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JOHN ST. CROIX
EXECUTIVE DIRECTOR

Date: July 13, 2012

To: Members, Ethics Commission

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

Re: Amendments to regulations regarding CFRO section 1.126

Campaign and Governmental Conduct Code (“C&GC Code”) section 1.126 (codified in the Campaign Finance Reform Ordinance, or CFRO) prohibits contributions to City elected officials from certain City contractors. Over the past several years, and most recently in a request for informal written advice, members of the regulated community and the press have asked whether section 1.126 applies to campaign contributions made to a City elected official seeking state elective office. Staff’s response was yes, the section 1.126 contractor contribution ban applies to local officials seeking election to state office. However, in providing that advice, staff noted that Ethics Commission Regulation 1.126-2 might unnecessarily confuse the proper interpretation of CFRO section 1.126. For this reason, and to make other technical changes, staff proposes that the Commission amend Regulations 1.126-1 and 1.126-2, as set forth in this memo.

CFRO section 1.126 prohibits any person who contracts with the City, the San Francisco Unified School District, the San Francisco Community College District or certain state agencies, from making a political contribution to *an individual holding a City elective office* if the contract must be approved by that individual, the board on which that individual serves, or a state agency on whose board an appointee of that individual serves. The ban also applies prohibit contributions to a candidate for the office held by the individual or a committee controlled by such individual or candidate. The ban applies whenever the agreement or contract has a total anticipated or actual value of \$50,000 or more in a fiscal year; and it applies from the commencement of negotiations until the termination of negotiations for such contract or six months from the date the contract is approved. *See* C&GC Code § 1.126, reprinted at the end of this memo.

I. The Advice Letter

In relevant portions of the advice letter, staff wrote:

You asked whether the City’s ban on contributions from City contractors applies to a supervisor or other City elective officer who runs for State office instead of a local office. As you point out, section 1.126 bars a contractor from making a contribution to, among

others, “an individual holding City elective office,” and “a committee controlled by such an individual.” Ethics Commission Regulation 1.126-2 defines “a committee controlled by such individual” to include “either a committee formed to support or oppose a candidate for City elective office or committee formed to support or oppose a local ballot measure.” You claim that the “clear language of the regulation thereby limits the ‘a committee controlled by such an individual’” to “a committee supporting a City official’s election to another City office or a committee supporting or opposing a City ballot measure.” You thus seek confirmation that Regulation 1.126-2 “effectively excludes from the contractor ban committees supporting a City official’s election to state office and state ballot measure committees.”

As you note, the legislative history of section 1.126 does not specifically address whether the contribution ban applies to City elective officers seeking State office. However, Ethics staff has consistently advised that section 1.126 applies when the requisite factors exist, *i.e.*, *whenever* any individual City elective officer who must approve a City contract worth at least \$50,000 per year is seeking any elective office.

The reasons for this advice include the following. First, section 1.126(b)(1)(A) specifically prohibits a contractor from making a contribution to “an individual holding a City elective office if the contract must be approved by such individual.” Under the plain language of this subsection, *any* individual currently holding City elective office is subject to this restriction, and there is no further limitation that suggests this individual must be a candidate seeking a City elective office. Second, the purpose of section 1.126 is to prevent pay-to-play situations whereby in exchange for making a political contribution to an individual holding City elective office, the contractor wins his or her approval on a contract. In these circumstances, the anti-corruption interests served by section 1.126 apply with equal force to a donation to a City elective officer running for *any* elective office, either state or local.

In your letter, you rely on Regulation 1.126-2 to argue that the City’s contractor contribution ban does not apply to individuals holding City elective office seeking election to State office. But, as you note, this regulation only interprets section 1.126(b)(1)(C) – not subsection (b)(1)(A). Nonetheless, Regulation 1.126-2 confuses the proper understanding of section 1.126(b)(1)(A) and unnecessarily suggests that the City’s contractor contribution ban should be limited to City elective officers seeking local elective office. To clarify this issue, staff will recommend that the Commission approve a regulation to make clear that the contractor ban in section 1.126 applies to any candidate campaign committee controlled by a City elective officer who must approve the contract, whether it be for City, State or Federal elective office.

II. The Proposed Changes to the Regulations

New language is set forth in underlined italic text; deletions are set forth in strikethrough text.

Regulation 1.126-1: Contribution Limits – Contractors Doing Business with the City: Definitions.

(a) Board on which an individual sits.

