

**RESOLUTION NO. 1045****RESOLUTION OF THE BOARD OF DIRECTORS OF THE SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT ADOPTING CONFLICT OF INTEREST GUIDELINES FOR THE DESIGN-BUILD METHOD OF PROJECT DELIVERY**

WHEREAS, the California Legislature has found and declared that various agencies authorized to use the design-build method of project delivery, using a best value procurement methodology, have reported benefits from such projects, including reduced project costs, expedited project completion, and design features that are not achievable through the traditional design-bid-build method; and

WHEREAS, the California Legislature has provided general authorization for certain local agencies to use design-build for certain projects by enacting Public Contract Code section 22160 *et seq.*; and

WHEREAS, Public Contract Code section 22160 *et seq.* authorizes local agencies such as the San Bernardino Valley Municipal Water District (Valley District), with the approval of the governing body, to procure design-build contracts for the construction of regional and local wastewater treatment facilities, regional and local solid waste facilities, regional and local water recycling facilities, or fire protection facilities, in excess of one million dollars (\$1,000,000), awarding the contract either the low bid or the best value; and

WHEREAS, Public Contract Code section 22162 contains a requirement that each local agency entering into design-build contracts authorized under Public Contract Code section 22160 *et seq.* 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; and

WHEREAS, the Board of Directors (Board) of the Valley District desires to establish guidelines for a standard organizational conflict of interest policy pursuant to Public Contract Code section 22162;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the San Bernardino Valley Municipal Water District as follows:

1. The Board hereby finds and determines that use of the design-build method of project delivery, using a best value procurement methodology, for the construction of regional and local wastewater treatment facilities, regional and local solid waste facilities, regional and local water recycling facilities, or fire protection facilities, in excess of one million dollars (\$1,000,000), with Board approval, on a case by case basis, is in the best interest of the Valley District.

2. The Design-Build Conflict of Interest Policy attached hereto and incorporated herein by this reference is hereby approved and adopted.

3. This Resolution shall become effective immediately upon adoption.

ENACTED: September 20, 2016.

*Mark V. Bulot*

Mark Bulot  
President

ATTEST:

*Steve Copelan*

~~OKNXXXX~~ Steve Copelan  
Secretary Vice-President

# **SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT**

## **CONFLICT OF INTEREST POLICY FOR DESIGN-BUILD PROJECTS**

### **I. PURPOSE**

The purpose of this policy is to establish guidelines, as required under California Public Contract Code § 22162 for a standard organizational conflict of interest policy, regarding the ability of a person or entity to submit a proposal to the San Bernardino Valley Municipal Water District (“Valley District”) 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 §§ 22160 et seq. A person or entity’s failure to comply with these standards of conduct may result in potential liability to that person or entity and may preclude the person or entity from participation in the project.

This conflict of interest policy is intended to accomplish the following goals:

1. Promote integrity, transparency, competitiveness and fairness in Valley District’s procurements and contracts for design-build projects;
2. Prevent Proposers from obtaining or appearing to obtain an unfair competitive advantage with respect to Valley District’s procurements and contracts for design-build projects;
3. Provide guidance to enable Proposers to make informed decisions while conducting business with Valley District related to the design-build project; and
4. Protect the validity of Valley District’s contracts, confidential and sensitive information concerning the design-build projects, and other Valley District interests related to the design-build projects.

Valley District recognizes that its goals must be balanced against the need to not unnecessarily restrict the pool of potential Proposers available to participate in Valley District’s procurements and contracts for design-build projects. This conflict of interest policy neither purports to address every situation that may arise in the context of Valley District’s procurements and contracts for design-build projects, nor to mandate a particular decision or determination by Valley District. Valley District retains the ultimate and sole discretion to determine on a case-by-case basis whether a conflict of interest exists and what actions may be appropriate to avoid, neutralize or mitigate any actual or potential conflict of interest or the appearance of any such conflict of interest.

### **II. POLICY**

#### **Definitions**

Unless otherwise stated, “Consultant” or “Proposer” shall mean prime consultant or prime contractor and subconsultants and subcontractors performing services for the prime.

“Project Party” shall mean the persons or entities working with Valley District on the Design-Build Project, if any.

The term “Design-Build Project” shall refer to the particular design-build project the design and construction of which is being considered under this Policy.

