

Public Integrity Reviews 12-Month Update

Implementation Status of
Recommendations From Assessments to Date



CITY & COUNTY OF SAN FRANCISCO

Controller's Office

August 4, 2021

In January 2020 the City Attorney's Office (City Attorney), with the support of the Controller's Office (Controller), launched an independent public integrity investigation and created a hotline in response to federal criminal charges against Mohammed Nuru for aiding and abetting honest services wire fraud in connection with an alleged scheme to bribe public officials. Concurrently, the Controller, in cooperation with the City Attorney, undertook a Public Integrity review of city contracts, purchase orders, and grants for red flags that could indicate process failures. In 14 months the U.S. Attorney's Office has brought criminal charges against 11 employees and contractors of the City and County of San Francisco (City) and against private parties who worked for clients on city building permits.

Due to the City Attorney's ongoing investigations, several city contractors who were federally charged have been suspended from city contracting, and two others have reached settlements with the City. Also, the District Attorney's Office has filed criminal charges against a former city employee in response to information released in a Controller's review.

At the same time, many recommendations issued by the Controller in its Public Integrity reviews have been implemented or are in the process of being implemented. This update provides a status overview of all recommendations issued by the Controller relating to its review and the City Attorney's investigation in the last 12 months.

The **11** former city employees and contractors federally charged to date include:

- **Mohammed Nuru**, former director of San Francisco Public Works (Public Works)
- **Nick Bovis**, owner of Lefty's Grill and Buffet and other restaurants
- **Sandra Zuniga**, former director of the Mayor's Office of Neighborhood Services
- **Florence Kong**, owner of SFR Recovery, Inc., and Kwan Wo Ironworks, Inc., and former member of the City's Immigrant Rights Commission
- **Baltimore Hernandez**, chief executive of engineering firm AzulWorks, Inc., a company with large city contracts
- **Wing Lok "Walter" Wong**, building permit expediter and owner of several entities that do business with the City
- **Alan Varela and William Gilmartin III**, officers of ProVen Management, Inc.
- **Paul Giusti**, former group government and community relations manager of Recology
- **Harlan Kelly, Jr.**, former general manager of the San Francisco Public Utilities Commission
- **John Porter**, former vice president and group manager of Recology

Mr. Bovis, Ms. Kong, Mr. Hernandez, Mr. Wong, and Mr. Giusti pled guilty to schemes to defraud the City using bribery and kickbacks. Mr. Bovis admitted to committing honest services wire fraud and wire fraud to attempt to bribe city officials. Ms. Kong pled guilty to providing bribes to Mr. Nuru. Mr. Wong admitted to conspiring with Mr. Nuru and other unnamed city officials since 2004. Mr. Giusti pled guilty to conspiracy to bribe a local official and commit honest services fraud. Ms. Zuniga pled guilty to conspiring to commit money laundering with Mr. Nuru and will cooperate. All, except Ms. Kong, agreed to cooperate with the ongoing federal investigation.

Other criminal charges:

The U.S. Attorney's Office also separately brought criminal charges against **Rodrigo Santos**, his company Santos & Urrutia Associates, Inc., a city supplier, and **Peter Schurman** for submitting falsified reports to the Department of Building Inspection.

The District Attorney brought criminal charges against **Gerald "Jerry" Sanguinetti**, former bureau manager for San Francisco Public Works. The District Attorney criminally charged Mr. Sanguinetti for failing to disclose his interest or income from "SDL Merchandising," a company which did business with Public Works and was nominally owned by Mr. Sanguinetti's wife.



City Attorney's Investigative Outcomes

The City Attorney has focused its investigation on misconduct by current and former city employees and any remedies for specific decisions or contracts tainted by conflicts of interest or other legal violations. Besides the actions described below, more than a dozen city employees, including department heads, have resigned or been fired in the wake of city and federal public integrity investigations.

Suspensions and Debarment:

July 13, 2020: The City Attorney initiated debarment proceedings against AzulWorks, Inc., and Mr. Hernandez. By agreement of the parties and a stipulated suspension, which prevents Mr. Hernandez and his company from participating in city contracting, the proceedings are stayed until the conclusion of the federal charges against Mr. Hernandez.

August 12-November 25, 2020: The City Attorney introduced legislation to help the City prevent corrupt contractors from receiving public funds, including adding a procedure authorizing the City to suspend contractors that have been indicted or charged in a civil, criminal, or administrative case with conduct that, if convicted, would be a basis for debarment.

March 1, 2021: The City Attorney issued suspension orders against Mr. Bovis and his company, SMTM Technology, LLC; Mr. Varela and Mr. Gilmartin and their company, ProVen Management Inc.; Ms. Kong and her companies, SFR Recovery Inc. and Kwan Wo Ironworks Inc.; and Mr. Wong and his companies, W. Wong Construction Co., Inc., Green Source Trading, LLC, and Alternate Choice, LLC.

