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PRACTICAL TIGHT-KNIT BRIEFINGS INCLUDING ACTION GUIDELINES ON GOVERNMENT CONTRACT TOPICS

California Public Procurement Bid Protest Process

By Michael R. Rizzo, Brian P. Cruz, and Mary Buxton*

In California, the right to protest a government solicitation or contract award is set forth in the California Public Contract Code and other code sections, the California Code of Regulations, and the California Department of General Services (DGS) State Contracting Manual (SCM), as well as in the instructions in an agency's solicitation document.

The right to protest stems from California's preference for competitive bidding as a means of protecting the public interest. In other words, by inviting competition, the aim is "to guard against favoritism, improvidence, extravagance, fraud and corruption, and to secure the best work or supplies at the lowest price practicable . . . for the benefit of property holders and taxpayers, and not for the benefit or enrichment of bidders."¹

In examining the bid protest process in California, this BRIEFING PAPER first addresses the significant disclosure risks that a contractor faces concerning its confidential or proprietary information under the California Public Records Act and the issues that arise when seeking an exemption to avoid such disclosures. A contractor must evaluate its risk of disclosures of confidential business information before entering into the government procurement process, especially where the contractor values its competition-sensitive information as a significant asset. The PAPER next examines the various protest processes that are available to contractors, including the Alternative Protest Pilot Project (Alternative Protest) that is applicable to many solicitations for information technology (IT) goods and services. Finally, the PAPER covers concerns regarding local government procurement protests and special rules that apply to the protests of public works procurements.

*Michael R. Rizzo is a partner, Brian P. Cruz is a counsel, and Mary Buxton is a senior associate in the Los Angeles, California office of Pillsbury Winthrop Shaw Pittman LLP. This Briefing Paper is adapted from a chapter of their book, CALIFORNIA PROCUREMENT HANDBOOK (Thomson Reuters 2020–2021 ed.), available in print and ProView ebook and on Westlaw. For further information about the HANDBOOK, please visit <https://legal.thomsonreuters.com>.

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California Public Records Act

The California Public Records Act (CPRA), which is codified in the California Government Code,² was enacted in 1968 to establish that “access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state.”³ Underlying the CPRA is “the notion that government should be accountable for its actions, [and] [i]n order to verify accountability, individuals must have access to government files.”⁴ A competing concern also underlying the CPRA, however, “is the privacy of individuals whose personal affairs are recorded in government files.”⁵ Consequently, the CPRA reflects “two fundamental yet competing interests: (1) prevention of secrecy in government; and (2) protection of individual privacy.”⁶ Further, the statute also attempts to promote efficient and effective government in addition to balancing the public’s interest in both government transparency and individual rights of privacy. These objectives are effectuated through two different public rights of access to information found in California Government Code § 6253.

Section 6253 of the Government Code provides as follows:

(a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

(b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon pay-

ment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.⁷

A public record is “any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.”⁸ The CPRA defines a writing as:

[A]ny handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.⁹

The California Legislature intended the term “writing” to broadly cover “every conceivable kind of record that is involved in the governmental process and will pertain to any new form of record-keeping instrument as it is developed.”¹⁰ Consequently, “public records” must be made available to the public unless one of the exemptions set forth in the CPRA applies.¹¹

State and local agency contracts involving public works, as well as the procurement of goods and services, are public records. Thus, invitations for bids (IFBs) and requests for proposals (RFPs), contractor bids and proposals, a contractor’s certified payroll records,¹² as well as a contractor’s financial information given during the bidding process, are all “public records” subject to agency disclosure pursuant to a CPRA request. The rationale behind this mandate is the public’s right to determine whether government resources “have been spent for the benefit of the community at large or only a limited few.”¹³

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Issues With Confidential Contractor Information

The CPRA presents significant challenges to protecting a contractor's confidential business information that has been submitted to the government either because of the contractor's extant contractual relationship with a California government agency or in furtherance of the contractor's pursuit of a contract with a state agency. Anyone may file a CPRA request, including data mining companies and even a private company's competitors. An agency in receipt of a CPRA request must disclose the requested information or raise an objection within 10 days.¹⁴ The CPRA does not mandate the agency provide notice of disclosure to affected contractors, which leaves contractors with little to no time to take action. Thus, it is important for private companies contracting with agencies to take protective action at the front end and to understand what types of information are exempt from disclosure.

The CPRA contains a number of narrowly construed exemptions to the disclosure of public records. California Government Code § 6254, subdivision (k), is most relevant to the question of whether confidential business information is protected.¹⁵ According to subdivision (k), nothing in the CPRA shall require "the disclosure of [records that are] exempted or prohibited pursuant to federal or state law, including . . . provisions of the Evidence Code relating to privilege."¹⁶ Thus, the official information privilege and trade secret privilege are both embodied within the California Government Code § 6254, subdivision (k) exemption. These privileges, in addition to the public interest exemption,¹⁷ often preclude public disclosure of certain qualifying business information pursuant to a CPRA request.¹⁸

"Exemption (k)" is useful for contractors because it precludes public disclosure of commercial or financial information given during the prequalification process for prospective bidders—as described in California Public Contract Code § 10160.¹⁹ Specifically, exemption (k) incorporates California Public Contract Code § 10165, which provides that, with regard to information given to an agency for purposes of prequalification, "[t]he questionnaires and financial statements are not public records and are not open to public inspection."²⁰ An agency's lists of prequalification applicants, however, are public records subject to disclosure.²¹

Trade Secret Exemption

A contractor may assert the trade secret privilege embodied within CPRA exemption (k), read in conjunction with California Evidence Code § 1060.²² As noted above, according to California Government Code § 6254, subdivision (k), nothing in the CPRA shall require "the disclosure of [records that are] exempted or prohibited pursuant to federal or state law, including . . . provisions of the Evidence Code relating to privilege."²³ Additionally, California Evidence Code § 1060 states that "the owner of a trade secret has a privilege to refuse to disclose the secret, and to prevent another from disclosing it, if the exercise of the privilege will not tend to conceal fraud or otherwise work injustice."²⁴

For information to be exempt under CPRA exemption (k) and California Evidence Code § 1060, the information must first qualify as a "trade secret."²⁵ "An exact definition of a trade secret is not possible."²⁶ According to the Uniform Trade Secrets Act, a "trade secret" is defined as information, including a method, technique, or process, that (1) derives independent economic value from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use, and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.²⁷

As with all issues concerning confidential contractor information, judicial determinations of whether certain information qualifies as a trade secret are complex and fact specific. Moreover, California courts have consistently held that people and businesses who voluntarily enter the public sphere diminish their own privacy interests.²⁸ Accordingly, a contractor seeking to prove that information qualifies as a "trade secret" must be aware of several factors that California courts consider when deciding whether the trade secret exemption applies. These factors include:

