

**RESOLUTION NO. 21-**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MAMMOTH LAKES, STATE OF CALIFORNIA, ADOPTING A CONFLICT-OF-INTEREST POLICY COVERING DESIGN-BUILD PROJECTS**

WHEREAS, the California Legislature has found and declared that various agencies authorized to use the design-build method of project delivery 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 Town of Mammoth Lakes, with the approval of the governing body, to procure design-build contracts for the construction of 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 Town of Mammoth Lakes desires to establish a conflict-of-interest policy pursuant to Public Contract Code section 22162.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Mammoth Lakes adopt the Design-Build Conflict of Interest Policy attached hereto and incorporated herein as Attachment A, which is hereby approved and adopted.

APPROVED AND ADOPTED THIS 17th day of November 2021.

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BILL SAUSER, Mayor

ATTEST:

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JAMIE GRAY, Town Clerk

## **Attachment A**

### **TOWN OF MAMMOTH LAKES CONFLICT-OF-INTEREST POLICY COVERING DESIGN-BUILD PROJECTS**

The purpose of this document is to clarify the Town of Mammoth Lakes (“Town”) position on potential conflicts-of-interest that may arise when consultants or contractors (collectively, “Proposer”) perform work for the Town 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 Town; 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 Town. The Town 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 Town 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 Town 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 Town may terminate the contract with the Proposer for material breach. If the Proposer is terminated, the Town 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 Town procurements relating to Town 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 Town’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 Town 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 Town.
  - 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 Town 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 Town Manager will determine, in his or her sole discretion, if the Proposer has an organizational conflict-of-interest. Decisions of the Town Manager regarding organizational conflicts-of-interest may be appealed to the Town Council. The decision of the Town 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 Town 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.