

RESOLUTION NO. 2021-092

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF CORONA, CALIFORNIA, ESTABLISHING A
CONFLICT OF INTEREST POLICY GOVERNING
DESIGN-BUILD PROJECTS**

WHEREAS, the City of Corona (“City”) is statutorily authorized to utilize the design-build project delivery method for certain statutorily designated projects, in accordance with Public Contract Code section 22160 et seq. and other applicable statutory provisions; and

WHEREAS, Section 22162(c) of the Public Contract Code requires the City to adopt a standard organizational conflict of interest policy applicable to its design-build projects, as a condition of utilizing the design-build project delivery method; and

WHEREAS, the City desires to adopt an organizational conflict of interest policy applicable to its design-build projects in compliance with Public Contract Code section 22162(c).

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OR
THE CITY OF CORONA, CALIFORNIA, AS FOLLOWS:**

SECTION 1. Recitals. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

SECTION 2. Conflict of Interest Policy. In accordance with Public Contract Code section 22162(c), the City hereby adopts the “City of Corona Conflict of Interest Policy Covering Design-Build Projects” attached hereto as Exhibit A and incorporated herein by this reference.

SECTION 3. Effective Date. This Resolution shall take effect upon its adoption.

PASSED, APPROVED AND ADOPTED this 21st day of July, 2021.

Mayor of the City of Corona, California

ATTEST:

City Clerk of the City of Corona, California

CERTIFICATION

I, Sylvia Edwards, City Clerk of the City of Corona, California, do hereby certify that the foregoing Resolution was regularly passed and adopted by the City Council of the City of Corona, California, at a regular meeting thereof held on the 21st day of July, 2021, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Corona, California, this 21st day of July, 2021.

City Clerk of the City of Corona, California

EXHIBIT “A”

CITY OF CORONA CONFLICT OF INTEREST POLICY COVERING DESIGN-BUILD PROJECTS

The purpose of this document is to clarify the City of Corona’s (“City”) position on potential conflicts of interest that may arise when consultants or contractors (collectively, “Proposer”) perform work for the City relating to potential design-build projects.

Organizational conflicts of interest can occur when, because of existing or planned activities or because of relationships with other entities, a Proposer is unable or potentially unable to render impartial assistance or advise the City; a Proposer’s objectivity in performing the contract work is or might be otherwise impaired; or a Proposer has an unfair competitive advantage.

The policies and guidelines concerning the organizational conflicts of interest found herein will be specified or referenced in the design-build Request for Qualifications (“RFQ”) and Request for Proposal (“RFP”) documents, as well as any contract for the engineering/design services, inspection, or technical support in the administration of the design-build projects.

Resolution of conflict of interest issues is ultimately at the sole discretion of the City. The City reserves the right to cancel or amend the resulting contract(s) if a successful Proposer failed to disclose a potential conflict, which it knew or should have known about, or if a Proposer provided information in response to an inquiry from the City that is false or misleading.

After award, conflict of interest guidelines and policies shall continue to be monitored and enforced. If an organizational conflict of interest is discovered after award, the Proposer will make an immediate and full written disclosure to the City that includes a description of the action that the Proposer 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 of interest, the City may terminate the contract with the Proposer for material breach. If the Proposer 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 the Proposer.

APPROACH

The following approach to conflict of interest will apply to City procurements relating to City design-build projects:

- I. A potential Proposer will not be allowed to participate as a design-build entity or to join a design-build team if, without limitation, any of the following is true:
 - A. The Proposer is the City's general engineering or design consultant on the design-build project. Subconsultants and subcontractors to the Proposer that have not performed work on the contract to provide services for the design-build project may participate as a design-build entity or join a design-build team.
 - B. The Proposer has assisted the City in managing or is assisting in the management of the design-build project, including the preparation of the RFQ or RFP language or evaluation criteria.
 - C. The Proposer has conducted preliminary design services for the design-build project such as geometric layouts, bridge-type selection, preliminary bridge design, etc.
 - D. The Proposer performed design work related to the design-build project for other project stakeholders.
 - E. The Proposer has performed work on a previous contract that specifically excludes them from participating as a design-build entity or joining a design-build team on the design-build project.
 - F. The Proposer is under contract with any other entity or stakeholder to perform oversight on the design-build project.
 - G. The 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 consultants and contractors of any entity who has provided technical support on the design-build project.
- II. Proposers who may have potential conflicts-of-interest in relation to the design-build project and wish to participate as a Proposer or join a design-build team must:
 - A. Conform to applicable federal and state conflict of interest rules and regulations including, without limitation, the California Political Reform Act, California Government Code Section 1090, the federal Copeland "Anti-Kickback" Act and federal conflict of interest rules set forth in the federal funding agency's administrative grant and cooperative agreement regulations. Federal conflict of interest rules and regulations shall only apply where the design-build project receives federal funding.

- B. Disclose all relevant facts relating to past, present or planned interest(s) of the Proposer's team (including the Proposer, Proposer's proposed consultants, contractors, subconsultants and/or subcontractors and their respective chief executives, directors and key personnel) which may result, 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 employee of the City.
- C. Disclose in the response documents to a design-build RFQ and RFP, all of the work performed in relation to the design-build project being procured under the RFQ and RFP.
- D. Provide all records of the work performed in relation to the design-build project to the City so that all information can be evaluated and made available to all potential design-build teams, if necessary.
- E. Ensure that the Proposer's contract with any entity to perform services related to the design build project has expired or has been terminated.

Upon review of the information provided above, the City Manager will determine, in his or her sole discretion, if the Proposer has an organizational conflict of interest. Decisions of the City Manager regarding organizational conflicts of interest may be appealed to the City Council. The decision of the City Council shall be final with respect to the disposition of the organizational conflict of interest and non-appealable.

- III. For other potential conflicts of interest not mentioned above (e.g. employee changing companies, merger/acquisitions of firms, property ownership, business arrangements, financial interest), Proposers shall disclose and address any conflicts of interest or potential conflicts of interest when participating as a design-build entity or joining a design-build team. The City will then determine if an organizational conflict of interest exists.
- IV. The successful Proposer or firms affiliated with the successful 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. 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.

Note – The forgoing is provided by way of example, and shall not constitute a limitation on the obligations of the Proposer in relation to organizational conflicts of interest.