

Section 1400

CONFLICT OF INTEREST POLICY FOR DESIGN- BUILD PROJECTS

PURPOSE

Public Contract Code section 22162 requires local agencies to establish an organizational conflict-of-interest policy that applies to design-build projects procured pursuant to Public Contract Code section 22160 et seq. Organizational conflicts of interest can occur in the design-build procurement process when a person or entity that performs services for a local agency relating to the solicitation of a design-build project seeks to submit a proposal to the County as a design-build entity or join a design-build team, thereby making that person or entity unable or potentially unable to render impartial assistance or advice to the County, impairing the objectivity of that person or entity in performing the contract work, or giving that person or entity an unfair competitive advantage.

POLICY

A. Defined Terms.

1. "Design-Build" means a project delivery process in which both the design and construction of a project are procured from a single entity.
2. "Design-Build Entity" means a corporation, limited liability company, partnership, joint venture, or other legal entity that is able to provide appropriately licensed contracting, architectural, and engineering services as needed pursuant to a Design-Build contract.
3. "Design-Build Team" means a Design-Build Entity and the individuals and other entities identified by the Design-Build Entity as members of its team. Members of a Design-Build Team include the general contractor and, if utilized in the design of the project, all electrical, mechanical, and plumbing contractors.
4. "Proposer" means any consultant or contractor that seeks to submit a proposal to the County as a Design-Build Entity or to join a Design-Build Team.

B. Organizational Conflicts of Interest.

1. A Proposer may not have any organizational conflicts of interest.
2. "Organizational conflicts of interest" are circumstances arising out of a consultant's or contractor's existing or past activities, business or financial

interests, familial relationships, contractual relationships, and/or organizational structure (e.g., parent entities and their subsidiaries and affiliates) that results in: (i) the impairment or potential impairment of a consultant's or contractor's ability to render impartial assistance or advice to the County or of its objectivity in performing work for the County; (ii) an unfair competitive advantage for any bidder or Proposer with respect to a County procurement; or (iii) a perception or appearance of impropriety with respect to any of the County's procurements or contracts or a perception or appearance of unfair competitive advantage with respect to a procurement by the County (regardless of whether any such perception is accurate).

3. An organizational conflict of interest exists in the following instances:
 - a. A Proposer is the County's general engineering or architectural consultant to the Design-Build project, except that a subconsultant to the general engineering or architectural consultant that has not yet performed work on the contract to provide services for the design-build project may participate as a proposer or join a Design-Build Team if it terminates the agreement to provide work and provides no work for the County's general engineering or architectural consultant on the Design-Build project.
 - b. A Proposer has assisted or is assisting the County in the management of the Design-Build project, including the preparation of the request for proposals, evaluation criteria, or any other aspect of the procurement.
 - c. A Proposer has conducted preliminary design services for the Design-Build project, such as conceptual layouts, preliminary design, or preparation of bridging documents.
 - d. A Proposer performed design work related to the Design-Build project for other stakeholders in the Design-Build project.
 - e. A Proposer performed design work on a previous contract that specifically excludes it from participating as a proposer or joining a Design-Build Team for the Design-Build project.
 - f. A Proposer is under contract with any other entity or stakeholder to perform oversight of the Design-Build project.
 - g. A Proposer has obtained advice from, or discussed any aspect relating to the Design-Build project or procurement of the Design-Build project with, any person or entity with an organizational conflict of interest, including, but not limited to, the consultants of any entity that have provided technical support on the Design-Build project.

- h. Any circumstances that would violate California Government Code section 1090, et seq.

C. Obligations of Proposers.

1. Proposers shall make a full written disclosure to the County of the facts and circumstances regarding an organizational conflict of interest or a potential organizational conflict-of-interest and shall have a continuing obligation to do so until they are no longer Proposers.
2. Proposers shall disclose all relevant facts relating to past, present or planned interests of the Proposer's Design-Build Team (including the Proposer, Proposer's proposed consultants and subconsultants and subcontractors and their respective directors and key personnel) that may result in, or could be viewed as, an organizational conflict-of-interest in connection with any Design-Build project procurement, including present or planned contractual or employment relationships with any current County employee.
3. Proposers shall disclose in the response documents to a Design-Build request for qualifications and request for proposals, all the work performed in relation to the particular proposed Design-Build project.
4. If a Proposer determines that a conflict of interest or potential conflict of interest exists, it must disclose the conflict or potential conflict of interest to the County. The disclosure may not necessarily disqualify a Proposer from being awarded a contract. The Proposer shall propose measures to avoid, neutralize, or mitigate all conflicts or potential conflicts. The County, in its sole discretion, shall determine whether the proposed measures are sufficient to overcome the conflict or potential conflict and whether the Proposer may continue with the procurement process. The County has the right to cancel or amend a resulting Design-Build project contract if the successful Proposer failed to disclose a conflict or potential conflict that it knew or should have known about, or if the Proposer provided information in its disclosure that is false or misleading.
5. For other conflicts or potential conflicts not mentioned specifically above, such as conflicts involving employees changing companies, mergers and acquisitions of firms, property ownership, business arrangements, and financial interests, a Proposer shall disclose and address any organizational conflicts of interest or potential organizational conflicts of interest when participating in or joining a Design-Build Team. The County will determine if a conflict of interest exists.

- D. Obligations After Contract Award. The successful Proposer to whom a contract is awarded ("Contractor") has an ongoing obligation to monitor and disclose its conflicts or potential conflicts of interest. The County has the right to ongoing enforcement of this policy. If an organizational conflict of interest is discovered after contract award, the Contractor must make an immediate and full written disclosure

to the County that includes a description of the action that the Contractor has taken or proposes to take to avoid or mitigate the conflict. If an organizational conflict of interest is determined to exist and the Contractor was aware of an organizational conflict of interest prior to award of the contract and did not disclose the conflict, the County may terminate the contract. If a new conflict of interest arises after contract award, and Contractor's proposed measures to avoid or mitigate the conflict are determined by the County to be inadequate to protect the County, the County may terminate the contract. If the contract is terminated, the County assumes no obligations, responsibilities and liabilities to reimburse all or part of the costs incurred or alleged to have been incurred by Contractor and is entitled to pursue any available legal remedies

- E. Incorporation by Reference. This policy shall be incorporated by reference into and included as part of all County Design-Build project requests for qualifications and requests for proposals, and all County Design-Build contracts.