



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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July 9, 2025

Jeffrey S. Ballinger
BEST BEST & KRIEGER LLP
City Attorney
City of Palm Springs
655 West Broadway, Suite 1500
San Diego, California 92101

Re: Your Request for Advice
Our File No. A-25-089

Dear Mr. Ballinger:

This letter responds to your request for advice on behalf of the City of Palm Springs (“City”) regarding Government Code Section 1090, et seq.¹ Please note that we are only providing advice under Section 1090, and 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. Finally, the Commission is not authorized and does not provide advice concerning past conduct. (Section 1097.1(c)(2) and Regulation 18329(b)(6)(A).) Therefore, nothing in this letter should be construed to evaluate any conduct that may have already taken place, and any conclusions contained in this letter apply only to prospective actions.

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 Riverside 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 City from entering into contract with a Computer-Aided Dispatch/Records Management System (“CAD/RMS”) software vendor (“Platform Provider”) due to its “strategic partnership” with SDI Presence, LLC, an independent contractor that assisted the

¹ The Political Reform Act (the “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.

City in the formation of the City's Request for Proposals ("RFP") and has a duty to advise the City in its software vendor selection for the new CAD/RMS system?

CONCLUSION

Yes. SDI Presence is a public officer under Section 1090, has participated in the making of the CAD/RMS RFP, and has a financial interest in a potential bidder, Platform Provider, due to their strategic partnership. Accordingly, the City may not enter into the contract with the Platform Provider without violating Section 1090.²

FACTS AS PRESENTED BY REQUESTER

In order to procure and select a new Computer-Aided Dispatch/Records Management System (CAD/RMS) software vendor for the City's police department, the City contracted with SDI Presence to provide project management services, CAD/RMS implementation and advisory services to the City. As a part of its services, SDI Presence is responsible for providing a comprehensive assessment of the City's current CAD/RMS system and helping the City develop functional and technical requirements for a replacement CAD/RMS system. SDI Presence is required to help the City prepare a scope of work for the new CAD/RMS software with implementation services that will allow for a thorough comparison of all qualified software vendors.

SDI Presence is also required to provide technical expertise and support throughout the City's selection process. This includes SDI Presence preparing a proposed project work plan with timelines to accomplish all tasks outlined in the scope of work with project deliverables, develop a needs assessment to include in the City's Request for Proposals ("RFP") and to be used in the evaluation process, draft and coordinate responses to software vendor questions during the proposal period, and provide technical advice as requested to the evaluation team during the evaluation period. Once the City selects the software vendor, SDI Presence will work with that software vendor and provide overall project management oversight throughout the new CAD/RMS system implementation process.

After the City released the RFP for a CAD/RMS software vendor, SDI Presence notified the City that it had recently entered into non-exclusive partnerships with multiple CAD/RMS vendors to provide maintenance and support for public safety clients.³ SDI Presence also informed the City about a press release indicating that SDI Presence had entered into a "strategic partnership" with a well-known CAD/RMS software provider or platform provider ("Platform Provider"), one whom

² To the extent any other vendor with an ongoing business relationship with SDI Presence wishes to bid on a contract for which SDI Presence had a duty to advise the City, Section 1090 may also prohibit the vendor and City from entering the contract. However, this determination can be made only after consideration of the specific business relationship with the vendor. Accordingly, the City may wish to seek additional advice should a vendor with an ongoing business relationship with SDI Presence attempt to bid on the RFP or any contract for which SDI provided advice to the City.

³ No further information was provided regarding SDI Presence and its non-exclusive partnerships with CAD/RMS vendors other than Platform Provider.

the City would likely consider for CAD/RMS software if that Platform Provider submitted a proposal.⁴

According to SDI Presence, its partnership enables the implementation teams of Platform Provider to utilize SDI Presence's skilled resources for upgrade services on Platform Provider's existing iCAD platform when Platform Provider's team lacks the capacity to deliver timely services to their customers. In other words, SDI Presence provides upgrade services to Platform Provider's existing clients on a case-by-case basis, but does not provide any services to Platform Provider's clients that are implementing brand new systems, which is what the City is seeking.