- (1) the extent to which the information is known outside of the contractor's business;
- (2) the extent to which it is known by employees and others involved in the contractor's business;
- (3) the extent of measures taken by the contractor to guard the secrecy of the information;
- (4) the value of the information to the contractor and to his competitors;

- (5) the amount of effort or money expended by the contractor in developing the information; and
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.²⁹

Even when public records are properly classified as trade secrets, California courts will conduct a balancing test to examine whether disclosure of that information would serve the public interest.³⁰ Thus, the agency bears the burden of demonstrating not only that requested information constitutes trade secrets but also that the public interest is better served by nondisclosure than by disclosure.³¹

Given the strong public policy in favor of disclosure and transparency, courts rarely find in favor of nondisclosure. In *Uribe v. Howie*,³² for example, a farm worker wanted to inspect and copy pest control operator reports because she was worried about the possible negative effects of her exposure to pesticides.³³ The state agency denied the request, claiming the information was exempt from disclosure as a trade secret under CPRA exemption (k) and California Evidence Code § 1060.³⁴ The reports contained information on the chemical composition of the pesticide spray, the quantity of the compound, the field to which the compound applied, the type of crop, the targeted pest, and the date of application.³⁵ The court of appeal found that although the general public did not have access to the requested information, certain individuals outside the pest control business (doctors, insurance adjusters, and growers) did have that information available to them.³⁶ Moreover, there was no evidence presented at trial indicating that the pest control operators that submitted the reports had invested any amount of time, money, or expertise above and beyond that of which was common to the industry in developing pesticide mixes and dosage levels.³⁷ Given that the requested information was readily available, the court held that the material contained in the reports did not constitute trade secrets.³⁸

Similarly, another California court of appeal favored disclosure of trade secret information even though it recognized that disclosure might have a chilling effect on the governmental entity's ability to gather information in future business transactions, and that the contractor had a

significant interest in protecting its competitive advantage.³⁹

The CPRA does not provide a method for the contractor to enforce CPRA exemption (k). Thus, even if a contractor is able to prove that the information at issue is a trade secret and satisfies the balancing test, the contractor must pursue injunctive relief in order to enjoin the agency's disclosure of its confidential business information. This is called a "reverse" CPRA action. Such action, however, is only available if the agency chooses to notify affected contractors before it discloses the potentially confidential information. Consequently, private contractors should familiarize themselves with an agency's procedures for responding to CPRA requests and be sure to properly label confidential information as trade secrets.

Bid Protest Issues Under The California Public Contract Code

Generally, a protest is a challenge brought by a bidder during the competitive solicitation process for a government contract, asserting that the solicitation requirements are restrictive or unclear, or that the bidder should have been selected for award.⁴⁰ The state thus differentiates between protests of requirements and protests of proposed awards.⁴¹ Generally, a bidder may submit a protest of requirements for IT goods and services valued in excess of \$100,000 by challenging the technical, administrative, or cost provisions in the competitive solicitation.⁴² A bidder may submit such a protest to the buying agency.⁴³

Similarly, a bidder may challenge the award of a contract for IT goods and services valued in excess of \$100,000⁴⁴ and for non-IT goods in excess of \$25,000.⁴⁵ Traditional (non-Alternative Protest cases) IT protests are filed at the DGS Office of Legal Services (OLS).⁴⁶ Protests under the Alternative Protest process, on the other hand, are filed at the DGS Office of Administrative Hearings (OAH).⁴⁷

Protests involving procurements of non-IT goods are filed with the OLS. For non-IT services, a bidder may challenge an award only if the procurement is conducted using the IFB or RFP process.⁴⁸ Such protests are initiated at the OLS. So-called "informal" procurements are not protestable.

Responsiveness

Most bid protests are against the award of a contract to a competitor and focus on the issue of bid responsiveness. The basic rule of competitive bidding is that bids must conform to the specifications.⁴⁹ A government agency may accept a bid that substantially conforms to the requirements in the solicitation if all variances are nonmaterial and “cannot have affected the amount of the bid or given a bidder an advantage or benefit not allowed other bidders.”⁵⁰ However, the government agency is not *required* to waive a nonmaterial bid deviation and may require strict compliance with the solicitation.⁵¹ As will be discussed later in this chapter, a contractor may seek to reverse a government agency’s decision to waive or not to waive nonmaterial deviations by bringing a mandamus action in state court.

Protest Of Solicitation Language For IT Goods & Services

A contractor may challenge or object to any administrative, technical, or cost specification/requirement(s) contained in a formal IT competitive solicitation.⁵² Such a protest is known as an “initial protest” or a “protest of requirements.”⁵³ Solicitation language in the DGS Bidder Instructions, Article 12—Specification Concerns, provides specific instructions for bidders as to the process for protesting solicitation requirements:

12. SPECIFICATION CONCERNS:

(a) In the event a supplier believes that the State’s solicitation is unfairly restrictive, ambiguous, contains conflicting provisions or mistakes or in the supplier’s experience any resulting contract would be commercially impractical to perform, the matter should be promptly brought to the attention of the buyer identified in the solicitation, either by telephone, letter or visit, immediately upon receipt of the solicitation, in order that the matter may be fully considered and appropriate action taken by the State prior to the closing time set to receive bids.

(b) Unless otherwise specified, failure by any supplier to raise any concern relating to the solicitation requirements within at least two (2) working days prior to the bid close date, will be deemed a waiver of the supplier’s right to protest any decision for contract award relating to the solicitation’s requirements.⁵⁴

Although a bidder is allowed to notify the agency buyer orally by telephone or in person of an *intent* to protest, the substantive protest must be in writing.⁵⁵ The

initial protest must be resolved either through a withdrawal of the protest or a written final determination by the DGS Deputy Director before any further solicitation action may take place.⁵⁶ If the resolution of an initial protest results in an addendum to the solicitation and the addendum requires additional time for bidders to respond, then the agency buyer must adjust the solicitation due date to allow additional time for bidders to respond to the changed solicitation.⁵⁷

Traditional Protest Of Proposed Award For IT Goods & Services

Anyone who has submitted a bid may protest the proposed award of a contract for IT goods and services on the grounds that the protester’s⁵⁸ bid was responsive to the requirements of the solicitation and should have been selected for award.⁵⁹ Such protests must be filed during the five-day period (excluding Saturdays, Sundays, and legal holidays) specified in the public posting of the “Notice of Intent to Award.”⁶⁰ The agency buyer must stop any further action on the proposed contract award until the protest.⁶¹ Within 10 calendar days after filing the notice of intent to protest, the protester must file a detailed statement of protest including citations to pertinent laws, rules, regulations, or procedures on which the protest is based.⁶² The state agency then issues a response to defend its proposed award.⁶³ OLS reviews all submitted documentation submitted by the protester and the state and has the authority to render a final administrative decision regarding the protest.⁶⁴

