CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CONTROLLER   **Ben Rosenfield**
                                                                Controller

City and County of San Francisco
Nonprofit Contractor Corrective Action Policy

I.   Introduction

The City and County of San Francisco's (CCSF) Nonprofit Contractor Corrective Action Policy is intended to ensure compliance with government funding requirements, accountability, and reliable service delivery for San Francisco residents.

This policy helps to identify, prioritize and support nonprofit contractors in need of technical assistance, workshops and/or other capacity building efforts. It provides the City with steps to act appropriately when a nonprofit contractor does not meet City standards, and does not comply with an established plan to correct deficiencies.

This document includes the following sections:
- Background on CCSF's Correction Action Policy
- Definitions
- Standard Nonprofit Contractor Monitoring and The Controller's Office List
- Elevated Concern Status
- Red Flag Status
- City Response Options & Referrals

A. Background

In response to a 2009 Community-Based Organization Task Force Report, City departments and nonprofits collaboratively drafted and adopted a corrective action policy in November 2010. In 2013, the Citywide Nonprofit Monitoring and Capacity Building Program (Monitoring Program) Steering Committee revised the policy in response to feedback from department contract monitors and the Mayor's Budget Analyst. In late 2014, the Controller's Office and the Monitoring Program Steering Committee revised the policy again to include more specific criteria for corrective action and ensure consistent policy implementation. This revised policy is used by the Controller's Office and City departments, both within and beyond the Monitoring Program, for situations when nonprofit contractors consistently fail to meet City monitoring standards or programmatic performance measures agreed upon by contract.

B. Definitions

- **Corrective Action Plan** – A list of activities a nonprofit must perform within the context of the Citywide Nonprofit Monitoring and Capacity Building Program. All nonprofits with findings will be required to come into compliance through completion of activities detailed in their Corrective Action Plan. A Corrective Action Plan does not indicate overall poor performance or put a nonprofit's contract with the City in jeopardy. It should not be confused with the status of "elevated concern" or "red flag" described below in Sections III and IV.

- **Technical Assistance** – In cases where corrective action is required, City departments may also recommend or require technical assistance offered by the Controller's Office, an external contractor, and/or City departmental staff to assist nonprofits.

II.   Standard Nonprofit Contractor Monitoring & the Controller's Office List

A. Performance Standards and Monitoring

All City departments are responsible for performing risk-based monitoring and oversight on fiscal, compliance and programmatic aspects of nonprofits that receive City funding. Performance, programmatic, and monitoring standards, as well as reporting deadlines, must be clear and reasonable in all City grants and contracts. In addition to standard monitoring assessments, City departments must make as-needed site visits or inquiries to follow up on issues or concerns that may arise. Departments can also use the elevated concern and red flag designations detailed in this policy for noncompliance with program outcomes (as measured by units of service, stated contract or grant deliverables, contract compliance, client satisfaction data, and/or other indicators developed by departmental program staff).

B. Nonprofits Funded by More Than One City Department

City departments must follow the policies and procedures in the Controller's Office Citywide Nonprofit Fiscal and Compliance Monitoring Guidelines[1] for nonprofits that are part of the citywide monitoring pool.[2]

C. Annual Report of the Citywide Nonprofit Monitoring and Capacity Building Program

The Controller's Office annually reviews the monitoring and technical assistance outcomes for nonprofits in the citywide monitoring pool. It releases a public report documenting this analysis with tables that display, for example:
- The number, type, and status of findings for all nonprofits in the monitoring pool;
- A list of nonprofits with repeated findings (i.e., the same finding in consecutive years); and
- A list of nonprofits without any findings.

The report also documents, with supporting data, any nonprofit contractors that have been placed on Elevated Concern or Red Flag Status for that fiscal year. Departments are recommended to view these lists to consider how best to assist nonprofits with multiple findings and support nonprofits with no findings to maintain high performance.

III.   Elevated Concern Status

A. Definition

The City may designate Elevated Concern Status to a nonprofit City contractor when it fails to complete corrective actions by a designated deadline or is non-responsive during the fiscal and/or programmatic monitoring process. "Non-responsiveness" is defined as a pattern of late or no response to City monitors.