Under their agreement, the SDI Presence's work is billed to Platform Provider or the Platform Provider's existing customers. The partnership also allows SDI Presence to sell its implementation services directly to Platform Provider's customers or to customers looking to become a customer of Platform Provider. SDI Presence has not committed to any sales goals or metrics to Platform Provider and does not receive any direct compensation from Platform Provider, except within the subcontractor relationship mentioned above. Since the City received this information, the City has paused the RFP.

ANALYSIS

Section 1090

Section 1090 generally prohibits public officers, 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.) 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.)

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.) An official "makes" a contract if the official participates in any way in the making of the contract, including involvement in matters such as preliminary discussions, negotiations, planning, drawing of plans and specifications. (*Millbrae Assn. for Residential Survival v. City of Millbrae* (1968) 262 Cal.App.2d 222, 237; see also *Stigall v. Taft*, *supra*, 58 Cal.2d at p. 569.) Additionally, Section 1090's prohibition extends to prohibit an official from subsequently acquiring an interest in a contract the official has previously participated in making. (See, e.g., 81 Ops.Cal.Atty.Gen. 317 (1998) [council

⁴ You indicate that SDI Presence has a confidentiality clause in its agreement with the Platform Provider and requested that the City not include the Platform Provider's name in the statement of facts. Because this term refers to a particular party-SDI Presence's strategic partner-we are providing advice without requiring the identification of the Platform Provider.

member could not participate in the establishment of a loan program and then leave office and apply for a loan].)

Independent Contractors Subject to Section 1090

First, we examine whether SDI Presence, an independent contractor, is a public officer and subject to the prohibitions under Section 1090. In 2017, the California Supreme Court held that “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.” (*People v. Superior Court (Sahlolbei)* (2017) 3 Cal.5th 230, 245. The Legislature recently enacted Section 1097.6, which codifies prevailing legal authority set forth in case law and Commission advice letters relevant to 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.

Due to its role as an adviser to the City in drafting the CAD/RM RFP and its future role in advising the City in its software vendor bid evaluation and selection process, SDI Presence is a public officer subject to Section 1090. As a result, SDI Presence may not be financially interested in the CAD/RMS contract due to its participation in the making of the contract.

Financial Interest

The next issue is whether SDI Presence’s strategic partnership with Platform Provider results in SDI Presence having a “financial interest” in any City contracts benefiting Platform Provider. Although Section 1090 does not specifically define the term financial interest, case law and Attorney General opinions state that prohibited financial interests may be indirect as well as direct, and may involve financial losses, or the possibility of losses, as well as the prospect of pecuniary gain. (*People v. Vallergera* (1977) 67 Cal.App.3d 847, 867, fn. 5; *Terry v. Bender* (1956) 143 Cal.App.2d 198, 207-208; 85 Ops.Cal.Atty.Gen. 34, 36-38 (2002); 84 Ops.Cal.Atty.Gen. 158, 161-162 (2001).) Prohibited financial interests are not limited to express agreements for benefit and need not be proven by direct evidence and extend to expectation of benefit by express or implied agreement and may be inferred from the circumstances. (*People v. Honig, supra* at p. 315.) The concern is “with any interest, 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 the [state].” (*Stigall v. City of Taft, supra*, 58 Cal. 2d at p. 569.) Thus, that the interest “might be small or indirect is immaterial so long as it is such as deprives the [people] of his overriding fidelity

to [them] and places him in the compromising situation where, in the exercise of his official judgment or discretion, he may be influenced by personal considerations rather than the public good.” (*Terry v. Bender* (1956) 143 Cal. App. 2d 198, 207-208.)

