

EXHIBIT L

DESIGN-BUILD CONFLICT OF INTEREST

FOR

SAN BERNARDINO COUNTY

303 W. 5TH STREET DESIGN-BUILD PROJECT

PROJECT NUMBER 10.10.1699



**SAN BERNARDINO
COUNTY**

DESIGN-BUILD CONFLICT OF INTEREST PACKAGE

The following is the Conflict of Interest Policy as stated in County Policy No. 11-13.

POLICY STATEMENT AND PURPOSE

The purpose of this policy is to provide guidelines, as required by Public Contract Code section 22162, for the conflict of interest policy for consultants or contractors that submit a proposal as a Design-Build Entity, or seek to join a Design-Build Team, for a Design-Build project procured pursuant to Public Contract Code section 22160 et seq.

Organizational conflicts of interest can occur when, because of existing or planned activities or because of relationships with other persons, a 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.

DEPARTMENTS AFFECTED

All County agencies, departments, and Board-governed Special Districts utilizing the Design-Build procurement for a project under Public Contract Code section 22160 et seq.

DEFINITIONS

County means all County departments, agencies, and Board-governed Special Districts.

Design-Build means a project delivery process in which both the design and construction of a project are procured from a single entity.

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.

Design-Build Team means the Design-Build Entity itself and the individuals and other entities identified by the Design-Build Entity as members of its team. Members shall include the general contractor and, if utilized in the design of the project, all electrical, mechanical, and plumbing contractors.

Proposal means a Proposer's response to the County's Design-Build RFQ and RFP.

Proposer means any consultant or contractor that seeks to submit a proposal as a Design-Build Entity or to join a Design-Build Team.

Related Entity means an organization in which:

- (1) The same person or a majority of the same persons direct or control each entity; or
- (2) The same person or a majority of the same persons have a 50 percent or greater ownership interest in each business entity.

For purposes of this definition, "person" shall mean an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee, and any other organization or group of persons acting in concert.

Request for Proposals (RFP) is the process of inviting prequalified or short-listed entities to submit competitive sealed Proposals for a Design-Build project.

Request for Qualifications (RFQ) is the process to prequalify or short-list the Design-Build Entities whose Proposals shall be evaluated for final selection.

Sub-consultant and Subcontractor means an individual or business seeking to join a Design-Build Team or provide services to a Design-Build Team, on a County Design-Build project.

POLICY AMPLIFICATION

Based upon the guidance of Federal, State and local laws, codes, regulations and policies, the following conflict of interest approach will apply:

1. Consultants will NOT be allowed to participate as a Proposer or to join a Design-Build Team if any of the following is applicable:
 - a. The consultant is the County's general engineering or architectural consultant to the Design-Build project. Sub-consultants to the general engineering or architectural consultant that have 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 they terminate the agreement to provide work and provide no work for the County's general engineering or architectural consultant on the Design-Build project.
 - b. The consultant has assisted or is assisting the County in the management of the Design-Build project, including the preparation of the RFP language or evaluation criteria.
 - c. The consultant has conducted preliminary design services for the Design-Build project such as conceptual layouts, preliminary design, or preparation of bridging documents.
 - d. The consultant performed design work related to the Design-Build project for other stakeholders in the Design-Build project.
 - e. The consultant has performed work on a previous contract that specifically excludes them from participating as a Proposer or joining a Design-Build Team for the Design-Build project.
 - f. The consultant is under contract with any other entity or stakeholder to perform oversight on the Design-Build project.
 - g. The consultant has obtained any advice from, or discussed any aspect relating to, the project or procurement of the project with any person or entity with an organizational conflict of interest, including but not limited to, the consultants of any entity who have provided technical support on the Design-Build project.
2. Consultants who may have potential conflicts of interest in relation to the Design-Build project and wish to participate as a Proposer must:
 - a. Conform to federal, state and local conflict of interest rules and regulations.
 - b. Disclose all relevant facts relating to past, present or planned interest(s) of the Proposer's team (including the Proposer, Proposer's proposed consultants and Sub-consultants and/or Subcontractors and their respective chief executives, directors and key personnel) which may result in, or could be viewed as, an organizational conflict of interest in connection with any Design-Build procurement, including present or planned contractual or employment relationships with any current County employee.
 - c. Disclose in the response documents to a Design-Build RFQ and RFP, all the work performed in relation to the Design-Build project.
 - d. Provide all records of work performed in relation to the Design-Build project to the County so that all information can be evaluated and made available to all potential Design-Build Teams, if necessary.
 - e. Ensure that the consultant's contract, with any other entity or stakeholder in the Design-Build project, to perform services related to the Design-Build project has expired or has been terminated.
 - f. In cases where consultants on different consultant teams belong to the same parent company, each consultant should describe how the Sub-consultants and/or Subcontractors would avoid conflicts through the qualification and bid phases of the Design-Build project.
3. The Design-Build Conflict of Interest Package ("Package") is attached to the standard practice and includes the Conflict of Interest Policy, Conflict of Interest Checklist Instructions, Conflict of Interest Checklist ("Checklist"), and Disclosure of Potential Conflict of Interest Form ("Disclosure Form"). The Package will be provided to and is to be used by all Proposers, including Sub-consultants and Subcontractors, to assist in screening for potential organizational conflicts of interest. If a Proposer

determines a potential conflict of interest exists that is not covered by the Checklist, that potential conflict must still be disclosed.

