



# California Fair Political Practices Commission

September 25, 1986

Daniel P. Torres  
Assistant Counsel  
Southern California Rapid  
Transit District  
425 South Main Street  
Los Angeles, CA 90013

Re: Your Request for Advice  
Our File No, A-86-245

Dear Mr. Torres:

Thank you for your request for advice on behalf of the Southern California Rapid Transit District (District).

## QUESTION

You have asked whether members of three firms which have contracted with the District to provide services on the District's Metro Rail Project are "consultants" within the meaning of the Political Reform Act (the "Act").<sup>1/</sup>

## CONCLUSION

Members of the three firms with which the District has contracted are not consultants within the meaning of the Act.

## FACTS

The District's Metro Rail Project will establish an 18-mile subway in the Los Angeles area. The firms in question provide the following services:

1. Metro Rail Transit Consultants acts as general contractor for the Metro Rail Project. The firm's duties include managing the work of subcontractors; coordinating, consolidating and integrating activities performed by various consultants; and identifying for resolution with District staff design integration issues and actions needed to accelerate the overall project. A management board appointed by the general contractor provides policy guidance for the project director.

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise noted.

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2. Booz-Allen & Hamilton, Inc., provides engineering services and systems analysis for the Metro Rail Project. The firm's duties vary, but include assistance in developing a project management plan; review and comment on operations documents; establishment of maintenance policies, plans and procedures; and some solicitations, either by competitive bidding or by negotiation.

3. Parsons, Dillingham, Deleuw, Cather acts as construction manager for the Metro Rail Project. The firm's duties include evaluation of standards for determining cost effectiveness and constructability; evaluation of cost estimates for reasonableness; provision of comparative cost studies for alternate materials and construction methods; and inspection to ensure that materials furnished and work performed are in accordance with governing contracts. It also participates in periodic District management meetings by making presentations and recommendations and providing back-up information. It recommends to the District the institution of default actions against contractors and assists the District in determining the amounts due under default settlements.

You have provided us with copies of relevant portions of the District's contracts with each of these firms.

#### ANALYSIS

The Act requires local government agencies to adopt conflict of interest codes designating employees who must file periodic statements disclosing certain financial interests. Any position within the agency which involves participation in decisions which may have a material financial effect on any financial interest must be designated. Section 87302.

"Designated employees" include "consultants" of the agency. Section 82019. The term "consultant" is in turn defined as follows:

(2) "Consultant" shall include any natural person who provides, under contract, information, advice, recommendation or counsel to a state or local government agency, provided, however, that "consultant" shall not include a person who:

(A) Conducts research and arrives at conclusions with respect to his or her rendition of information, advice, recommendation or counsel independent of the control and direction of the agency or of any agency official, other than normal contract monitoring; and

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(B) Possesses no authority with respect to any agency decision beyond the rendition of information, advice, recommendation or counsel.

Regulation 18700(a)(2).<sup>2/</sup>

Two of the firms involved in the present question have argued that since the firms with which the District has contracted are not "natural persons," no disclosure is required by the firms or their employees. The term "natural person" was used to clarify that corporate entities do not need to file statements of economic interests. If the argument presented by these firms was accepted, all consultants could avoid the provisions of the Act simply by incorporating themselves. The definition in subdivision (a)(2) of Regulation 18700 was not intended to provide such a loophole. We have consistently advised that natural persons working for consulting firms are subject to the Act's provisions in appropriate circumstances. See Advice Letter to Geoffrey L. Hayden, No. A-84-319; Advice Letter to Gerard Rose, No. A-84-307; and Advice Letter to David Kaplan, No. A-82-108 (copies enclosed).

It has also been argued that members of these firms are not consultants because their services are provided independent of the agency's direction and control and they "possess no authority with respect to any agency decision beyond the rendition of information, advice, recommendation or counsel." Based on our review of the contracts involved, we agree with this conclusion.

In the Commission's Maloney Opinion, 3 FPPC Opinions 69 (No. 76-082, Aug. 18, 1977), the Commission held that a contract county surveyor-engineer was not a consultant when performing specific engineering or surveying work because in so doing he was "not involved in any official decisionmaking." In our Advice Letter to Ron Criss, No. A-82-029 (Feb. 8, 1982), we advised that an engineer hired under a contract to perform design or other discrete engineering services for a specific project or study ordinarily is not a "consultant" within the meaning of the Act. We noted that, under such circumstances, the engineer uses his own expertise to render professional services according to the specifications of a contract, and his decisions are not subject to day-to-day

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<sup>2/</sup> Commission regulations appear at 2 California Administrative Code Sections 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

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review or direction by the governmental agency. Essentially, the engineer is being called upon to deliver a finished product--a report or a design--and not to participate in or advise the agency on general governmental decisions requiring engineering expertise. We also stated:

This would be true even if some incidental advice about the specific project were provided as part of these professional services. For example, the engineer could advise the District on what materials should be used for construction, or that the project could not be constructed within the proposed budget. (Ibid.)