Alternative Protest Pilot Project For IT Goods & Services

The bid protest procedures for many IT goods and services solicitations are governed by the Alternative Protest Pilot Project.⁶⁵ The Alternative Protest procedures were implemented in 1998 with the main objective of decreasing the number of frivolous protests occurring in IT procurements. Any formal non-IT goods and services competitive solicitation may also include the Alternative Protest procedure. The Alternative Protest process grants the DGS OAH the authority to administer protests concerning “major” IT acquisitions of goods and services.⁶⁶ Solicitation language regarding the Alternative Protest procedure is contained in the DGS Bidders Instructions:

21. PROTESTS: The Department of General Services, Procurement Division, has appointed a Protest Coordina-

tor to serve as the primary point of contact for handling: (1) initial protests of solicitation requirements as allowed for in Public Contract Code (PCC) Section 12102(h); (2) protests of proposed awards for commodities (PCC Section 10306) and information technology goods and services (PCC Section 12102[h]); and (3) the Alternative Protest Process (PCC Section 12125 et seq.). A Supplier Advocate has been established in accordance with PCC Section 10300 as a resource to protesting bidders seeking assistance and information. Contact the buyer or contact the Procurement Division at (916) 375-4400 for assistance.⁶⁷

The Alternative Protest process, unlike prior California protest procedures, eliminates the automatic stay of the award or performance of the contract.⁶⁸ An unsuccessful bidder that intends to protest the awarded contract must first inform the Alternative Protest Pilot Project Coordinator designated by DGS in writing within the number of days specified in the solicitation (but not less than one working day and no more than five working days after contract award).⁶⁹ After receipt of the notice of intent to protest, the coordinator will provide a service list to all protesters, the awardee, and the contracting department.⁷⁰ From there, the protester must submit a “Detailed Written Statement of Protest” setting forth the grounds of protest, pay a filing fee, and an arbitration deposit within seven working days after the notice of intent to protest was due.⁷¹

The Alternative Protest procedure limits the protest grounds of major IT acquisitions to “violations of the Solicitation procedures and that the [protester] should have been selected.”⁷² Additionally, in protests of major IT acquisitions, the detailed written statement of protest must specify each and every solicitation procedure that was violated and the manner of such violation and why, but for that violation, the protester would have been selected for award.⁷³ For Alternative Protest actions based on other types of acquisitions, protesting bidders are limited to grounds that the bid or proposal should have been selected in accordance with the selection criteria in the solicitation.⁷⁴ The protesting bidder bears the burden of proving the grounds of protest by a preponderance of the evidence.⁷⁵

The DGS Coordinator reviews the protest within five working days after receipt of the protest to determine preliminarily whether the protest is frivolous.⁷⁶ If the coordinator determines that the protest is frivolous, the

bidder is given the option of either (1) withdrawing the protest,⁷⁷ or (2) posting a bond in an amount not less than 10% of the estimated contract value.⁷⁸

The awardee has seven working days after notification by the coordinator to submit a response to the detailed written statement of protest.⁷⁹ The contracting department has seven calendar days after the filing of the detailed written statement of protest to provide a response.⁸⁰

The DGS OAH provides the protesting bidder, the awardee of the contract, and the DGS Coordinator, with a list of 10 arbitrators that includes OAH administrative law judges and private arbitrators.⁸¹ Each party may strike two of the 10 names prior to OAH’s selection of an arbitrator.⁸² The protesting bidder may indicate to the OAH its preference for a contract arbitrator or an OAH administrative law judge.⁸³

Hearings may be held, and supplemental responses by the parties submitted, at the discretion of the arbitrator.⁸⁴ The arbitrator renders the final decision, which includes a statement of factual and legal basis that addresses the issues raised in the detailed written statement of protest and includes an order upholding or denying the protest.⁸⁵ The arbitrator does not have the power to award a contract.⁸⁶ A copy of the arbitrator’s decision is sent to the protester within 45 calendar days after the first detailed written statement of protest is filed.⁸⁷

For protests not initially determined to be frivolous, if the arbitrator denies the protest, the protester will be liable for all costs of the arbitration.⁸⁸ If the arbitrator upholds the protest, the contracting department must pay for all costs of the arbitration, and the protester will be refunded their deposit by OAH.⁸⁹ If a protest was deemed frivolous and is then denied by the arbitrator, the protester will forfeit its bond.⁹⁰

Protest Process Relating To Non-IT Goods

A bidder may protest the specifications contained in a formal, non-IT competitive solicitation in accordance with the DGS Bidders Instructions, Article 12, as discussed above.⁹¹ The solicitation language also provides key information that will notify bidders of specific dates for filing protests of the solicitation requirements as well as for the last day to file a protest of the proposed contract award for non-IT goods valued over \$25,000.⁹²

Generally, California agencies must award contracts valued over \$25,000 for non-IT goods to the lowest responsible, responsive bidder.⁹³ A bidder may protest the proposed award of such a contract on that basis.⁹⁴ As with “traditional” protests of contract awards for IT goods and services, the bidder must file a written protest with the OLS within 24 hours of notice of intent to award (excluding Saturdays, Sundays, and legal holidays).⁹⁵ If a bidder files a timely protest, the contract will not be awarded until either the protest has been withdrawn or the OLS has made a final decision on the protest.⁹⁶

Within 10 calendar days after filing a protest, the protester must file with the OLS a full and complete statement of the relevant facts supporting its contention that it is the lowest responsible bidder meeting specifications.⁹⁷ The OLS reviews all submitted documentation and renders a final administration decision regarding the protest.⁹⁸

Protest Process Relating To Non-IT Services

For non-IT services procurements, California only allows protests of contracts awarded through the IFB or RFP process.⁹⁹ For IFBs, the bidder challenging the contract award must be the lowest responsible bidder meeting the specifications for the contract. For RFPs, the protester must claim that the agency failed to follow procedures specified in either California Public Contract Code § 10344, subdivision (b) or (c):

(b) State agencies that use the evaluation and selection procedure in this subdivision shall include in the request for proposal, in addition to the information required by subdivision (a), a requirement that bidders submit their proposals with the bid price and all cost information in a separate, sealed envelope. Proposals shall be evaluated and the contract awarded in the following manner:

(1) All proposals received shall be reviewed to determine those that meet the format requirements and the standards specified in the request for proposal.

(2) The sealed envelopes containing the bid price and cost information for those proposals that meet the format requirements and standards shall then be publicly opened and read.

