STATE OF CONNECTICUT

STATE ELECTIONS ENFORCEMENT COMMISSION

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TO: Commissioners and Agency Heads

FROM: Jeffrey B. Garfield
Executive Director and General Counsel
State Elections Enforcement Commission

RE: Preliminary Instructions Concerning Prohibition on Campaign Contributions by State Contractors and State Agency Requirements to Obtain Information Concerning "Principals" of State Contractors and Prospective State Contractors – SEEC: SCB No. 1

DATE: June 7, 2006

General Background

As you may be aware, the Connecticut General Assembly recently enacted the most sweeping campaign reform legislation in the U.S. This legislation is contained in Public Act 05-05 of the October 25, 2005 Special Session, and was amended by Public Act 06-137. **Effective on December 31, 2006, the Act prohibits "principals" of state contractors and prospective state contractors from donating and soliciting certain campaign contributions**. See Section 9-333n (g) of the General Statutes. (2006 Supplement to the General Statutes). This memorandum is intended to explain this prohibition and the duties it imposes on state agencies to ensure compliance with the law.

State Agency Duties and Responsibilities

In order to administer the ban, the law requires each state agency and quasi-public agency to collect information from their contractors and prospective state contractors and provide it to the State Elections Enforcement Commission, (SEEC) which, in turn, must publish a master listing of those contractors, prospective state contractors and their "principals."

On May 19, 2006 each state agency was sent a memorandum and designation form to complete if it wished to designate the SEEC as its authorized agent to obtain the information directly from its contractors who are listed on the CORE-CT system. The intent was to avoid duplication and redundancies. However, each state agency will be responsible for collecting the required information from contractors who have been awarded contracts that are not listed on CORE-CT and from any of its prospective state contractors.

The SEEC is currently working on the form that state agencies can use to electronically file this information. Effective July 1, the law requires each state agency to begin reporting the names of "principals" of their state contractors and prospective state contractors to the SEEC, and to provide monthly updates.

Each state and quasi-public agency will be contacted within the next two weeks with additional information regarding the specific process to be followed by that agency for reporting the required information.

How does the prohibition apply to State Contractors?

If a state contractor has a contract with any single state agency or quasi-public agency within the Executive branch of State government that is valued at $50,000 or more in a fiscal year, ***or*** has a combination of such contracts with multiple agencies within the Executive branch valued at $100,000 or more in a fiscal year, then the "principals" of the state contractor are prohibited from making or soliciting campaign contributions to, or for the benefit of, any committee of a candidate for statewide office, any political committee authorized to make contributions to any such candidate, or any party committee.

If a state contractor has a contract with any single agency with the Legislative branch of State government that is valued at $50,000 or more in a fiscal year, ***or*** multiple agencies within the Legislative branch valued at $100,000 or more in a fiscal year, then the "principals" of the state contractor are prohibited from making or soliciting campaign contributions to, or for the benefit of, any committee of a candidate for the General Assembly, any political committee authorized to make contributions to any such candidate, or any party committee.

The value of the contract is determined by the contract award or the payments actually made to the contractor, whichever is greater.

The duration of the prohibition continues until the state contractor no longer has a contract with a single state agency of $50,000 or more, or a combination of contracts with multiple agencies of $100,000 or more.

How does the prohibition apply to Prospective State Contractors?

A "prospective state contractor" includes the holder of a valid prequalification certificate issued by the Commissioner of Administrative Services in accordance with Section 4a-100, General Statutes, or any one who has submitted a bid or proposal in response to an invitation or RFP by a state agency or quasi public agency, and that meets the financial threshold described below.

The "principals" of any prospective state contractor who holds a valid prequalification certificate issued by the Commissioner of Administrative Services are prohibited from making and soliciting contributions to, or for the benefit of, any candidate for statewide office, the General Assembly, or any political committee authorized to make contributions to any such candidate, or any party committee. The prohibition is effective with respect to contractors on the prequalification list as long as they hold a valid prequalification certificate.

If a prospective state contractor submits a bid in response to an agency's bid solicitation or a proposal in response to a request for proposal (RFP) issued by a state agency, and the value of the bid or proposal is $50,000 or more, then the "principals" of the prospective state contractor are prohibited from making or soliciting contributions in the same manner as described above for state contractors. If the contract is awarded to a different party, then the prohibition is no longer in effect.

Definition of applicable terms

The law includes the following definitions of terms:

State Contract—an agreement or contract with a state agency or quasi public agency, valued at $50,000 or more in a fiscal year, or a combination of contracts or agreements with more than one agency that is valued at $100,000 in a fiscal year, for any of the following:

1. rendition of personal services (e.g. PSAs)
2. furnishing any material, supplies or equipment
3. construction, alteration or repair of any public building or public work
4. acquisition, sale or lease of any land or building
5. a licensing arrangement
6. a grant, loan or loan guarantee

State Contractor—a person, business entity or non profit organization that enters into a contract with any state agency. A state contractor does not include a municipality, a state employee by virtue of his or her state employment, or a labor union by virtue of a collective bargaining agreement. A person, business entity or non profit organization is no longer a state contractor upon termination of the contract.

Principals of a State Contractor or Prospective State Contractor that is a Business Entity—

The following are subject to the prohibition on making and soliciting certain campaign contributions:

1. Members of the Board of Directors
2. Individuals owning 5% or more of the business
3. President, Treasurer, Executive and Senior Vice Presidents
4. Employees that have managerial or discretionary responsibilities to administer the state contract
5. Spouses and dependent children of all of the above
6. Any political committee (PAC) registered in Connecticut to make contributions to candidates that has been established by, or on behalf of, any of the above individuals

"Employees that have managerial or discretionary responsibilities" generally refers to higher level personnel who have oversight responsibility for the implementation of the state contract.