The Controller recommends Elevated Concern Status when:
- A nonprofit contractor repeatedly ignores or is late in responding to the City's request for monitoring information and/or corrective action compliance by a designated deadline; and/or
- The number of nonprofit findings or repeated findings shows a pattern of noncompliance with City standards; and/or

---

[1] See http://sfcontroller.org/fiscal-and-compliance-monitoring for current Monitoring Program Guidelines.
[2] Nonprofit contractors funded by more than one of the following CCSF departments enter the Citywide Nonprofit Monitoring and Capacity Building Program: Department of Children, Youth and Their Families; Department of Homelessness and Supportive Housing; Department on the Status of Women; First 5 San Francisco; Human Services Agency; Mayor's Office of Housing and Community Development; Office of Economic and Workforce Development; Department of Public Health; San Francisco Arts Commission; and the Sheriff's Department.

- A nonprofit contractor does not comply with corrective action within the designated time period for the specific fiscal and compliance standards listed in Table 1.

B. Impact

Elevated Concern Status results in mandatory technical assistance to support the nonprofit in establishing sound fiscal and management practices in compliance with standards assessed in the monitoring program. *Elevated Concern Status does not result in defunding,* although if the nonprofit is unresponsive to technical assistance and remains noncompliant with monitoring requirements, the Controller's Office and funding departments may elect to heighten the designation to Red Flag Status, for which de-funding is an option.

C. Designation Process

Using the criteria listed above, the Controller's Office annually reviews the results of the joint monitoring process and identifies any nonprofits that should be placed on Elevated Concern. If the Controller's Office determines that a nonprofit should be placed on Elevated Concern, the Controller's Office will:
1. Inform and discuss with the Citywide Nonprofit Monitoring and Capacity Building Program Steering Committee;
2. Send a memo with the names of the nonprofits on elevated concern to the department head(s) that fund the nonprofit(s), the rationale for the designation, and a response deadline for department heads to indicate any questions or concerns with the designation;
3. Include the names of the nonprofit(s) placed on elevated concern in the Citywide Nonprofit Monitoring and Capacity Building Program annual report, which is widely distributed.

Any City department holding a contract with a nonprofit may also initiate an Elevated Concern Status designation based on the established criteria. If a City department elects to initiate Elevated Concern designation, the Steering Committee member for that department will contact the Controller's Office to discuss the proposed designation and the rationale. At that point, the Controller's Office follows steps 1 through 3 above.

Note that the process for designating a nonprofit contractor on Elevated Concern Status for *programmatic* non-compliance is the responsibility of the relevant funding departments, not the Controller's Office.

D. Internal City Communication

When considering Elevated Concern Status in instances of multi-department funding, a Controller's Office staff person will be responsible for coordination and information sharing with all of the department funders.

E. Nonprofit Notification & Technical Assistance

Once the City has determined that a nonprofit should be placed on Elevated Concern, the funding departments and Controller's Office will notify the nonprofit's Executive Director and President of the Board of Directors of the designation writing. The designation letter will include the issues leading to Elevated Concern and the process for removal.

The Controller's Office staff will coordinate an in-person meeting with the nonprofit leadership and the funding departments to explain the designation and begin the technical assistance process to help the nonprofit come into compliance with City standards. The lead City staff person will work with the nonprofit to identify capacity building needs and develop a Corrective Action Plan with deadlines for compliance.

F. De-designation

Elevated Concern Status is meant to be temporary. The nonprofit will remain on Elevated Concern Status

until the nonprofit provides a satisfactory response to the City's requests for information or action. Upon submission of additional information or proof of activity by the nonprofit, the City will send a written response to the nonprofit within one month of submission. The City's response must detail either a de-designation of Elevated Concern Status or a clear plan outlining the remaining issues to be resolved and detailed steps the nonprofit must take to remove the status.

IV. <u>Red Flag Status</u>

A. Definition

In rare cases, Red Flag Status may be applied when a nonprofit is at imminent risk of losing its funding for mismanagement or being unable to perform services per its grant or contract.

See Table I below for a list of specific standards that would trigger Red Flag Status if a nonprofit does not comply with corrective action within a designated timeframe.

Red Flag Status may occur regardless of a nonprofit's Elevated Concern Status. Nonprofits undergoing corrective action may be considered for Red Flag Status at any stage of the corrective action process if risk factors call for such action.

B. Impact

De-funding is a possible ultimate sanction for nonprofits that are out of compliance with the City's grant and contract conditions. Note that those City departments that provide contracts, not grants, to nonprofits must take disciplinary action per the default provisions in the contract, and defunding may require termination of the contract. Termination for default requires that the nonprofit be given appropriate notice and an opportunity to fix the contract breach.