(3) The contract shall be awarded to the lowest responsible bidder meeting the standards.

(c) State agencies that use the evaluation and selection procedure in this subdivision shall include in the request

for proposal, in addition to the information required by subdivision (a), a description of the methods that will be used in evaluating and scoring the proposals. Any evaluation and scoring method shall ensure that substantial weight in relationship to all other criteria utilized shall be given to the contract price proposed by the bidder. Proposals shall be evaluated and the contract awarded in the following manner:

(1) All proposals shall be reviewed to determine which meet the format requirements specified in the request for proposal.

(2) All proposals meeting the formal requirements shall then be submitted to an agency evaluation committee which shall evaluate and score the proposals using the methods specified in the request for proposal. All proposals and all evaluation and scoring sheets shall be available for public inspection at the conclusion of the committee scoring process.

(3) The contract shall be awarded to the bidder whose proposal is given the highest score by the evaluation committee.¹⁰⁰

Generally, a protesting bidder bears the burden of proving that the awarding agency has committed an error in the bid award process sufficiently material to justify its challenge of the proposed award, or that the agency’s decisions lack a rational basis, and are, therefore, arbitrary and capricious.¹⁰¹ A material deviation could be the failure of the awarding agency to follow pertinent state statutes and regulations or the provisions of the solicitation document.¹⁰²

For the IFB process, the agency must notify the lowest bidder that the contract is being awarded to another bidder at least five working days before making such award.¹⁰³ Other bidders in the IFB process may, by written request, ask the agency to post notice of the proposed contract award at least five working days prior to awarding the contract.¹⁰⁴ For the RFP process, the agency is required to post the notice of the proposed contract award at least five working days prior to awarding the contract.¹⁰⁵ In both processes, a bidder must file a protest with the agency and DGS after notice of intent to award the contract, but before the actual award.¹⁰⁶ After filing a protest, the protester has five calendar days to file a detailed written statement of the protest grounds.¹⁰⁷

After receiving a protest, the OLS assigns a hearing officer to the protest.¹⁰⁸ The hearing officer determines whether the protest will be resolved by written submis-

sion or public hearing.¹⁰⁹ The hearing officer's decision is a final administrative decision and the DGS has no jurisdiction to consider any appeal to this decision.¹¹⁰

Conflict Of Interest

A conflict of interest, or merely the appearance of a conflict of interest, is a common ground for bid protests both on the state and federal level. If a prohibited interest is found on the part of the public officials awarding the contract, the contract will be deemed void from its inception. Courts will err on the side of caution in trying to ensure a contract award is made free from the possibility of an improper conflict of interest. The California Government Code provides the statutory framework for the issue.

Section 1090 of the California Government Code prohibits public officers, while acting in their official capacities, from making contracts in which they have a financial interest. It states, in pertinent part:

Members of the Legislature, state, county, district, judicial district, and city 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 members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.¹¹¹

A public official or employee in the context of California Government Code § 1090 has been defined broadly by California courts. One common area of conflict of interest issues in the context of bid protests is the case of the “follow-on” contract. This is where a business entity awarded a consulting services contract tries to obtain a subsequent contract to provide goods or services that are required, suggested, or otherwise deemed appropriate to the end product from the original consulting services contract. While it does not appear to be applicable on its face, § 1090 has been interpreted by California courts to prohibit follow-on contracts for consultants. The court in *Hub City Solid Waste Services, Inc. v. City of Compton*¹¹² held that under § 1090 consultants are considered public officers or employees if they act in an advisory role and possess the ability to exert considerable influence over the contracting decisions of a public agency.¹¹³ Simply being in a position to advise a city, or any other public entity, on its policy goals has been held to rise to the level

of possessing the ability to exert considerable influence over the contracting decisions of the public entity. In *Davis v. Fresno Unified School District*,¹¹⁴ the court held that § 1090 applies to corporate consultants that are hired by local agencies, as opposed to only individual consultants, which was the subject of *Hub City*. If a consultant is subject to § 1090 because it is found that the consultant has an ability to exercise considerable influence over the agency's decisions, the next question is to determine whether the consultant is participating in the “making of a contract.” California courts have defined “making a contract” broadly under § 1090. This definition covers any act involving preliminary decisions, negotiations, compromises, reasoning, planning, drawing plans and specifications, and solicitations for bids.¹¹⁵

In *McGee v. Balfour Beatty Construction*,¹¹⁶ the court relied on California Government Code § 1090 to allow a taxpayer brought action to go forward challenging a contract between Torrance Unified School District and construction company, Balfour Beatty. The conflict of interest at issue was that Balfour had been retained to provide consulting services to the school district prior to being awarded an allegedly related contract.¹¹⁷ The California Public Contract Code has a provision exactly relevant to this situation, but it was held to be inapplicable to the school district. California Public Contract Code § 10365.5 states, in relevant part:¹¹⁸

No person, firm, or subsidiary thereof who has been awarded a consulting services contract may submit a bid for, nor be awarded a contract for, the provision of services, procurement of goods or supplies, or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract.¹¹⁹

The court in *McGee* found that, although the Public Contract Code provision was not applicable, the spirit of § 1090 of the Government Code covered this specific type of conflict. Citing its 2015 decision in *Davis*, the court held:

Because the statute's object is to limit the *possibility* of any influence, direct or indirect, that might bear on an official's decision, we conclude that the allegations that Contractor served as a professional consultant . . . and had a hand in designing and developing the plans and specifications for the project are sufficient to state a cause of action.¹²⁰

Taken together, the provisions from the California

Public Contract Code and the California Government Code carve out a strong prohibition of follow-on contracts for consultants.

Local contracting entities in California also have specific provisions governing follow-on contracts. The Los Angeles County Code contains a provision and contract clause entitled “Contractor Independence.”¹²¹ Its stated purpose is to establish “procedures precluding firms or persons that assisted the County in developing or preparing a solicitation document, from subsequently being involved in the bidding process on that solicitation document.”¹²²

The County Board of Supervisors directed that the following language be included in its contracts with consultants:

Prohibition from Participation in Future Solicitation(s)

A Proposer, or a Contractor or its subsidiary or Subcontractor (“Proposer/Contractor”), is prohibited from submitting a bid or proposal in a County solicitation if the Proposer/Contractor has provided advice or consultation for the solicitation. A Proposer/Contractor is also prohibited from submitting a bid or proposal in a County solicitation if the Proposer/Contractor has developed or prepared any of the solicitation materials on behalf of the County. A violation of this provision shall result in the disqualification of the Contractor/Proposer from participation in the County solicitation or the termination or cancellation of any resultant County contract. This provision shall survive the expiration, or other termination of this Agreement.¹²³

The above clause is quite broad in that it applies where the consultant “has developed or prepared *any* of the solicitation materials.”¹²⁴ In the event that the agency allowed the consultant to bid on the resultant contract, this provision would provide a very good protest ground for a disappointed bidder.

