

RESOLUTION NO. 8-19

**A RESOLUTION OF THE COUNCIL OF THE CITY OF RICHMOND, CALIFORNIA,
ADOPTING A CONFLICT OF INTEREST POLICY FOR THE DESIGN-BUILD
METHOD OF PROJECT DELIVERY FOR WASTEWATER AND STORMWATER
CONSTRUCTION PROJECTS**

WHEREAS, the California Legislature has found and declared that various agencies authorized to use the design-build method of project delivery, using a best value procurement methodology, have reported benefits from such projects, including reduced project costs, expedited project completion, and design features that are not achievable through the traditional design-bid-build method; and

WHEREAS, the California Legislature has provided general authorization for certain local agencies to use design-build for certain projects by enacting Public Contract Code Section 22160 *et seq.*; and

WHEREAS, California Public Contract Code Section 22160 *et seq.* authorizes local agencies, with the approval of the governing body, to procure design-build contracts for the construction of regional and local wastewater treatment facilities, regional and local solid waste facilities, regional and local water recycling facilities, or fire protection facilities, in excess of one million dollars (\$1,000,000), by awarding the contract either to the low bid or for the best value; and

WHEREAS, California Public Contract Code Section 22160 *et seq.* contains a requirement that each local agency entering into design-build contracts authorized under Public Contract Code Section 22160 *et seq.* shall develop guidelines for a standard organizational conflict of interest policy, consistent with applicable law, regarding the ability of a person or entity that performs services for the local agency relating to the solicitation of a design-build project, to submit a proposal as a design-build entity, or to join a design-build team; and

WHEREAS, the City of Richmond, as a charter city in the State of California, is not bound by the enactment of California Public Contract Code Section 22160 *et seq.* but has determined that the provisions set forth in California Public Contract Code Section 22160 *et seq.* are in the best interest of the City of Richmond with regards to the utilization of the design-build method for the City of Richmond's wastewater and stormwater construction projects; and

WHEREAS, the Council of the City of Richmond has adopted Richmond Municipal Code Section 2.52.995 whereby the City of Richmond's wastewater and stormwater construction projects have been made subject to the provisions set forth in the California Public Contract Code Section 22160 *et seq.*; and

WHEREAS, the Council of the City of Richmond desires to establish guidelines for a conflict of interest policy pursuant to California Public Contract Section 22162 for the utilization of the design-build method for the City of Richmond's wastewater and stormwater construction projects.

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Richmond hereby finds and determines that the use of the design-build method of project delivery, using a best value procurement methodology, for the construction of the City of Richmond's wastewater and stormwater projects, in excess of one million dollars (\$1,000,000), with Council approval, on a case by case basis, is in the best interest of the City of Richmond.

BE IT FURTHER RESOLVED that the Council of the City of Richmond hereby approves and adopts the Design-Build Conflict of Interest Policy that is attached hereto as Exhibit A and is incorporated herein by this reference.

I certify that the foregoing resolution was passed and adopted by the Council of the City of Richmond at a regular meeting thereof held February 19, 2019, by the following vote:

AYES: Councilmembers Bates, Johnson, Martinez, Myrick, Willis,
Vice Mayor Choi, and Mayor Butt.
NOES: None.
ABSTENTIONS: None.
ABSENT: None.

PAMELA CHRISTIAN
CLERK OF THE CITY OF RICHMOND
(SEAL)

Approved:

TOM BUTT

Mayor

Approved as to form:

BRUCE GOODMILLER

City Attorney

State of California }
County of Contra Costa : ss.
City of Richmond }

I certify that the foregoing is a true copy of **Resolution No. 8-19**, finally passed and adopted by the City Council of the City of Richmond at a regular meeting held on February 19, 2019.

Certified as a True Copy

PAMELA CHRISTIAN
CLERK OF THE CITY OF RICHMOND, CALIFORNIA

BY *Johnnie Linder*
ASSISTANT

Exhibit A
City of Richmond
Design-Build Conflict of Interest Policy
for
Wastewater and Stormwater Construction Projects

Purpose

The purpose of this policy is to establish guidelines, as required under California Public Contract Code Section 22162, for a standard organizational conflict of interest policy, regarding the ability of a person or entity to submit a proposal to the City of Richmond (hereinafter referred to as “City”), or an entity acting under the authority of the City, as a design-build entity or to join a design-build team (hereinafter referred to as “Proposer”) for a wastewater or stormwater design-build project (hereinafter referred to as “Project”) procured pursuant to California Public Contract Code Section 22160 *et seq.* A person or entity’s failure to comply with these standards of conduct may result in potential liability to that person or entity and may preclude the person or entity from participation in the Project.

This conflict of interest policy is intended to accomplish the following goals:

- (1) Promote integrity, transparency, competitiveness and fairness in the City’s procurements and contracts for a Project;
- (2) Prevent Proposers from obtaining or appearing to obtain an unfair competitive advantage with respect to the City’s procurements and contracts for a Project;
- (3) Provide guidance to enable Proposers to make informed decisions while conducting business with the City related to the City’s Projects; and
- (4) Protect the validity of the City’s contracts, confidential and sensitive information concerning the City’s Projects, and other City interests related to the City’s Projects.

The City recognizes that its goals must be balanced against the need to not unnecessarily restrict the pool of potential Proposers available to participate in the City’s procurements and contracts for the City’s Projects. This conflict of interest policy neither purports to address every situation that may arise in the context of the City’s procurements and contracts for the City’s Projects, nor to mandate a particular decision by the City. The City retains the ultimate and sole discretion to determine on a case-by-case basis whether a conflict of interest exists and what actions may be appropriate to avoid, neutralize or mitigate any actual or potential conflict of interest or the appearance of any such conflict of interest.

Policy

A. Definitions.

Unless otherwise stated, the following terms shall have the following meaning:

- (1) "Design-Build" shall mean the Project delivery process in which both the design and the construction of the 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-Built contract.
- (3) "Design-Build Project" shall mean the particular Project the design and construction of which is being considered under this Policy.
- (4) "Design-Build Team" shall mean 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.
- (5) "Project Party" shall mean the persons or entities working with the City on the Design-Build Project, if any.
- (6) "Proposer" shall mean the prime consultant or prime contractor, and any subconsultants and subcontractors performing services for the prime consultant or prime contractor, that seeks to submit a proposal to the City 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, 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 City or of its objectivity in performing work for the City; (ii) an unfair competitive advantage for any Proposer with respect to a City 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 City (regardless of whether any such perception is accurate).
- (3) An organizational conflict of interest exists in the following instances:
 - (a) A Proposer is the City'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 City's general engineering or architectural consultant on the Design-Build Project.

- (b) A Proposer has assisted or is assisting the City 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 City 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 City 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 City. 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 City, 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 City 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 City 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 City 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 City 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 City 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 City to be inadequate to protect the City, the City may terminate the contract. If the contract is terminated, the City 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 City Project requests for qualifications and requests for proposals, and all City Design-Build contracts.