**A.** A Consultant shall be deemed to have a conflict of interest if any of the below circumstances occur. A Consultant that has a conflict shall **not** be allowed to participate as a Proposer or to join a design-build team in response to a design-build Request for Statement of Qualifications (RFQ) or Request for Proposals (RFP), unless the Consultant follows the procedure identified in this Policy and obtains a finding from Valley District that no conflict exists, or that Consultant can avoid the conflict by Consultant's proposed mitigation efforts:

1. The Consultant is the general engineering, architectural or design consultant (hereinafter collectively referred to as "general design consultant") for Valley District or its Project Parties to the Design-Build Project. Subconsultants to the general design consultant that have 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.
2. The Consultant has assisted or is assisting Valley District or its Project Parties in the management or procurement of the Design-Build Project, including drafting or preparation of the RFQ or RFP language or evaluation criteria.
3. The Consultant has conducted preliminary design services for the 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 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 Design-Build Project.
6. The Consultant is under contract with any other entity or stakeholder to perform oversight on the 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 Design-Build Project.

**B.** Consultants who may have potential conflicts of interest in relation to the Design-Build Project or program 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 Valley District or Project Party employee.

3. Disclose in the response documents to a design-build RFQ and RFP, all of the work performed in relation to the design-build program and project.
4. Upon written request by Valley District, provide all records of such work performed for Valley District or its Project Parties 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, Valley District will determine, in its sole discretion, if the Consultant has an unfair competitive advantage.

- C. For other potential conflicts of interest not mentioned specifically above (including without limitation an employee changing from a conflicted company to a non-conflicted company, merger/acquisitions of firms, property ownership, business arrangements, financial interest) Consultant shall disclose and address any conflicts of interest or potential conflicts of interest when participating as or joining a design-build team. Valley District will then determine if a conflict of interest exists.
- D. 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.

### **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, then that potential conflict must still be disclosed. Failure to disclose a potential conflict, whether specifically covered in the conflict checklist or not, may result in Proposer's proposal being rejected.
- B. The Proposer shall complete the Disclosure of Potential Conflict of Interest form and submit it along with the Proposer's RFQ and 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 Valley District contract management staff, in consultation with Valley District 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. Valley District

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. Valley District also reserves the right to seek damages from the Proposer in the event that Proposers' failure to disclose a potential conflict causes the loss of state or federal funds that were or would have been awarded to Valley District but for the undisclosed conflict of interest or otherwise.

C. Upon review of the information provided by Proposer, Valley District will determine, in its sole discretion, if the Proposer has a conflict of interest. Valley District recognizes that Proposers must maintain business relationships with other public and private sector entities in order to continue as a viable business. Valley District will take this into account as it evaluates the appropriateness of the proposed measures to mitigate potential conflicts. It is not the intent of Valley District 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 Valley District. Valley District will disqualify Proposers in cases where a potential conflict cannot be adequately mitigated.

## CONFLICT OF INTEREST CHECKLIST

### 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 interest of Valley District or its Project Parties with respect to the specific project covered by this contract. **Comment:** the mere existence of a business relationship with another entity would not ordinarily result in determination of a conflict. Rather, this scenario focuses on the nature of services commissioned by the other entity. For example, it would not be appropriate to propose on a Valley District project if another entity has also retained the Proposer for the purposes of persuading Valley District to stop or alter the project plans.
- The Proposer is providing 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 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 Valley District or Project Party 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 Valley District or Project Party employees or their immediate family members. **Comment:** this provision is not intended to supersede any statutes or policies applicable to Valley District or Project Party 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 Valley District or its Project Parties, provided design services specific to the project in question 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 product must be provided.
- The Proposer has, in previous work for Valley District or its Project Parties, 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 Govt. Code §§ 6250-6270), such data has not been subsequently made public, 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.
- The Proposer has, in previous work for Valley District or its Project Parties, managed or assisted in the management of the design-build program for Valley District or its Project Parties, 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, has financial interests that are inconsistent with Valley District's effective and timely pursuit of the Project. Nothing in this paragraph is to be interpreted to infer an inconsistent financial interest merely from the fact that Proposer may receive additional payments if the Project takes longer to complete.

Any Proposer is obligated to immediately notify Valley District of any potential conflict of interest as described in this Policy. After contract award, the Consultant has an ongoing obligation to monitor its conflicts or potential conflicts of interest. Valley District 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 Valley District 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, Valley District 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 Valley District to be inadequate to protect Valley District, Valley District may terminate the contract. If the contract is terminated, Valley District shall have no obligations, responsibilities or 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.

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.

## DISCLOSURE OF POTENTIAL CONFLICT OF INTEREST FORM

Having had the opportunity to review the 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 exists as follows:

(Attach additional sheets as necessary)

Describe nature of the potential conflict(s):

Describe measures proposed to mitigate the potential conflict(s):

Applicant Firm: \_\_\_\_\_

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

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

If a potential conflict has been identified, please provide the name and telephone number for a contact person authorized to discuss this disclosure form with Valley District contract personnel.

Name: \_\_\_\_\_ Telephone: \_\_\_\_\_