

GARDEN GROVE CITY COUNCIL

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE
ADOPTING AN ORGANIZATIONAL CONFLICT OF INTEREST POLICY FOR DESIGN-
BUILD PROJECTS

WHEREAS, the City of Garden Grove has enacted regulations authorizing the design-build procurement process for certain public works projects as provided for under California Public Contract Code Section 22160 et seq.; and

WHEREAS, California Public Contract Code Section 22162 requires the City to adopt an organizational conflict of interest policy for design-build projects.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Garden the policy attached hereto as Exhibit "A" be approved and adopted.

Exhibit "A"

ORGANIZATIONAL CONFLICT OF INTEREST POLICY FOR DESIGN- BUILD PROJECTS

PURPOSE

In accordance with Public Contract Code Section 22162, the purpose of this policy is to clarify the City of Garden Grove's organizational conflict of interest guidelines applicable to design-build projects procured pursuant to Public Contract Code Section 22160, et seq.

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.

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 City or of its objectivity in performing work for the City, (ii) an unfair competitive advantage for any bidder or proposer with respect to a City procurement; or (iii) a perception or appearance of impropriety with respect to any of the City'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).

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 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 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.

Proposers' Obligations

Proposers must immediately make a full written disclosure to the Public Works Director and Purchasing Manager, and shall 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 City. Such disclosure will not necessarily disqualify a Proposer from being awarded a contract, however. The Proposer shall propose measures to avoid, neutralize, or mitigate all potential or actual conflicts. The City, at 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.

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 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 City 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 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.

Incorporation by Reference

This Policy shall be incorporated by reference into all design-build contracts executed by the City.