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VIA EMAIL

Dave Bainbridge
General Counsel
Fair Political Practices Commission
1102 Q Street, Suite 3050
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Re: *Request for Written Advice for Executive Director of the California County Assessors' Information Technology Authority*

Dear Mr. Bainbridge:

This firm acts as General Counsel to the California County Assessors' Information Technology Authority ("CCAITA"). I am seeking formal written advice from the FPPC on behalf of the District's Executive Director, Rob Grossglauser, with respect to the application of the law and the FPPC's regulations to the facts set forth 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 (“Project”). (See <https://www.ccaitjpa.org/procurements>.)

CCAITA has engaged various contractors to assist with staffing functions. This includes engaging Pinnacle Advocacy (Pinnacle) to provide Executive Director services. Pinnacle’s founding partner, Rob Grossglauser, serves as CCAITA’s Executive Director.

In addition to working with CCAITA, Pinnacle Advocacy provides advocacy services to clients before the California State Legislature and California’s various departments and agencies. This includes legislative advocacy and business development consulting services for a number of clients, including technology and software companies (“Clients”). Pinnacle solely supports clients with State matters and procurements. In addition, Pinnacle services are contracted at monthly retainers and do not contain contingency nor “win” bonuses.

Aware of the likelihood that one of Pinnacle’s Clients could potentially submit a proposal for the Project, both Pinnacle and the Executive Director have not discussed the Project with any of Pinnacle’s Clients. Moreover, given the potential conflict of interest, Pinnacle and the Executive Director did not participate in the development of the request for proposals for the Project nor any draft agreement for services that was included in the request for proposals. Additionally, the Executive Director has primarily been involved in more general manager duties such as drafting meeting minutes, handling accounting, billing, and preparing agendas, some of which tangentially relate to the Project and proposed agreements, but his main function relates to assisting and reporting directly to CCAITA’s Board. Lastly, Pinnacle and Mr. Grossglauser serving as CCAITA’s Executive Director does not have any decision-making authority. The services specifically exclude and prohibit even recommendations of vendors or contracts. The evaluation, scoring, and decision to award the Project to a vendor will not include any participation by Pinnacle and Mr. Grossglauser.

It was recently discovered that one of Pinnacle’s Clients, Accenture, is a subcontractor to a third-party entity, Oracle, who submitted a bid for the Project. This is a formal request for advice under the Political Reform Act (Gov. Code, § 81000 et seq.) (the “Act”) and Government Code section 1090.

QUESTIONS

1. Would the Executive Director have a conflict of interest under the Act if CCAITA awards a contract to the Oracle who subcontracts directly with Accenture for the Project? For purposes of this request, please assume that the Executive Director received more than \$500 from Accenture in the prior year.

2. Would the Executive Director have a conflict of interest under Section 1090 if CCAITA awards a contract to the Oracle who subcontracts directly with Accenture for the Project?

3. If the answer to #1 or #2 is yes, would the Executive Director's recusal allow CCAITA to award a contract to Oracle for the Project?

DISCUSSION

CCAITA understands that under the Act and Section 1090, a public officer or employee may be precluded from participating in negotiations and decisions in which their personal finances are involved.

1. Political Reform Act

The Act prohibits a public official, including an official, from making, participating in making, or otherwise using their official position to influence *any* governmental decision in which the official knows or has a reason to know of a disqualifying financial interest. A public official has a disqualifying financial interest if the decision will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, directly on the official, or the official's immediate family, or on any of the financial interests enumerated in the applicable regulation. (2 Cal. Code Regs., § 18700(a); Gov. Code, § 87103.) Among the enumerated financial interests is a public official's own personal finances or the personal finances of their immediate family, including income amounting to a total of at least \$500 in the last 12 months before the decision is made. (2 Cal. Code Regs. § 18700(c)(6); Gov. Code, §§ 81703(c), 82030(a).)

