



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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October 3, 2023

Kurt C. Wendlenner  
Senior Deputy City Attorney  
City of Sacramento  
Office of the City Attorney  
E-mail: kwendlenner@cityofsacramento.org

Re: Your Request for Advice  
**Our File No. A-23-121**

Dear Mr. Wendlenner:

This letter is in response to your request for advice regarding conflict-of-interest provisions of Section 1090 et seq.<sup>1</sup> Please note that we are not providing advice under any 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, then 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

Does Section 1090 prohibit the City of Sacramento (the City) from issuing either of two proposed grants to independent contractor PRO Youth and Families, Inc. (PRO) where the City has previously issued several similar grants to PRO?

### CONCLUSION

No. Based on the facts provided, while PRO is subject to Section 1090 based on the fact that it had duties to contract on behalf of the City under the previous grants, it did not participate in the making of either of the proposed grants through its services under the prior grants. Thus, Section 1090 does not prohibit the City from issuing the two proposed grants to PRO.<sup>2</sup>

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<sup>1</sup> All statutory references are to the Government Code, unless otherwise indicated.

<sup>2</sup> Section 1090 does not generally prohibit the City from extending the identified subsequent grants to the contractor, notwithstanding prior grants for similar services, so long as the need for additional services was identified

## FACTS AS PRESENTED BY REQUESTER

The volume of contracts between the City and PRO, and the overlapping terms of those agreements, show a longstanding relationship between the City and PRO. Considering the relatively limited contractor-options within the youth-programming arena, the City may desire to engage with PRO for years to come.

The contracts discussed below provide context for how the City's youth-programming is designed and managed. City staff created the programmatic framework, which is variously referred to as "#SacYouthWorks" and the "Connect, Earn, Learn Framework" throughout the span of the agreements cited below. This framework establishes 40 hours of work-based learning programming that is administered by a lead agency through subcontracts with multiple community-based organizations.

### A. Contractual History.

**Grant C2018-0311.** In March 2018, the City issued a \$5,000 grant to PRO to fund an event designed to organize and educate various entities interested in serving youth and families in the Sacramento region, as part of the PRO-lead Youth & Family Collective project. (Youth & Family Collective, Funding Agreement, C2018-0311.)

**Grant C2020-1475.** In July 2020, the City issued a (sub)grant to PRO in the amount of \$240,000. (#SacYouthWorks, CARES Act Grant Agreement, C2020-1475.) The funding source for the grant was the Coronavirus Aid, Relief and Economic Security Act (CARES Act). Under this agreement, PRO made subawards to various service providers, who in turn, were responsible for providing 40-hours of youth work-based learning programming for 400 youth. PRO was also responsible for developing a subrecipient selection process, establishing basic programming standards, ensuring each subrecipient had a safety plan, developing milestones for the overall program, supporting subrecipients with capacity building, outreach, technical assistance, and training.

**Grant C2020-3140.** In September 2020, the City issued another CARES Act (sub)grant to PRO, this time in the amount of \$1,298,792. (Citywide Youth Work-Based Learning Fall Program, CARES Act Grant Agreement, C2020-3140.) This grant focused on 850 young people who suffered a loss of "out of school time" programming as a result of the Coronavirus pandemic. Under this agreement, PRO was responsible for implementing work-based learning programming and a youth-led mental health public awareness campaign, performing fiscal oversight, developing a subrecipient selection process, establishing basic programming standards, ensuring each subrecipient had a safety plan, supporting subrecipients with capacity building, outreach, technical assistance, and training—as well as releasing Requests for Proposals (RFP). Again, the framework

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independently by the City and all decisions regarding the grants are independently made by the City. We caution, however, to the extent that the contractor made recommendations or provided advice regarding extending additional grants under the existing programs, Section 1090 may prohibit the City from entering the subsequent grant. Accordingly, to the extent that the contractor was tasked with identifying future needs and subsequent work under any of the existing contracts, you should seek additional advice describing any recommendations or advice provided by the contractor that may have influenced the potential awarding of a subsequent grant to the contractor.

