



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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May 9, 2023

Jonathan Velasquez
Fagen Friedman & Fulfrost
4160 Temescal Canyon Road, Suite 610
Corona, CA 92883-4625

Re: Your Request for Informal Assistance
Our File No. I-23-065

Dear Mr. Velasquez:

This letter responds to your request for advice regarding Section 84308 of the Political Reform Act (the “Act”).¹ Because your inquiry is general in nature, we are treating your request as one for informal assistance.²

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.

QUESTIONS

1. Is a project labor agreement that involves a collective bargaining agreement between a school district and general contractors, establishing terms and conditions of employment for workers on specific construction projects, considered a “labor contract” for purposes of Section 84308?
2. Are small contracts, including purchase orders, considered entitlement for use proceedings for purposes of Section 84308?
3. Are charter school petitions considered entitlement for use proceedings for purposes of Section 84308?

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.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

CONCLUSIONS

1. Yes, the agreement would establish terms and conditions between the school district and project contractors and, therefore, constitute a labor contract for purposes of Section 84308.
2. Yes, small contracts, including purchase orders, are considered entitlement for use proceedings, as Section 84308 defines such proceedings to include contracts generally and does not include an exception based on the value of a contract.
3. Yes, as California courts have stated, charter school petitions are contracts. As such, they constitute entitlement for use proceedings for purposes of Section 84308.

FACTS AS PRESENTED BY REQUESTER

Project Labor Agreements

The administration of a local school district is beginning to negotiate a Project Labor Agreement pursuant to Public Contract Code Section 2500, et seq. Under Public Contract Code Section 2500(b), “project labor agreement” (“PLA”) means a pre-hire collective bargaining agreement that establishes terms and conditions of employment for a specific construction project or projects and is an agreement described in Section 158(f) of Title 29 of the United States Code. Under Section 2501 of the Public Contract Code, a school district governing board may vote “to enter into” or “require contractors to enter into” a PLA. In this case, the school district administration likely will craft PLAs with general contractors, establishing terms and conditions of employment for workers on specific construction projects, including employees of subcontractors who are members of trade unions. Such an agreement must be approved by the school district governing board to be effective. So, once the agreement has been negotiated, it will be presented to the school district governing board for approval.

Representatives of trade unions likely will appear at governing board meetings during which PLAs will be considered.

Small Contracts and Purchase Orders

You have inquired whether small purchase orders below the bid threshold of public contracting laws, such as certain purchase orders with a local business or vendor, are considered entitlements for use under Section 84308. You write:

For example, a school district approves purchases from a local supermarket for snacks during a staff development training, in the amount of \$400. The [purchase order] is on a printed form that the vendor signs that includes “terms and conditions” pertinent to the transaction (like a simple contract). Would approval of that purchase order be subject to Section 84308?

You also ask: (1) whether the answer would change if there are no printed terms on the purchase order, just a record of the purchase and price; and (2) whether it matters if the purchase order is approved on a consent agenda (i.e., a grouping of routine actions for which

discussion/debate is not expected and that are taken up with a motion, second, and subsequent vote, but not addressed individually).

Relatedly, you also ask whether small contracts below the bidding threshold that are ratified by the board of a local government body on a consent agenda are considered entitlements for use under Section 84308, using the example of “a contract for the emergency repair/replacement by a plumber of a broken toilet at a school in the amount of \$600.”

Charter School Petitions

Finally, you ask whether a Governing Board’s consideration of a charter school petition, renewal, or material revisions to an existing charter are considered an entitlement for use for purposes of Section 84308. You write:

To obtain authorization to operate a charter school within California as part of the public school system, generally a petitioner must submit a charter school petition to the governing board of a local school district. The governing board must convene a hearing and later must vote to approve or reject the petition.

ANALYSIS

Often referred to as the Act’s “pay to play” restrictions, Section 84308 aims to ensure that public officials are not biased by large campaign contributors, who might appear before them in a proceeding involving a license, permit or entitlement for use. As amended by SB 1439, effective January 1, 2023, Section 84308 applies to officers of local government agencies whose members are directly elected by voters, including members of school district governing boards. Section 84308 establishes certain requirements and prohibitions pertaining to an officer’s ability to take part in proceedings involving a license, permit, or other entitlement for use where a party or participant in the proceeding has contributed more than \$250 to the officer within the preceding 12 months. The statute similarly prohibits officers from receiving contributions exceeding \$250 from parties or participants for the 12 months following the date a final decision is rendered in such a proceeding.

Section 84308(a)(5) defines the term “license, permit, or other entitlement for use” to mean “all business, professional, trade, and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts (*other than competitively bid, labor, or personal employment contracts*), and all franchises.” (Emphasis added.)

You have indicated that the potential project labor agreement would establish terms and conditions of employment for workers on specific construction projects, including employees of subcontractors who are members of trade unions. Therefore, as a labor contract, such a project labor agreement would fall outside the scope of Section 84308.

In contrast, Section 84308 provides no similar exception for contracts based on value. Rather, “entitlements for use” are expressly defined as including *all* contracts, other than competitively bid, labor, or personal employment contracts. Consequently, unless one of those exceptions applies, Section 84308’s restrictions and requirements apply to small contracts, including small purchase orders. Further, a purchase order remains a contract and therefore subject

to Section 84308's provisions regardless of whether: (1) the record of the purchase order contains printed terms and conditions; or (2) the purchase order is considered by a governmental body as part of a consent agenda.

Finally, you inquire whether charter school petitions constitute entitlement for use proceedings subject to Section 84308. A petition to establish a charter school is approved by the governing board of a school district pursuant to the process contained in California Education Code Section 47605. California courts have explained, "[t]he charter establishing a charter school is a contract detailing the school's educational programs, goals, students served, measurable pupil outcomes and measurement methods, and the school's governance structure." (*Knapp v. Palisades Charter High School* (2007) 146 Cal.App.4th 708, 715 (citing Cal. Ed. Code Section 47605(b)(5).) However, a charter school petition does not constitute a competitively bid contract, a labor contract, or a personal employment contract. As such, charter school petitions are considered entitlement for use proceedings for purposes of Section 84308.³

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

Sincerely,

Dave Bainbridge
General Counsel

By:



Kevin Cornwall
Senior Counsel, Legal Division

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³ We note that the Commission is currently in the process of amending various regulations related to Section 84308. However, the conclusions reached in this informal assistance letter would not be affected by any of the proposed changes to regulatory language.