Thus, while the Executive Director has an interest in any Client as a source of income and it can be assumed for the purposes of this request for formal advice from the FPPC that the Executive Director received at least \$500 in the past 12 months, under the Act, this financial impact must be reasonably foreseeable, material, and distinguishable from any effect to the public generally in order to constitute a conflict of interest.

a. *Reasonably Foreseeable*

When a financial interest is explicitly involved in a decision (i.e., it is a named party in, or the subject of, the governmental decision) it is presumed that the financial effect is reasonably foreseeable. (2 Cal. Code Regs. § 18701(a).) An interest is the subject of a proceeding if the decision involves among others the approval or denial of a contract with the interest. (*Ibid.*)

Here, Accenture as a known subcontractor to the above mentioned entity, Oracle, who would be the subject of a governmental decision to award a contract which would have a reasonably foreseeable financial effect on Accenture, and consequently on the Executive Director's source of income. Thus, we believe this element is likely met.

b. *Materiality*

Once it is established that a financial effect on an official's financial interest is reasonably foreseeable, the next step is to determine whether the financial effect is material (meaning it will trigger a conflict unless an exception applies). The FPPC has established specific Materiality Standards for each of the enumerated financial interests, including real property, business entities and sources of income. The reasonably foreseeable financial effect of a government decision on a source of income is material if, among other things, the source of income is a named party in, or subject of, the decision including a contracting party. (2 Cal. Code Regs. § 18702.3(a)(1).)

As discussed above, it is reasonably foreseeable that CCAITA's decision to award a contract to Oracle would have a financial effect on Accenture and the Executive Director's source of income. Because Accenture would be the subject of government decision as a known subcontractor to the entity who is a contracting party, the reasonable foreseeable effect on the Client, and thus on the Executive Director's financial interest, is likely material.

c. *Distinguishable from Effect on Public Generally*

The so-called "public generally" exception would not apply under these circumstances.

Accordingly, the Executive Director has a conflict of interest with respect to any decision made by CCAITA's Board involving or affecting Accenture which would have a "reasonably foreseeable" "material" "financial effect". The Executive Director would, therefore, be disqualified and must recuse from making, participating in making, or using her official position to influence any such decisions under the Act. The Board, however, may proceed to make such decisions in the Executive Director's absence if the Executive Director recuses under the Act.

2. Section 1090

Government Code section 1090 provides that public officers and employees "shall not be financially interested in any contract made by them in their official capacity, or by anybody 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 is "made" in his or her official capacity. Although Section 1090 does not specifically define the term "financial interest," case law and Attorney General opinions state that prohibited financial interests may be indirect as well as direct, and may involve financial losses, or the possibility of losses, as well as the prospect of pecuniary gain. (*Thomson, supra*, at pp. 651-652; see also *People v. Vallerga* (1977) 67 Cal.App.3d 847, 867, fn.5; 85 Ops.Cal.Atty.Gen. 34, 36-38 (2002); 84 Ops.Cal.Atty.Gen. 158, 161-162 (2001).)

An official or employee is directly financially interested when they are the actual party contracting with the agency. An indirect interest may arise when an official's or employee's financial interest is somehow affected by a third party that is actually contacting with the agency. Even if an official has a disqualifying financial interest, the agency may be able to approve the agreement if the interest is deemed "remote" under Government Code section 1091. If an official has a remote interest, he or she must recuse himself or herself and note his or her interest in the

minutes. There are also enumerated non-interests under section 1091.5 which once disclosed do not require the official or employee to recuse themselves.

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, the Executive Director is an independent contractor that would be directly involved in contracting on behalf of CCAITA and we assume he is subject to Section 1090.

If Oracle, the entity in which Accenture is a known subcontractor, is selected as the preferred vendor in response to the request for proposals, CCAITA would enter into a contract for the work, which would also be subject to Section 1090. However, the Executive Director has not participated in any preliminary discussions regarding the scope or substance of the solicitation or the preparation of the request for proposals for the Project, nor will the Executive Director participate in the selection, negotiations or approval of an agreement with Oracle if they are ultimately selected.

CONCLUSION

In short, CCAITA requests an opinion from the FPPC whether the Executive Director has a potential conflict of interest under the Act due to financial interest in Accenture as a source of income and whether CCAITA may award a contract to Oracle under the Act if the Executive Director recuses himself from any CCAITA decision to award said contract. Further, CCAITA requests an opinion from the FPPC whether a conflict of interest exists under Section 1090 in this context since the Executive Director has not participated nor will he partake in any aspect of making a contract.

We appreciate your attention to this request for advice; if you would like any additional information, please feel free to contact me directly.

Sincerely,



Joshua Nelson
of BEST BEST & KRIEGER LLP

JN:kcr