



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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May 16, 2025

Joshua Nelson
Partner
BEST BEST & KRIEGER LLP
500 Capitol Mall, Suite 2500
Sacramento, California 95814

Re: Your Request for Advice
Our File No. A-25-052

Dear Mr. Nelson:

This letter responds to your request for advice regarding Government Code section 1090, et seq.¹ Please note that we are only providing advice under Section 1090, not under other general conflict of interest prohibitions such as common law conflict of interest.

Also, note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

We are required to forward your request regarding Section 1090 and all pertinent facts relating to the request to the Attorney General's Office and the Sacramento County District Attorney's Office, which we have done. (Section 1097.1(c)(3).) We did not receive a written response from either entity. (Section 1097.1(c)(4).) We are also required to advise you that, for purposes of Section 1090, the following advice "is not admissible in a criminal proceeding against any individual other than the requestor." (See Section 1097.1(c)(5).)

QUESTION

Does Section 1090 prohibit the Citrus Heights Water District ("District") from entering an agreement with 19six Architects ("Consultant") to complete the final design phase for the District's Corporation Yard project ("Project") where the District and Consultant previously entered into a general agreement not specific to the Project under which the Consultant performed preliminary work on the Project?

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 18104 through 18998 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.

CONCLUSION

No. While the initial agreement included a provision that the Consultant assist the District in preparing final bidding documents, the agreement was not specific to the Project. Additionally, the facts state that the Consultant performed preliminary work for the Project, including a mechanical, electrical, and plumbing site assessment and preparing a Corporation Yard Master Plan, but it never assisted in preparing any procurement documents related to the final design of the Project. Accordingly, because the Consultant never engaged in or advised on public contracting on behalf of the District such that it would be considered an “officer” under Section 1097.6, Section 1090 does not prohibit the District from entering into an agreement with the Consultant to complete the final design phase for the Project.

FACTS AS PRESENTED BY REQUESTER

Your firm acts as General Counsel for the District, an irrigation district organized under Division 11 of the California Water Code, which provides water to several communities in Sacramento County. The District entered into an on-call professional services agreement (“Agreement”) with the Consultant in June 2024. The Agreement provides that the Consultant shall perform various general architectural and supplementary support services for the District as needed, “[b]ased on the... issuance of an approved Task Order.” The scope of services also includes “assisting the District in preparing the final bidding documents.”

To date, the Consultant has completed services based on five (5) Task Orders which were authorized pursuant to the Agreement. Two of the Task Orders involve preliminary work on Project including, but not limited to, performing a mechanical, electrical and plumbing site assessment and preparing a Corporation Yard Master Plan. Notably, none of the Task Orders require Consultant to assist with preparing any procurement documents related to final design of the Project. The District would now like to contract with the Consultant to complete the final design phase for the Project.

ANALYSIS

Section 1090 generally prohibits public officers or employees, while acting in their official capacities, from making contracts in which they are financially interested. Section 1090 is “concerned with any financial interests, other than perhaps a remote or minimal interest, which would prevent the officials involved from exercising absolute loyalty and undivided allegiance to the best interests of” their respective agencies. (*Stigall v. Taft* (1962) 58 Cal.2d 565, 569.) Section 1090 is intended not only to strike at actual impropriety, but also to strike at the appearance of impropriety. (*City of Imperial Beach v. Bailey* (1980) 103 Cal.App.3d 191, 197.)

The Legislature recently enacted Section 1097.6, which codifies prevailing legal authority set forth in case law and FPPC advice letters relevant to the question at issue here: whether a subsequent contract with an independent contractor for a later phase of the same project violates Section 1090. Section 1097.6(a) provides:

(1) For a public entity that has entered into a contract with an independent contractor to perform one phase of a project and seeks to enter into a subsequent contract with that independent contractor for a later phase of the same project, the independent contractor is not an “officer”

under this article if the independent contractor's duties and services related to the initial contract did not include engaging in or advising on public contracting on behalf of the public entity.

(2) For purposes of this section, "engaging in or advising on public contracting" means preparing or assisting the public entity with any portion of the public entity's preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with the public entity.

Here, the facts state that the District entered into an on-call agreement with the Consultant to perform various general architectural and supplementary support services to be determined by the District through issuing approved task orders. In addition, the agreement included a provision that the Consultant assist the District in preparing final bidding documents. Of the five task orders that have been assigned, two have related to the Project including performing a mechanical, electrical and plumbing site assessment and preparing a Corporation Yard Master Plan. However, the task orders did not require the Consultant to assist with preparing any procurement documents related to final design of the Project.

While the on-call agreement had a provision contemplating the Consultant would generally assist with the preparation of final bidding documents, the agreement and the provision were not specific to the Project. In fact, the Consultant was never required to engage in or advise the District on public contracting specifically concerning the Project because, as mentioned in the facts above, it never assisted with the preparation of any procurement documents related to final design of the Project as a result of any task orders or otherwise. Accordingly, the Consultant is not considered an "officer" under Section 1097.6(a)(1) with respect to the Project and Section 1090 does not prohibit the District from entering an agreement with the Consultant to complete the final design phase for the Project.

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

Sincerely,

Dave Bainbridge
General Counsel

By: *Jack Woodside*
Jack Woodside
Senior Counsel, Legal Division

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