Additionally, the Los Angeles County Metropolitan Transportation Authority (Metro) publishes a Contractor’s Code of Conduct in which it has a provision directly aimed at follow-on contracts by consultants. Section 5-20-130 is entitled “Prohibition Regarding Participation in Procurement Development.” It states:

No contractor who participates in the development of a scope of work, solicitation documents, contractual instruments or technical specifications may participate as a proposer or sub-proposer on that particular procurement

or perform any work on that particular procurement or any other procurement that would constitute an organizational conflict of interest or would give that contractor an unfair advantage over other bidders on that procurement. This prohibition may be waived in writing by the administrative head of procurement for [Metro] upon a showing of good cause.¹²⁵

The provision above is a broad prohibition, as it states “any other procurement that would constitute an organizational conflict of interest or would give that contractor an unfair advantage over other bidders on that procurement.”¹²⁶ This could be interpreted very broadly if it was the subject of a bid protest from an unsuccessful bidder. However, this clause also has the waiver option in which the head of procurement for Metro could allow for follow-on work for good cause. This good cause would mostly likely be that the contractor was found to be the only qualified source, and in that case would be subject to a sole-source justification.

Judicial Appeal & Remedies

Generally, protesters may seek judicial recourse through a writ of mandate, asserting that a government official acted beyond his or her authority. Before seeking review from any court, the protester must exhaust all administrative remedies. It is important to note that the government may waive minor issues relating to the solicitation.¹²⁷

The legal standard in an action for a writ of mandate is whether the government agency’s actions were arbitrary, capricious, entirely lacking in evidentiary support, or inconsistent with proper procedure.¹²⁸ Protesters seeking writs of mandate have a difficult task, because courts will generally defer to the decisions made by the agencies.¹²⁹

Decisions of the OLS regarding contract awards are reviewable by administrative mandamus under California Civil Procedure Code § 1094.5.¹³⁰ Upon a bidder’s petition for administrative mandamus, the trial court reviews the OLS’ decision to determine whether it acted outside its jurisdiction, whether there was a fair hearing, and whether there was a prejudicial abuse of discretion.¹³¹ The court can render a decision against the agency, holding that the agency could not have taken the award action. However, even if a protester is successful in seeking a writ of mandate, the court cannot order the agency to award the contract to the protester or to any other party.

An unsuccessful bidder may also bring a civil action seeking a determination by the superior court that a government agency has entered into a contract in violation of the applicable contracting statutes for government procurement.¹³² If the action results in a final determination in favor of the plaintiff, then the contract is void.¹³³

A protester under the Alternative Protest process may challenge the arbitrator's decision and seek judicial review as set forth in California Civil Procedure Code §§ 1285 to 1287.6.¹³⁴ Below are some examples of grounds for judicial review of arbitrations conducted under the Alternative Protest process:

- (1) The award was procured by corruption, fraud, or other undue means.
- (2) There was corruption in any of the arbitrators.
- (3) The rights of the party were substantially prejudiced by misconduct of a neutral arbitrator.
- (4) The arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted.¹³⁵

Local Government Procurement Protests

Local government entities promulgate their own rules and procedures pertaining to bid protests.¹³⁶ It is important for bidders to understand and comply with the applicable rules and procedures regarding the particular public entity at issue.

For instance, San Diego bid protests are governed by the San Diego Municipal Code¹³⁷ and San Diego Council Policy 000-29. The Council Policy establishes the hearing procedures to resolve both protests of contract selection and designation of bidders as nonresponsible.

The current version of Policy 000-29 sets forth procedures for determinations of both contractor responsibility and bid responsiveness. A nonresponsive bid may be summarily rejected, or the City Manager (as defined in Policy 000-29) may convene a hearing, at his or her discretion, to take testimony on a disputed question of fact. With regard to contractor *responsibility*, however, a contractor that is determined to be nonresponsible is entitled to a hearing as a matter of right before the contract is awarded to the next-in-line bidder.¹³⁸

Protests Of Public Works Projects

The California Public Contract Code contains specific rules for procurement concerning public works projects.¹³⁹ The bid protest procedures for Public Works projects are generally contained in bid instructions. However, in some instances, bid protest procedures may be set forth in a local ordinance or statute.

An unsuccessful bidder may seek a writ of mandate from a state court to prevent award to other than the lowest responsible bidder.¹⁴⁰ However, if a bidder fails to comply with the procedures in the bid instructions, it waives any right to challenge the bid by mandamus.¹⁴¹ Bidders generally protest on the following grounds concerning public works projects: (1) the winning bidder is not a responsible contractor, and (2) the winning bid is not responsive to the solicitation, the instructions to bidders, or the job specifications.

Guidelines

These *Guidelines* are intended to assist you in understanding the bid protest process in California public procurements. They are not, however, a substitute for professional representation in any specific situation.

1. Remember that the CPRA does not mandate that California agencies provide notice to affected contractors of disclosure of information that could be proprietary. Thus, it is important for private companies contracting with agencies to take protective action at the front end and to understand what types of information are exempt from disclosure.

2. Recognize that California public policy under the CPRA favors disclosure. Therefore, any information provided in IFBs and RFPs, including contractor bids and proposals, a contractor's certified payroll records, as well as a contractor's financial information given during the bidding process, are all "public records" subject to agency disclosure pursuant to a CPRA request.

3. Bear in mind that the CPRA does not provide a method for the contractor to enforce the trade secret exemption to the CPRA, so-called "reverse" CPRA actions. Consequently, private contractors should familiarize themselves with an agency's procedures for responding to CPRA requests and be sure to properly label confidential information as trade secrets.

4. Do not make the mistake of assuming that just because a solicitation is being issued by a state agency, the entire process will be handled without error or bias. State agencies, although acting with the best intent, are subject to the same human errors and frailties as everyone else. Therefore, contractors should understand the basics of bid protests, including timeliness rules, and possible protest grounds before submitting their proposal.

5. Be aware that California has multiple processes and differing timing requirements for protests depending upon the goods and services being procured and whether the protest is of the requirements of a solicitation or of the propriety of a contract award.

6. If a contractor believes that an agency solicitation is unfairly restrictive, is ambiguous, contains conflicting provisions or mistakes, or in the supplier's experience any resulting contract would be commercially impractical to perform, it must be prepared to protest the solicitation prior to the bid close date, or waive its right to challenge the solicitation.

