



September 29, 2020

The Honorable Betty T. Yee
California State Controller
300 Capitol Mall, Suite 185
Sacramento, California 95814

The Honorable Holly Mitchell
Chair, Joint Legislative Budget Committee
1020 N Street, Room 553
Sacramento, California 95814

Ms. Keely Martin Bosler
Director of Finance
Room 1145, State Capitol
Sacramento, California 95814

Dear Controller Yee, Senator Mitchell, and Ms. Bosler:

We write to you to express significant concerns with the Secretary of State's (SOS) recently reported contract to spend \$35 million, ostensibly to provide voter outreach, through a firm widely known for its partisan history. This letter explains details that have emerged in the past few weeks and requests that you take action to stop this highly problematic and partisan contract from moving forward.

An August 27th report in the *Sacramento Bee*¹ reasonably raised concerns about the appearance of a conflict of interest in using taxpayer dollars to award a "voter outreach" contract to a firm that advertises itself as being a member of "Team Biden" on its website. The SOS and representatives of the firm have reportedly argued that staff overseeing this project would be nonpartisan. However, a follow-up report by the *Sacramento Bee*² on September 16th states, "According to the firm's proposal, obtained by the Bee, the project team includes multiple employees who have worked extensively on electing Democrats to office." This creates an obvious conflict of interest in the administration of these public funds, no matter the protestations from the SOS and the contracting firm that the money would be used in a nonpartisan manner.

¹ Sacramento Bee, August 27, 2020. <https://www.sacbee.com/article245279195.html>

² Sacramento Bee, September 16, 2020. <https://www.sacbee.com/news/politics-government/capitol-alert/article245759840.html>

Beyond the alarming conflict of interest, our review shows major concerns regarding the budgetary and statutory authority for the SOS to use funds in the manner proposed. When the first press report surfaced regarding the award of the \$35 million contract to SKD Knickerbocker, our staff asked the SOS' staff for details regarding its authority to spend the funds in this manner. The SOS' staff, in an email dated August 29, 2020, cited three sources of authority: Assembly Bill 89, Assembly Bill 100, and Public Contract Code Section 1102. Our staff examined these sources, and we believe that the funds allocated in these sources are intended primarily for local elections administration, not voter outreach. Additionally, these sources do not in fact provide budget authority for the SOS to contract directly with a firm for voter outreach, nor do they appear to grant authority to bypass normal contracting procedures, as explained below:

- Assembly Bill 89: This bill amends a budget line item for the SOS that already allocated \$35 million General Fund for various election-related purposes. However, the budget language specifically requires all these funds to be given to counties directly as reimbursement for various election costs.
- Assembly Bill 100: This bill provides more specificity for eligible uses of election funds during the COVID-19 pandemic. The language does not specifically authorize voter outreach as an allowable use of election funds. The only provision that could possibly be read as permitting voter outreach is the authorization for “Costs reasonably related to the administration of an election during the COVID-19 pandemic,” though it would seem to be a stretch to read that to mean outreach. However, the bill again specifies that these funds should be paid to counties. There is no authority for the SOS to contract directly with a firm.
- Public Contract Code 1102: This statute defines an “emergency” for purposes of procuring contracts outside the normal rules for soliciting bids through an open and public process. The language clearly address emergencies that pose “a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.” It does not seem credible that outreach funding, or lack thereof, poses an “immediate danger” to anybody.

In addition, a new article in the *Sacramento Bee* dated September 29th³, indicates that the SOS' office now claims it is spending money “on counties' behalf” in an apparent effort to meet the letter of the law that directs the funds to counties themselves. This explanation raises significant legal questions as to how the SOS can unilaterally decide it will spend money on behalf of all 58 counties. Thus far, we have seen no indication from counties that any of them in fact did ask the SOS to engage in the contract on their behalf (before even considering whether the outreach contract is allowed under budgetary language).

The same article in the *Sacramento Bee* also indicates that ads ostensibly authorized by the contract are appearing publicly, even though the contract has apparently not been fully executed.

³ Sacramento Bee, September 29, 2020. <https://www.sacbee.com/news/politics-government/capitol-alert/article246011195.html>

Moreover, the article indicates that the State Controller's Office has not yet received a copy of the contract and cannot judge yet whether the SOS has authority to spend these funds. The Department of General Services has not seen the contract, according to the article, nor has the Department of Finance notified the Legislature of any transfer of funds for this purpose.

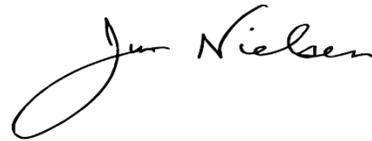
All of this takes place in the context of an electorate that already largely votes by mail. In fact, 72 percent of California voters already voted by mail in the 2020 primary election. Accordingly, it is unclear as to why such an expensive outreach contract is even necessary.

For the reasons laid out here, we respectfully request that you take whatever steps are within your power to stop this highly problematic contract from moving forward. Funds should instead be given to the counties, as required by the enacted budget. If you have any questions, please do not hesitate to contact us at (916) 651-4036.

Sincerely,



PATRICIA C. BATES
Senator, 36th District



JIM NIELSEN
Senator, 4th District

CC: Daniel C. Kim, Director, Department of General Services
Members of the Joint Legislative Budget Committee