



## FAIR POLITICAL PRACTICES COMMISSION

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May 1, 2014

Caroline Bolton  
Attorney  
Office of Systems Integration  
CA Health and Human Services Agency  
2525 Natomas Parkway, Suite 200  
Sacramento, CA 95833

Re: **Your Request for Advice**  
**Our File No. I-14-081**

Dear Ms. Bolton:

This letter responds to your request for advice regarding the provisions of the Political Reform Act (the "Act").<sup>1</sup>

Please note that we only provide advice under the Act and Government Code Section 1090. We do not provide advice on other conflict of interest restrictions, if any, that could arise such as those governed by common law.

Because you ask only general questions under the Act and Section 1090, we offer only informal assistance. For purposes of the Act, informal assistance does not provide the requestor with the immunity set forth in Sections 83114(a) or (b). (See Regulation 18329(b)(8)(C) and (c)(1) and (3).) Also, for purposes of Section 1090, because your request does not provide specific information regarding a government contract and your possible financial interest in the contract, we do not deem this letter to meet the requirements for showing good faith conduct to permit the requestor to offer the letter into evidence in a Commission enforcement proceeding or criminal prosecution regarding Section 1090. (See Section 1097.1(c)(5).)

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<sup>1</sup> 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 18110 through 18997 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.

## QUESTION

Does either the Act or Section 1090 prevent your agency from contracting with companies who provide upfront information before a Request for Proposals is drafted and then bid on the Request for Proposals once it is released?

## CONCLUSION

No. The contractors are not public officials under the Act or employees under Section 1090 and are therefore not subject to either provision.

## FACTS

You are an attorney with the Office of Systems Integration within the California Health and Human Services Agency. Your office is writing a Request for Proposals for a Systems Integrator. To draft that proposal, you will be contacting contractors who are currently contracting with counties to request information about the functions they currently provide to the California Department of Social Services and the counties, including the types and amount of data the contractors store. Once it has this information, the Office of Systems Integration will be able to provide more complete information in the Request for Proposals and the bidders will be better able to estimate costs.

## ANALYSIS

### Conflicts of Interest under the Act

Section 87100 prohibits any state or local public official from making, participating in making, or using his or her official position to influence a government decision in which the official has an interest specified in Section 87103. A public official has a "financial interest" in a government decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the public official's interests. (Section 87103; Regulation 18700(a).) The Commission has adopted an eight-step standard analysis for deciding whether an individual has a conflict of interest under Section 87100.

### **Step One - Is the individual a public official? (Section 87100; Regulation 18700(b)(1).)**

You have not offered any facts to suggest that the county contractors are "public officials" for purposes of the Act. A contractor could be considered a public official only if he or she meets the definition of "consultant" in Regulation 18701 (copy enclosed). Assuming that they are not public officials, Section 87100 would not apply.

Because the individuals are not public officials, there is no conflict of interest under the Act.

**Application of 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 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. 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.)

We typically employ a six-step analysis to determine whether an official has a disqualifying conflict of interest under Section 1090. As seen below, the six-steps are not necessary in this case.

**Step One: Is the official subject to the provisions of Section 1090?**

Section 1090 provides, in part, that “[m]embers of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members.” Based on your limited facts, the contractors for the counties are not county employees or a member of any board. The Attorney General has found that Section 1090 would apply to independent contractors or consultants only in certain instances, particularly “when a contractor is advising government officials on matters of public policy, or when they are exercising judgment on behalf of a public entity.” (88 Ops. Cal. Atty. Gen. 183 (2005).) That is not the case here. Section 1090 therefore does not apply to the contractors and does not bar them from participating in the Request for Proposals based on your communication with them.

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

Sincerely,

Zackery P. Morazzini  
General Counsel



By: Heather M. Rowan  
Senior Counsel, Legal Division

HMR:jgl