“Board on which an individual sits” means the board to which the officer was elected and any other board on which the elected officer serves.

(b) Commencement of Negotiations.

Negotiations commence when a prospective contractor first communicates about the possibility of obtaining a specific contract with an officer or employee of the City, the San Francisco Unified School District, the San Francisco Community College District, or a state agency on whose board an appointee of a city elective officer sits ~~about the possibility of obtaining a specific contract~~. Either the prospective contractor or the officer or employee may initiate the communication, and this This initial communication may occur in person, by telephone, or in writing, ~~and may be initiated by the prospective contractor or the officer or employee.~~

Examples of communications between prospective contractors and officers and employees of the City, the Unified School District, the Community College District or a state agency on whose board an appointee of a city elective officer sits that commence negotiations include, but are not limited to, the following: ~~A~~ a prospective contractor contacts an officer or employee to promote himself or herself for a specific contract; an officer or employee contacts a prospective contractor to propose that the contractor apply for a specific contract; a prospective contractor submits a bid, proposal or response to a Request for Proposals or Request for Qualifications to compete or be eligible for a specific contract.

Examples of communications between prospective contractors and officers and employees that do not commence negotiations include, but are not limited to, the following: ~~I~~ nquiries regarding a particular contract, and requests for information or documents relating to a Request for Proposal or Request for Qualifications, provided that the inquiry or request does not involve promotion of the prospective contractor's interest in a specific contract; distribution or receipt of Requests for Proposals ~~or; distribution or receipt of~~ Requests for Qualifications; attendance at an interested persons meeting or a hearing that is open to the public where the prospective contractor does not promote himself or herself for a specific contract; and requests to be placed on a mailing list regarding contracting opportunities.

(c) Contract.

For the purposes of section 1.126, a contract does not include the following:

- (1) a work order or purchase order submitted under an existing contract; or
- (2) a modification of an existing contract where the majority of the terms of the contract remain in full force and effect and the total amount of the modification does not exceed \$50,000 in a fiscal year.

(d) Date the Contract Is Approved.

A contract is approved when it is finalized and signed by the City, a state agency on whose board an appointee of a City elective officer sits, the San Francisco Unified School District or the San Francisco Community College District and the contractor.

(e) Person who Contracts With.

- (1) For the purposes of section 1.126, a “person who contracts with” includes any named party or prospective named party to a contract, as well as any member of that named party or prospective named party’s board of directors, its chairperson, chief executive officer, chief financial officer, chief operating officer, any person with an ownership interest of more than 20

percent in the named or prospective named party, any subcontractor listed in a bid or contract, and any committee as defined in Chapter 1 of the Campaign and Governmental Conduct Code that is sponsored or controlled by the named party or prospective named party.

(2) If a named party or prospective named party does not have a board of directors or chairperson of the board of directors, a “person who contracts with” includes any person who directs or participates in directing the affairs and activities of the named party or prospective named party.

(3) If a named party or prospective named party does not have a chief executive officer, chief financial officer, or chief operating officer, a “person who contracts with” includes any president of the named party or prospective named party or any person who directs the overall activities, financial activities, or operations of the named party or prospective named party.

(f) Personal services.

For the purposes of section 1.126(a)(2)(A), personal services means services that are provided by a person or an entity. Such services include but are not limited to tasks such as consulting, architecture, engineering, design, legal services, finance, accounting, janitorial services, medical treatment, transportation, underwriting, insurance, and security.

(g) State Agency on whose Board an Appointee of a City Elective Officer Serves.

For the purposes of section 1.126, a state agency on whose board a City elective officer or an appointee of a City elective officer serves is limited to the following: Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, ~~Redevelopment Agency Commission~~, Relocation Appeals Board, ~~Treasure Island Development Authority~~, and Local Workforce Investment Board. The City elective officers who appoint members of these boards for the purposes of section 1.126 are:

- (1) Health Authority: Board of Supervisors and Mayor
- (2) Housing Authority Commission: Mayor
- (3) Industrial Development Authority Board: Mayor and Board of Supervisors
- (4) Parking Authority: Mayor and Board of Supervisors
- ~~(5) Redevelopment Agency Commission: Mayor and Board of Supervisors~~
- ~~(6) Relocation Appeals Board: Mayor and Board of Supervisors~~
- ~~(7) Treasure Island Development Authority: Mayor~~
- ~~(8) Local Workforce Investment Board: Mayor~~

(h) Submission of a Contract to an Individual Holding City Elective Office.