7. Remember that a losing bidder of a contract award bears the burden of proving that the agency has committed an error in the bid award process sufficiently material to justify its challenge of the proposed award, or that the agency's decisions lack a rational basis, and are, therefore, arbitrary and capricious. A material deviation could be the failure of the awarding agency to follow pertinent state statutes and regulations or the provisions of the solicitation document.

8. Recognize that the decisions of state agencies regarding contract awards are reviewable by California courts administrative mandamus. Upon a bidder's petition for administrative mandamus, a state trial court may review the agency's decision to determine whether it acted outside its jurisdiction, whether there was a fair hearing, and whether there was a prejudicial abuse of discretion. The court can render a decision against the agency, holding that the agency could not have taken the award action.

ENDNOTES:

¹Domar Elec., Inc. v. City of Los Angeles, 9 Cal. 4th 161, 173 (1994).

²See Cal. Gov't Code §§ 6250 to 6254.21, 6275 to

6276.48.

³Cal. Gov't Code § 6250.

⁴Cal. State Univ. v. Super. Ct., 90 Cal. App. 4th 810, 823 (Cal. Ct. App. 2001).

⁵Cal. State Univ., 90 Cal. App. 4th at 823.

⁶Cal. State Univ., 90 Cal. App. 4th at 831.

⁷Cal. Gov't Code § 6253(a), (b).

⁸Cal. Gov't Code § 6252(e).

⁹Cal. Gov't Code § 6252(g).

¹⁰San Gabriel Tribune v. Super. Ct., 143 Cal. App. 3d 762, 774 (Cal. Ct. App. 1983).

¹¹Cal. State Univ., 90 Cal. App. 4th at 830.

¹²Payroll records must be redacted to protect names, addresses, and other identifying information of employees from public disclosure. Cal. Labor Code § 1776.

¹³Cal. State Univ., 90 Cal. App. 4th at 833.

¹⁴Cal. Gov't Code § 6253(c).

¹⁵Cal. Gov't Code § 6254(k).

¹⁶Cal. Gov't Code § 6254(k).

¹⁷See Cal. Gov't Code § 6255.

¹⁸San Gabriel Tribune, 143 Cal. App. 3d at 775–81.

¹⁹Cal. Pub. Cont. Code § 10160 (“The department may require from prospective bidders answers to questions contained in a standard form of questionnaire and financial statement including a complete statement of the prospective bidder's financial ability and experience in performing public works.”).

²⁰Cal. Gov't Code § 6276 (stating that Cal. Gov't Code § 6254(k), includes, but is not limited to, records and information identified in statutes subsequently listed); Cal. Gov't Code § 6276.42 (identifying Cal. Pub. Cont. Code § 10165 as a statute that exempts qualifying records); Cal. Pub. Cont. Code § 10165.

²¹Cal. Pub. Cont. Code § 20101(a).

²²Uribe v. Howie, 19 Cal. App. 3d 194, 206–07 (Cal. Ct. App. 1971).

²³Cal. Gov't Code § 6254(k).

²⁴Cal. Evid. Code § 1060.

²⁵Uribe, 19 Cal. App. 3d at 207.

²⁶Futurecraft Corp. v. Clary Corp., 205 Cal. App. 2d 279, 289, 23 Cal. Rptr. 198 (2d Dist. 1962).

²⁷Cal. Civ. Code § 3426.1.

²⁸California State Univ. v. Super. Ct., 90 Cal. App. 4th 810, 834, 108 Cal. Rptr. 2d 870 (5th Dist. 2001); Braun v. City of Taft, 154 Cal. App. 3d 332, 347, 201 Cal. Rptr. 654 (5th Dist. 1984); San Gabriel Tribune v. Super. Ct., 143 Cal. App. 3d 762, 781, 192 Cal. Rptr. 415 (2d Dist. 1983).

²⁹Futurecraft Corp., 205 Cal. App. 2d at 289.

³⁰Uribe, 19 Cal. App. 3d at 213.

³¹Uribe, 19 Cal. App. 3d at 206.

³²Uribe, 19 Cal. App. 3d 194.

³³Uribe, 19 Cal. App. 3d at 199–200.

³⁴Uribe, 19 Cal. App. 3d at 206.

³⁵Uribe, 19 Cal. App. 3d at 206.

³⁶Uribe, 19 Cal. App. 3d at 209.

³⁷Uribe, 19 Cal. App. 3d at 209.

³⁸Uribe, 19 Cal. App. 3d at 209.

³⁹San Gabriel Tribune, 143 Cal. App. 3d at 780. In that case, the City of West Covina contracted with a disposal company for garbage collection. The company submitted a number of financial reports to the city in support of a 15% to 25% rate increase for city residents. The city claimed that the public's interest in nondisclosure outweighed the public's interest in disclosure of the financial reports. The court, however, held that neither the interest of the city in its future information-gathering for business transactions, nor the interest of the disposal company in protecting its competitive advantage, outweighed the public's need to be informed about services obtained on its behalf. Accordingly, the financial reports were not exempt under the Government Code.

⁴⁰SCM, Vol. 3 § 7.1.0 (Cal. Dep't Gen. Servs. 2010).

⁴¹SCM, Vol. 3 § 7.1.0 (Cal. Dep't Gen. Servs. 2010).

⁴²SCM, Vol. 3 § 7.2.0 (Cal. Dep't Gen. Servs. 2010).

⁴³See SCM, Vol. 3 §§ 7.2.1 to 7.2.2 (Cal. Dep't Gen. Servs. 2010).

⁴⁴SCM, Vol. 3 § 7.3.0 (Cal. Dep't Gen. Servs. 2010).

⁴⁵SCM, Vol. 2 § 7.1.6 (Cal. Dep't Gen. Servs. 2010).

⁴⁶See Cal. Govt. Code §§ 14659 to 14659.02.

⁴⁷See Cal. Pub. Cont. Code §§ 12125 to 12129; Cal. Code Reg., tit. 1, §§ 1400 to 1440.

⁴⁸Cal. Pub. Cont. Code § 10345; SCM, Vol. 1 § 6.02 (Cal. Dep't Gen. Servs. 2015).

⁴⁹See Ghilotti Constr. Co. v. City of Richmond, 45 Cal. App. 4th 897 (Cal. Ct. App. 1996).

⁵⁰Ghilotti Constr., 45 Cal. App. 4th at 904.

