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VIA EMAIL

Dave Bainbridge
General Counsel
Fair Political Practices Commission
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Re: *Request for Written Advice for the California County Assessors' Information Technology Authority*

Dear Mr. Bainbridge:

Our firm acts as General Counsel for the California County Assessors' Information Technology Authority ("CCAITA"). On behalf of CCAITA's Board President, I am seeking formal written advice from the FPPC regarding CCAITA's ability to enter into a contract in accordance with the requirements under Government Code Section 1090 ("Section 1090") and based on the facts below.

FACTS

CCAITA was created in November 2022 as a joint powers authority for the purposes of implementing a new information technology program for California County Assessors to assist in the standardization of statewide assessment practices. The program receives state funding as set forth in Revenue and Taxation Code section 95.60. The scope of the new information technology program is outlined below.

In November of 2020, California voters passed Proposition 19, which dramatically changed property tax laws and placed new administrative and valuation requirements on all Assessor Offices throughout the State. These requirements mandate the cooperation of County Assessors throughout the State to certify and share property value information statewide.

- The first project of the CCAITA is aimed at creating a portal to file required forms by taxpayers and a way for counties to collaborate on data collection and communication pursuant to Proposition 19.
- The second project approved by the CCAITA will create a public portal for schools, churches, affordable housing providers, non-profits, museums, etc., to file their property tax

exemption claim forms electronically with all participating Assessor Offices. This will allow a more efficient means of communicating and working with property owners, organizations, and other California Assessors.

After an initial proof of concept effort, CCAITA is currently conducting a competitive procurement to secure an information technology vendor to develop and implement the two projects noted above through a single contract and program. (See <https://www.ccaitipa.org/procurements>.) CCAITA does not have any direct employees and has engaged TEKsystems, Inc. to provide project management support in the development and issuance of the request for proposals for the program and to assist in the review and scoring of proposals. TEKsystems, Inc. assigned Matt Kissinger as a CCAITA project manager, and he assisted in the development of the request for proposals. Mr. Kissinger ultimately left TEKsystems, Inc. and now acts as an independent contractor for Just Appraised Inc. (“JA”). His duties for JA are unrelated to the CCAITA program, and he has reached out to a CCAITA Director and member agency staff to discuss JA’s ability to provide unrelated services to those counties. JA has submitted a proposal to CCAITA for the program. Proposals are currently being evaluated, and no contract has been entered into for the program.

QUESTION

Can CCAITA contract with Just Appraised Inc. for the development of the information technology program described above?

DISCUSSION

Government Code Section 1090 directs public officers and employees “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 this language, a Section 1090 violation requires (1) a public official or employee (2) who is financially interested (3) in a contract and (4) that contract is “made” in his or her official capacity. If an official or employee has a disqualifying financial interest, the agency in some limited circumstance may be able to approve the agreement.

The California Supreme Court has held that “the Legislature did not intend to categorically exclude independent contractors from the scope of Section 1090 who are “entrusted with ‘transact[ing] on behalf of the Government.’” (*People v. Superior Court (Sahlolbei)* (2017) 3 Cal.5th 230, 240, quoting *Stigall v. City of Taft* (1962) 58 Cal.2d 565, 570.) The Court stated: “[a]s we have explained, 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.” (*Sahlolbei* (2017) 3 Cal.5th 230, 240 at p. 245.) Here, Mr. Kissinger’s prior services as project manager for the procurement likely qualified as public contracting on behalf of CCAITA subject to Section 1090.

Based on this, if the JPA awards the contract to JA and Mr. Kissinger does any work on it, it may be a Government Code section 1090 violation because Mr. Kissinger “participated in the

making” of the contract that he now has a financial interest in. (*Beshir* FPPC Adv. A-23-168 (2023); *Carvalho* FPPC Advice No. A-24-041 (2024); 66 Ops.Cal.Atty.Gen. 156, 159 (1983) [county employees could not propose agreement for consultant services, then resign, and provide such consulting services]; *Stigall v. Taft* (1962) 58 Cal.2d 565, 569-571 [councilmember involved in the making of a contract based on his involvement in the preliminary stages of the planning and negotiating process on the contract, even though he had resigned from the council prior to its vote on the contract]; 81 Ops.Cal.Atty.Gen. 317 (1998) [council member could not participate in the establishment of a loan program and then leave office and apply for a loan].)

When a Section 1090 conflict arises, the agency may go forward with it if a “remote interest” or “non-interest” exception applies. Remote interest exceptions only apply where the underlying conflict is with an official, not employee. (See, Gov. Code, § 1091.) Non-interest exceptions can apply to employee, or former employee, conflicts but no non-interest exceptions are plausibly applicable. (*Id.* at § 1091.5.) Moreover, the typical work-around for an employee Section 1090 issue is to not participate from the get-go.

CONCLUSION

Based on the above, CCAITA requests an opinion from the FPPC whether it may award the contract to JA based on the facts above. We appreciate your prompt attention to this request for advice. Please feel free to contact me directly if you would like any additional information.

Sincerely,



Joshua Nelson
of BEST BEST & KRIEGER LLP