



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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May 15, 2025

Steven Touchi  
Senior Hazardous Substances Engineer  
8810 Cal Center Drive, R1-5  
Sacramento, CA 95826

Re: Your Request for Advice  
**Our File No. A-25-059**

Dear Mr. Touchi:

This letter responds to your request for advice regarding the Political Reform Act (“Act”) and Government Code Section 1090, et seq.<sup>1</sup> Please note that we are only providing advice under the Act and Section 1090. We are not providing advice under other general conflict of interest prohibitions such as common law conflict of interest, including the 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

Do you have a prohibitive financial interest in the Department of Toxic Substance Control’s (“DTSC”) operation, monitoring, and maintenance (“OM&M”) services contract decisions where AECOM is a potential future bidder and your spouse owns shares of stock in AECOM?

### CONCLUSION

Yes. Under the Act, it is reasonably foreseeable that decisions on the scope of the contract for purposes of the present negotiations will be the basis for the DTSC’s potential Invitation for

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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 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.

Bids or Request for Information, and that the OM&M contract decisions would have a material financial effect on AECOM, a potential bidder. You have a disqualifying financial interest in AECOM and may not participate in the contract specification decisions or any subsequent evaluations of the bidders, so long as AECOM is a prospective contractor. Under Section 1090, DTSC is not prohibited from entering into the contract with AECOM because your financial interest meets the definition of a noninterest under Section 1091.5(a)(1).

### **FACTS AS PRESENTED BY REQUESTER**

You are a Senior Hazardous Substances Engineer working for DTSC and have worked there since August 2000. One of your current assignments is to assist in preparing an invitation for bid (“IFB”) to procure a new contractor to provide operation, monitoring, and maintenance (“OM&M”) services at the Stringfellow Hazardous Waste Site.

DTSC has a contract for these services with Veolia, which was previously amended to extend through December 2025. The original contract with Veolia was formed in 2012. You were involved in developing the scope of work for the original contract and its eight amendments. The original contract was for the operation of a groundwater treatment plant that was later replaced. The amendments reflect the current work performed by Veolia. The current OM&M contract (base contract plus 8 amendments) with Veolia is valued at \$82 million for 14 years (\$5.9 million/year). A new OM&M contract likely will have a similar scope of work and possibly have higher costs as well.

DTSC is in the process of negotiating with Veolia to amend and extend the current agreement for the Site work. You are scheduled to be involved in reviewing/revising the “scope of work” of the current contract for these negotiations. The scope of the work for the Stringfellow Hazardous Site involves how the site’s wellfields, groundwater treatment plants, and other facilities are operated, monitored, and maintained. The scope of work includes operational requirements for the site, inspection, monitoring, and maintenance frequencies, reporting requirements, as well as minimum qualifications for the contractor and its staff.

Your revisions would reflect refinements to the existing scope of work, rather than any “wholesale changes.” For example, the groundwater treatment plant was replaced in 2016 with a larger, more computer-controlled facility. Past amendments made extensive revisions to the scope of work relating to the modernization of tools used for operations with non-substantive updates, such as no longer requiring CDs/DVD submissions, streamlining of the Monthly OM&M Report, and reducing the inspection frequency from 3 times a day to one per day. The objective of the scope of work revisions, for both the existing contract and any new contract (either with Veolia or a new contractor), will still be to “*operate, monitor, and maintain the Stringfellow Site,*” so you state that from the “50,000-foot level,” the scope of work is the same.

Negotiations between DTSC and Veolia are ongoing. Veolia has taken exception to some of the State’s General Terms and Conditions, including indemnification, liquidated damages, and insurance requirements. As of now, DTSC has rejected all of Veolia’s proposed revisions to these terms, but negotiations are continuing.

In the event negotiations with Veolia are not successful, the revised scope of work is anticipated to be used as the basis for the IFB you are assigned to assist in preparing. The IFB

process would award the contract to the lowest qualified bidder. The contract work may also follow a Request for Information (“RFI”) solicitation with a “direct negotiations” process. (It is your understanding that this process would also award the contract to the lowest qualified bidder.)

You anticipate that you may be asked to provide recommendations on any revisions to the existing contract’s minimum qualifications and how they are weighted. If the contract were to be awarded to the lowest qualified bidder using an IFB, you could be involved in determining whether the bidder meets the qualifications. Your supervisor and likely other staff members would be involved in this review. If the contract is awarded using an RFI and proposals, then you could be involved in evaluating the bidders’ qualifications and technical approach. Other staff members and your supervisor would be involved in the evaluation, and it would be a group discussion and consensus to reach any recommendations and conclusions.