An Attorney General Opinion addressed a similar situation where the board of a redevelopment agency anticipated entering into contracts with business firms, several of which were clients of a board member’s promotional products and services company. (86 Ops.Cal.Atty.Gen. 187 (2003).) The Attorney General determined that the board member would have a financial interest in any contracts between the redevelopment agency and the official’s clients due to the official’s business relationship with the contracting parties as a supplier of goods or services:

The board member could be influenced by the prospect of future business opportunities directly related to the contracts or by a desire to maintain favorable ongoing relationships with the contracting parties . . . The Legislature has made clear that ongoing business relationships may represent financial interests for purposes of section 1090.(See, e.g., § 1091, subd. (b)(5), (b)(6), (b)(8).)

(86 Ops.Cal.Atty.Gen. 187, 188.)

Additionally, we have advised that where the contract will contribute to the financial health of the contracting party with which the officer is associated, the officer has an indirect financial interest in the contract that is “the type of indirect interest Section 1090 attempts to thwart.” (See e.g., *Woodruff* Advice Letter, No. A-22-121 [City mayor could not participate in a BART station project due to her financial interest in a client of her nonprofit firm who is also on the BART development team.]; *Khuu* Advice Letter, No. I-14-107, [City could not enter into or renew contracts with city contractors that are clients of a city councilmember’s new employer due to the councilmember’s indirect financial interest.]; *Reyes* Advice Letter, No. A-15-099 [A city mayor was disqualified under Section 1090 even though his employer was not the contracting party but was instead a subcontractor of the contracting party.]; *Schons* Advice Letter, No. A-15-114 [A consulting firm was disqualified from conducting the hiring process for potential vendors even though the process would be conducted blindly, because the consulting firm knew that it had prior or ongoing business relationships with some of the potential vendors.])

Here, SDI Presence has a financial interest under Section 1090 in City contracts benefiting Platform Provider . The facts state that SDI Presence has a “strategic partnership” and a “subcontractor relationship” with Platform Provider to provide services, or sell its services directly to, its existing or potential customers. Under their arrangement, Platform Provider or their customers pay SDI Presence for its services. As a result, SDI Presence could be influenced by the prospect of future business opportunities and a desire to maintain its ongoing relationship with Platform Provider.

Under the facts provided, SDI Presence would acquire a prohibited financial interest in its contract with the City, if the City enters a subsequent contract with SDI Presence’s strategic partner, Platform Provider. It will have participated in the making of a contract in which it has a financial interest. Thus, the City may not enter into the contract with the Platform Provider without violating Section 1090.

The facts indicate that there are other CAD/RMS vendors with which SDI Presence has recently formed non-exclusive partnerships to offer maintenance and support for public safety clients. To the extent any other vendor with an ongoing business relationship with SDI Presence wishes to bid on this contract, Section 1090 may also prohibit the vendor and the City from entering into the contract. However, this determination can be made only after consideration of the specific business relationship between SDI Presence and the vendor. Accordingly, the City may wish to seek additional advice should a vendor with an ongoing business relationship with SDI Presence attempt to bid on this or any contract for which SDI provided advice to the City.⁵

If you have other questions on this matter, please contact me at KHarrison@fppc.ca.gov.

Sincerely,

Dave Bainbridge
General Counsel

L. Karen Harrison

By: L. Karen Harrison
Senior Counsel, Legal Division

KH:aja

⁵ In light of the conclusion that the City may not subsequently contract with Platform Provider without violating Section 1090, we do not further analyze the application of the Act. However, we note that the Act also prohibits City consultants from making, participating in making, or influencing a decision if it is reasonably foreseeable that the decision would have a material financial effect on a source of income to the consultant. (See Sections 82048, 87100, and 87103.) While, we do not provide advice on past conduct, we caution that past violations of the Act may have occurred if SDI Presence made, participated in making, or attempted to influence any City decision, including the decisions involving the drafting of the RFP or the award of the contract, and it was reasonably foreseeable that vendors who are sources of income to SDI Presence would be bidding on the contract. However, as we cannot advise on past conduct, we express no opinion regarding any past violations resulting from SDI's involvement in the decisions while in discussions with "strategic partners" who may be bidding on the resulting contract.