⁵¹See MCM Constr., Inc. v. City & Cnty. of San Francisco, 66 Cal. App. 4th 359, 374 (Cal. Ct. App. 1998); SCM, Vol. 3 §§ 4 D4.4 to 4 D4.5 (Cal. Dep't Gen. Servs. 2010). See also DeSilva Gates Constr., LP v. Dep't of Transp., 242 Cal. App. 4th 1409, 195 Cal. Rptr. 3d 891 (3d Dist. 2015), where the court found that Caltrans had abused its discretion in waiving a material defect for one bidder, but rejecting the apparent low bidder's bid as non-responsive for a deviation that was not material. DeSilva Gates Constr., 242 Cal. App. 4th at 1424. The court held that an agency can accept a bid that is not strictly responsive only if the variance did not give the bidder an advantage or benefit not allowed other to bidders. DeSilva

Gates Constr., 242 Cal. App. 4th at 1422–23. In this case, CalTrans had allowed the successful bidder to cure its failure by submitting an addendum; thereby giving it an advantage over other bidders not afforded this opportunity. DeSilva Gates Constr., 242 Cal. App. 4th at 1423. The court further held that “[w]hether a state agency has discretion to waive a material deviation from the information for bids for a bidder does not constitute a question of fact for which the agency is entitled to deference.” DeSilva Gates Constr., 242 Cal. App. 4th at 1424.

⁵²Cal. Pub. Cont. Code § 12102.2(g); SCM, Vol. 3 § 7.1.0 (Cal. Dep't Gen. Servs. 2010).

⁵³SCM, Vol. 3 § 7.1.0 (Cal. Dep't Gen. Servs. 2010).

⁵⁴See Department of General Services Bidders Instructions Form GSPD 451 (revised and effective Nov. 9, 2011), available at <https://www.documents.dgs.ca.gov/dgs/FMC/GS/PD/DGSPD%20451.pdf>.

⁵⁵SCM, Vol. 3 § 7.2.2 (Cal. Dep't Gen. Servs. 2014).

⁵⁶SCM, Vol. 3 § 7.2.2 (Cal. Dep't Gen. Servs. 2014).

⁵⁷SCM, Vol. 3 § 7.2.3 (Cal. Dep't Gen. Servs. 2014).

⁵⁸The protesting party in a California bid protest is sometimes referred to as the “protestant.” See, e.g., Alternative Protest Pilot Project Bid Protest Regulations, Cal. Code Reg., tit. 1, § 1402. We believe that the term “protester” (or even “protestor”) as used in federal procurement law parlance is somewhat more accurate and much less confusing to the reader.

⁵⁹Cal. Pub. Cont. Code § 12102.2(g); SCM, Vol. 3 § 7.3.1 (Cal. Dep't Gen. Servs. 2010).

⁶⁰Cal. Pub. Cont. Code § 12102.2(g); SCM, Vol. 3 § 7.3.1 (Cal. Dep't Gen. Servs. 2010).

⁶¹Cal. Pub. Cont. Code § 12102.2(g); Cal. Code Reg., tit. 2, § 872.1(b); SCM, Vol. 3 § 7.3.3 (Cal. Dep't Gen. Servs. 2014).

⁶²Cal. Pub. Cont. Code § 12102.2(g); Cal. Code Reg., tit. 2, § 872.7(a); SCM, Vol. 3 § 7.3.3 (Cal. Dep't Gen. Servs. 2014).

⁶³SCM, Vol. 3 § 7.3.3 (Cal. Dep't Gen. Servs. 2014).

⁶⁴Cal. Code Reg., tit. 2, §§ 870.1 to 874.1; see Cal. Govt. Code §§ 14659 to 14659.02.

⁶⁵Cal. Pub. Cont. Code §§ 12125 to 12129; Cal. Code Reg., tit. 1, §§ 1400 to 1440.

⁶⁶Major IT goods and services acquisitions are governed by the Alternative Protest procedures. See Cal. Code Reg., tit. 1, § 1402(h), defining a major IT acquisition as the “the purchase of goods or services, or both, by a state agency, through contract, from nongovernmental sources, that has significant mission criticality, risk, impact, complexity, or value attributes or characteristics. Pursuant to subdivision (e) of Section 11702 of the Government Code, these purchases shall include, but not be limited to, all electronic technology systems and services, automated information handling, system design

and analysis, conversion of data, computer programming, information storage and retrieval, telecommunications that include voice, video, and data communications, requisite system controls, simulation, electronic commerce, and all related interactions between people and machines.”

⁶⁷See Department of General Services Bidders Instructions Form GSPD 451.

⁶⁸Cal. Pub. Cont. Code § 12126(c)(1); Cal. Code Reg., tit. 1, § 1404.

⁶⁹Cal. Code Reg., tit. 1, § 1406(a).

⁷⁰Cal. Code Reg., tit. 1, § 1406(b).

⁷¹Cal. Code Reg., tit. 1, § 1408.

⁷²Cal. Code Reg., tit. 1, § 1410(a)(1).

⁷³Cal. Code Reg., tit. 1, § 1412(b)(1).

⁷⁴Cal. Code Reg., tit. 1, § 1410(a)(2).

⁷⁵Cal. Code Reg., tit. 1, § 1410(b).

⁷⁶Cal. Pub. Cont. Code § 12126; Cal. Code Reg., tit. 1, § 1414(b).

⁷⁷Cal. Pub. Cont. Code § 12126; Cal. Code Reg., tit. 1, § 1414(b).

⁷⁸Cal. Code Reg., tit. 1, § 1418. The contracting department determines the percentage of the bond, which is specified in the solicitation. Section 1402, subdivision (f), defines “Estimated Contract Value” as the value of the protesting bidder’s bid.

⁷⁹Cal. Code Reg., tit. 1, § 1416(a).

⁸⁰Cal. Code Reg., tit. 1, § 1416(b).

⁸¹Cal. Code Reg., tit. 1, § 1422(a).

⁸²Cal. Code Reg., tit. 1, § 1422(a).

⁸³Cal. Code Reg., tit. 1, § 1422(a).

⁸⁴Cal. Code Reg., tit. 1, §§ 1424, 1426.

⁸⁵Cal. Code Reg., tit. 1, § 1436(b).

⁸⁶Cal. Code Reg., tit. 1, § 1436(a).

⁸⁷Cal. Code Reg., tit. 1, § 1436(b).

⁸⁸Cal. Code Reg., tit. 1, § 1437(a).

⁸⁹Cal. Code Reg., tit. 1, § 1437(a).

⁹⁰Cal. Code Reg., tit. 1, § 1437(b).

⁹¹SCM, Vol. 2 § 7.1.5 (Cal. Dep’t Gen. Servs. 2010).

⁹²SCM, Vol. 2 § 7.1.6 (Cal. Dep’t Gen. Servs. 2010).

⁹³Cal. Pub. Cont. Code § 10301.

⁹⁴Cal. Pub. Cont. Code § 10306; Cal. Code Reg., tit. 2, § 872.7(c)(1).