(1) A contract is submitted to each member of the Board of Supervisors when a resolution to approve the contract is introduced at the Board of Supervisors.

(2) A contract approved by the Board of Supervisors is submitted to the Mayor upon adoption of a resolution approving the contract by the Board of Supervisors.

(3) A contract is submitted to any other individual holding City elective office when the individual is informed that negotiations for the contract have commenced or the individual’s office receives a copy of the contract for the individual’s review or approval.

(i) Termination of Negotiations.

Negotiations terminate when an officer or employee of the City, the San Francisco Unified School District, the San Francisco Community College District, or a state agency on whose board an appointee of a eCity elective officer sits, ~~the Unified School District or the Community College District and/or the prospective contractor~~ ends the negotiation process before a final decision is made to award a contract. Negotiations may also terminate when the prospective contractor ends the negotiation process with such officers or employees.

Examples of actions that terminate negotiations include, but are not limited to, the following: A prospective contractor formally withdraws or is disqualified from consideration for a specific contract.

Regulation 1.126-2: Party that is Subject to the Prohibition.

(a) The prohibition set forth in section 1.126(b) applies to the named party or prospective named party 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 San Francisco Unified School District or the San Francisco Community College District. This includes:

- (1) any named party or prospective named party to the contract;
- (2) any member of that named party's board of directors, its chairperson, chief executive officer, chief financial officer, chief operating officer,
- (3) any person with an ownership interest of more than 20 percent in the named party;
- (4) any subcontractor listed in a bid or contract; and
- (5) any committee as defined in the California Government Code (commencing at section 81000) that is sponsored or controlled by the named party or prospective named party.

(b) The prohibition set forth in section 1.126(b) does not apply to any member of the board of directors, chairperson, chief executive officer, chief financial officer or chief operating officer of any person with an ownership interest of more than 20 percent in the named party or prospective named party to a contract, or of any subcontractor listed in a bid or contract.

(c) For the purposes of section 1.126(b)(1)(A), an "individual holding City elective office" includes any committee controlled by that individual formed to support that individual's candidacy to a local or state elective office.

~~(ed)~~ For the purposes of section 1.126(b)(1)(C), "a committee controlled by such individual or candidate" includes ~~either a~~ any committee controlled by such individual or candidate formed either to support or oppose a candidate for ~~City~~ local or state elective office or ~~a committee formed~~ to support or oppose a local or state ballot measure.

III. Discussion of the Proposed Changes

Proposed changes to Regulation 1.126-1(b), (d), and (i)

The proposed changes to two of these subsections are linguistic, in order to provide for greater clarity about when negotiations for a contract commence (§1.126-1(b)) or terminate (§1.126-1(i)). Proposed changes to Regulation 1.126-1(b) and (d) add the words "San Francisco" to identify the Unified School District and Community College District at issue.

Proposed changes to Regulation 1.126-1(g)

Regulation 1.126(g) identifies the state agencies on whose board a City elective officer or appointee of a City elective officer serves. When the regulation was adopted, there were eight such state agencies, including the Redevelopment Agency and the Treasure Island Development Authority (TIDA). As a result of state legislation and a subsequent decision by the California Supreme Court, effective February 1, 2012, redevelopment agencies have been eliminated in California, and the Redevelopment Agency and TIDA have ceased to exist as state agencies. The Redevelopment Agency no longer exists, and TIDA is now a City agency. Because the Redevelopment Agency and TIDA are no longer state agencies, staff recommends that they be deleted from Regulation 1.126-1(g).

Proposed changes to Regulation 1.126-2(c)

Proposed Regulation 1.126-2(c) adds new language to clarify that the term “an individual holding City elective office” in CFRO section 1.126(b)(1)(A) includes any committee controlled by that individual formed to support that individual’s election to a local *or state* elective office. This change clarifies that no contractor may make a contribution to an individual who holds a City elective office or to *any* of that individual’s candidate committees, whether formed for City elective office or state elective office, if that individual must approve the contract.

Proposed changes to Regulation 1.126-2(d)

The proposed changes to Regulation 1.126-2(d) clarify the term “a committee controlled by such individual or candidate” in CFRO section 1.126(b)(1)(C). It means that no contractor may make a contribution to (1) a City elective officer who must approve the contract, (2) a candidate for such City elective office that must approve the contract, (3) any committee controlled by the officer or candidate that is formed to support or oppose a candidate for local or State elective office, or (4) any committee controlled by the officer or candidate that is formed to support or oppose a local or State ballot measure.