for the programming was for PRO to act as lead agency, and to utilize subgrantees to effectuate services. This agreement was amended twice.<sup>3</sup>

**Grant C2021-0373.** In April 2021, the City issued a grant in the amount of \$362,045.30 to PRO, paid for by City funds. (#SacYouthWorks Spring, Youth Development Program Grant Agreement, C2021-0373.) The scope of this agreement is virtually identical to the scope set forth in Grant C2020-3140, but for the fact that this iteration was designed to provide 200 high school youth with work-based learning programming.

**Grant C2022-0123.**<sup>4</sup> The City issued a (sub)grant in the amount of \$928,555 to PRO. (#SacYouthWorks: Futures, Proposition 64 Cohort 2, Grant Agreement for Youth Marijuana and Substance Use Prevention, C2022-0123.) This grant was funded by the Board of State and Community Corrections, and its scope is similar to other agreements discussed above. Though executed in February 2022, the term of the grant agreement was May 2021 through April 2024. Under this agreement, PRO was responsible for implementing work-based learning programming, as well as performing fiscal oversight, implementing a subrecipient selection process, issuing subawards, establishing basic programming standards, ensuring each subrecipient had a safety plan, and supporting subrecipients with capacity building, outreach, technical assistance, and training.

**Grant C2021-0744.** In June 2021, the City issued a grant in the amount of \$360,000 to PRO, paid for by City funds. (#SacYouthWorks Summer 2021, Youth Development Program Grant Agreement, C2021-0744.) Likewise focusing on providing 200 high school youth with work-based learning programming, the scope of this agreement is identical to that which is set forth in C2020-0373 and was simply to be performed during a different term. This agreement was supplemented once.

**Services Agreement PRC001353.** In July 2021, the City entered into a services agreement with PRO in the (potential) total amount of \$600,000. (On-Call Consulting for the Neighborhood Development Action Team, Professional Services Agreement, PRC001353.) Per this agreement, PRO Youth was to develop and participate in community-outreach plans, consulting, write and advise on grants, and market, if required by the City per individually issued task-orders.

**Grant C2022-0090.** In January 2022, the City issued a grant in the amount of \$360,000 to PRO, paid for by City funds. (Pathways & Partnerships, Youth Development Program Grant Agreement, C2022-0090.) This grant was intended to fund the Pathways & Partnerships project of the Youth & Family Collective (see Grant C2018-0311), which was a partnership lead by PRO - itself designed to support community-based organizations working in the youth services arena.

**Grant C2022-0258.**<sup>5</sup> Also in January 2022, the City issued a grant in the amount of \$247,303 to PRO, paid for by City funds. (#SacYouthWorks: Futures, Youth Development: Underage Cannabis Education, Prevention & Outreach, Grant Agreement, C2022-0258.) The purpose of this agreement was to fund the early stages of the Youth & Family Underage-use

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<sup>3</sup> We do not analyze whether these amendments were prohibited under Section 1090 as we are statutorily prohibited from providing any advice related to past conduct. (Section 1097.1(c)(2).)

<sup>4</sup> This contract with PRO was entered to fulfill the proposed Futures Program.

<sup>5</sup> This contract with PRO was entered to fulfill the proposed Futures Program.

Cannabis Prevention Outreach and Engagement Project (“Project”). Per the agreement, the “Project will leverage, strengthen, and expand an existing partnership between PRO Youth and Families (PRO Youth) and the City to implement #SacYouthWorks: Futures (#Futures), a positive youth development program ... funded by a three-year grant from the California Board of State and Community Corrections (BSCC) Proposition 64 ...” Similar to scenarios discussed previously, under this agreement, PRO was to recruit subrecipients, issue subcontracts, train subcontractors, and develop and implement program infrastructure and outreach. This Project focused on 100 youth.

