



# COUNTY OF EL DORADO, CALIFORNIA

## BOARD OF SUPERVISORS POLICY

Subject:  DESIGN-BUILD CONTRACTS – CONFLICT OF INTEREST	Policy Number:  C-19	Page Number:  1 of 9
	Date Adopted: 06/09/15	Effective Date: 06/09/15

### I. 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, consistent with applicable law, regarding the ability of a person or entity to submit a proposal as a design-build entity or to join a design-build team (“Proposer”) for a design-build project procured pursuant to California Public Contract Code section 22160 et seq.

### II. POLICY

A. A consultant will NOT be allowed to participate as a Proposer or to join a design-build team in response to a design-build Request for Proposals (RFP) if any of the following circumstances is applicable:

1. The consultant is the County’s general engineering, architectural or design consultant (hereinafter collectively referred to as “general design consultant”) to the particular design-build project. Subconsultants to the general design consultant that have not yet performed work on the contract to provide services for the particular design-build project may participate as a Proposer or join a design-build team.
2. The consultant has assisted or is assisting the County in the management or procurement of the particular design-build project, including drafting or preparation of the RFP language or evaluation criteria.
3. The consultant has conducted preliminary design services for the particular design-build project such as engineering analysis, environmental analysis, feasibility studies, preliminary designs, conceptual layouts, preparation of bridging documents, etc.
4. The consultant performed design work related to the particular design-build project for other stakeholders.
5. 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 particular design-build project.
6. The consultant is under contract with any other entity or stakeholder to perform oversight on the particular design-build project after letting.
7. 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 particular design-build project.



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**B.** Consultants who may have potential conflicts of interest in relation to the design-build program or project and wish to participate as a Proposer or join a design-build team must:

1. Conform to federal and state conflict of interest rules and regulations.
2. 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 subconsultants 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.
3. Disclose in the response documents to a design-build Request for Qualifications (RFQ) and RFP, all of the work performed in relation to the design-build program and project.
4. Provide ALL 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.
5. 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 or program has expired or has been terminated.
6. In cases where consultants on different consultant teams belong to the same parent company, each consultant shall describe how the subconsultants and or subcontractors would avoid conflicts through the qualification and bid phases of the design-build project.

Upon review of the information provided above, the County will determine, in its sole discretion, if the consultant has obtained an unfair competitive advantage.

**C.** The successful Proposer for a design-build RFP or firms affiliated with this Proposer are prohibited from competing on any agreement to provide construction inspection services for the design-build project. An affiliated firm is one, which is subject to the control of the same persons, through joint ownership or otherwise. Except for subconsultants whose services are limited to providing surveying or material testing information, no subconsultants 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.



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### III. PROCEDURE

- A. A conflict of interest checklist will be provided to and is to be used by all Proposers to assist in screening for potential organizational conflicts of interest. Please note that this checklist serves as a guide only, and that there may be additional potential conflict 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.
- B. The Proposer shall complete the Disclosure of Potential Conflict of Interest form and submit it along with the Proposer's RFP response. A disclosure of a potential conflict will not necessarily disqualify a Proposer from being awarded a contract. The disclosure form shall be provided separate from the bound proposal, and it will not be provided to the RFQ/RFP selection committee members. Separate County contract management staff, in consultation with County Counsel, will review the disclosure and the appropriateness of the proposed mitigation measures to determine whether the conflict disqualifies the Proposer from award of the 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, or if the Proposer provided false or misleading information on the Disclosure Form.
- C. Upon review of the information provided by Proposer, the County will determine, in its sole discretion, if the Proposer has a conflict of interest. The County recognizes that Proposers must maintain business relationships with other public and private sector entities in order to continue as a viable business. The County will take this into account as it evaluates the appropriateness of the 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 and potentially impairs the Proposer's ability to provide objective advice to the County. The County will disqualify Proposers in cases where a potential conflict cannot be adequately mitigated.

### V. RESPONSIBLE DEPARTMENT

Chief Administrative Office, Procurement & Contracts Division



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### VI. DATES ISSUED AND REVISED; SUNSET DATES:

<b>Issue Date:</b>	06/09/15	<b>Sunset Review Date:</b>	06/08/19
<b>Original Adoption Date:</b>	06/09/15	<b>Previous Revision Date:</b>	N/A



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### CONFLICT OF INTEREST CHECKLIST

As used herein, the word “Proposer” includes both the prime contractor/consultant and all proposed subcontractors/subconsultants.

#### **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 deliverable 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 interest 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 another entity 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 current or potential site for a 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 providing recommendations for property interest acquisition, access control and the design or location of frontage roads and interchanges. **Comment:** this provision does not presume Proposers know nor have a duty to



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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 County 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 professional services that potentially provide 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.



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- The Proposer has, in previous work for the County, managed or assisted in the management of the County’s design-build program, performing such work as: helping to create the ground rules for this solicitation, writing this 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.

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.

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



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interest when participating as or joining a Design-Build Team. The County will then determine if a conflict of interest exists.

The successful Proposer and affiliates of the successful Proposer are prohibited from competing on any agreement to provide construction inspection services for the design-build project. Except for subconsultants whose services are limited to providing surveying or material testing information, no subconsultants who provided design services in connection with the design-build project shall be eligible to compete for any agreement to provide construction services for the design-build project.





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**DISCLOSURE OF POTENTIAL CONFLICT OF INTEREST FORM**

Having had the opportunity to review Organizational Conflict of Interest Checklist, 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):

Name and title of Proposer's authorized representative: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_