Decision Point

Shall the Commission approve the proposed changes to Ethics Regulations 1.126-1 and 1.126-2, as discussed and set forth above?

IV. Text of San Francisco Campaign and Governmental Conduct Code section 1.126

SEC. 1.126. CONTRIBUTION LIMITS--CONTRACTORS DOING BUSINESS WITH THE CITY, THE UNIFIED SCHOOL DISTRICT AND THE COMMUNITY COLLEGE DISTRICT.

(a) DEFINITIONS.

For purposes of this section, the following words and phrases shall mean:

(1) "Person who contracts with" includes any party or prospective party to a contract, as well any member of that party's board of directors, its chairperson, chief executive officer, chief financial officer, chief operating officer, any person with an ownership interest of more than 20 percent in the party, any subcontractor listed in a bid or contract, and any committee, as defined by this Chapter that is sponsored or controlled by the party, provided that the provisions of Section 1.114 of this Chapter governing aggregation of affiliated entity contributions shall apply only to the party or prospective party to the contract.

(2) "Contract" means any agreement or contract, including any amendment or modification to an agreement or contract, with the City and County of San Francisco, a state agency on whose board an appointee of a City elective officer serves, the San Francisco Unified School District, or the San Francisco Community College District for:

- (A) the rendition of personal services,
- (B) the furnishing of any material, supplies or equipment,
- (C) the sale or lease of any land or building, or
- (D) a grant, loan or loan guarantee.

(3) "Board on which an individual serves" means the board to which the officer was elected and any other board on which the elected officer serves.

(b) Prohibition on contribution. No 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 San Francisco Unified School District or the San Francisco Community College District,

(1) Shall make any contribution to:

- (A) An individual holding a City elective office if the contract must be approved by such individual, the board on which that individual serves or a state agency on whose board on which an appointee of that individual serves;
- (B) A candidate for the office held by such individual; or
- (C) A committee controlled by such individual or candidate

(2) Whenever the agreement or contract has a total anticipated or actual value of \$50,000.00 or more, or a combination or series of such agreements or contracts approved by that same individual or board have a value of \$50,000.00 or more in a fiscal year of the City and County

(3) At any time from the commencement of negotiations for such contract until.

- (A) The termination of negotiations for such contract; or
- (B) Six months have elapsed from the date the contract is approved.

(c) Prohibition on receipt of contribution. No individual holding City elective office or committee controlled by such an individual shall solicit or accept any contribution prohibited by subsection (b) at any time from the formal submission of the contract to the individual until the termination of negotiations for the contract or six months have elapsed from the date the contract is approved. For the purpose of this subsection, a contract is formally submitted to the Board of Supervisors at the time of the introduction of a resolution to approve the contract.

(d) Forfeiture of contribution. In addition to any other penalty, each committee that receives a contribution prohibited by subsection (c) shall pay promptly the amount received or deposited to the City and County of San Francisco and deliver the payment to the Ethics Commission for deposit in the General Fund of the City and County; provided that the Commission may provide for the waiver or reduction of the forfeiture.

(e) Notification.

(1) Prospective Parties to Contracts. Any prospective party to a contract with the City and County of San Francisco, a state agency on whose board an appointee of a City elective officer serves, the San Francisco Unified School District or the San Francisco Community College District shall inform each person described in subsection (a)(1) of the prohibition in subsection (b) by the commencement of negotiations for such contract.

(2) Individuals Who Hold City Elective Office. Every individual who holds a City elective office shall, within five business days of the approval of a contract by the officer, a board on which the officer sits or a board of a state agency on which an appointee of the officer sits, notify the Ethics Commission, on a form adopted by the Commission, of each contract approved by the individual, the board on which the individual serves or the board of a state agency on which an appointee of the officer sits. An individual who holds a City elective office need not file the form required by this subsection if the clerk or secretary of a board on which the individual serves or a board of a state agency on which an appointee of the officer serves has filed the form on behalf of the board.

(Added by Ord. 71-00, File No. 000358, App. 4/28/2000; amended by Proposition O, 11/7/2000; Ord. 141-03, File No. 030034, App. 6/27/2003; Ord. 228-06, File No. 060501, App. 9/14/2006; amended by Proposition H, June 3, 2008) (Derivation: Former Administrative Code Section 16.510-2; added by Proposition N, 11/7/95)

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