage. In general … the Commission shall not enter into any such contract agreement or arrangement unless it finds, after evaluating all information provided under … this section and any other information otherwise available to the Commission that (a) it is unlikely that a conflict of interest would exist, or (b) such conflict has been avoided after appropriate conditions have been included in such contract, agreement, or arrangement.

FERC Handbook for using third-party contractors

Contractors must submit as part of their proposals a statement of Contractor's Organizational Conflicts of Interest Disclosure or Representations (OCI Statement). Specifically, contractors must reveal all relationships, including ownership interests, with all FERC regulated entities. Contractors must state whether or not there is an OCI, and if so, to what extent. Contractors must provide an abstract listing all the … entities with which it or its subcontractors have had a business relationship and indicate whether or not that relationship results in a real or perceived conflict. In the event [of] an apparent or real conflict … a detailed mitigation plan to resolve and isolate any OCI should be included in the abstract … The OCI Statement must be refreshed on an annual basis, at a minimum, and more frequently if the contractor and/or its affiliate’s business relationships have changed in a manner that affects the previously submitted OCI Statement.

The types of entities or individuals required to complete the [OCI] are as follows:

1. The prime contractor.

2. The subcontractor(s) (unless the subcontractor(s) is only providing supplies) and consultants at every tier.

3. All affiliates of the foregoing if the prime or subcontractors do not file on their behalf.

4. Any entities owned or represented by the chief executives or directors of: the prime contractor; any of the subcontractors, except for those only providing supplies; and any of the consultants.

5. Chief executives and directors - if they will be involved in performing the proposed work

of: the prime contractor; the subcontractors at every tier (except for subcontractors which are only providing supplies); consultants at every tier; and all affiliates of the foregoing.

CFR 3401

In a January 5, 2017 to the Federal Energy Regulatory Commission (FERC), Massachusetts Senators Elizabeth Warren and Ed Markey demanded more answers on a possible conflict of interest in the environmental review of a … natural gas project. FERC’s chair, Norman Bay, responded: according to FERC’s guidelines, work for an applicant pipeline company does not automatically disqualify a potential third party contractor. Rather, only when the contractor derives more than 1% of its total income from the company in each of the previous three years, a conflict is present and the contractor must be disqualified.

California Fair Political Practices Commission

There are [several] types of interests that may result in disqualification:

• Business Entity. A business entity in which the [company] has an investment of [material size]

• Real Property. Real property in which the [company] has an interest of [material size]

• Income. An individual or an entity from whom the [company] has received income or promised income aggregating to [material size] in the previous 12 months, including the [company’s] community property interest

If a decision may have a financial impact or effect on any of the foregoing interests, [a company] is disqualified from governmental decision if the following two conditions are met:

• The financial impact or effect is foreseeable, and

• The financial impact or effect is significant enough to be considered material.

Generally, a financial impact or effect is presumed to be both foreseeable and material if the financial interest is "explicitly" or directly involved in the decision.

If the interest is "not explicitly involved" in the decision, a financial impact or effect is reasonably foreseeable if the effect can be recognized as a realistic possibility and more than hypothetical or theoretical. A financial effect need not be likely to occur to be considered reasonably foreseeable.

However, for interests "not explicitly involved" in the decision, different standards apply to determine whether a foreseeable effect on an interest will be material depending on the nature of the interest. The … rules for deciding what kinds of financial effects are important enough to trigger a conflict of interest … are called "materiality standards," that is, they are the standards that should be used for judging what kind of financial impacts resulting from governmental decisions are considered material or important.

IN SUMMARY:

We must acknowledge that conflicts of interest will arise regardless of any written policy. The operative phrase seems to be “would benefit from”. Our responsibility is to anticipate potential conflicts, and, when they arise, to evaluate materiality and manage the response by means of policy, process, and culture:

* Policy - WestConnect shall establish a procedure through which it will identify and quickly respond to potential conflicts and, when a conflict emerges, engage in a stated process
* Process - from the above (and any other sources deemed relevant) the TDSTF shall develop and disseminate its process to all stakeholders, perhaps: (a) a COI review task force of the PMC? (b) hand off to the independent evaluator? (c) other??
* Culture - the TDSTF, PMC and WestConnect shall maintain a culture of “transparency” and full disclosure to all stakeholders