4. If the Proposer determines a potential conflict of interest exists, it must disclose the potential conflict of interest to the County; however, such a disclosure will not necessarily disqualify a Proposer from being awarded a contract. The Proposer shall propose measures to avoid, neutralize or mitigate all potential conflicts. Proposer will provide the Disclosure Form separate from the Proposal and it will not be provided to the RFQ/RFP selection committee members. Separate County staff, with the assistance of County Counsel, will review the Disclosure Form and the appropriateness of the proposed mitigation measures to determine if the Proposer may be awarded the contract notwithstanding the potential conflict. The County reserves the right to cancel or amend the resulting contract if the successful Proposer failed to disclose a potential conflict, which it knew or should have known about, or if the Proposer provided information on the Disclosure Form that is false or misleading.
5. Upon review of the information provided by Proposer, the County will determine, in its sole discretion, if the Proposer has a conflict of interest.
6. After contract award, the consultant has an ongoing obligation to monitor 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 consultant must make an immediate and full written disclosure to the County that includes a description of the action that the consultant has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist and the consultant 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 consultant'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 consultant and is entitled to pursue any available legal remedies.
7. For other potential conflicts of interest not mentioned specifically above (e.g. employee changing companies, merger/acquisitions of firms, property ownership, business arrangements, financial interest) consultant shall disclose and address any conflicts of interest or potential conflicts of interest when participating as or joining a Design-Build Team. The County will then determine if a conflict of interest exists.
8. The successful Proposer, or Related Entities affiliated with the successful Proposer, are prohibited from competing on any agreement to provide construction inspection services for the Design-Build project. Except for Sub-consultants whose services are limited to providing surveying or material testing information, no Sub-consultants who provided design services in connection with the Design-Build project shall be eligible to compete for any agreement to provide construction inspection services for the Design-Build project.
9. The County recognizes that Proposers must maintain business relations with other public and private sector entities in order to continue as viable businesses. The County will take this reality into account as it evaluates the appropriateness of proposed measures to mitigate potential conflicts. It is not the intent of the County to disqualify Proposers based merely on the existence of a business relationship with another entity, but rather only when such relationship causes a conflict that potentially impairs the Proposer's ability to provide objective advice to the County. The County would seek to disqualify Proposers only in those cases where a potential conflict cannot be adequately mitigated.
10. This Policy and the accompanying Standard Practice must be referenced in the Design-Build RFQ and RFP documents, and the County's contract with the successful Design-Build Entity.

Conflict of Interest Checklist Instructions

Purpose of the Checklist. A Checklist will be provided to and is to be used by all Proposers to assist in screening for potential organizational conflicts of interest. The Checklist is for the internal use of the Proposers and does not need to be submitted to the County.

Checklist is not Exclusive. This Checklist serves as a guide only. There may be additional potential conflict of interest situations not covered by this Checklist. If a Proposer determines a potential conflict of interest exists that is not covered by this Checklist, that potential conflict must still be disclosed.

Use of the Disclosure Form. After review of the Checklist, the Proposers must complete the Disclosure Form and submit it along with the Proposal in a separate sealed and labeled envelope. If the Proposer determines a potential conflict of interest exists, it must disclose the potential conflict of interest to the County; however, such a disclosure will not necessarily disqualify a Proposer from being awarded a contract. Proposer will provide the Disclosure Form separate from the Proposal, and it will not be provided to the selection committee members. Separate County staff, with the assistance of County Counsel, will review the disclosure and the appropriateness of the proposed mitigation measures to determine if the Proposer may be awarded the contract notwithstanding the potential conflict. Resolution of the conflict of interest issues is ultimately at the sole discretion of the County.

Material Representation. The Proposer is required to submit the attached Disclosure Form either declaring, to the best of its knowledge and belief, that no potential conflict exists, or identifying potential conflicts and proposing remedial measures to mitigate such conflicts. The Proposer is also responsible to update conflict information if such information changes after the submission of the Proposal. Information provided on this Disclosure Form will constitute a material representation as to the award of this contract. The County reserves the right to cancel or amend the resulting contract if the successful Proposer failed to disclose a potential conflict, which it knew or should have known about; if the Proposer provided information on the Disclosure Form that is false or misleading; or if a new conflict of interest arises after contract award and the consultants proposed measures to avoid or mitigate the conflict are determined by the County to be inadequate to protect the County.