The field of potential bidders is limited. The contractor must meet specific minimum qualifications, including a set number of years of experience in technical areas, such as at least 5 years of experience in sampling contaminated groundwater. The contractor will likely be required to have at least ten years of experience in handling an OM&M contract with a value of at least \$10 million for an industrial wastewater treatment facility or a hazardous waste contaminated groundwater treatment system. The minimum qualifications preclude smaller firms from bidding. The current contract’s “site walk” in 2011 for potentially interested bidders included several large firms, but only two firms submitted bids, one of which was Veolia. It is anticipated that AECOM will be interested in bidding for this contract. A firm that AECOM has since acquired participated in the 2011 site walk.

Prior to your employment at DTSC, you worked for several consultants, with the last being URS Corporation (which was acquired by AECOM in 2014). Your spouse, who has been employed by DTSC as a Hazardous Substances Engineer since January 2020, was also employed by AECOM and owns 165 shares of AECOM stock (purchased through an Employee Stock Purchase program). The stock is currently worth \$16,541. You understand that the dividends are approximately \$171.60 a year, which is less than 5 percent of her total annual income. According to its website, AECOM had revenue of \$13.3 billion in 2021 and has approximately 50,000 employees worldwide. It has assets of 11.82 billion, and approximately 132 million shares outstanding.

## ANALYSIS

### *The Act*

Section 87100 prohibits any public official from making, participating in making, or using their official position to influence a governmental decision in which the official has a financial interest. A public official has a “financial interest” in a governmental 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 economic interests. (Section 87103; Regulation 18700(a).) Different standards apply to determine whether a reasonably foreseeable financial effect on an interest will be material, depending on the nature of the interest.

Under Section 87103(a), an official has a financial interest in any business entity in which the public official has a direct or indirect investment worth \$2,000 or more. An “investment” means

any financial interest in or security issued by a business entity, including, but not limited to, common stock, preferred stock, rights, warrants, options, debt instruments, and any partnership or other ownership interest owned directly, or indirectly, or beneficially by the public official. (Section 82034.) You have a financial interest in AECOM due to your spouse's stock interests in the business.

At issue is whether you will be participating in making decisions on the OM&M contract, and if so, whether it is reasonably foreseeable that the decisions would have a material financial effect on your investment interest in AECOM under the standards set forth below.

*Making, Participating in Making, or Influencing a Decision*

Regulation 18704 states that a public official "makes a governmental decision" if the official authorizes or directs any action, votes, appoints a person, obligates or commits the official's agency to any course of action, or enters into any contractual agreement on behalf of the official's agency.

A public official "participates in a governmental decision" if the official provides information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review. A public official "uses an official position to influence a governmental decision" if the official:

- (1) Contacts or appears before any official in the official's agency or in an agency subject to the authority or budgetary control of the official's agency for the purpose of affecting a decision; or
- (2) Contacts or appears before any official in any other government agency for the purpose of affecting a decision, and the public official acts or purports to act within the official's authority or on behalf of the official's agency in making the contact.

(Regulation 18704(a)-(c).)

*Foreseeability & Materiality*

Generally, a financial effect is presumed reasonably foreseeable if the interest is explicitly involved as a named party in, or the subject of, a governmental decision before the official or the official's agency. (Regulation 18701(a).) Relevant to these facts, an interest is the "subject of a decision" if the decision involves the issuance, renewal, approval, denial, or revocation of any license, permit, or other entitlements to, or contract with, the financial interest.

If the interest is not explicitly involved in the decision, a financial effect is reasonably foreseeable if the effect can be recognized as a realistic possibility and is more than hypothetical or theoretical. A financial effect need not be likely to be considered reasonably foreseeable. (Regulation 18701(6).) Additionally, we have previously advised that where there is a limited field of potential bidders, and a business has the specialization and could be awarded the contract, the financial effect of the decision on an official's financial interest in the business is reasonably foreseeable. (See *Condotti* Advice Letter, No. A-08-022.)

