

MIDDLE RIO GRANDE WATER ASSEMBLY

POLICIES AND PROCEDURES SYSTEM

POLICY NUMBER: EC 003

DATE: 12.14.01

TITLE: Policy for Water Assembly Participants to Submit Proposals for Water Plan Subcontracts Funded by ISC or Local Governments

1. **Background.** Concerns have recently surfaced regarding the propriety of individuals participating in the Water Assembly submitting bids or offers for subcontracts funded by the New Mexico Interstate Stream Commission (ISC) and local governments and awarded by the Middle Rio Grande Council of Governments (MRGCOG). Inasmuch as the funds for the subcontracts have been appropriated by the State of New Mexico and local governments and administered by MRGCOG - a local public body chartered by the State - there can be little doubt that in considering this matter we will be obliged to comply with State regulations.

2. **Discussion**

Chapter 10, Article 16, Paragraph 13 of the New Mexico Statutes Annotated states:

10-16-13. Prohibited bidding.

No state agency shall accept any bid from a person who directly or indirectly participated in the preparation of specifications on which the competitive bidding was held.

It should be noted that Chapter 10 is titled "Public Officers and Employees" and that Article 16 is titled "Government Conduct". This might lead one to believe that, inasmuch as Water Assembly participants are neither public officers nor employees of the State of New Mexico, they would be totally exempt from compliance with the statutes. However, despite these titles, the specific prohibition is clear and causes MRGCOG personnel - in the procurement of subcontracts using State or local government funds - to be obliged to comply with the provision.

That being said, the provision does not necessarily preclude an individual who intends to submit a bid or offer from participating in the Water Assembly process more generally. However, it seems clear that such an individual would be obliged to refrain from participation on a Working Team which is preparing the scope of work or specification and should not be a member of the committee reviewing and selecting proposals.

In addition, inasmuch as the Executive Committee and the Action Committee consider and render decisions about matters having a significant impact on contractual actions, it seems appropriate that an individual who intends to submit a bid or offer should not participate in the Executive Committee and should recuse himself or herself from participating in any action being taken by the Action Committee involving a subcontract or proposed subcontract in which the individual has an interest.

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3. **Policy.** Effective immediately no individual participating in the Water Assembly who has also participated on a Working Team that has prepared a scope of work or specification for a subcontract or purchase order for the Middle Rio Grande Regional Water Plan funded through the Middle Rio Grande Council of Governments and no individual serving as a member of the Executive Committee shall submit a bid or offer for such subcontract or purchase order.

In addition, no individual who has an interest in any contract or proposed contract for the Middle Rio Grande Regional Water Plan funded through the Middle Rio Grande Council of Governments shall take part in any action being taken by the Action Committee involving such subcontract or proposed subcontract.

Any disputes over the applicability of this policy shall be resolved by the Executive Committee.

This Policy has been established by action of the Executive Committee on:

_____.
Date

Signed _____
Secretary