



FAIR POLITICAL PRACTICES COMMISSION

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November 3, 1999

Lou Cordia
The Cordia Companies
122 South Royal Street
Alexandria, Virginia 22314-3328

**Re: Your Request for Advice
Our File No. A-99-235**

Dear Mr. Cordia:

This letter is in response to your request for advice regarding the provisions of the Political Reform Act (the "Act")¹ on behalf of The Cordia Companies. You have also posed general questions about contract procurement which are not under the jurisdiction of the Act.

QUESTION

Under the Act, may The Cordia Companies be paid a success or contingency fee for helping a client obtain a contract with one of California's state agencies?

CONCLUSION

Under most circumstances, the Act does not prohibit a lobbyist from receiving a commission for successfully representing a client in obtaining a contract from a state agency.

FACTS

Cordia and Associates, a division of The Cordia Companies, does government and communications consulting. The Cordia Companies represents BI, Inc. ("BI"), a California company that produces technologies for corrections and parole and probation departments. This includes the California Youth and Adult Correctional Agency, as well as other agencies in California.

¹ Government Code sections 81000 - 91014. Commission regulations appear at title 2, sections 18109 - 18995, of the California Code of Regulations.

Through the RFP process, BI is seeking a contract with the Department of Corrections and the Youth Authority. The Cordia Companies is the registered lobbyist for BI and is representing BI in the RFP/contract process.

ANALYSIS

Section 86205(f) prohibits a lobbyist or lobbying firm from:

“Accept[ing] or agree[ing] to accept any payment in any way contingent upon the defeat, enactment, or outcome of any proposed legislative or administrative action.”

The terms “administrative action” and “legislative action” are defined in the Act as follows:

“‘Administrative action’ means the proposal, drafting, development, consideration, amendment, enactment or defeat by any state agency of any rule, regulation or other action in any rate-making proceeding or any quasi-legislative proceeding, which shall include any proceeding governed by Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.” (Section 82002.)

“‘Legislative action’ means the drafting, introduction, consideration, modification, enactment or defeat of any bill, resolution, amendment, report, nomination or other matter by the Legislature or by either house or any committee, subcommittee, joint or select committee thereof, or by a member or employee of the Legislature acting in his official capacity. ‘Legislative action’ also means the action of the Governor in approving or vetoing any bill.” (Section 82037.)

Pursuant to Regulation 18202(a)(6), a proceeding of a state agency at which an action is taken awarding a grant or contract is not a quasi-legislative proceeding for the purposes of Section 82002. Hence, the provisions of the Act, and specifically the prohibition of Section 86205(f), are not applicable to proceedings regarding the awarding of a grant or contract by a state agency.

Therefore, The Cordia Companies may represent BI in the RFP process in pursuit of winning the contract with the California Youth and Adult Correction Agency and may obtain a success or contingency fee for such representation. However, if The Cordia Companies

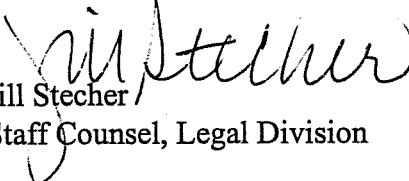
represents a client regarding a contract with the Legislature, such representation would be considered lobbying the Legislature and a contingency fee would be prohibited.

In addition, we have previously advised that if a meeting involves a RFP or state contract and discussions include proposals for common or generic boilerplate provisions which may be included in future contracts proposed by a state agency, such an activity may be considered a "quasi-legislative proceeding." (*Erickson Advice Letter, No. A-90-537, copy enclosed.*)

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

Sincerely,

Luisa Menchaca
Acting Chief, Legal Division

By:  Jill Stecher
Staff Counsel, Legal Division

LM:JS:tls

Enclosure

CORRECTED LETTER: November 18, 1999