⁹⁵Cal. Pub. Cont. Code § 10306; Cal. Code Reg., tit. 2, § 872.1(a); see Cal. Govt. Code §§ 14659 to 14659.02.

⁹⁶Cal. Pub. Cont. Code § 10306; see Cal. Govt. Code §§ 14659 to 14659.02.

⁹⁷Cal. Pub. Cont. Code § 10306; Cal. Code Reg., tit.

2, § 872.7(a), (c); see Cal. Govt. Code §§ 14659 to 14659.02.

⁹⁸See Cal. Code Reg., tit. 2, §§ 870.1 to 874.1; see also Cal. Govt. Code §§ 14659 to 14659.02.

⁹⁹Cal. Pub. Cont. Code § 10345; SCM Vol. 1 § 6.02 (Cal. Dep’t Gen. Servs. 2012).

¹⁰⁰Cal. Pub. Cont. Code § 10344(b)–(c).

¹⁰¹SCM, Vol. 1 § 6.00 (Cal. Dep’t Gen. Servs. 2012).

¹⁰²SCM, Vol. 1 § 6.00 (Cal. Dep’t Gen. Servs. 2012).

¹⁰³Cal. Pub. Cont. Code § 10345(a); SCM, Vol. 1 § 6.10 (Cal. Dep’t Gen. Servs. 2017).

¹⁰⁴Cal. Pub. Cont. Code § 10345(a)(1); SCM, Vol. 1 § 6.10 (Cal. Dep’t Gen. Servs. 2017).

¹⁰⁵Cal. Pub. Cont. Code § 10345(b); SCM, Vol. 1 § 6.10 (Cal. Dep’t Gen. Servs. 2017).

¹⁰⁶Cal. Pub. Cont. Code § 10345(a)(2), (b)(1); SCM, Vol. 1 § 6.10 (Cal. Dep’t Gen. Servs. 2017).

¹⁰⁷Cal. Pub. Cont. Code § 10345(a)(3), (b)(2); SCM, Vol. 1 § 6.10 (Cal. Dep’t Gen. Servs. 2017).

¹⁰⁸SCM, Vol. 1 § 6.10 (Cal. Dep’t Gen. Servs. 2017).

¹⁰⁹SCM, Vol. 1 § 6.10 (Cal. Dep’t Gen. Servs. 2017). The Public Hearing Guidelines are contained in § 6:15.

¹¹⁰SCM, Vol. 1 § 6.18 (Cal. Dep’t Gen. Servs. 2012).

¹¹¹Cal. Gov’t. Code § 1090.

¹¹²Hub City Solid Waste Servs., Inc. v. City of Compton, 186 Cal. App. 4th 1114, 112 Cal. Rptr. 3d 647 (2d Dist. 2010).

¹¹³Hub City Solid Waste Servs., Inc., 186 Cal. App. 4th at 1124–25.

¹¹⁴Davis v. Fresno Unified School Dist., 237 Cal. App. 4th 261, 301, 187 Cal. Rptr. 3d 798 (5th Dist. 2015), rejected by McGee v. Balfour Beatty Constr., LLC, 247 Cal. App. 4th 235, 202 Cal. Rptr. 3d 251 (2d Dist. 2016)).

¹¹⁵Millbrae Ass’n for Residential Survival v. City of Millbrae, 262 Cal. App. 2d 222, 237, 69 Cal. Rptr. 251 (1st Dist. 1968).

¹¹⁶McGee v. Balfour Beatty Constr., LLC, 247 Cal. App. 4th 235, 202 Cal. Rptr. 3d 25 (2d Dist. 2016).

¹¹⁷McGee, 247 Cal. App. 4th at 259.

¹¹⁸McGee, 247 Cal. App. 4th at 261–62.

¹¹⁹Cal. Pub. Cont. Code § 10365.5(a).

¹²⁰McGee, 247 Cal. App. 4th at 260.

¹²¹Los Angeles County Board Policy § 5.090, “Contractor Independence,” available at https://library.municode.com/ca/la_county_-_bos/codes/board_policy?nodeId=CH5COPU_5.090COIN.

¹²²Los Angeles County Board Policy § 5.090, “Contractor Independence,” available at https://library.municode.com/ca/la_county_-_bos/codes/board_policy?nodeId=CH5COPU_5.090COIN.

¹²³Los Angeles County Board Policy § 5.090, “Contractor Independence,” available at https://library.municode.com/ca/la_county_-_bos/codes/board_policy?nodeId=CH5COPU_5.090COIN.

¹²⁴Los Angeles County Board Policy § 5.090, “Contractor Independence” (emphasis added), available at https://library.municode.com/ca/la_county_-_bos/codes/board_policy?nodeId=CH5COPU_5.090COIN.

¹²⁵Metro Contractor’s Code of Conduct § 5-20-130, available at https://media.metro.net/about_us/ethics/images/codes_ethics_contractors_2014-07.pdf.

¹²⁶Metro Contractor’s Code of Conduct § 5-20-130, available at https://media.metro.net/about_us/ethics/images/codes_ethics_contractors_2014-07.pdf.

¹²⁷See Ghilotti Constr., 45 Cal. App. 4th 897.

¹²⁸See Ghilotti Constr., 45 Cal. App. 4th at 903.

¹²⁹See Ghilotti Constr., 45 Cal. App. 4th at 903.

¹³⁰See National Coach Corp. v. Bd. of Control, 137 Cal. App. 3d 750 (Cal. Ct. App. 1982); see also Cal. Govt. Code §§ 14659 to 14659.02.

¹³¹See Cal. Civ. Proc. Code § 1094.5(b)–(c); NBS Imaging Sys., Inc. v. State Bd. of Control, 60 Cal. App. 4th 328, 335 (Cal. Ct. App. 1997); see also Cal. Govt. Code §§ 14659 to 14659.02.

¹³²See Cal. Pub. Cont. Code § 10421.

¹³³See Cal. Pub. Cont. Code § 10421.

¹³⁴See Cal. Code Reg., tit. 1, § 1438.

¹³⁵Cal. Civ. Proc. Code § 1286.2.

¹³⁶See generally Rizzo & Cruz, California Procurement Handbook ch. 4 (Thomson Reuters 2020–2021 ed.).

¹³⁷See, e.g., San Diego Municipal Code §§ 11 & 22.

¹³⁸See San Diego Council Policy 000-29 (Apr. 5, 2012).

¹³⁹See generally Rizzo & Cruz, California Procurement Handbook ch. 13 (Thomson Reuters 2020–2021 ed.).

¹⁴⁰Cal. Civ. Proc. Code § 1085.

¹⁴¹MCM Constr., 66 Cal. App. 4th at 378–83.

NOTES:

BRIEFING PAPERS