STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

November 5, 2015

Lan Saadatnejadi
2734 Calle Aventura
Rancho Palos Verdes, CA 90275

Re: Your Request for Informal Assistance
Our File No. I-15-157

Dear Ms. Saadatnejadi:

This letter responds to your request for advice regarding the post-governmental employment provisions of the Political Reform Act (the "Act").[1] Because your question is general in nature, we are treating your request as one for informal assistance.[2]

Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090. Additionally, this letter is based only on the facts presented. The Fair Political Practices Commission (the "Commission") does not act as a finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

QUESTION

Does the permanent ban prevent you from accepting a position working as a consultant with Caltrans on an "as-needed" basis in the development and construction of proposed Caltrans transportation projects in District 7 covering Los Angeles and Ventura counties?

CONCLUSION

Provided you did not participate in any specific proceedings or contracts in the new Caltrans agreement, the permanent ban does not prohibit you from working on new projects in District 7.

FACTS

You worked at the California Department of Transportation ("Caltrans") from May 1988 through June 2004. You were Supervising Transportation Engineer in District 7 covering Los

[1] The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

[2] Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

Angeles and Ventura counties. You were responsible for the development and design of major state highway improvement projects including: I-5 HOV widening from the Orange County line to Route 605; I-60 HOV widening; I-710 major freeway and access improvements rehabilitation on I-110 at Temple Street; I-5 and I-10 separation access improvements; I-405 auxiliary lane from Waterford to I-10; SR-60/SR-57 direct HOV connector; I-405/SR-101 connector gap closure; SR-47 grade separation; Harbor Transit way extension; I-405 HOV from I-10 to SR-101; I-710 / 7th Street interchange modifications; US-101 / Parkway Calabasas; and the May 1989 retrofit sound wall program.

Your projects at Caltrans involved capital improvement projects for the state highway system within Los Angeles and Ventura counties. They ranged from pavement rehabilitation, intersection improvements, interchange improvements, freeway widenings, and sound walls. Your responsibilities ranged from preparing design plans and specifications, preparing technical reports, to managing the budget, schedule, and resources of these projects.

As a Caltrans manager who oversaw construction projects in District 7, you were also involved in predevelopment contracts. Many of these contracts involved a project in its preliminary stages of planning and development, which can last many years. During a project's construction phase, your unit also provided necessary engineering support regarding construction design, change orders, and plan reviews.

When you left state service, you were supervising transportation engineer (1998 to 2004). Prior to that time, you were the chief of capital outlay support date management (managing databases) from 1998-2000. You worked as supervising project manager for the Central Los Angeles area from 2000-to 2004.

CalTrans recently advertised a Request for Qualifications ("RFQ") to fill current vacancies with regard to transportation projects in District 7. This RFQ, Number 07A3845, lists dozens of potential freeway and capital improvement projects in the scope of work. The list consists of general categories of construction work but does not identify specific projects at this time.

You are currently a part-time consultant with IDC Consulting Engineers, Inc. ("IDC"), which was awarded the Caltrans contract over the summer. You wish to know whether you may work as employee of IDC on proposed Caltrans transportation projects in District 7.

ANALYSIS

Permanent Ban

The "permanent ban" prohibits a former state employee from "switching sides" and participating, for compensation, in certain proceedings involving the State of California and other specific parties, or assisting in the proceeding if the proceeding is one in which the former state

employee participated while employed by the state.[3] The permanent ban applies when an official has permanently left or takes a leave of absence from any particular office or employment.[4]

The permanent ban is a lifetime ban and applies to any formal or informal appearance or any oral or written communication – or aiding, advising, counseling, consulting, or assisting in representing any other person, other than the State of California, in an appearance or communication – made with the intent to influence any judicial, quasi-judicial, or other proceeding in which you participated while you served as a state administrative official. "'Judicial, quasi-judicial or other proceeding' means any proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in any court or state administrative agency . . .."[5]