**Grant C2022-0734.** In June 2022, the City issued a grant in the amount of \$1,470,000 to PRO. (#SacYouthWorks, ARPARG Grant Agreement, C2022-0734.) This grant was funded by the City’s American Rescue Plan Act Reinvestment Fund and Measure U Fund. Again, PRO was responsible for implementing work-based learning programming, as well as performing fiscal oversight, developing a subrecipient selection process, establishing basic programming standards, ensuring each subrecipient had a safety plan, developing milestones for the overall program, supporting subrecipients with capacity building, outreach, technical assistance, and training - as well as releasing RFPs. In July 2022, the City entered into a services agreement with PRO in the amount of \$143,751, paid for by City funds. (#SacBuildsSkills2Careers, Professional Services Agreement, PRC002022.) Per this agreement, PRO was required to develop and participate in community-outreach plans, consulting, write and advise on grants, and market, per task-orders issued by the City.

**Grant C2023-0142.**<sup>6</sup> In January 2023, the City issued a grant in the amount of \$718,101 to PRO, paid for by City funds. (#SacYouthWorks: Futures, Youth Development: Underage Cannabis Education, Prevention & Outreach, Grant Agreement, C2023-0142.) This agreement was designed to further expand the Project and the #SacYouthWorks: Futures program discussed in C2022-0258, by PRO continuing to issue subcontracts, provide program and fiscal management, and expanding the number of program participants.

## **B. The Futures Program.**

The Futures Program may be considered a subpart, or subprogram under the #SacYouthWorks program framework discussed above. As set forth above, the City has contracted with PRO on three separate occasions in Grants C2022-0123, C2022-0258 and C2021-0142 to fulfill the Futures Program.

Pursuant to Grant C2022-0123, among other things, PRO implemented a subrecipient selection process and issued subawards. Similarly, under Grant C2022-258, PRO recruited subrecipients, issued subcontracts, trained subcontractors, and developed and implemented program infrastructure and outreach. Lastly, PRO performed similar functions under Grant C2023-0142.

The City is now contemplating entering two further contracts with PRO to expand the duties first established under Grants C2022-0123 and C2022-0258.

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<sup>6</sup> This contract with PRO was entered to fulfill the proposed Futures Program.

## 1. Proposed Prop 64 Grant.

Under the proposed Proposition 64 Cohort 3 Grant Agreement for Youth Marijuana and Substance Use Prevention (the Prop 64 Grant), PRO would be tasked with further expanding upon the Futures Program initiated under Grant C2022-0123. For instance, PRO would be required to refine program implementation strategies, develop RFPs and subgrantee evaluation plan, issue RFPs, and continue to administratively and fiscally manage the subgrantee network, while expanding coverage to 800 participants.

## 2. Proposed Prevention Outreach Grant.

Under the proposed Youth & Family Underage-Use Cannabis Prevention Outreach & Engagement Agreement (the Prevention Outreach Grant), PRO would be tasked with expanding the Project first identified in Grant C2022-0258. PRO would be supporting program implementation, bolstering an ad campaign, performing outreach, recruitment, training and fiscal management of subgrantees, as well as attempting to expand the number of program participants by 100.

## ANALYSIS

Under Section 1090, public “officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are a member.” Section 1090 is concerned with financial interests, other than remote or minimal interests, that prevent public officials from exercising absolute loyalty and undivided allegiance in furthering the best interests of their agencies. (*Stigall v. City of Taft* (1962) 58 Cal.2d 565, 569.) 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.) A contract that violates Section 1090 is void, regardless of whether the terms of the contract are fair and equitable to all parties. (*Thomson v. Call* (1985) 38 Cal.3d 633, 646-649.) The making of a contract not only includes the execution of the contract, but also “the negotiations, discussions, reasoning, planning and give and take which goes beforehand . . .” (*Stigall, supra*, 58 Cal.2d at p. 569.)

