



POLICY NO. PLY-PRO-2024-01

NAME: DESIGN-BUILD ORGANIZATIONAL CONFLICT OF INTEREST
POLICY

DATE ISSUED: DECEMBER 18, 2024

SUPERCEDES: N/A

VERSION: FINAL VERSION 01

GENERAL MANAGER SIGNATURE:

A handwritten signature in dark ink, appearing to be "G. L. L.", written over a horizontal line.

I. PURPOSE

The purpose of this policy is to formalize an Organizational Conflict of Interest ("OCOI") Policy for Traditional Design-Build and Progressive Design-Build projects as required by Public Contract Code Section 22162 and Public Contract Code Section 22185.2. This Policy will establish the organizational conflicts of interest guidelines and requirements applicable to these types of projects.

This policy is intended to comply with the requirements of the State of California Department of Transportation ("CA DOT"), the Federal Transit Administration ("FTA"), the Federal Railroad Administration ("FRA"), and the Federal Highway Administration ("FHWA").

This Policy will remain in effect until modified or rescinded.

II. RESPONSIBILITIES

Contractors, Consultants, and their subcontractors at any tier, who are involved in submitting a Statement of Qualifications or Proposal in response to a Traditional

Design-Build or Progressive Design-Build project solicitation for SMART or Contractors, Consultants, and their subcontractors at any tier who are performing work on a current Traditional Design-Build or Progressive Design-Build project for SMART shall comply with this Organizational Conflicts of Interest Policy.

All District personnel who participate in the following activities shall be aware of and comply with this policy:

- (1) Development of procurement strategy and/or approach to risk allocation;
- (2) Development and preparation of procurement documents; including, Requests for Qualifications, Request for Proposals, contract documents, technical specifications, program requirements, and general conditions;
- (3) Development of evaluation criteria, process, or procedures;
- (4) Management and Administration of Contracts;
- (5) Evaluation of procurement submittals by Consultants and Contractors;
- (6) Negotiation of a Contract; and
- (7) Advising in any other aspect of the procurement process.

It is the responsibility of these individuals to protect the District from Organizational Conflicts of Interest as they pertain to the District's procurement process.

III. DEFINITIONS

Award. The acceptance by the District of a Proposal submitted in response to a District Solicitation.

Contract. The written contract executed by the District and the Design-Build Entity covering the performance of the Work for SMART's Design-Build project.

Design-Build Entity. A Design-Build Entity is defined as: "a corporation, limited liability company, partnership, joint venture, or other legal entity that is able to provide appropriately licensed contracting, architectural, and engineering services as needed pursuant to a traditional or progressive design-build contract".

Design-Build Project. Any project using either the Progressive Design-Build or Traditional Design-Build construction procurement process.

Design-Build Team. The Traditional Design-Build or Progressive Design-Build Entity itself and the individuals and other entities identified by the Traditional Design-Build or Progressive Design-Build Entity as members of its team. Members shall include the General Contractor and, if utilized in the design of the project, all electrical, mechanical, and plumbing contractors.

District. The Sonoma-Marín Area Rail Transit District, also referred to as SMART. For the purpose of this document, use of “SMART” the “Sonoma-Marín Area Rail Transit District”, and “District” shall be interchangeable and mean the same thing.

Progressive Design-Build. A project delivery process in which both the design and construction of a project are procured from a single entity that is selected through a qualifications-based selection at the earliest stage of the project. Preliminary pricing may be reviewed as part of this procurement process; however, a Guaranteed Maximum Price (GMP) has not yet been established at the time of award.

Project. A District Project.

Proposal. The offer of the Proposer to perform the Work required by the Request for Qualifications or Request for Proposal. The term includes initial Proposals and Best and Final Offers submitted.

Traditional Design-Build. A project delivery process in which both the design and construction of a project are procured from a single entity that is selected through a “Best Value” procurement process, which includes review of both technical expertise, qualifications, and project price.

Qualifications-Based-Selection. The process by which the District solicits for services from the Design-Build entities. The evaluation of Statement of Qualifications or Proposals submitted is primarily on technical expertise, qualifications, and demonstrated history of performing similar work; however, in some cases, preliminary pricing may factor into the basis of the award.

Subcontractor. Any person or persons, firm, partnership, joint venture, corporation, or combination thereof, or any other entity that contracts with the Design-Build Entity or any subcontractor of any tier, to perform a portion of the work included in the Project.

IV. POLICY

Contractors and Consultants participating as Proposers on a Traditional Design-Build or Progressive Design-Build project or joining a Design-Build Team (“Proposers”) may not have organizational conflicts of interest.

Organizational conflicts of interest are circumstances arising out of a Contractor’s or Consultant’s existing or past activities, business, financial interests, familial relationships, contractual relationships, and/or organizational structure (For Example: Parent entities, subsidiaries, affiliates) that result in:

1. An unfair competitive advantage for any Bidder or Proposer with respect to a District procurement. This includes an unfair competitive through unequal access to information where a Bidder or Proposer obtains access to nonpublic information during performance of an earlier contract;
2. A perception or appearance of impropriety with respect to any of the District's procurements or contracts or a perception or appearance of unfair competitive advantage with respect to a procurement by the District (regardless of whether any such perception is accurate).
3. Lack of impartiality or impaired objectivity of a Contractor's or Consultant's ability to render impartial assistance or advice to the District or of its objectivity in performing work for the District;

An organizational conflict of interest exists in the following instances:

- a. A Proposer is the District's General Engineering or Architectural Consultant to the Design-Build Project. Subcontractors or Subconsultants to the General Engineering or Architectural 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 if it terminates the Agreement to provide work and provides no work for the District's General Engineering or Architectural Consultant on the Design-Build Project.
- b. A Proposer has assisted or is assisting the District in the management of the Design-Build project, including the preparation of the Request for Proposals, Request for Qualifications, evaluation criteria, cost estimate, or any other aspect of the procurement (Biased Ground Rules).
- 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 after letting the contract.
- 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 circumstance that would violate California Government Code 1090, et seq.

V. PROPOSER'S OBLIGATIONS

Proposers must make an immediate and full written disclosure of a conflict of interest or a potential conflict of interest to SMART's Procurement and Contracts Manager at khendricks@sonomamarintrain.org and shall have a continuing obligation to do so until they are no longer Proposers.

Such a disclosure will not necessarily disqualify a Proposer from being awarded a contract; however, the Proposer shall propose measures to avoid, neutralize, or mitigate all potential or actual conflicts. The District, 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.

VI. 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 District 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 District 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 District may terminate the contract. If a new conflict of interest arises after contract award, and Contractor's proposed measures to avoid or mitigate the conflict are determined by the District to be inadequate to protect the District, the District may terminate the contract. If the contract is terminated, the District assumes no obligations, responsibilities, and liabilities to reimburse all or part of the costs incurred or alleged to have been incurred by Contractor and is entitled to pursue any available legal remedies.

VII. REFERENCES

Public Contract Code Section 22162
Public Contract Code Section 22185.2
CA Board for Professional Engineers & Land Surveyors Board Rules 475 & 476
23 CFR 636.116
2 CFR 200.112
Circular 4220.1 F - Third Party Contracting Guidance