

RESOLUTION NO. 19-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMECULA APPROVING A CONFLICT OF INTEREST POLICY FOR DESIGN-BUILD PROJECTS

WHEREAS, California Public Contract Code Section 22160 et seq. authorizes cities and other local agencies to procure design-build contracts for qualified public works projects in excess of \$1,000,000, awarding the contract to either the lowest responsible bidder or to the design-build entity whose proposal provides the best value to the public; and

WHEREAS, California Public Contract Code Section 22162 requires each local agency seeking to use the design-build procurement method to develop guidelines for a standard organizational conflict-of-interest policy, consistent with applicable law, regarding the ability of a person or entity, that performs services for the local agency relating to the solicitation of a design-build project, to submit a proposal as a design-build entity, or to join a design-build team; and

WHEREAS, City staff have determined that the attached Organizational Conflict of Interest Policy for Design-Build Projects is appropriate for the City and consistent with the requirements of Section 22162.

**THE CITY COUNCIL OF THE CITY OF TEMECULA DOES HEREBY RESOLVE AS
FOLLOWS:**

Section 1. The information set forth above is true and correct.

Section 2. The City Council hereby adopts the attached Organizational Conflict of Interest Policy for Design-Build Projects.

Section 3. The City Council hereby authorizes and directs the City Manager and the Director of Public Works to take all actions necessary to implement the Organizational Conflict of Interest Policy for Design-Build Projects.

Section 4. This Resolution shall take effect upon its adoption.

Section 5. Notice of Adoption. The City Clerk shall certify to the adoption of this Resolution and cause it to be published in the manner required by law.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Temecula
this 28th day of May, 2019.

Michael S. Naggar, Mayor

ATTEST:

Randi Johl, City Clerk

[SEAL]

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss
CITY OF TEMECULA)

I, Randi Johl, City Clerk of the City of Temecula, do hereby certify that the foregoing
Resolution No. 19- was duly and regularly adopted by the City Council of the City of Temecula
at a meeting thereof held on the 28th day of May, 2019, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

Randi Johl, City Clerk

CITY OF TEMECULA, CALIFORNIA

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 establish the City of Temecula'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 in a proposal to the City as a design-build entity, or joining a design-build team ("Proposers") may not have organizational conflicts of interest. For purposes of this policy, the terms "design-build", "design-build entity", and "design-build team" shall have the meanings ascribed in Public Contract Code section 22161.

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 1090.

PROPOSERS' OBLIGATIONS

Proposers shall make a full written disclosure to the City of the facts and circumstances regarding an organizational conflict of interest or a potential organizational conflict of interest and shall have a continuing obligation to do so until they are no longer Proposers.

Proposers shall disclose all relevant facts relating to past, present or planned interests of the proposer's design-build team (including the Proposer, proposed consultants and subconsultants and subcontractors and their respective directors and key personnel) that may result in, or could be viewed as, an organizational conflict of interest in connection with any design-build project procurement, including present or planned contractual or employment relationships with any current City employee.

Proposers shall disclose in the response documents to a design-build request for qualifications and request for proposals all the work performed in relation to the particular proposed design-build project.

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. The disclosure may not necessarily disqualify a proposer from being awarded a contract. The proposer shall propose measures to avoid, neutralize, or mitigate all conflicts or potential conflicts. The City, in 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. The City has the right to cancel or amend a resulting design-build project contract if the successful proposer failed to disclose a conflict or potential conflict that it knew or should have known about, or if the proposer provided information in its disclosure that is false or misleading.

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 the 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 any 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 and included as part of all City design-build project requests for qualifications and requests for proposals and all City design-build contracts.

APPROVED BY

DATE
