

Contract Exemption 2026-04

Issued on February 5, 2026, by

The West Virginia Ethics Commission

Opinion Sought

The City of Smithers seeks a Contract Exemption to contract for demolition services with [Giannini Construction and Excavating, LLC](#), which is owned by Steve Giannini, a member of Smithers City Council.

Facts Relied Upon By the Commission

In 2023, the City of Smithers ("City") applied for grant funding from the Rehabilitation Environmental Action Plan ("REAP") Demolition Program. The Demolition Program ("Program") was created pursuant to W. Va. Code § 22-15A-1, et. seq., and is administered by the West Virginia Department of Environmental Protection ("DEP"). The Program provides grant funds for the demolition and removal of vacant, unsafe, and dilapidated structures.

The City was awarded grant funding for a three-year period, subject to annual appropriations by the State and the City's compliance with DEP regulations involving the grant. The City is currently in the application process for the distribution of funding for the third year, 2026, of the initial three-year grant award. The City asserts that without the REAP grant funding, it does not have the financial resources to remediate the existing vacant, dilapidated, and unsafe structures located within the City.

The City complied with the grant requirements, including advertising a request for proposals ("RFP") seeking contractors to perform the demolition and abatement work. In April 2023, the City advertised in both the Beckley and Charleston Gazette-Mail Newspapers. The City received one bid in response to the RFP. The bid was from Giannini Construction and Excavating, LLC, ("Giannini Construction") which is owned by Steve Giannini, who is one of the five city council members of the City, and Mr. Giannini's wife.

The City asserts that Giannini Construction's bid was reasonably priced (\$5.25 per square foot), the company and its equipment are located in Smithers, and the company has a reputation for providing timely and competent work. The City's Building Commission, a separate body, received and approved the bid. Then, the City Council approved the bid by unanimous vote of the remaining four city council members at its May 8, 2023, regular public meeting. The City asserts Mr. Giannini is not and has never been a member of the City's Building Commission, did not participate in any city council discussions involving the bid or award of the contract, and did not vote on the award of the contract to Giannini Construction to perform the demolition work.

Consistent with guidance from the DEP, the contract was awarded for one year with the option to renew for two additional one-year periods. When the City filed paperwork with the DEP to request approval and disbursement of funding for the 2026 year of the REAP grant, DEP became aware that Steve Giannini was a councilman at the time the contract was awarded to Giannini Construction. Thereafter, the City and DEP agreed that the City would publish a new RFP for the remaining year of the project to identify any other contractors who could perform the work in a competent and timely manner for a similar price.

The City published an RFP for the 2026 work in three newspapers, and the city administrator sought potential contractors from the DEP and the West Virginia Contractors Board, and provided direct notice of the RFP to contractors, encouraging them to submit bids. This time, Trigon Unlimited, LLC. ("Trigon"), submitted a bid. Trigon's bid is for \$7.90 per square foot (and does not include workers compensation coverage). Although Giannini Construction did not submit a bid for the 2026 work, it agreed to honor its earlier bid of \$5.25.

The City estimates that the City would pay around \$4,000 more per structure if it hired Trigon for the work, resulting in $\frac{1}{3}$ fewer structures being demolished. The City also asserts that Trigon's bid does not meet some of the important specifications, including Trigon's staff and equipment is located 75-80 miles away and the RFP requires them within a 30-mile radius of Smithers.

Mr. Giannini has not participated in the City's decision to request this contract exemption.

Provisions Relied Upon By the Commission

W. Va. Code § 6B-2-5(d)(1) states, in relevant part:

In addition to the provisions of section fifteen, article ten, chapter sixty-one of this code, no elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract which the official or employee may have direct authority to enter into, or over which he or she may have control Provided, however, That nothing herein shall be construed to prohibit a member of the Legislature from entering into a contract with any governmental body, or prohibit a part-time appointed public official from entering into a contract which the part-time appointed public official may have direct authority to enter into or over which he or she may have control when the official has not participated in the review or evaluation thereof, has been recused from deciding or evaluating and has been excused from voting on the contract and has fully disclosed the extent of his or her interest in the contract.

W. Va. Code § 6B-2-5(d)(2) states, in relevant part:

In the absence of bribery or a purpose to defraud, an elected or appointed public official or public employee or a member of his or her immediate family or a business with which he or she is associated shall not be considered as having a prohibited financial interest in a public contract when such a person has a limited interest as an owner, shareholder or creditor of the business which is awarded a public contract. A limited interest for the purposes of this subsection is:

(A) An interest which does not exceed one thousand dollars in the profits or benefits of the public contract or contracts in a calendar year;. . .

W. Va. Code § 6B-2-5(d)(3) states, in relevant part:

If a public official or employee has an interest in the profits or benefits of a contract, then he or she may not make, participate in making, or in any way attempt to use his office or employment to influence a government decision affecting his or her financial or limited financial interest. Public officials shall also comply with the voting rules prescribed in subsection (j) of this section.

W. Va. Code § 6B-2-5(d)(4) states, in relevant part:

Where the provisions of subdivisions (1) and (2) of this subsection would result in the loss of a quorum in a public body or agency, in excessive cost, undue hardship, or other substantial interference with the operation of a state, county, municipality, county school board or other governmental agency, the affected governmental body or agency may make written application to the Ethics Commission for an exemption from subdivisions (1) and (2) of this subsection.

Opinion

Ethics Act

The Ethics Act prohibits public employees and officials from having more than a limited interest in the profits or benefits of a public contract over which they have direct authority or control unless their governing body seeks, and receives, an exemption to contract with the public employee or official. W. Va. Code § 6B-2-5(d)(1). Mr. Giannini, as a city council member, has direct authority or control over the City's contracts. See [Contract Exemption 2024-03](#). Therefore, the City needs a contract exemption.

Contract Exemption

The Ethics Commission may only grant a contract exemption if the prohibition would

result in excessive cost, undue hardship, or other substantial interference with the operation of a governmental body or agency.

The City estimates that the City would pay around \$4,000 more per structure if it hired Trigon for the work, resulting in $\frac{1}{3}$ fewer structures being demolished. Also, the bid is not completely responsive to the RFP in material terms as mentioned above. Finally, Mr. Giannini did not participate in his official city council capacity, on Smithers decision to request this contract exemption. Therefore,

The Ethics Commission grants a contract exemption to the City of Smithers to contract with Giannini Construction and Excavation, LLC, which is owned by Steve Giannini, a member of Smithers City Council, under the following terms:

This Contract Exemption is effective until February 28, 2027.

Mr. Giannini must recuse himself from decisions, discussions, and votes relating to his contract and payment for services. He must follow the restrictions in W. Va. Code § 6B-2-5(j). For recusal to be proper, he must first fully disclose on the record his disqualifying interest and leave the room during the discussion, deliberation, and vote on the matter. In addition, the minutes or record of the meeting must reflect the basis for the recusal and that Mr. Giannini left the room during all consideration, discussion, and vote on the contract and payment for his services. W. Va. Code § 6B-2-5(j)(3).

The Commission notes that exemptions must be granted on a case-by-case basis. Therefore, this Contract Exemption is limited to the facts and circumstances of this particular case and may not be relied upon as precedent by other persons or entities.

/s/ Robert J. Wolfe
Robert J. Wolfe, Chairperson
West Virginia Ethics Commission

A handwritten signature in black ink, appearing to read 'Robert J. Wolfe', written in a cursive style.