A Business entity includes any corporation, partnership, cooperative, joint venture, trust, or any association of any kind that is engaged in the operation of a business or profit making activity. See Section 9-333a (7), General Statutes.

Principals of a State Contractor or Prospective State Contractor that is neither a Business Entity nor a Non Profit Organization—

This would include a sole proprietorship or professional service corporation owned by a single individual.

The following are subject to the prohibition on making and soliciting certain campaign contributions:

1. The Chief Executive Officer
2. Employees that have managerial or discretionary responsibilities to administer the state contract
3. Spouses and dependent children of all of the above
4. Any political committee (PAC) registered in Connecticut to make contributions to candidates that has been established by, or on behalf of, any of the above individuals.

Principals of a State Contractor or Prospective State Contractor that is a Non Profit Organization—

The following are subject to the prohibition on making and soliciting certain campaign contributions:

1. The Chief Executive Officer
2. Employees that have managerial or discretionary responsibilities to administer the state contract
3. Spouses and dependent children of all of the above
4. Any political committee (PAC) registered in Connecticut to make contributions to candidates that has been established by, or on behalf of, any of the above individuals.

What does "solicit" a contribution mean for purposes of the prohibition?

The term solicit includes any of the following--

1. Requesting that a contribution be made
2. Participating in any fundraising activities for the restricted class of candidates, political and party committees, such as forwarding invitations or tickets to an

event sponsored by the committee, or receiving contributions on behalf of the committee

3. Acting as Chairperson, Campaign Treasurer, Deputy Treasurer or other Officer of such a committee, or
4. Establishing a political committee (PAC) for the purpose of soliciting, making or receiving contributions for any such candidate or committee within the restricted class.

Solicit does not include informing others of any position taken by a candidate, or of any activities of, or contact information for, any such candidate. Section 9-333a (26), General Statutes.

What is a "statewide office?"

A statewide office includes the Governor, Lieutenant Governor, Attorney General, State Comptroller, State Treasurer and Secretary of the State.

What is a "party committee?"

A party committee includes any state central committee of a political party or local town committee of a political party. For example, the Westbrook Republican Town Committee and the Bridgeport Democratic Town Committee.

What are the consequences for state contractors or prospective state contractors that violate the prohibition on solicitation or donation of contribution to the restricted class?

On or after December 31, 2006, if the SEEC determines that <u>any principal of state contractor</u> has violated the prohibition, the Commission will notify the contracting state agency or quasi public agency of its determination, and the agency (1) may void the existing contract and (2) shall not award a new contract to the state contractor, or grant an extension or an amendment to the existing state contract for 1 year following the election for which such violation relates.

On or after December 31, 2006, if the SEEC determines that <u>any principal of a prospective state contractor</u> has violated the prohibition, the Commission will notify the contracting state agency or quasi public agency of its determination, and the agency shall not award the contract or any other state contract to such prospective state contractor for 1 year following the election for which such violation relates.

The SEEC will also publish on its website the name of any such state contractor and prospective state contractor whose principal has violated the prohibition.

In addition, the SEEC is authorized to impose civil penalties for any violations of this and other campaign finance laws, and may refer evidence of criminal violations to the Chief State's Attorney for prosecution.

What are the Contracting Agencies Duties to Inform their Contractors or Prospective Contractors of the Prohibition on Solicitation and Donation of Contributions by their Principals?

The law requires each state agency to include the applicable statutory prohibition in each state contract that is valued at $50,000 or more, as a condition of the contract. This will apply to state contracts issued on or after December 31, 2006. In addition, the state contractor shall also be required to agree as a condition of the contract, to provide a list of the names of its principals to the contracting agency at the time of execution of the contract, and to report changes to such list each month for the duration of the contract. The SEEC will confer with the Attorney General and develop proposed language to be included by state agencies for purposes of compliance with this requirement.

Similarly, any state agency that issues a bid solicitation or request for proposal must include the applicable statutory prohibition in such solicitation or request issued on and after December 31, 2006. The Commissioner of Administrative Services is required to include the applicable prohibitions in each prequalification certificate issued. The chief executive officer of each prospective state contractor is required to

1. inform each individual who is identified as a "principal" of the prohibition on soliciting and making campaign contributions;
2. certify in a sworn statement that any such principal will not make or solicit a contribution in violation of the prohibition;
3. acknowledge in writing that if any such contribution is made or solicited, the prospective state contractor shall be disqualified from being awarded the contract described in the bid solicitation or request for proposal, or any other state contract for 1 year following the election to which the violation relates.

To ensure the confidentiality of the bidding process and, at the same time, compliance with this prohibition, the SEEC intends to develop a procedure that requires these prospective state contractors to submit the names of their principals to the agency in a separate envelope, and to the SEEC in electronic format, as a condition of acceptance of the bid or response to the RFP.

With respect to state contracts that have been executed before December 31, 2006, the state agency or quasi public agency that is party to the contract should inform the state contractor of the applicable prohibitions on contributions by their principals. The SEEC will disseminate a memorandum to each agency for distribution to the contractors, and will post it on its website.

If you have any questions regarding this process, please contact Brenda Lou Mathieu in our office at (860)566-1776 or e-mail at brendalou.mathieu@ct.gov.