Approach to Reviewing Potential Conflicts. The County recognizes that the Proposers must maintain business relations with other public and private sector entities in order to continue as viable businesses. The County will take this reality into account as it evaluates the appropriateness of proposed measures to mitigate potential conflicts. It is not the intent of the County to disqualify Proposers based merely on the existence of a business relationship with another entity, but rather only when such relationship causes a conflict that potentially impairs the Proposer's ability to provide objective advice to the County. The County would seek to disqualify Proposers only in those cases where a potential conflict cannot be adequately mitigated.

Additional Guidance for Professionals Licensed by the California Board For Professional Engineers and Land Surveyors and the California Architects Board. The California Board For Professional Engineers and Land Surveyors provides additional guidance and has established conflict of interest rules which can be found at California Code of Regulations, title 16, sections 475 and 476. For professionals licensed by the California Architects Board see California Code of Regulations, title 16, article 9, professional conduct.

CONFLICT OF INTEREST CHECKLIST

(For Proposers Internal Use and Information Only – Does **NOT** need to be Provided to County)

An organizational conflict of interest may exist in any of the following cases:

- ☐ The Proposer, or its principals, own real property in a location where there may be a positive or adverse impact on the value of such property based on the recommendations, designs or other deliverables required by this contract.
- ☐ The Proposer is providing services to another governmental or private entity and the Proposer knows or has reason to believe, that the entity's interests are, or may be, adverse to the County's interest with respect to the specific project covered by this contract. **Comment:** the mere existence of a business relationship with another entity would not ordinarily need to be disclosed. Rather, this focuses on the nature of services commissioned by the other entity. For example, it would not be appropriate to propose on a County project if a City has also retained the Proposer for the purposes of persuading the County to stop or alter the project plans.
- ☐ The Proposer is providing design services to a private entity, including but not limited to developers, whom the Proposer knows or has good reason to believe, own or are planning to purchase property affected by the project covered by this contract, when the value or potential uses of such property may be affected by the Proposer's performance of work pursuant to this contract. "Property affected by the project" includes property that is in, adjacent to, or in reasonable proximity to the project. The value or potential uses of the private entity's property may be affected by the Proposer's work pursuant to the contract when such work involves, but is not limited to, providing recommendations for right-of-way acquisitions, access control and traffic flow. **Comment:** this provision does not presume Proposers know nor have a duty to inquire as to all of the business objectives of their clients. Rather, it seeks the disclosure of information regarding cases where the Proposer has a reason to believe that its performance of work under this contract may materially affect the value or viability of a project it is performing for the other entity.
- ☐ The Proposer has a business arrangement with a County employee or immediate family member of such employee, including promised future employment of such person, or a subcontracting arrangement with such person, when such arrangement is contingent on the Proposer being awarded this contract. This item does not apply to pre-existing employment of current or former County employees, or their immediate family members. **Comment:** this provision is not intended to supersede any statutes or policies applicable to its own employees accepting outside employment. This provision is intended to focus on identifying situations where promises of employment have been made contingent on the outcome of this particular procurement. It is intended to avoid a situation where a Proposer may have unfair access to "inside" information.
- ☐ The Proposer has, in previous work for the County, provided design services and such other professional services that potentially provides the Proposer with an unfair advantage in preparing a Proposal for this project. **Comment:** this provision will not, for example, necessarily disqualify a Proposer who provided surveying or material testing services for this project, however such work must be disclosed and all work products must be provided.
- ☐ The Proposer has, in previous work for the County, been given access to "data" relevant to this procurement or this project that is classified as "private" or "nonpublic" under the California Public Records Act (see GC 6250-6270), and such data potentially provides the Proposer with an unfair advantage in preparing a Proposal for this project. **Comment:** this provision is intended to avoid a situation where a Proposer has been provided information that cannot be provided to other Proposers.
- ☐ The Proposer has, in previous work for the County, managed or assisted in the management of the design-build project, performing such work as: helping to create the ground rules for the solicitation, writing the solicitation, or preparing evaluation criteria or evaluation guides for this solicitation.
- ☐ The Proposer, or any of its principals, because of any current or planned business arrangement, investment interest, or ownership interest in any other business, may be unable to provide objective advice to the County.

Disclosure of Potential Conflict of Interest Form

(To be completed by Proposer and provided to County in a separate sealed envelope from the Proposal)

Following review of the Design-Build Conflict of Interest Package for Projects under Public Contract Code section 22160 et seq., the Proposer hereby indicates that it has, to the best of its knowledge and belief:

_____ Determined that no potential organizational conflict of interest exists.

_____ Determined a potential organizational conflict of interest as follows:

Attach additional sheets as necessary.

Describe nature of the potential conflict(s):

Describe measures proposed to mitigate the potential conflict(s):

Signature

Date

If a potential conflict has been identified, please provide the name and phone number for a contact person authorized to discuss this Disclosure Form with County personnel.

Name

Phone Number