Red Flag Status may also require a nonprofit to comply with mandatory technical assistance or fiscal sponsorship to strengthen the financial and management practices of the agency. Additional actions City departments may employ are detailed in Section V below.

C. Designation Process

Using the criteria listed in Table I, the Controller's Office annually reviews the results of the joint monitoring process and identifies any nonprofit(s) that it recommends should be placed on Red Flag Status. If the Controller's Office recommends that a nonprofit should be placed on Red Flag Status, the Controller's Office will:
1. Discuss the recommendation with the Citywide Nonprofit Monitoring and Capacity Building Program Steering Committee;
2. Send a memo with the names of the nonprofits recommended for Red Flag Status and the rationale to the department head(s) that fund the nonprofit(s);
3. If the funding departments agree that Red Flag Status is warranted, the Controller's Office will include the names of the nonprofit(s) placed on Red Flag Status in the Citywide Nonprofit Monitoring and Capacity Building Program annual report.

City departments holding contracts with the nonprofit make the final determination whether a nonprofit is placed on Red Flag Status. Any individual funding department may also initiate the Red Flag Status designation process. When considering Red Flag Status in instances of multi-department funding, City departments jointly determine if a nonprofit should be on Red Flag Status.

Note that the process for designating a nonprofit contractor to be on Red Flag Status for *programmatic* reasons is the responsibility of the relevant funding departments, not the Controller's Office.

D. **Internal City Communication**

When considering Red Flag Status in instances of multi-department funding, a Controller's Office staff person will be responsible for coordination and information sharing with all of the department funders.

E. **Notification & Contestation**

Once a nonprofit is designated as being on Red Flag Status, the City will notify the nonprofit leadership, including the Executive Director and President of the Board of Directors, of this new status in writing. The designation letter will also include the issues leading to Red Flag Status, specific corrective actions required, the deadline for completion of each action item, the ramifications of the status, such as being less competitive for grants, and the process for removal from this status.

City departments that provide contracts, not grants, to nonprofits must take disciplinary action per the default provisions in the contract. This action includes providing the nonprofit with appropriate notice and an opportunity to correct issues as specified in the default and termination sections of the contract.

F. **De-designation**

The nonprofit will remain on Red Flag Status until the nonprofit has successfully implemented the required corrective action, or partially implemented corrective action to the satisfaction of the relevant City department(s). Upon submission of additional information or proof of activity by the nonprofit after the Red Flag designation, the City will send a written response to the nonprofit within one month of submission.

The City's response must include either a de-designation of Red Flag Status or a clear plan with any remaining steps the nonprofit still needs to take in order to be removed from Red Flag Status. The City may choose to dialogue with the nonprofit leadership, including the Board of Directors, to make progress on the implementation of corrective action and may consider technical assistance, as appropriate.

Table I: Triggers for Elevated Concern or Red Flag Status[3]

Standard		Elevated Concern	Red Flag
1. Agency-wide Budget			
a.	Current (fiscal or calendar year)		3+ years of same finding
b.	Shows income and expense by program and funding source	2+ years of same finding	
c.	Shows allocation of shared and indirect costs by program	2+ years of same finding	
e.	Clearly identifies all revenue sources (City, state, federal)	2+ years of same finding	
2. Cost Allocation Procedures			
a.	Process for cost allocation procedures and plan for <u>shared</u> costs is documented in a written narrative or in the footnotes of the current approved agency-wide budget	2+ years of same finding	
c.	Process for cost allocation procedures and plan for <u>indirect</u> costs is documented in a written narrative or in the footnotes of the current approved agency-wide budget	2+ years of same finding	
3. Audited Financial Statements			
a.	Complete: all sections and statements included; opinion and other audit letters are signed	1 without an audit	2+ years of same finding
b.	Unqualified opinion	1 year of finding	2+ years of same finding
c.	No material weaknesses mentioned or going concern stated in the notes to the financial statements	1 year of finding	2+ years of same finding
	For A-133 Audit (when applicable)		
h.	No material weaknesses mentioned or going concern stated in the notes to the financial statements	2+ years of same finding	3+ years of same finding
i.	No current findings and/or questioned costs	2+ years of same finding	3+ years of same finding
4. Tax Form			
a.	Federal 990 return filed for most recent tax year or request for extension submitted on time	2+ years of same finding	3+ years of same finding
7. Invoices			
a.	Expenses tested on invoices have supporting documentation: credit card charges and/or petty cash expenditures are all documented with an original receipt and reasonably tie to the cost allocation plan.	2+ years of same finding	3+ years of same finding
b.	Contractor follows its policies for writing checks, credit card use, petty cash use, and/or reimbursement for expenses tested on invoices	2+ years of same finding	3+ years of same finding
c.	Tested expenses on invoices appear to be reasonably associated with the program budget	2+ years of same finding	3+ years of same finding
8. Payroll			
c.	Documentation that payroll taxes due were actually paid	1 year of finding	2+ years of same finding
d.	If employee time is paid by more than one source, it is recorded by funding source or program on timesheets	2+ years of same finding	3+ years of same finding
13. Subcontracts			
c.	Documentation that contractor regularly monitors fiscal and programmatic performance of subcontractor (e.g. copies of sub-contractor's fiscal documents and invoices)	2+ years of same finding	3+ years of same finding

