STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3050 • Sacramento, CA 95811

September 15, 2026

Joshua Nelson
Best Best & Krieger
500 Capitol Mall, Suite 2500
Sacramento, California 95814

Re: Your Request for Advice
Our File No. A-26-046

Dear Mr. Nelson:

This letter responds to your request for advice on behalf of the Delta Conveyance Design and Construction Joint Powers Authority ("Delta JPA") 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 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

May the Jacobs Engineering Group, Inc. ("Jacobs") and its subconsultant, GEI Consultants, Inc. ("GEI"), provide final design engineering services for compensatory mitigation projects ("CMPs") for the Delta Conveyance Project ("Project") if Jacobs and its subconsultant performed preliminary design services for the CMPs?

---

[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.

CONCLUSION

To the extent that preliminary design services for the CMPs include preparing the bid specifications that would be issued, inviting contractors to bid for the work as either a request for proposals or notice to invite bids, Jacobs and GEI would be disqualified from performing the subsequent final design work under Section 1097.6 and would be public officers subject to Section 1090. As a result, Section 1090 would prohibit Jacobs and GEI from entering into the CMP contract due to their participation in the making of that contract.

FACTS AS PRESENTED BY REQUESTER

The Delta JPA is a joint powers agency formed by public water agencies that have participated in the design and planning phase for the Project. The Department of Water Resources ("DWR") and the Delta JPA then entered into Amendment Nos. 1-9 to the Delta Conveyance Joint Exercise of Powers Agreement ("JEPA Agreement") to provide for the Delta JPA's services to DWR in support of new planning and environmental work, as described below.

Background and Purposes

The Delta JPA was formed for the purpose of designing and constructing a new Sacramento- San Joaquin Delta (Delta) water conveyance facility for the State Water Project, under the supervision of DWR. DWR owns and operates the State Water Project. The conveyance facility described in the initial JEPA was commonly known as California WaterFix and involved two tunnels through the Delta. In early 2019, Governor Newsom's Executive Order N-10-19 set a new water policy for California, and on May 2, 2019, DWR withdrew approval of the California WaterFix project and announced it would embark on new planning and environmental documentation for a potential Project. Under Amendments No. 1-9 of the JEPA, Delta JPA has provided design and site investigative services to support DWR's planning and environmental work for the single tunnel Project.

EDM Services for the Planning Phase

On December 20, 2018, the Delta JPA Board of Directors approved the execution of a five-year agreement with Jacobs for Engineering Design Management services ("EDM Agreement"). Under the EDM Agreement, Jacobs and a team of subconsultants were authorized to provide conceptual-level engineering work for the California WaterFix project and support the Delta JPA as an extension of Delta JPA staff in project management of individual projects identified as part of the California WaterFix project. Services were expected to be provided under the issuance of various task orders by the Delta JPA.

In light of DWR's withdrawal of approvals for California WaterFix, the Delta JPA is currently utilizing Jacobs and its subconsultants exclusively for conceptual design engineering services to assist DWR's planning and environmental review process for a potential Conveyance Project.

Jacobs' and its subcontractors' work is subject to technical and administrative oversight.

Specifically, the Delta JPA has engaged the services of a chief engineer who oversees and directs Jacobs' and its subcontractors' work. This oversight is in addition to that provided by other Delta JPA staff, including its Executive Director, Deputy Executive Director, and the Delta JPA Board of Directors. Moreover, DWR provides ultimate oversight of all Delta JPA activities, and DWR engineering reviews and provides input on Delta JPA's technical work.

Since the issuance of the *Nelson and Dowd* Advice Letter, No. A-20-059, the Delta JPA has extended Jacobs' initial five-year agreement, and Jacobs and its subconsultants have provided the conceptual design and similar services as anticipated in the advice letter. The Delta JPA team is currently preparing a Basis of Design Report ("BODR") for the Project. This BODR will capture all conceptual design and be utilized for procurement of final design firms for Project work. This BODR is being prepared by Jacobs and its subconsultants, including GEI. In addition, Jacobs and its subconsultants are preparing design and similar specifications that will be incorporated into documents for the procurement of final design firms. All work remains subject to the oversight of Delta JPA's Executive Director, Deputy Executive Director, and chief engineer. In addition, technical staff from DWR are reviewing and providing input. Despite the conclusion in Advice Letter, No. A-20-059, Jacobs will not serve as final designer for the bulk of Project work.

One area in which Jacobs has provided a broader scope than anticipated in Advice Letter, No. A-20-059 is geotechnical work, which is provided by a separate vendor. Historically, this work has been overseen by other Delta JPA staff. However, Jacobs now provides oversight of this work, including review and recommendations on scope and budget for task orders and amendments. However, the Delta JPA has ultimate authority to approve task orders and amendments. This geotechnical work is fed into Jacobs' and its subconsultants' engineering work. This work remains subject to the oversight of Delta JPA's Executive Director, Deputy Executive Director, and chief engineer. In addition, technical staff from DWR are reviewing and providing input.

