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EXECUTIVE DIRECTOR

Date: February 3, 2009  
To: Members, Ethics Commission  
From: John St. Croix, Executive Director  
Re: Proposed Changes to Section 1.126 of CFRO

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In general, section 1.126 of the San Francisco Campaign and Governmental Conduct Code prohibits any person from making a campaign contribution to an elected officials and candidates when the person is negotiating a contract worth \$50,000 or more that must be approved by the officer, the officer's board or commission, or the board of a state agency with members appointed by the officer. The prohibition applies during contract negotiations and for six months after the contract is approved. Since its enactment, staff has found section 1.126's reach to be too broad and its requirements difficult to enforce. Accordingly, staff proposes several changes to section 1.126, which are discussed below.

1. Exclude board members and 20-percent owners from the definition of "person who contracts with" (page 1, line 21 – page 2, line 2)

Section 1.126 currently prohibits contributions from any party or prospective party to a contract, as well as all members of the party's board of directors; its chairperson, chief financial officer and 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 sponsored or controlled by the party. Additionally, before negotiations commence, the prospective party to the contract must inform all of those individuals and entities of the prohibition on contributions.

Staff proposes to narrow the scope of this definition in two ways. First, staff proposes removing from the prohibition members of the board of directors of the party or prospective party. The parties to contracts often are non-profit organizations or other entities with very large boards of directors, most of whom have no personal pecuniary interest in particular City contracts. Moreover, members of a board of directors usually do not participate in the negotiations of a contract. For these reasons, staff believes that applying the prohibition to board members sweeps too broadly by restricting contributions that pose less threat or appearance of corruption in the contracting process.

Second, staff also proposes applying the ban to a person with a 50 percent ownership interest in the party or prospective party, rather than one with 20 percent ownership. Again, staff believes that the scope of the current law is too broad. As a result, the goals of the law may have been compromised because compliance, notification and enforcement have been hampered. To make the law's reach more clear and simple to follow and enforce, staff proposes limiting the prohibition to half and majority owners of contracting parties.

2. Do not apply the ban to contracts approved by boards of state agencies (page 2, lines 4-5 & 21-22; page 3, lines 21-22; page 4, lines 8, 11)

Currently, section 1.126 applies to contracts that must be approved by (1) City elective officers, (2) the boards on which those officers sit, or (3) *the boards of state agencies whose members are appointed by City elective officers*. By regulation, the Ethics Commission has clarified that the third category includes the San Francisco Health Authority, the San Francisco Housing Authority, the Industrial Development Authority, the San Francisco Parking Authority, the San Francisco Redevelopment Agency, the San Francisco Relocation Appeals Board, the Treasure Island Development Authority, and the Local Workforce Investment Board. Staff proposes to delete the third category altogether.

This provision has been especially problematic because City elective officers who appoint members to serve on state agencies usually do not have any influence on, much less have knowledge of, the contracts that the state agency enters. Staff from those agencies have reported to Ethics Commission staff that City elected officials generally are not involved in contracts with their agencies. Additionally, those staff members have informed Commission staff that the staff reporting requirements in section 1.126 is onerous in light of their limited resources. For that reason, staff believes allowing parties contracting with those agencies to make contributions to local elected officials poses little or no potential for corruption of the contracting process.

3. Do not apply the ban to City grants (page 2, lines 10-13)

Section 1.126 currently applies to all contracts, including grants. Staff proposes that the prohibition should not apply to grants given by the City, the School District or the Community College District. The City distributes a large number of grants, primarily to non-profit organizations. Because of the absence of a profit motive, staff believes that the possibility for corruption or the appearance of corruption is less significant. Because the City distributes so many grants, many of which are approved by elected officials, the administrative costs of filing, notification and monitoring are large. Staff believes that the costs of applying the prohibition to grants outweigh the benefits.

4. Change the contract value threshold from \$50,000 to \$100,000 (page 3, lines 1-4)

Section 1.126 currently applies to all contracts a total anticipated or actual value of \$50,000 or more, and to any series or combination of contracts with that value approved by the same elected official or board. Staff proposes amending subsection 1.126(b)(2) to increase that threshold to \$100,000. Under the City's Administrative Code, departments may enter contracts worth up to

\$100,000 and less than ten years in duration without approval of the Board of Supervisors, but the Board must approve contracts that are worth \$100,000 or more or that last ten years. Staff proposes adopting the \$100,000 threshold for section 1.126 for consistency. Staff believes the \$100,000 mark reflects the value of a substantial City contract, as signified by the Administrative Code.

5. Adopt a ten-day deadline for party notification (page 3, line 19 through page 4, line 12)

Under current law, *before negotiations commence*, the prospective party to a contract must inform the following people that they cannot make contributions under section 1.126: members of the party's board of directors; its chairperson, chief financial officer and 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 sponsored or controlled by the party. Because negotiations typically commence with the first contact between the prospective party and the City, staff believes that this immediate notification requirement is unrealistic and places an undue burden on prospective City contractors. Instead, staff proposes that prospective parties must notify the individuals subject to the contribution prohibition within ten business days of the commencement of negotiations.

6. Amend the reporting requirements for elected officials (page 4, line 3-12)

Under current law, a City officer or the board on which the individual serves must file a form with the Ethics Commission within five business days of the day that a contract is approved. Staff proposes two changes here – increase the time to ten business days, and permit a person who is authorized by the City elective officer to file the form. Staff believes these changes make the reporting requirement more reasonable and will result in greater compliance.

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