



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3050 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

September 10, 2025

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

Re: Your Request for Advice
Our File No. A-25-106

Dear Mr. Nelson:

This letter responds to your request for advice on behalf of the Delta Conveyance Design and Construction Joint Powers Authority 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, including the Public Contract Code.

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

Is the Delta Conveyance Design and Construction Joint Powers Authority ("DCA") or its Delta Conveyance Project manager, Jacobs Engineering Group, prohibited from contracting with Keller Group during the construction phase of the Delta Conveyance Project if Keller Group provides technical assistance during the preliminary design phase?

CONCLUSION

No, Section 1090 does not prohibit the DCA or Jacobs Engineering Group ("Jacobs Engineering") from later contracting with Keller Group during the construction phase of the Delta

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.

Conveyance Project if Keller Group provides a professional opinion on technical issues related to soils engineering and constructability during the preliminary design phase.

FACTS AS PRESENTED BY REQUESTER

Under the Joint Powers Agreement, the DCA provides the California Department of Water Resources (“DWR”) with engineering and related supportive services while DWR conducts planning and permitting for the Delta Conveyance Project (the “Project”).² Jacobs Engineering is an independent contractor serving as the DCA’s engineering design manager on the Project. Jacobs Engineering’s work involves refining preliminary design options for the Project. These preliminary designs will be utilized by future design teams to prepare final designs. Jacobs Engineering has encountered several Project areas that may pose unique soils engineering and constructability issues due to site conditions and Project demands. The DCA and Jacobs Engineering wish to consult with Keller Group about how to best address these technical issues.³

To date, Keller Group has not worked on any portion of the Project, has no existing contractual relationship with the DCA, and would not be compensated for its professional opinion in the preliminary design phase. The input sought from Keller Group would be purely technical in nature. Keller Group would be applying its highly specialized expertise in soils-related construction issues to provide feedback to help Jacobs Engineering better understand how portions of the Project will be impacted by soil conditions in the specifically defined Project areas. Additionally, Keller Group would not be advising on public contracting, overseeing any portion of the Project or holding any decision-making authority, or participating in the preparation of or making of any procurement for the build-out phase of the Project. Keller Group’s technical input would necessarily be included in plans or specifications for future Project-related procurements. The DCA and Jacobs Engineering want to make sure Keller Group is not prohibited from proposing in response to procurements in the construction phase of the project if Keller Group provides technical assistance in the preliminary design phase.

ANALYSIS

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 financial interests, other than remote or minimal interests, that prevent public officials from exercising absolute loyalty and undivided allegiance in furthering the best interests of their 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

² The Project is an essential climate adaptation strategy that will help protect California against future water supply losses caused by climate change, sea level rise, and earthquakes. And it helps ensure the State Water Project can capture, move, and store water to make the most of big, but infrequent, storm events. (California Department of Water Resources, *Delta Conveyance*, <https://water.ca.gov/deltaconveyance> (as viewed, Sept. 2, 2025)).

³ Keller Group is an international geotechnical specialist contractor that designs and implements geotechnical solutions for construction projects. (Keller Group plc, *About Us*, <https://www.keller.com/about-us> (as viewed, Sept. 2, 2025)).

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 p. 646-649.)

Section 1090 also prohibits the use of a public position for self-dealing. (See *Hub City Solid Waste Services, Inc. v. City of Compton* (Hub City)(2010) 186 Cal.App.4th 1114, 1124 [independent contractor leveraged his public position for access to city officials and influenced them for his pecuniary benefit]; *California Housing Finance Agency v. Hanover* (2007) 148 Cal.App.4th 682, 690 [“Section 1090 places responsibility for acts of self-dealing on the public servant where he or she exercises sufficient control over the public entity, i.e., where the agent is in a position to contract in his or her official capacity”]; *Lexin v. Superior Court* (2010) 47 Cal.4th 1050, 1090 [The purpose of Section 1090 is to prohibit self-dealing, not representation of the interests of others].)

Independent Contractors Subject to Section 1090

The California Supreme Court has held that the term “officers” in Section 1090 applies to “outside advisors [independent contractors, including corporate consultants] with responsibilities for public contracting similar to those belonging to formal officers.” (*People v. Superior Court (Sahlolbei)* (2017) 3 Cal.5th 230, 237-240.) Thus, liability extends only to independent contractors entrusted with “transact[ing] on behalf of the Government.” (*Id.* at p. 240.) Furthermore, in applying the *Sahlolbei*, *supra*, standard in past advice letters, we have examined the role played by the contractor to determine the application of Section 1090. For example, we have found that an independent contractor involved in design and construction services on a housing project, including construction of public streets, was not subject to Section 1090 with respect to a subsequent construction contract for additional public streets, where no facts suggested that the town hired the contractor to engage in or advise on public contracting on behalf of the town. (*Morris Advice Letter*, No. A-22-003.)

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 that a public entity can enter into a contract with an independent contractor in a subsequent phase of a project if the duties and services of the independent contractor in the initial phase “did not include engaging in or advising on public contracting on behalf of the public entity.” The phrase “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.” (Section 1097.6(a)(2).) We have previously advised that where the scope of an independent contractor’s work is limited to design schematics and the independent contractor had no duty to engage in or advise on public contracting on behalf of the public agency nor any involvement with the evaluation, ranking, or decisions on future requests for bids or proposals, the independent contractor was not an “officer” under Section 1097.6(a)(1). (See *Garza Advice Letter*, A-25-058.)

Here, DCA and Jacobs Engineering wish to only have Keller Group provide technical assistance on portions of the Project that Jacobs Engineering has identified as having soils engineering and constructability issues. This technical information would necessarily be included in

the plans or designs for future procurements related to the Project. However, similar to the *Garza* Advice letter, *supra*, the facts here do not indicate that Keller Group would have any decision-making authority nor do they indicate that the DCA or Jacobs Engineering is seeking Keller's involvement in preparing or assisting with any portion of the preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract. Consequently, so long as Keller Group's involvement is limited to technical assistance and it does not engage in or advise the DCA or Jacobs Engineering on public contracting, as those terms are defined in Section 1097.6(a)(2), Keller Group will not be an "officer" under Section 1090 with respect to providing initial technical assistance on the preliminary designs of the Project and would not be disqualified from responding to subsequent proposals for work to be performed during the construction phases for the Project.

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

Sincerely,

Dave Bainbridge
General Counsel

By: *Margaret L. Roeckl-Navazio*

Margaret Roeckl-Navazio
Counsel, Legal Division

MRN:ash