

City of San José, California

COUNCIL POLICY

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EFFECTIVE DATE February 6, 2007	REVISED DATE	
APPROVED BY COUNCIL ACTION		2/6/07

BACKGROUND

On December 13, 2005, Council directed the City Manager and City Attorney as part of the Mayor's Biennial Ethics Review to develop this Council Policy which includes all elements of the Procurement Process Integrity Guidelines adopted by Council on November 9, 2004 and apply this policy to all competitive processes.

PURPOSE

The purpose of this policy is:

1. to ensure integrity in the procurement and contract processes;
2. to educate City employees, consultants, uncompensated outside parties, and any person involved in the decision to award a contract about potential Conflicts of Interests; and
3. to establish guidelines for procedural screening of Conflicts of Interests.

POLICY

It is the policy of the City of San José to provide a fair opportunity to participants in competitive processes for the award of City contracts by promulgating integrity and removal of Conflicts of Interests through the inclusion of the following components in all competitive solicitations. Procurement and contract activities are defined as but not limited to specification development, preparation and issuance of solicitations, evaluation of solicitations and submissions, and other evaluations which lead to an award of a City contract.

I. Communication Protocol:

This section describes the characteristics of appropriate communication between respondents and the City during various phases of a solicitation.

A. Prior to Issuance of Solicitations

Prior to the issuance of solicitations, contact between prospective respondents and City staff, elected officials, or consultants is permissible.

B. After Issuance of Solicitations and prior to Submission deadline for Solicitations:

After issuance of solicitations, all contact between prospective respondents and the City must be directed to the Procurement Contact designated in the solicitation. City staff, elected officials, and consultants will refer all inquiries to the Procurement Contact.

All requests for clarification, objections to the structure, content, or distribution of a solicitation, or other inquiries must be made in writing and the City shall answer to these clarifications, objections, and inquiries in writing via addenda to the solicitation.

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C. After Submission Deadline of Solicitations and prior to Issuance of a Notice of Intended Award:

After the submission deadline of solicitations, all contact regarding the procurement between respondents and the City and participants in the evaluation process, who are not City employees, must be directed to the Procurement Contact designated in the solicitation. City staff, elected officials, and consultants will refer all inquiries to the Procurement Contact.

D. After Issuance of a Notice of Intended Award:

The City will issue a Notice of Intended Award to all respondents including the basis for selection and instructions for filing a protest. All respondents shall follow the procedures for protest as indicated in the solicitation document. During the protest period, City staff, elected officials, and consultants will refer all inquiries to the Protest Hearing Officer identified in the solicitation document.

E. After Completion of Protest Period:

After completion of the protest period, contact between prospective respondents and City staff, elected officials, or consultants is permissible.

II. Respondent's Code of Conduct

By submitting a response to a City solicitation, respondents agree to adhere to this Policy and are individually and solely responsible for ensuring compliance with this policy on behalf of the respondent's employees, agents, consultants, lobbyists, or other parties or individuals engaged for purposes of developing or supporting a response.

In addition to adhering to the various sections of the policy, respondents may not

- collude, directly or indirectly, among themselves in regard to the amount, terms or conditions of a solicitation;
- influence any City staff member or evaluation team member throughout the solicitation process, including the development of specifications; and
- submit incorrect information in the response to a solicitation or misrepresent or fail to disclose material facts during the evaluation process.

Any evidence that indicates that a Respondent has failed to adhere with any section of this policy may result in the respondent's disqualification from the procurement as well as possible debarment.

III. Confidentiality during Evaluation Process

City staff, consultants, and outside evaluators, who are participants in the evaluation process are required to sign a Confidentiality Agreement, which binds the participants not to share any information about responses received and the evaluation process until the City issues a Notice of Intended Award.

IV. Conflict of Interest

Per the General Rule with Respect to Conflicts of Interest, as outlined in the City Policy 2.01, "Code of Ethics", City elected officials, appointed officials, their staffs, and City employees are expected to avoid any conflicts of interest. Further, employees should avoid the appearance of conflicts of interest in order to ensure that City decisions are made in an independent and impartial manner.

In general, Council Appointees shall take measures to ensure that the City avoid any conflict of interests in procurement processes of City contracts. Specifically, these measures include that

1. professional procurement and contracting staff, including buyers, managers, department heads, members of the City Attorneys office and others who regularly participate in the making of contracts on behalf of the City to disclose relevant financial interest as required by State Law and by City Policy and to annually review those statements in conjunction with this Policy and other ethical standards.

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2. persons who may not be regularly involved in City procurements to review this Policy and other ethical standards and to elicit such information from them to enable the City to determine if the person's participation would create a conflict of interest. Such persons shall include, but are not limited to:
 - a. authors of specifications
 - b. paid and unpaid evaluators
 - c. paid and unpaid consultants who assist in the procurement process
3. the person managing the procurement shall discuss any potential conflict of interest identified with the City Attorney's Office and document the resulting determination, and take appropriate action including, but not limited to, removal of an employee, consultant, or outside uncompensated party from the procurement activity or cancellation of a solicitation.
4. the City Manager, in consultation with the City Auditor and City Attorney, publish an administrative policy outlining the procedural elements of this Council Policy.

This Policy is intended to set a balance between careful adherence to good procurement and contracting principles together with thorough examination of potential conflicts of interest against an undue burden on the participants in procurement and contracting processes. By establishing the following exceptions to the procedures to be administered by the City Manager, it is not intended to suggest that there is a lesser requirement with regard to ethical standards, but rather a need to have a less burdensome process with regard to certain procurements and contracting activities. The following competitive processes are not subject to procedural requirements as administered by the City Manager:

1. Any contracting activity with an estimated value less than \$100,000.
2. Disposition of goods as described in the Municipal Code Section 4.16.
3. Award of grants by the City with a value below \$10,000.

V. Allegations of Conflict of Interest

Prior to the solicitation release up to award of contract, any allegations of Conflict of Interest by a City employee, consultant, or other participant in the pre-solicitation and solicitation process shall be reported to the Procurement Contact. The Procurement Contact shall investigate the alleged conflict of interest in consultation with the City Attorney's Office and document the resulting determination.

VI. Allegations of Misconduct

At any time during a solicitation process, any misconduct by a City employee, consultant, or other participant in the pre-solicitation and solicitation process, shall be reported to the City's Chief Purchasing Officer. The Chief Purchasing Officer shall investigate the alleged misconduct, in consultation with the City Attorney's Office and others as appropriate. Nothing in this Policy is intended to prohibit anyone from communicating with the City Manager's Office, the City Attorney's Office, the City Auditor's Office, or the Mayor or any City Council Member about any alleged misconduct.

