



**Contra
Costa
County**

To: Board of Supervisors
From: David Twa, County Administrator
Date: February 13, 2018

Subject: Approve and Adopt Organizational Conflict -of-Interest Policy for Design -Build Projects

RECOMMENDATION(S):

APPROVE and ADOPT the attached organizational conflict-of-interest policy for Design-Build projects as required by Public Contract Code section 22162.

FISCAL IMPACT:

No fiscal impact.

BACKGROUND:

As required by Public Contract Code section 22162, the purpose of the proposed policy is to set forth the County's, organizational conflict-of-interest guidelines applicable to design-build projects procured pursuant to Public Contract Code section 22160 et seq.

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY ADMINISTRATOR

☐ RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **02/13/2018** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

AYE: John Gioia, District I Supervisor
Candace Andersen, District II Supervisor
Diane Burgis, District III Supervisor
Karen Mitchoff, District IV Supervisor
Federal D. Glover, District V Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: February 13, 2018

David Twa, County Administrator and Clerk of the Board of Supervisors

By: June McHuen, Deputy

Contact: Eric Angstadt
925.335.1009

cc:

BACKGROUND: (CONT'D)

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Organizational conflicts of interest can occur when, because of existing or planned activities or because of relationships with other persons, a design-build project proposer is unable or potentially unable to render impartial assistance or advice to the County, the proposer's objectivity in performing the contract work is or might be otherwise impaired, or the proposer has an unfair competitive advantage.

The proposed policy provides that contractors and consultants participating as proposers to a design-build project solicitation or joining a design-build team ("Proposers") may not have organizational conflicts of interest.

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, subsidiaries, affiliates) that results in (i) 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).

The attached proposed policy sets forth situations under which an organizational conflict of interest exists for the purposes of responding to a design-build project.

Under the conflict-of-interest policy, design-build project proposers must make a full written disclosure to the County and have a continuing obligation to do so until they are no longer proposers.

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. Such disclosure will not necessarily disqualify a Proposer from being awarded a design-build contract, however. The Proposer shall propose measures to avoid, neutralize, or mitigate all potential or actual 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 proposed policy further provides that a successful Proposer to whom a contract is awarded has an ongoing obligation to monitor and disclose its conflicts or potential conflicts of interest. The County has the right to enforce the policy on an ongoing basis. 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.

Incorporation by Reference

The policy provides that it shall be incorporated by reference into and included as part of all County Design-Build project Requests for Qualifications, Requests for Proposals, and the County's Design-Build contracts between the County and the successful Design-Build proposer.

CONSEQUENCE OF NEGATIVE ACTION:

Not approving these actions could make the County ineligible to use the design-build procurement method for projects.

ATTACHMENTS

Conflict of Interest Policy for Design-Build Projects