

**COUNTY OF FRESNO  
ORGANIZATIONAL CONFLICT OF INTEREST POLICY  
APPLICABLE TO DESIGN-BUILD PROJECTS**

**1. PURPOSE**

The purpose of this Organizational Conflict of Interest Policy ("Policy") is to establish the County of Fresno's organizational conflict of interest guidelines applicable to design-build projects procured pursuant to Public Contract Code section 22160, et seq. and Federal Procurement Standards 2 CFR 200.319.

**2. AUTHORITY**

By this Policy, the Director of the Department of Public Works and Planning is delegated the authority to make the County's final determination on whether any Proposers have an Organizational Conflict of Interest in a manner consistent with the Board's general and specific intent set forth herein, consistent with all applicable laws, and in consultation with the Office of County Counsel.

The legal basis for this policy is Public Contract Code Sections, 22160-22169, as may be amended from time to time, and such other statutory and regulatory provisions as may be applicable.

**3. POLICY**

Contractors and Consultants participating as proposers on a design-build project or joining a design-build team ("Proposers") may not have organizational conflicts of interest.

**3.1 Organizational Conflict of Interest Defined**

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).

While this Policy cannot and does not purport to describe every problematical situation that may arise, the following are examples of circumstances that will constitute an organizational conflict of interest:

- 3.1.1 A Proposer is the County's general engineering or architectural Consultant to the design-build project, except that a sub-consultant 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.
- 3.1.2 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.
- 3.1.3 A Proposer has conducted preliminary design services for the design-build project such as conceptual layouts, preliminary design, or preparation of bridging documents.
- 3.1.4 A Proposer performed design work related to the design-build project for other stakeholders in the design-build project.
- 3.1.5 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.
- 3.1.6 A Proposer is under contract with any other entity or stakeholder to perform oversight of the design-build project.
- 3.1.7 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.
- 3.1.8 Any circumstances that would violate California Government Code Section 1090, et seq. or the Political Reform Act, Government Code Section 80000, et seq.

## 3.2 Proposers' Obligations Before Contract Award

If a Proposer determines that a conflict of interest or potential conflict of interest exists, Proposers must immediately make a full written disclosure of the conflict or potential conflict of interest to disclosure to the Director of the Department of Public Works and Planning and shall have a continuing obligation to do so until they are no longer Proposers.

Such disclosure will not necessarily disqualify a Proposer from being awarded a contract, however. The Proposer shall propose measures to avoid, prevent, or mitigate all potential or actual conflicts. The Director of the Department of Public Works and Planning 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. In the event the conflict of interest involves the Director of the Department of Public Works and Planning, the County Administrative Officer would make the determination.

### **3.3 Proposers' 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 a 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 Director of the Department of Public Works and Planning that includes a description of the action that the Contractor has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist and the Contractor was or reasonably should have been aware of an organizational conflict of interest prior to award of the contract while acting with due diligence to search for such a conflict and did not disclose the conflict, the County may terminate the contract, and Contractor shall disgorge all money paid to it under the Contract, in addition to any other remedies available to the County. 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 any portion of the costs incurred or alleged to have been incurred by Contractor and the County further is entitled to pursue any and all available legal remedies.

## **4. INCORPORATION BY REFERENCE**

This Policy shall be incorporated by reference into all related Consultant and Contractor design-build solicitations and contracts executed by the County.