---

[3] Triggers are based on the Standard Monitoring Form of the Citywide Nonprofit Monitoring and Capacity Building Program. Elevated Concern Status may also be applied based upon a pattern of nonresponsiveness to the joint monitoring process or based on programmatic criteria specific to an individual department.

V.   City Response Options & Referrals

The City in its sole discretion may take all, some or none of the following actions in response to a nonprofit's corrective actions taken, Elevated Concern Status, or a Red Flag designation.

- **Dialogue with Nonprofit Leadership** - The City may choose to hold meetings with the nonprofit's leadership, including the executive committee of the Board of Directors, as needed and appropriate, to make progress on required corrective action. The department may provide the nonprofit's leadership with a reasonable opportunity to respond to the department's determination that serious deficiencies exist and warrant implementation of a required corrective action plan.

- **Technical Assistance** - The City may consider, on a case-by-case basis, whether technical assistance is appropriate and necessary in assisting the provider to become compliant. For guidance, tools and resources on fiscal, governance, and compliance technical assistance, contact the Citywide Nonprofit Monitoring and Capacity Building Program facilitated by the Controller's Office at nonprofit.monitoring@sfgov.org.

- **Identification of Alternative Service Providers** - City departments may choose to identify appropriate alternative service providers immediately upon designation of a nonprofit to Red Flag Status. City departments must follow all applicable procurement policies.

- **De-funding** – City departments may choose to de-fund a nonprofit that is continuously unresponsive and/or does not take appropriate steps to address a corrective action plan.

- **Funding Limitations** - City departments may choose to include in their solicitations that nonprofits on Red Flag Status do not meet minimum qualifications. City departments that do so should review the Red Flag Status list and perform appropriate due diligence in the scoring process and before awarding a grant or contract.

- **Incentives for Good Performance** – If appropriate and in alignment with the department's solicitation procedures, departments are encouraged to provide incentives for good performance by including the opportunity for nonprofits applying for City funding to describe their ability to successfully comply with the City's fiscal and compliance standards, and to award points for their past success, as part of the procurement scoring system. The Controller's Office will publish as part of its annual report a list of all nonprofit contactors in the joint monitoring pool that had no findings that year and nonprofits that corrected their findings during the monitoring cycle.

- **Whistleblower Referral** - In cases of suspected or alleged fraud (as opposed to fiscal mismanagement) City departments should contact the Controller's Office Whistleblower Program at www.sfgov.org/controller/whistleblower.

- **Human Rights Commission (HRC) Referral** - In cases of suspected or alleged discrimination, City departments should contact the Human Rights Commission at hrc.info@sfgov.org or (415) 252-2500.

- **Vendor Debarment** – In cases of egregious misconduct, City department heads should pursue debarment against any City-funded nonprofit that engages in any willful misconduct with respect to any City bid, request for qualifications, request for proposals, purchase order and/or contract. This includes failure to comply with grant or contract terms, unexcused delays, poor performance and providing false information. Debarment requires a hearing at which the vendor can be represented by an attorney and present facts and evidence refuting the department's allegations of misconduct. The Controller's Office posts debarred nonprofits at http://www.sfgov.org/site/controller_index.asp?id=28412. See Chapter 28 of the San Francisco Administrative Code for more information.

- **Grievances** - Departments should inform their nonprofit service providers about their dispute resolution procedures as well as that of the Nonprofit Review/Appellate Panel: http://sfgsa.org/index.aspx?page=379.