



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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June 18, 2025

Regina A. Garza
Madera County
7404 North Spalding Avenue
Fresno, CA 93720-3370

Re: Your Request for Advice
Our File No. A-25-058

Dear Ms. Garza:

This letter is in response 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 Madera 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 County of Madera from entering a contract with DLR Group, Inc. (DLR) for final design and construction work on a new behavioral health crisis stabilization unit and sobering center facility (the BH facility) where the County had previously contracted with DLR, on the same project, to prepare program level schematic drawings for the County's use in a grant application for the BH facility?

CONCLUSION

No. As explained below, although DLR entered into an agreement for purposes of Section 1090 to assist the County in preparing a grant, DLR did not have duties to engage in or advise on public contracting on behalf of the County. Specifically, the prior agreement was for a limited two-

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.

month term, the scope of work was limited to schematic design services, and it explicitly excluded the design and construction work for the BH facility that the County now seeks to complete. Accordingly, based on the facts provided, DLR is not an “officer” under Section 1097.6(a)(1) and Section 1090 does not prohibit the County from entering an agreement with DLR to complete the final design and construction work for the BH facility.

FACTS AS PRESENTED BY REQUESTER

The County is implementing a design-build project method for a new behavioral health crisis stabilization unit and sobering center facility (the BH facility). As part of the grant application process for the new BH facility, the County contracted with DLR to develop a schematic design level program, specification outline, and schematic design drawing set for the new facility.

On January 23, 2023, the County entered a purchasing agent agreement with DLR for a term not to exceed two months. The primary scope of services under the agreement was to provide “Architectural and Engineering Services” for the BH facility incorporating a “Schematic Design services” proposal that included the following exclusion: “Scope of services does not include being AOR (Architect of Record) for bringing current design of project up to 100% DD [Design Development] per AIA [American Institute of Architects] standards.” DLR’s contractual duties and responsibilities under the purchasing agent agreement did not involve public contracting and DLR had no opportunity to influence and did not participate in making any subsequent contracts for purposes of Section 1090 through its performance of the initial contract.

On November 7, 2024, the County released a request for statement of qualifications (RSOQ) to seek qualified candidates that would become eligible to bid on the design and construction of the BH facility. Under the terms of the RSOQ, only the top three highest ranked bidders were eligible for the next phase of the competitive bid process which is a Request for Proposals (RFP). DLR was ranked as one of the top three qualified respondents.

DLR had no opportunity to influence either the proposed RSOQ or RFP for bid proposals, it was not involved in the County’s evaluation, ranking, or decisions on the RSOQ, and it will not be involved in or have influence over the review or evaluation of bid proposals or the making of a contract with the selected contractor.

ANALYSIS

A. Section 1090.

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. City of 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.)

Under Section 1090, the prohibited act is the making of a contract in which the official has a financial interest. (*People v. Honig* (1996) 48 Cal.App.4th 289, 333.) A contract that violates

Section 1090 is void. (*Thomson v. Call* (1985) 38 Cal.3d 633, 646.) The prohibition applies regardless of whether the terms of the contract are fair and equitable to all parties. (*Id.* at pp. 646-649.) Section 1090 applies to officials who participate in any way in the making of the contract, including involvement in matters such as preliminary discussions, negotiations, compromises, reasoning, planning, drawing of plans and specifications, and solicitation for bids. (*People v. Superior Court (Sahlolbei)* (2017) 3 Cal.5th 230, 239, citing *Stigall, supra*, at p. 569.)

B. Independent Contractors Under Section 1090.

In 2017, the California Supreme Court held that “the Legislature did not intend to categorically exclude independent contractors from the scope of section 1090” in its language, applying the prohibition to “public officers and employees.” (*Sahlolbei, supra*, at p. 238.) In this opinion, the Court held that Section 1090 applies to those independent contractors who are “entrusted with ‘transact[ing] on behalf of the Government.’” (*Id.* at p. 240, quoting *Stigall, supra*, 58 Cal.2d at p. 570.) On this issue, the *Sahlolbei* Court explained:

So, for example, a stationery supplier that sells paper to a public entity would ordinarily not be liable under section 1090 if it advised the entity to buy pens from its subsidiary because there is no sense in which the supplier, in advising on the purchase of pens, was transacting on behalf of the government.

In the ordinary case, a contractor who has been retained or appointed by a public entity and whose actual duties include engaging in or advising on public contracting is charged with acting on the government’s behalf. Such a person would therefore be expected to subordinate his or her personal financial interests to those of the public in the same manner as a permanent officer or common law employee tasked with the same duties.

(*Sahlolbei, supra*, at p. 240.)

In determining whether Section 1090 applies to a particular independent contractor, the *Sahlolbei* Court explicitly rejected a “considerable influence standard” under which contractors would come within the scope of Section 1090 when occupying positions “that carry the potential to exert ‘considerable influence’ over public contracting.” (*Sahlolbei, supra*, at pp. 244-45, referencing *California Housing Finance Agency, supra*, 148 Cal.App.4th at p. 693.) The Court stated: “[a]s we have explained, independent contractors come within the scope of section 1090 when they have duties to engage in or advise on public contracting that they are expected to carry out on the government’s behalf.” (*Id.* at p. 245.)

C. Section 1097.6.

Section 1097.6 codifies prevailing legal authority set forth in case law, including the *Sahlolbei* case discussed above, 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 provided state that under the 2023 purchasing agent agreement with DLR for the County’s grant application for the project the scope of services was to provide “Architectural and Engineering Services” for the BH facility incorporating a “Schematic Design services” proposal. This initial agreement explicitly excluded scope of services for Architect of Record and full project design development. The County now seeks competitive bidding from the top three qualified candidates eligible to bid on the design and construction of the BH facility, and DLR is one of those candidates. To determine whether Section 1097.6 applies, the question is whether DLR’s duties and services under the initial agreement included engaging in or advising on public contracting on behalf of the County.

There is nothing in the purchasing agent agreement that called for DLR’s duties and services to include engaging in or advising on public contracting for the County. The prior 2023 agreement was for a limited two-month term, the scope of work was limited to schematic design services, and it explicitly excluded the design and construction work for the BH facility that the County now seeks to complete. Moreover, the facts provided state that DLR had no opportunity to influence either the proposed RSOQ or RFP, it was not involved in the County’s evaluation, ranking, or decisions on the RSOQ, and it will not be involved in or have influence over the review or evaluation of bid proposals or the making of a contract with the selected contractor.

Accordingly, based on the facts provided, DLR is not an “officer” under Section 1097.6(a)(1) and Section 1090 does not prohibit the County from entering an agreement with the County to complete the final design and construction work for the BH facility.

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

Sincerely,

Dave Bainbridge
General Counsel

/ s/ John M. Feser Jr.

JF:aja

By: John M. Feser Jr.
Senior Counsel, Legal Division