

COUNTY OF SONOMA
CONFLICT OF INTEREST POLICY FOR DESIGN-BUILD PROCUREMENTS

1. Policy Background

The County of Sonoma (“County”) is a general law county of the State of California. The County is governed by its Board of Supervisors.

For the purposes of this Conflict of Interest Policy for Design-Build Procurements (“Policy”), “design-build” means a project delivery process in which both the design and construction of a project are procured from a single entity and includes without limitation “progressive design-build,” in which such single entity is selected through a qualifications-based selection at the earliest feasible stage of the project and which offers flexibility to retain a different entity for the construction phase of the project after a specified portion of the design phase is complete. (See, e.g., California Pub. Contract Code §§ 22170 et seq.)

The County may use a progressive design-build delivery method for certain projects.

2. Policy Purpose

This Policy applies to any design-build procurement and resulting contract by the County for a project (“Project”), and any procurement and contracting by the selected design-build entity or its subsidiaries for engineering services, inspection, or technical support in the administration of the design-build portion of such Project.

This Policy prescribes ethical standards of conduct applicable to persons and entities entering into a design-build contract with the County and their subcontractors of all tiers, broadly defined herein as “Proposers,” to include prime contractors, constituent joint venture partners, team members, consultants, subcontractors, and in appropriate cases, suppliers, at all tiers.

The County adopted this Policy in furtherance of California and federal laws that prohibit organizational conflicts of interest in public contracting. For example, California law prohibits public officers and employees from making contracts in which they are financially interested. (Gov. Code, § 1090.) Section 1090’s prohibitions apply to independent contractors “when they have duties to engage in or advise on public contracting that they are expected to carry out on the government’s behalf.” (*People v. Superior Court (Sahlolbei)* (2017) 3 Cal.5th 230, 245.) Federal law similarly prohibits federal funding recipients from making contracts that result in an organizational conflict of interest. (E.g., 2 C.F.R. §§ 200.112, 200.318; Federal Transit Administration, *Third-Party Contracting Guidance*, FTA C 4220.1G (Jan. 17, 2025), § VI-2.e(9).)

The Policy is distinct from and in addition to the County’s adopted conflicts of interest code, and County’s adopted procurement policies promulgated pursuant to Sonoma County Code Section 2-53.

3. Policy Goals

This Policy is intended to accomplish the following procurement goals:

- Promoting integrity, transparency, competitiveness and fairness in the County’s design-build procurements.
- Preventing Proposers from obtaining or appearing to obtain an unfair competitive advantage with respect to the County’s design-build procurements.
- Providing guidance to enable Proposers to make informed decisions while conducting business with the County.
- Protecting the validity of the County’s design-build procurement.

The County recognizes that these goals must be balanced against the need to not unnecessarily restrict the pool of potential Proposers available to participate in the County’s design-build procurements. The County recognizes that Proposers must maintain business relationships with other public and private sector entities in order to continue as viable businesses. 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 disqualification is required under law and this Policy.

4. Thresholds for Organizational Conflicts of Interest

“Organizational Conflict of Interest” means a circumstance arising out of a Proposer’s existing or past activities (including projects outside of the County’s jurisdiction), business or financial interests, familial relationships, contractual relationships, and/or organizational structure (i.e., parent entities, subsidiaries, etc.) that results or would result in:

- Impairment or potential impairment of a Proposer’s ability to render impartial assistance or advice to the County or of its objectivity in performing work for the County,
- An unfair competitive advantage for any Proposer bidding or proposing or offering on an County design-build procurement, or
- A perception or appearance of impropriety or unfair competitive advantage with respect to County’s design-build procurement (regardless of whether any such perception is accurate).

Based upon the guidance of State and Federal laws, codes, regulations and policies, Proposers will NOT be allowed to propose or join a design-build team in the following circumstances:

- The Proposer performed program management, program controls, and/or construction management services for the design-build component of the relevant Project, related to contracting or advising on contracting for the design-build component of that Project.
- The Proposer is the County’s general engineering consultant (GEC) for the design-build component of the relevant Project, or is a subconsultant to the GEC that has engaged in or has advised the County (through the GEC) on contracting for the design-build component of that Project.