The Delta JPA is considering an exception to the final design process above for final design of certain compensatory mitigation projects ("CMP"). These CMPs offset potential impacts to sensitive species and resources and include features that must be completed prior to commencement of general Project construction. Examples are habitat restoration projects in Bouldin Island and a series of ponds near Interstate 5.

Given the different timing and scope of the CMPs, the Delta JPA would like to consider issuing a task order to Jacobs under its agreement to complete final design services for the CMPs. This will include Jacobs and its subconsultant, GEI, who will progress the current design of the CMPs through detailed and final design and prepare associated bid documentation, including technical specifications. As anticipated in Advice Letter, No. A-20-059, this work will remain subject to the oversight of the Delta JPA's Executive Director, Deputy Executive Director, and chief engineer. In addition, technical staff from DWR are reviewing and providing input. Construction management services would be provided by a separate vendor procured through a competitive process.

In a follow-up email, you clarified that for the CMPs only, Jacobs and GEI Consultants would prepare the bid specifications that would be issued, inviting contractors to bid for the work. These specifications would be based on the final design for the CMP features. The exact wording of the bid documents has not been finalized but it would be a request for proposals or notice to invite bids.

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 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.) "The defining characteristic of a prohibited financial interest is whether it has the potential to divide an official's loyalties and compromise the undivided representation of the public interests the official is charged with protecting." (*Lexin v. Superior Court* (2010) 47 Cal.4th 1050, 1075.) 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.)

Moreover, Section 1090 prohibits self-dealing. (See *Hub City Solid Waste Services, Inc. v. City of Compton* (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

In 2017, the California Supreme Court recognized "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." (*People v. Superior Court* (*Sahlolbei*) (2017) 3 Cal.5th 230, 238.) 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, emphasis added, quoting *Stigall, supra*, 58 Cal.2d at p. 570.)

We examine whether Jacobs and GEI had duties to engage in or advise on public contracting on behalf of the Delta JPA under the extended 2018 agreement, under which they have provided conceptual design and similar services, such that Jacobs and GEI would be "officers" under Section 1097.6, and subject to Section 1090's prohibitions.

Subsequent to the issuance of Advice Letter, No. A-20-059, the Legislature 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.[2] Pursuant to Section 1097.6(a)(1), an independent contractor whose duties under an initial contract did not require it to engage in or advise on public contracting *on behalf of the public entity* will not qualify as an "officer," and therefore not be subject to Section 1090.[3] 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.

Section 1097.6(b) states that it is not a violation of Section 1090 under the following conditions:

> (1) If an independent contractor is an officer under subdivision (a), then it is not a violation of this article for the public entity to enter into a subsequent contract with that independent contractor for a later phase of the same project if the independent contractor did not engage in or advise on the making of the subsequent contract during its performance of the initial contract.
>
> (2) For purposes of this section, an independent contractor does not "engage in or advise on the making of the subsequent contract" by participating in the planning, discussions, or drawing of plans or specifications during an initial stage of a project if that participation is limited to conceptual, preliminary, or initial plans or specifications and all bidders or proposers for the subsequent

---

[2] We note that the Legislature enacted this new statute under AB334, effective January 1, 2024, which is intended to clarify the law in this type of situation to establish that an independent contractor, who meets specified requirements, is not an officer for purposes of being subject to the prohibition on being financially interested in a contract.

[3] "Engaging or advising on a public contracting" means to prepare or assist the public entity in preparing solicitation materials (e.g., a request for proposals or request for qualifications) for a subsequent contract. (Section 1097.6(a)(2).)

contract have access to the same information, including all conceptual, preliminary, or initial plans or specifications.

The facts here establish that the above conditions are not met.

The Delta JPA would like to consider issuing a task order to Jacobs under its agreement to complete final design services for the CMPs. This will include Jacobs and its subconsultant, GEI, who will progress the current design of the CMPs through detailed and final design and prepare associated bid documentation, including technical specifications. For the CMPs, Jacobs and GEI would prepare the bid specifications that would be issued inviting contractors to bid for the work. These specifications would be based on the final design for the CMP features. The exact wording of the bid documents has not been finalized but it would be a request for proposals or notice to invite bids.

If the Delta JPA issues a task order to Jacobs under its agreement to complete final design services for the CMPs drafting, including the CMP bid documentation and request for proposals or notice to invite bids, Jacobs and GEI would be engaging in or advising on the making of the subsequent contract and therefore would qualify as public officers subject to Section 1090. As a result, Jacobs and GEI may not be financially interested in the CMP contract due to their participation in the making of the contract. Further, the facts suggest that under the proposed scope of services, Jacobs and GEI would have influence over the scope of future projects due to this work. As a result, Jacobs and GEI will have "participated in making" the future contract and would be disqualified from the CMP projects based on their prior services.

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

Sincerely,

Dave Bainbridge
General Counsel

Zachary W. Norton

By: Zachary W. Norton
Senior Counsel, Legal Division

ZWN:mkk