

Overview of Conflict of Interest Form

1. Is this a new requirement?

No. Government Code section 1090 has prohibited, for many years, contractors from having a conflict of interest when performing work for the County.

2. What types of conflicts does Government Code section 1090 prohibit?

Simply put, Section 1090 prohibits the same party from being on both sides of a contract. This means that a contractor may not help create a contract and then bid or propose to do the work on that contract at a later date. For example, if the County hired a contractor to review plans for a road project, that contractor would be prohibited by law from bidding on that work. That is because the reviewing of plans that are used in preparing the ultimate bid is considered under State law participation in the making of the contract. If a contractor participates in the making of a contract, then the contractor is prohibited by State law from entering into a contract through a subsequent bid process. The same is true for requests for proposal “best value” procurements.

3. What if the County takes the contractor’s original work and does not use it for several years? Does the passage of time make a conflict go away?

Unfortunately, no. Government Code section 1090 does not have a “cooling off” period. In other words, once there is work done as part of the making of a contract, the potential for a conflict always exists.

4. Does the prohibition on contracts extend to a spouse or registered domestic partner?

Yes.

5. Does the prohibition on conflicts extend to subcontractors?

Yes. While the County’s conflict of interest form only requests information from contractors, if a contractor retains a subcontractor to perform work on its behalf for the County, that subcontractor cannot have a conflict of interest in performing that work.

6. Why is the County requiring this?

Contractors have been subject to the conflict of interest laws for many years. Identifying contracts that may have created a conflict of interest and considering whether a conflict of interest exists is something that contractors should have been doing and should

continue to do. The only “new” requirement is to list the potential contracts so that the County can also confirm for its own purposes whether a potential conflict might exist.

7. Does the prohibition on conflicts only apply to County contracts?

No. California’s conflict of interest laws apply to all government contracts with State or local entities, including counties.

8. Does this mean that potential contractors may not participate in vendor fairs and other information gathering activities?

No. The prohibition generally does not apply where a contractor has provided information to the County as part of a larger County request for information or through a vendor fair.

9. Will the County determine for me if my company or I have a conflict?

No. You should seek your own legal counsel if you have any questions about a conflict of interest. The County cannot provide you with advice on whether you have a conflict of interest.

10. If the County will not make this determination for me or my company, then what is the point?

While the County will not and cannot provide you with advice on whether you have a conflict of interest, it will notify you if it believes that you do. In other words, if the County identifies a conflict, it may seek out additional information from you and may disqualify you from performing the work. Again, however, the County has no obligation to perform this review for you, and if it does not or fails to identify and/or notify you of a conflict, that does not provide you with any legal defense nor does it create any liability to the County by you.

11. What is the impact of a conflict of interest?

California’s courts have not been kind to contractors who have a conflict of interest. Initially, the contract is “void.” This means that it is immediately deemed by a court to have never been valid. Worse yet, because it was never valid, the courts have held that contractors should not receive any payment for the contracted-for work, including work already done. This means that courts have ordered contractors to return all payments to the contractor by the government, and have not required the government to provide anything in return. So, using the road example above, if the contractor is found to have

had a conflict of interest after some or all of the road work is completed, a court would likely order the contractor to pay back the County all of money paid to the contractor. The contractor would receive no compensation for materials, labor or profit for any of the work completed.

12. Are there other legal ramifications?

Yes. It is possible that the District Attorney could also pursue criminal charges where the conflict violated criminal laws.