- The Proposer has engaged in or has advised the County on contracting for the design-build component of the relevant Project, including the preparation of Request for Qualifications or Request for Proposals.
- The Proposer has materially assisted the County in management of or assistance in the management of contracting for the design-build component of the relevant Project.
- The Proposer has performed work on a previous contract that specifically excludes them from participating as a Proposer or joining a design-build team for the relevant Project.
- The Proposer is under contract to perform oversight on the relevant Project on behalf of the County or Project stakeholders, now or in the future.
- The Proposer has obtained substantive advice from or otherwise substantively discussed the procurement of the design-build component of the relevant Project with any person or entity with an Organizational Conflict of Interest as to the design-build component of that Project, resulting in an unfair competitive advantage.
- The Proposer's employees are identified in the County's conflict of interest code or otherwise file a Form 700 resulting from their work for the County.
- The Proposer is a subsidiary of a parent organization, and the parent organization or another subsidiary of the parent organization has an Organizational Conflict of Interest as to the design-build component of the relevant Project.
- The Proposer serves currently, or would serve, in a capacity of acting as the County's agent for review, approval, or acceptance of the Proposer's own prior work product.

Proposers MAY be allowed to propose or join a design-build team in the following circumstances, provided that the Proposer can demonstrate (through substantiating documentation, as requested by the County) that its work did not include engaging in or advising on contracting for the design-build component of the relevant Project, broadly interpreted:

- The Proposer performed preliminary design services, prepared preliminary designs, feasibility studies, and conceptual designs.
- The Proposer provided environmental support services, including data collection and drafting of environmental documents for NEPA and CEQA compliance.
- The Proposer performed program management, program controls, and/or construction management services, including planning and pre-construction, for other components of the relevant Project.

Proposers are cautioned that determination of a conflict of interest in cases involving prior services connected to the relevant Project is highly fact-specific.

5. Proposers' Obligations to Identify and Disclose Any Potential Organizational Conflict of Interest

Proposers participating in and bidding, proposing, or offering on a design-build contract for a County Project must agree to comply fully with and be bound by the applicable provisions of federal, state, and local laws related to conflicts of interest, including without limitation (a) the County conflict of interest code; (b) California Government Code sections 1090 et seq.; and (c) California Government Code sections 87100 et seq.

Proposers participating in and bidding, proposing, or offering on a design-build contract for a County Project are obligated to identify and promptly disclose any potential Organizational Conflicts of Interest to the County pursuant to this Policy and the written requirements established in the procurement documents. Proposers disclosing potential Organizational Conflicts of Interests are encouraged to propose mitigation measures for the County's consideration.

Proposers shall use all reasonable efforts to arrange their affairs so as to prevent Organizational Conflicts of Interest from arising.

Proposers must undertake reasonable due diligence, including necessary conflict searches, to determine whether new actual, perceived or potential Organizational Conflicts of Interest have arisen whenever engaged in a proposal process or whenever working under a design-build contract for a County Project.

An Organizational Conflict of Interest may arise at any time, and a Proposer's obligation to disclose is ongoing. Each Proposer shall consider whether disclosure is required in connection with changed circumstances, including by example only new hires, changes in the company's board of directors, mergers and acquisitions, changes in property ownership, and new business relationships including joint ventures and contractor/subcontractor relationships.

Proposers whose responsibilities to the County include review, supervision or oversight of work by other entities must pay careful attention to their relationships with the other entities and their affiliates and must take care to avoid relationships with such other entities that would give rise to an Organizational Conflict of Interest. Due diligence must extend to investigation of current and past relationships that exist within or outside of the County's jurisdiction and, if the Proposer is a corporate entity, to officers or directors of the Proposer.

