

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
BOARD ACTION SUMMARY

DEPT: Chief Executive Office

BOARD AGENDA #: *B-1

AGENDA DATE: April 19, 2016

SUBJECT:

Approval to Adopt Conflict of Interest Policy that would Apply to Bidders and Proposers Submitting Responses to an Invitation to Bid for Construction Projects or Request for Proposals for Design-Build Projects

BOARD ACTION AS FOLLOWS:

No.

2016-179

On motion of Supervisor O'Brien, **Seconded by Supervisor** Withrow
and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Withrow, DeMartini, and Chairman Monteith

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) Approved as recommended

2) Denied

3) Approved as amended

4) Other:

MOTION:

ATTEST: Elizabeth A. King
ELIZABETH A. KING, Clerk of the Board of Supervisors

File No.

**THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
AGENDA ITEM**

DEPT: Chief Executive Office

Urgent Routine

phot

BOARD AGENDA #: *B-1

AGENDA DATE: April 19, 2016

CEO CONCURRENCE: _____

4/5 Vote Required: Yes No

SUBJECT:

Approval to Adopt Conflict of Interest Policy that would Apply to Bidders and Proposers Submitting Responses to an Invitation to Bid for Construction Projects or Request for Proposals for Design-Build Projects

STAFF RECOMMENDATIONS:

1. Approve a County-wide standard organizational Conflict of Interest policy, consistent with applicable law, regarding the ability of a person or entity to submit a proposal as a construction contractor ("Bidder") for all County construction projects, however procured.
2. Approve a Conflict of Interest policy, as required under California Public Contract Code section 22162, 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 all County design-build projects procured pursuant to California Public Contract Code section 22160, et seq.

DISCUSSION:

California Public Contract Code Section 22162, which became effective in in 2015, requires that the County adopt a Conflict of Interest policy related to all design-build projects. The purpose of this policy is to establish guidelines 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 for a design-build project pursuant to California Public Contract Code section 22160 et seq.

County staff recommends that in addition to adopting a Conflict of Interest policy that comports with the requirements of the Public Contract Code for design-build projects, it would be advantageous to the County to have a County-wide Conflict of Interest policy that would govern the eligibility of bidders for all County construction projects.

The attached draft Conflict of Interest policy would render potential Proposers / Bidders ineligible to bid on a County construction project or join a design-build team for a design-build project under the following circumstances:

1. The contractor is the County's general engineering, architectural or design contractor.

Approval to Adopt Conflict of Interest Policy that would Apply to Bidders and Proposers Submitting Responses to an Invitation to Bid for Construction Projects or Request for Proposals for Design-Build Projects

2. The contractor 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 contractor 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 contractor performed design work related to the particular design-build project for other stakeholders.
5. The contractor 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 contractor is under contract with any other entity or stakeholder to perform oversight on the particular design-build project.
7. The contractor 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 contractors of any entity who have provided technical support on the particular design-build project.

POLICY ISSUE:

This policy is consistent with the State of California Contract Code, Section 22162 and Government Code, Section 1090, and is required as part of the procurement process for design-build projects, and will be advantageous to the County in connection with the procurement of other types of construction projects.

FISCAL IMPACT:

This item has no fiscal impact to the County.

BOARD OF SUPERVISORS' PRIORITY:

Adoption of this policy is consistent with the Board of Supervisors policy of Efficient Delivery of Public Services by ensuring the process for awarding a design-build project is fair and objective.

STAFFING IMPACT:

Oversight of this policy will be handled by existing County staff.

CONTACT PERSON:

Patricia Hill Thomas, Chief Operations Officer, Telephone, (209) 525-6333

Approval to Adopt Conflict of Interest Policy that would Apply to Bidders and Proposers Submitting Responses to an Invitation to Bid for Construction Projects or Request for Proposals for Design-Build Projects

ATTACHMENT(S):

1. Conflict of Interest Policy for County Construction Projects

ATTACHMENT 1

STANISLAUS COUNTY CONFLICT OF INTEREST POLICY
EFFECTIVE
April 19, 2016

I. PURPOSE

- A. This policy has two purposes:
- a. To establish guidelines for a County-wide standard organizational conflict-of-interest policy, consistent with applicable law, regarding the ability of a person or entity to submit a proposal as a construction contractor (“Bidder”) for all County construction projects, however procured.
 - b. To establish guidelines for a conflict-of interest policy, as required under California Public Contract Code section 22162, 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 all County design-build projects procured pursuant to California Public Contract Code section 22160, et seq.

