

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • 1100 K STREET BUILDING, SACRAMENTO, 95814

December 29, 1976

76-345

Mr. Enrique R. Sanchez
Associate Counsel
Southern California Rapid
Transit District
425 South Main Street
Los Angeles, California 90013

Dear Mr. Sanchez:

You ask whether members of minority contractor associations who participate in establishing a required level of minority business enterprise in District construction projects are subject to the conflict of interest provisions of Chapter 7 of the Political Reform Act.

As you indicate, the conflict of interest prohibitions of the Act are only applicable to "public officials". The term "public official", as defined in §82048 of the Government Code, includes consultants. Thus, more specifically, you ask, are "representatives of the contractor associations consultants within the meaning of the Political Reform Act"?

The Fair Political Practices Commission has defined the term "consultant" at 2 Cal. Adm. Code §18700(a)(2) as follows:

"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

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

Enrique R. Sanchez
December 29, 1976

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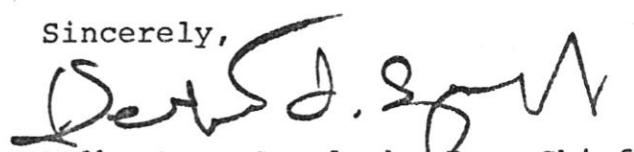
You describe the function of the association members with respect to the District as follows:

The associations are community groups which have volunteered their services to the District for the purpose of implementing the District's affirmative action program. They meet and confer with District staff, are not subject to the control of the District, are not under contract to the District, supply the District staff with minority contractor profiles, and make recommendations to our staff concerning the level of minority contractor participation. They then meet with the staff to establish a percentage of minority participation for a particular construction project. The representatives cannot vote and they have no authority in setting the percentage. This process is followed in every project and the percentage for each project will likely vary.

It is clear, based upon your representations, that members of the association are not consultants within the meaning of the Commission's regulation or the Act. Such persons function as advisors, without authority, and interested persons with respect to the operations of the District. So long as the Board does not clothe such persons with the mantle of authority with respect to District decisions, they are not consultants or public officials within the meaning of the Political Reform Act.

I hope that these comments are responsive to your question. If you have other questions, please feel free to call me at 916/322-6444.

Sincerely,



Delbert L. Spurlock, Jr., Chief
Conflicts of Interest Division

DLS:glb



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Southern California Rapid Transit District
425 South Main St., Los Angeles, California 90013
Telephone: (213) 972-6000

December 23, 1976

Del Sperlock, General Counsel
Fair Political Practices Commission
1100 K Street
Sacramento, California 95814

Dear Mr. Sperlock:

Per our conversation of December 22, 1976, this letter is a request for an informal opinion from your office as to whether or not members of minority contractor associations who participate in establishing a required level of minority business enterprise in District construction projects are subject to the Conflict of Interest provisions of Chapter 7 of the Political Reform Act. of 1974.

Section 87100 prohibits a "public official" from making or participating in making a governmental decision in which he has a financial interest. "Public official" is defined by Section 82048 as including a consultant. The question is whether representatives of the contractor associations are within the meaning of the term "consultant" as used in the Act. The representatives may or may not be contractors who own or have substantial ownership interest in minority contractor firms.

Briefly, the associations are community groups which have volunteered their services to the District for the purpose of implementing the District's affirmative action program. They meet and confer with District staff, are not subject to the control of the District, are not under contract to the District, supply the District staff with minority contractor profiles, and make recommendations to our staff concerning the level of minority contractor participation. They then meet with the staff to establish a percentage of minority participation for a particular construction project. The representatives cannot vote and they have no authority in setting the percentage. This process is followed in every project and the percentage for each project will likely vary.



Del Sperlock, General Counsel
Fair Political Practices Commission

December 23, 1976

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The effect of this procedure is that the District has recently received a bid on the first project in which the program was implemented. Eighteen percent was the required level of minority subcontractor participation which means that no less than 18% of the total dollar bid amount on the project must go to minority subcontractors. Failure of a bidder to meet the minimum level of participation will make his bid nonresponsive. A representative active in this project almost submitted a bid as a general contractor on this project estimated at 1.7 million dollars.

The participation of the associations is important in that if they do not give the District staff information on minority contractors, no percentage will be set for the project under consideration.

After reviewing the relevant provisions of the Act and of the Regulations, it does not appear that the representatives who are in a position to bid on the particular project as a subcontractor or a general contractor are covered by the Act as "consultants" and thus need not disqualify themselves from participating in establishing the level of minority participation required for any particular project. I believe that the determining factor is that they have absolutely no authority to establish the percentages and that if they disagree with a staff determination, their only recourse is to appear before the Board of Directors of the District and express their differences of opinion.

I would appreciate your thoughts on this issue.

Thank you for your cooperation.

Sincerely,

Enrique R. Sanchez
Enrique R. Sanchez
Associate Counsel



RAFERTY
TELEPHONE ADVICE

76345?

Atty: Spitz

4159

Requestor: Mary Rafferty

Date: 9-1

DA - San Mateo.

Tele: 415-363-4795

Question: Treasurer's dept. → investments for county.
audit has disclosed problem w/ process of investments
bank w/ County buys notes from Northern Trust in Chicago

Contracts SF investment firm

No direct link⁽¹⁾ between County + SF firm

is SF firm consultant ??

Advice: 18100(a)(2)

A-87-102

81-129

76-345

Regulations: _____ Act: _____

Opinions: _____ Guide to PRA: _____

Advice Letters: _____ 84308 Pamphlet: _____

Other: _____