The failure to disclose any actual, perceived or potential Organizational Conflict of Interest may result in serious consequences to the Proposer and its affiliates (see below Remedies).

6. Disclosure and Determination Process

A Proposer's disclosure to the County of a potential Organizational Conflict of Interest in relation to the design-build component of a County Project must contain a detailed description of:

- The facts and circumstances giving rise to the actual or potential Organizational Conflict of Interest. Disclose all relevant facts relating to past, present or planned interest(s) of the Proposer's team (including the Proposer, Proposer's proposed consultants, subconsultants and 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 for the Project, including present or planned contractual or employment relationships with any current employee of the County.

- All work performed in relation to the design-build component of the relevant Project.
- Provide relevant records of such work performed for the County so that all information can be evaluated and made available to all potential design-build teams, if necessary.
- Contracts with any related entity to perform services related to the design-build component of the relevant Project and the status of such contracts (e.g., active, expired, terminated).
- In cases where Proposers on different design-build teams belong to the same parent company, each Proposer must describe how the subconsultants and subcontractors would avoid conflicts through the qualification bid phases of the design-build procurement.
- Any efforts the Proposer has taken or proposes to take to mitigate the conflict.

The County may request additional information or records to support its review. Upon review of the information provided above and from any other source, the County will determine, in its sole discretion, if the Proposer has an Organizational Conflict of Interest and is disqualified from the design-build procurement opportunity. The County may publicly disclose/publish information and relevant records related to its review and determination.

7. Remedies for Conflicts and Failure to Comply with Policy

If the County determines, in its sole discretion, that a Proposer has an Organizational Conflict of Interest or has failed to comply with this Policy in any respect (County any failure to disclose an actual, perceived or potential Organizational Conflict of Interest), the County may, among other things, take the following actions:

- Preclude and/or disqualify the Proposer, as well as any other persons or legal entities on the Proposer's team, from participation in the County's design-build procurement;
- Require the Proposer, as well as any other persons or legal entities on the Proposer's team, to implement mitigating measures;
- Amend the contract under which the Proposer is performing work for the County;
- Cancel or terminate the contract, including the possibility of termination for default; and/or
- Exercise any and all other remedies available at law or in equity.

If the County cancels a contract as specified above, it will have no obligation, responsibility or liability to reimburse all or part of the costs incurred or alleged to have been incurred by the Proposer, its affiliates or other team members. Additionally, the County shall be entitled to recover

any and all payments made to the Proposer subsequent to the date when the Proposer became aware of or should have become aware of the existence of the Organizational Conflict of Interest.

8. Application of the Policy to Proposer's Employees

If the County determines that a potential or actual Organizational Conflict of Interest exists for a particular Proposer, an Organizational Conflict of Interest shall also be considered to apply to any employee of such Proposer that has participated in a material way in the performance of work (or other facts and circumstances) giving rise to the determination. If such individual leaves the Proposer's employment, the potential or actual Organizational Conflict of Interest shall apply to such individual in the same manner as it applies to the Proposer. However, the individual's new employer (if not an affiliate of the original employer) will not be considered to have an Organizational Conflict of Interest provided the new employer adopts and implements safeguards and mitigation measures satisfactory to the County in its sole discretion.

9. Limitations of this Policy

This Policy does not purport to address every situation that may arise in the context of a County design-build procurement.

This Policy does not mandate a particular decision or determination by the County.

This Policy does not address all applicable requirements that may affect persons and entities wishing to enter contracts with the County.

Nothing in this Policy is intended to limit, modify, supersede or otherwise alter the effect of other relevant federal, State, or local regulations, statutes or rules.

Nothing in this Policy restricts or binds the authority of a court of competent jurisdiction to make a final determination of whether an Organization Conflict of Interest exists. The County is not required to delay its procurement process during the pendency of any legal challenge.

Proposers may request an Advice Letter or an Opinion from the Fair Political Practices Commission with respect to specific factual circumstances. The County may defer to an opinion of the Fair Political Practices Commission, timely issued and based on the same facts before the County.