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JOHN ST. CROIX
EXECUTIVE DIRECTOR

Date: November 20, 2013

To: Members, Ethics Commission

From: John St. Croix, Executive Director
By: Mabel Ng, Deputy Executive Director

Re: Draft regulation regarding C&GC Code section 1.126

San Francisco Campaign and Governmental Conduct Code section 1.126 bars any person who contracts with

- the City and County of San Francisco,
- a state agency on whose board an appointee of a City elective officer serves,
- the SF Unified School District or
- the SF Community College District,

from making a campaign contribution to

- any individual holding City elective office if the contract must be approved by such individual or the board on which he or she serves, or to
- any candidate for such office, or to
- a committee controlled by such individual or candidate

whenever the contract is worth \$50,000 or more, at any time from the commencement of negotiations for the contract until either the termination of negotiations for such contract or six months have expired from the date the contract is approved.

As mentioned in its May 20, 2013 report, staff is exploring how to make information regarding section 1.126 more accessible. Currently, the City does not have a central database or list that discloses contracts under negotiation. Elected officers file a Form SFEC-1.126 report with the Ethics Commission to disclose information about a contract only when they have approved the contract.

To begin to comply with the ban under section 1.126, candidates and committees conceivably would be required to search through all SFEC-1.126 forms filed within the past six months every time they receive a contribution. For example, if a candidate for the Board of Supervisors received a contribution on September 30, 2013, he or she would have to search through ninety (90) SFEC-1.126 forms to see if the contribution is forbidden under section 1.126. Even though Commission staff scan paper SFEC-1.126 forms into electronic format, the scanned images cannot be easily searched.

At the same time, as mentioned above, parties to contracts under negotiation are not disclosed at any centralized location, so there is no way to check if a contribution might be forbidden because the contributor has entered into negotiations to secure a City

contract. Thus, it is a challenge for candidates and committees to comply with the contributor ban under section 1.126.

Staff recommends that the Commission approve a regulation that may make it easier for candidates to demonstrate compliance with section 1.126. Under the proposal, candidates and committees that use fundraising or contribution forms with language similar to that set forth below, with a signature line or electronic equivalent, will be deemed to have satisfied the due diligence requirements of section 1.126. Such forms, if used, would be retained by the candidate or committee and be made available to the Commission during an audit or investigation. Candidates and committees are not required to use signature forms, but if they did, such information may provide the candidate or committee a safe harbor from penalties for receiving banned contributions. Some candidates and committees already provide a list of rules for contributors to read and certify that they comply with when making a contribution.

Regulation 1.126-7: Contributor Information.

A candidate will meet the due diligence requirements of the contribution ban in section 1.126 if the contributor to the candidate certifies that the following is true:

I am not an owner, director, officer, or named sub-contractor of any entity that is currently negotiating a contract with [select appropriate: City and County of San Francisco, name of a City department, or the San Francisco Unified School District, the San Francisco Community College District, or board of a state agency that has a member who is appointed by a City elective officer], or of any entity that received such a contract within the last six months.

Decision Point:

Shall the Commission approve draft Regulation 1.126-7?

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