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.) A contract that violates Section 1090 is void. (*Thomson v. Call* (1985) 38 Cal.3d 633, 646.) When an officer with a proscribed financial interest is a member of the governing body of a public entity, the prohibition of Section 1090 also extends to the entire body. (89 Ops.Cal.Atty.Gen. at p. 50.) The prohibition applies regardless of whether the terms of the contract are fair and equitable to all parties. (*Thomson, supra*, at pp. 646-649.)

The grant agreement at issue here is a contract under Section 1090. Grant agreements are generally considered contracts under Section 1090. (See *Honig, supra*, 48 Cal.App.4th at p. 350; 89 Ops.Cal.Atty.Gen. 258, 260-262 (2006).) “[W]here a state official makes a contract in which he has a financial interest we see no basis upon which he can escape responsibility under sections 1090 and 1097 by claiming that the transfer was actually a ‘grant.’” (*Honig, supra*, 48 Cal.App.4th at p. 350.)

The first issue is whether PRO is considered an “officer” for purposes of Section 1090. The California Supreme Court has held that the term “officers” in Section 1090 applies to “outside

advisors [independent contractors, including corporate consultants] with responsibilities for public contracting similar to those belonging to formal officers.” (*People v. Superior Court (Sahlolbei)* (2017) 3 Cal.5th 230, 237-240.) Thus, Section 1090 extends to any independent contractors entrusted with “transact[ing] on behalf of the Government.” (*Id.* at p. 240.)

You indicate that the City has contracted with PRO to act as the “lead agency” responsible for administering the programs, issuing solicitations, advising on the selection of subcontractors/subgrantees, and managing finances and contracts within the programs, and has also advised and provided recommendations to City staff on the selection of subcontractors/subgrantees. More specifically under the prior contracts, PRO’s duties have included acting as lead agency (Grants C2020-3140 and C2021-0373), writing and advising on grants (Services Agreement PRC001353 and Grant C2022-0734), and issuing subcontracts (Grants C2022-0258 and C2023-0142). The facts provided further indicate that, as far back as July 2020, under Grant C2020-1475, PRO was responsible for developing a subrecipient selection process, establishing basic programming standards, ensuring each subrecipient had a safety plan, developing milestones for the overall program, supporting subrecipients with capacity building, outreach, technical assistance, and training. As of May 2021, PRO was responsible for performing nearly identical services under the Futures Program. Under Grant C2022-0123, PRO implemented work-based learning programming, as well as performed fiscal oversight, implemented a subrecipient selection process, issued subawards, established basic programming standards, ensured each subrecipient had a safety plan, and supported subrecipients with capacity building, outreach, technical assistance, and training. Grant C2022-0258 was an expansion of Grant C2022-0123.

These facts plainly demonstrate that PRO’s role under the prior contracts involved engaging in or advising on public contracting on behalf of the City. Accordingly, PRO is subject to Section 1090.<sup>7</sup> The next issue is whether PRO would be considered to have participated in the making of the two proposed grants to expand the duties first established under Grants C2022-0123 and C2022-0258 through the services it provided under the initial grants.

Although PRO had duties to transact on behalf of the City under the prior contracts, the facts provided do not indicate that PRO had duties under the prior contracts to prepare or advise the City regarding the two proposed grants at issue. Rather, the facts indicate that the City was solely responsible for preparing the proposed grants. Because PRO did not participate in the making of the proposed grants through its services under the prior contracts, Section 1090 does not prohibit the City from entering the two proposed grants with PRO based on the facts provided.

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<sup>7</sup> This is consistent with your own conclusion in the request that, as a result of the services performed by PRO under the prior contracts, PRO was “transacting” on behalf of the City and therefore is subject to Section 1090.

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

Sincerely,

Dave Bainbridge  
General Counsel

/s/ John M. Feser Jr.

By: John M. Feser Jr.  
Senior Counsel, Legal Division

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