



Legislation Text

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**REQUEST FOR CITY COUNCIL AND  
CORONA UTILITY AUTHORITY ACTION**

DATE: 07/21/2021

TO: Honorable Mayor and City Council Members  
Honorable President and Board

FROM: Department of Water & Power and LRM Department

SUBJECT:  
Resolution establishing a Conflict of Interest Policy governing Design-Build Projects.

**EXECUTIVE SUMMARY:**

Applicable law requires that the City develop guidelines for a standard organizational conflict of interest policy governing 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 otherwise join a design-build team. The accompanying proposed Resolution would adopt such a policy for the City.

**RECOMMENDED ACTION:**

**That the:**

- a. City Council adopt Resolution No. 2021-092.
- b. Corona Utility Authority review, ratify, and to the extent necessary, direct the City Council to take the above actions.

**BACKGROUND & HISTORY:**

Public construction projects are traditionally procured through the design-bid-build process, where separate firms design and construct a project. However, in rare cases applicable law authorizes public agencies such as the City to procure public construction projects through a design-build process, where the same firm is responsible for the design and construction of a project. There are many potential advantages to the design-build procurement method for project owners, which may include a reduction in overall time to complete the project, the ability to select the design-build team based on qualifications, experience, and cost and a reduction in project change order claims.

Public Contract Code § 22160 et seq. is one source of design-build statutory authority for the City.

**ANALYSIS:**

As a prerequisite for utilizing this design-build method, Public Contract Code, § 22162(c) specifically provides:

*(c) The local agency shall 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. This conflict-of-interest policy shall apply to each local agency entering into design-build contracts authorized under this chapter.*

As provided for in the attached Resolution, 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.

Proposers are required to disclose information regarding potential conflicts of interest. 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.

**FINANCIAL IMPACT:**

Not applicable.

**ENVIRONMENTAL ANALYSIS:**

This action is exempt pursuant to Section 15061(b)(3) of the Guidelines for the California Environmental Quality Act (CEQA), which states that a project is exempt from CEQA if the activity is covered by the common sense exemption that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. This action simply adopts a conflict of interest policy, and there is no possibility that adopting this resolution will have a significant effect on the environment. Therefore, no environmental analysis is required.

**PREPARED & REVIEWED BY:** DEAN DERLETH, CITY ATTORNEY & LRM DIRECTOR & TOM MOODY, GENERAL MANAGER

**Attachments:**

1. Exhibit "1" - Proposed Resolution No. 2021-092