Additionally, an official is considered to have "participated" in a proceeding if he or she took part in the proceeding "personally, and substantially through decision, approval, disapproval, formal written recommendation, rendering advice on a substantial basis, investigation, or use of confidential information . . .." [6]

A former state official who held a management position in a state administrative agency is deemed to have participated in a proceeding if: (1) the proceeding was pending before the agency during his or her tenure, and (2) the proceeding was under his or her supervisory authority. (Section 87400(d); Regulation 18741.1(a)(4).) However, proceedings are not under an official's "supervisory authority" merely because the supervisor is responsible for the general oversight of the administrative actions or functions of a program, where the responsibilities concerning the specific or final review of the proceedings are expressly delegated to other persons in the agency's structure and the supervisor is not involved in the actual proceedings.[7]

Furthermore, "[t]he permanent ban does not apply to a 'new' proceeding even in cases where the new proceeding is related to or grows out of a prior proceeding in which the official had participated. A 'new' proceeding not subject to the permanent ban typically involves different parties, a different subject matter, or different factual issues from those considered in previous proceedings."[8]

New contracts with the employee's former agency in which the former employee did not participate are considered new proceedings.[9] A new contract is one that is based on new

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[3] Sections 87401 and 87402; Regulation 18741.1.

[4] Regulation 18741.1(a)(1).

[5] Section 87400(c).

[6] Section 87400(d).

[7] Regulation 18741.1(a)(4); see also *In re Lucas* (2000) 14 FPPC Ops. 15.

[8] *Rist* Advice Letter, No. A-04-187; also see *Donovan* Advice Letter, No. I-03-119.

[9] *Leslie* Advice Letter, No. I-89-649.

consideration and new terms, even if it involves the same parties.[10] In addition, the application, drafting, and awarding of a contract, license, or approval is considered a proceeding separate from the monitoring and performance of the contract, license, or approval. [11]

Your facts indicate that you were a state administrative official overseeing major construction projects in District 7. You were involved in numerous predevelopment contracts and projects in preliminary stages of planning and development, a process that can last many years. The permanent ban only applies to judicial, quasi-judicial, or other proceeding involving specific parties, including a contract, in which you participated while you served as a state administrative official. The IDC contract with Caltrans currently does not specify particular projects. It lists dozens of general categories involving various highway construction, improvement, and maintenance tasks in Los Angeles and Ventura counties.

Provided you have had no past participation in any specific contracts or proceedings in the IDC agreement, the permanent ban does not prohibit you from working on the proposed Caltrans transportation projects in District 7.

You may wish to contact us again for further advice, as the projects are more specifically described in the Caltrans agreement. Also, note that Section 1090 may apply with regard to prospective Caltrans construction projects if these involve contracts in which you previously participated.[12]

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Hyla P. Wagner
General Counsel

/s/

By: Emelyn Rodriguez
Senior Counsel, Legal Division

ER:jgl

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[10] *Ferber* Advice Letter, No. I-99-104; *Anderson* Advice Letter, No. A-98-159.

[11] *Anderson, supra*; *Blonien* Advice Letter, No. A-89-463.

[12] Section 1090 generally prohibits public officers, while acting in their official capacities, from making contracts in which they are financially interested. Section 1090 reaches beyond the officials who actually execute the contract and courts have broadly interpreted "participation in the making of a contract" when applying the section. Participation in the making of a contract" includes any act involving the planning, preliminary discussions, negotiations, compromises, reasoning, drawing of plans and specifications and solicitation for bids. (*Millbrae Assn. for Residential Survival v. City of Millbrae* (1968) 262 Cal.App.2d 222, 237; see also *Stigall v. City of Taft*, *supra*, at p. 569.) Therefore, leaving state employment may not avoid a Section 1090 violation when the person has been involved in the contract process. (*City Council v. McKinley* (1978) 80 Cal. App.3d 204, 212.)