II. POLICY

- A. A potential proposer will NOT be allowed to participate as a Bidder or Proposer if any of the following circumstances is applicable:
1. The potential Bidder or Proposer is the County’s engineering, architectural or design consultant (hereinafter collectively referred to as “design consultant”) for the particular project, including but not limited to the bridging architect. Subconsultants to the design consultant that have not yet performed work on the contract to provide services for the particular project may participate as a Bidder or Proposer or join a design-build team.
 2. The potential Bidder or Proposer has assisted or is assisting the County in the management or procurement of the particular project, including drafting or preparation of the proposal or bid language or evaluation criteria.
 3. The potential Bidder or Proposer has conducted services for the particular project such as environmental analysis, feasibility studies, needs assessments, design services, preparation of bridging documents, and/or related activities.
 4. The potential Bidder or Proposer has performed work on a previous contract that specifically excludes them from participating as a Bidder or Proposer or joining a design-build team for the particular project.
 5. The potential Bidder or Proposer is under contract with any other entity or stakeholder to perform oversight on the particular project.
 6. The potential Bidder or Proposer 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 members of any entity who have provided technical support on the particular project.
- B. Potential Bidders or Proposers who may have potential conflicts of interest with respect to the project and wish to participate as a Bidder or 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 Bidder's/Proposer's team (including the Bidder/Proposer, their proposed consultants, and subconsultants and or subcontractors and their respective chief executives, directors and key personnel) that may result in, or could be viewed as, an organizational conflict of interest in connection with any procurement including present or planned contractual or employment relationships with any current County employee.
 3. Disclose in the response documents to a Request for Qualifications, Request for Proposals, and/or Invitation to Bid, all of the work performed in relation to the program and/or 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 Bidders/Proposers, if necessary.
 5. Ensure that the consultant's contract with any other entity, or stakeholder in the project, to perform services related to the 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 project.
 7. For other potential conflicts of interest not specifically mentioned above (e.g. employee changing companies, merger/acquisition of firm, financial interest) consultant shall disclose and address any conflicts of interest.
- C. Upon review of the information provided above, the County will determine, in its sole discretion, if the potential Bidder or Proposer has obtained an unfair competitive advantage.
- D. The successful Bidder or Proposer and firms affiliated with the Bidder or Proposer are prohibited from competing on any agreement to provide construction inspection services for the project.
1. An affiliated firm is one 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 project shall be eligible to compete for any agreement to provide construction inspection services for the project.
- E. After contract award, each Bidder/Proposer 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 Bidder/Proposer 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 proposer 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 Bidder's/Proposer'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 Bidder/Proposer and is entitled to pursue any available legal remedies.

III. PROCEDURE

- A. A conflict of interest checklist will be provided to and is to be used by all Bidders/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 Bidder/Proposer shall complete the Disclosure of Potential Conflict of Interest form and submit it along with the Bidder's/Proposer's bid or proposal or response. A disclosure of a potential conflict will not necessarily disqualify a Bidder or 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 Bidder or Proposer from award of the contract. The County reserves the right to cancel or amend the resulting contract if the successful Bidder or Proposer failed to disclose a potential conflict, which it knew or should have known about, or if the Bidder or Proposer provided false or misleading information on the Disclosure Form.
- C. Upon review of the information provided by Bidder/Proposer, the County will determine, in its sole discretion, whether Bidder/Proposer has a conflict of interest. The County recognizes that Bidders/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 Bidders/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 Bidder's/Proposer's ability to provide objective advice to the County. The County will disqualify Bidders/Proposers in cases where a potential conflict cannot be adequately mitigated.