Different standards apply to determine whether a reasonably foreseeable financial effect on an interest will be material, depending on the nature of the interest and whether the interest is explicitly involved in the decision. Relevant to your investment interests, Regulation 18702.1 provides a narrow exception for “small shareholders” to the general conflict of interest rules. To the extent the exception applies, a small shareholder of a company is not disqualified from the decision merely because the company is explicitly involved in the decision. Under provisions for a “small shareholder” in Regulation 18702.1(b), when an official has an investment interest in a business entity and the investment interest is valued at \$25,000 or less, and is less than one percent of the entity’s shares, the official has a disqualifying interest if the decision:

- May result in an increase or decrease of the entity’s annual gross revenues, or the value of the entity’s assets or liabilities, in an amount equal to or more than \$1 million or 5 percent of the entity’s gross revenues and the increase or decrease is at least \$10,000. (Regulation 18702.1(a)(2).)
- May cause the entity to incur or avoid additional expenses or to reduce or eliminate expenses in an amount equal to or more than \$250,000 or 1 percent of the entity’s annual gross revenues and the change in expenses is at least \$ 2,500. (Regulation 18702.1(a)(3).)

You are tasked with reviewing/revising the scope of work of the current Stringfellow Hazardous Waste Site OM&M contract for negotiations to renew the contract with the current contractor. The recommended revisions will also set the scope of work for an IFB or an RFI for outside bidders, if the negotiations are not successful. Additionally, there is no indication that your recommendations will be subject to “substantial intervening review,” even where your work is reviewed by your co-workers and your supervisor at DTSC.

Further, the facts indicate that it is reasonably foreseeable – a realistic possibility – that AECOM will be interested in bidding on the contract, and that your role would involve your participation in making the contract. The current contractor is making demands that DTSC has rejected, so it is a realistic possibility that the negotiations will fall through and DTSC will need to find a new contractor for the OM&M work. There are a limited number of large businesses that will meet the minimum qualifications for the OM&M contract, and it is understood that AECOM is a potential bidder. You estimate that the contract will have a value to AECOM of greater than \$1 million per year. As a result, the materiality standard in Regulation 18702.1(a)(2) is met, and it is reasonably foreseeable that the contract decisions will have a material financial effect on AECOM.

Therefore, you may not make, participate in making, or influence decisions on the scope of the contract for purposes of the present negotiations because AECOM would be a prospective bidder. Additionally, if the contract goes out to bid, you may not make, participate in making, or influence decisions such as by making recommendations on proposed technical approaches or evaluating a bidder’s qualifications, so long as AECOM is a potential bidder on the contract.

### *Section 1090*

This is a separate body of law that requires a separate 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. 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.) 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.)

Due to our conclusion above, the Act prohibits your participation in the contract decisions so long as AECOM is a potential bidder. At issue is whether Section 1090 prohibits DTSC, your agency, from making the contract with AECOM.

When an employee is financially interested in a contract, the employee's agency is only prohibited from making the contract if the employee was involved in the contract-making process. As long as the employee plays no role whatsoever in the contracting process (either because such participation is outside the scope of the employee's duties or because the employee disqualifies themselves from all such participation), the employee's agency is not prohibited from contracting with the employee or the employee's financial interest. (*See* 80 Ops.Cal.Atty.Gen. 41 (1997) [firefighters permitted to sell a product, which they invented in their private capacity, to their fire department so long as they did not participate in the sale in their official capacity].) Here, the facts state that you have participated in the past amendments to the existing contract, which, along with any revisions, will form the scope of work for a new contract process.

However, under Section 1091.5(a)(1), your financial interest in AECOM is defined as a "noninterest." Section 1091.5(a) provides that an officer shall not be deemed to be interested in a contract if the officer's interest is:

The ownership of less than 3 percent of the shares of a corporation for profit, provided that the total annual income to him or her from dividends, including the value of stock dividends, from the corporation does not exceed 5 percent of his or her total annual income, and any other payments made to him or her by the corporation do not exceed 5 percent of his or her total annual income

Your spouse's stock ownership interest of 165 shares is less than 3 percent of AECOM's approximately 132 million issued shares. The dividend income of \$171.60 are the only payments received and these payments does not exceed 5 percent of your total annual income. As a result, DTSC is not prohibited under Section 1090 from making a contract with AECOM even where you have participated in the making of the underlying contract in the past. We note that despite your "noninterest" in AECOM under Section 1090, you are still disqualified from participating in the contract decisions under the Act, as discussed above.

If you have other questions on this matter, please contact me at [KHarrison@fppc.ca.gov](mailto:KHarrison@fppc.ca.gov)

Sincerely,

Dave Bainbridge  
General Counsel

**L. Karen Harrison**

By: L. Karen Harrison  
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