In the present situation, each of the firms has contracted to perform services on a specific project. Although the project is large and complex, the scope and quantity of services to be provided under each contract is limited and the specific tasks to be performed are well defined. (See, e.g., the attached provisions from the Districts contract with Booz-Allen & Hamilton, Inc.) Within the scope of the services to be provided, the firms are provided with limited authority to make decisions which are instrumental to completion of a particular task. However, the District retains final decisionmaking control over all decisions which are normally considered to be of a governmental nature. Accordingly, we conclude that the members of these firms are not "consultants" within the meaning of the Act.

If you should have any questions, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths  
General Counsel

By John G. McLean  
Counsel, Legal Division

JGM:km



Legal Department

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July 24, 1986

Mr. John McLean  
Staff Counsel  
Fair Political Practices Commission  
Box 897  
Sacramento, California 95804

Re: Request for Opinion

Dear Mr. McLean:

On July 8 of this year, I spoke with you by telephone concerning a question the Southern California Rapid Transit District (SCRTD) is presented with by three separate Metro Rail Consulting firms concerning the applicability of the Political Reform Act to their situations.

I am in receipt of the copies of the letters you sent me concerning opinions the FPPC provided to us in other matters. My review of those letters confirms my opinion that a separate opinion letter is required in this situation. The Metro Rail project is one of enormous proportion and will continue to exist for many years into the future. It is imperative that both the SCRTD and the consulting firms that it employs are aware of their respective legal obligations and duties.

Briefly, Booz, Allen and Hamilton and Parsons, Dillingham, Deleuw, Cather (PDCD) claim that the disclosure provisions of the Act apply to natural persons only and not to incorporated contractor consulting firms such as themselves. In support of their position, they focus on the language of Section 18700(a)(2) of Title 2 of the California Administrative Code which states, "'Consultant' shall include any natural person...." It is, furthermore, the position of the two firms and the third firm, Metro Rail Transit Consultants, that the Act does not apply because their contracts with the SCRTD state that final decision

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authority remains with the SCRTD. The three firms each cite Section 18700(a)(2)(A) & (B) of the Code which lists those categories of consultants not required to file disclosure statements. Included among these are consultants independent of the control and direction of the agency and whom possess no authority with respect to any agency decision beyond the rendition of information, advice, recommendations or comment. Some language found in each of the contracts between these consultants and the SCRTD states that final decisionmaking authority rests with the SCRTD; however, other language indicates that the consultant makes the final decision (see, for example, paragraphs 3.1.1 M, N, O, P, R, V, W, and X of PDCD contract).

Enclosed for your reference are copies of the letters received by the SCRTD from these individual consulting firms in response to SCRTD's request for financial disclosure statements which were sent pursuant to the SCRTD's Conflict of Interest Code and the relevant portions of each of their contracts. Enclosed also is a copy of the SCRTD's Conflict of Interest Code.

To further assist you in rendering the opinion requested, provided below is a brief description of each of the consulting firms and a summary of the scope of their relationships with the SCRTD.

Metro Rail Transit Consultants act as General Contractor for the Metro Rail Project. It's duties include: managing the work of subcontractors; coordinating, consolidating and integrating activities performed by various consultants including the review, coordination, technical and schedule integration and finalization of all work products and deliverables identified in selected technical service contracts; and identification for immediate action and resolution with SCRTD Staff, all activities needed to accelerate the overall project and all design integration issues. A Management Board appointed by the General Contractor provides policy guidance for the Project Director.

The consulting firm of Booz - Allen & Hamilton, Inc., provides systems engineering and analysis for the Metro Rail Project. Its duties vary but include: support in the development of a project management plan; review and comment on operations documentation; establishment of maintenance policies, plans and procedures; and some solicitations, whether by competitive bidding or negotiation.

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Parsons, Dillingham, Deleuw, Cather acts as Construction Manager for the Metro Rail Project. Its duties include: evaluation of criteria and standards for cost effectiveness and constructibility; evaluation of preliminary cost estimates for reasonableness; provision of comparative cost studies of alternate materials and construction methods; and, insuring through inspection that all materials furnished and work performed on the Project are in accordance with contract documents. It also participates in periodic SCRTD management meetings to make presentations, provide back-up information and make recommendations. Additionally, it recommends to the SCRTD the institution of any partial or complete default actions against contractors and assists the SCRTD in determining the amounts due under default settlements.

If there is any additional information that you desire or if you have any questions concerning this letter, please do not hesitate to contact me.

Thank you for your assistance in this matter.

Sincerely,



Daniel P. Torres  
Assistant Counsel

Enclosures

cc: Howard Chaliff, MRTC  
Nancy Ofte-Gibson, Booz-Allen  
Melvin L. Polacek, PDCD