Settlements:

March 4, 2021: The City Attorney announced a more than \$100 million refuse rate settlement with Recology.

May 13, 2021: The City Attorney and Ethics Commission announced a settlement calling for Mr. Wong to pay the City over \$1.7 million and for Mr. Wong and the companies he controls to be debarred for five years.

Public Integrity Review Reports & Key Investigative Outcomes



Upcoming Assessments in 2021 & 2022

Our Public Integrity Review, performed in consultation with the City Attorney, will continue to assess selected city policies and procedures to evaluate their adequacy in preventing abuse and fraud. Future assessments will address:

September 2021: Department of Building Inspection

Based on properties identified by the City Attorney, we will assess internal control risks posed to the department by any policy, process, or practice weaknesses we find in permitting and inspections. The report will present case examples to illustrate the risks and provide recommendations to mitigate them.

December 2021: San Francisco Public Utilities Commission (SFPUC)

We will refer to the U.S. Attorney's allegations against former SFPUC general manager Harlan Kelly, Jr., and identify internal control risks posed to the department by the contracting process. The report will provide recommendations to mitigate these risks.

February 2022: Citywide Ethics Reporting

We will review ethics citywide and will specifically evaluate communications with senior leaders and employees, organizational culture, reporting mechanisms, consistency of accountability, acknowledgment of employee integrity, and enforcement.

Note: The need for additional reviews and assessments will be determined as the U.S. Attorney and City Attorney's investigations proceed. Tentative publication dates are subject to change.

Summary of Recommendations

In conjunction with the investigation being led by the City Attorney stemming from alleged criminal wrongdoing by Mr. Nuru, the Controller has issued **five Public Integrity assessment reports to date**. Each assessment report identifies areas for further review and makes preliminary recommendations for the City to ensure increased transparency in its operations and address internal control weaknesses and risks in a timely manner. The goal is to help the City prevent fraud and abuse. The benefit to be gained from this work is not in the recommendations made, but in the **effective implementation of those recommendations** to mitigate internal control weaknesses and risks. The Controller now provides this update on the implementation status of the recommendations it has issued to date, which are in the assessment reports listed below.

Date Issued	Public Integrity Assessment Report Title	Number of Recommendations Made	Implemented 	In Progress 	Not Yet Started 
06/29/2020	San Francisco Public Works Contracting	8	3	5	-
09/24/2020	Gifts to Departments Through Non-City Organizations Lack Transparency and Create "Pay to Play" Risk	10	-	10	-
11/05/2020	San Francisco's Debarment Process	1	1	-	-
01/11/2021	Ethical Standards for Contract Award Processes of the Airport Commission and Other Commissions and Boards	10	3	5	2
04/14/2021	Refuse Rate-Setting Process Lacks Transparency and Timely Safeguards	5	-	5	-
Total		34	7	25	2

Reporting Results and Impact

Of the **34** recommendations issued by the Controller's Audits Division:

Four have been implemented via a **mayoral executive directive**, including ones that require:

- Department heads to report behested payments on Form SFEC-3610(b).
- Departments to formalize their relationships with non-city organizations through memorandums of understanding (MOUs).
- Departments to comply with gift acceptance and gift reporting requirements and to state whether the gift is used for employee recognition or appreciation.
- Departments to certify that the Board of Supervisors approved the gifts received in the preceding fiscal year.

Four have resulted in **approved legislation and amendments to city law** that:

- Prohibit the Mayor from delegating to department heads contracting decisions and other matters for which the Mayor has delegation discretion ([BOS #200949](#)).
- Create new requirements on pre-qualified contractor selection, notification, and documentation for public works professional services contracts ([BOS #200787](#)).
- Revise the city's debarment procedures by adding suspension and other related procedures and requirements, including those related to notification ([BOS #200896](#)).
- Codify that the City must award grants by using a competitive solicitation process similar to that used to award contracts under the Administrative Code, Chapter 21 ([BOS #201089](#)).

Reporting Results and Impact *(continued)*

- Two** have resulted in **legislation introduced at the Board of Supervisors** that proposes to:
- Require Public Works and the Department of Homelessness and Supportive Housing to follow competitive bidding and other requirements for homelessness-related projects ([BOS # 200734](#)).
 - Expand the definition of an “interested party” in behested payments and prohibit department heads from soliciting certain types of behested payments ([BOS #201132](#)).

Other departmental actions taken, results, and impacts so far include:

- Public Works implemented revised procurement procedures for projects addressing homelessness and emergency procurement.
- The Airport Commission (Airport) and SFPUC implemented policies prohibiting their officials and employees from communicating with contract proposers/bidders and potential proposers/bidders.
- The City Attorney created an MOU template for non-city organizations’ fundraising services, which include the Controller’s required disclosure, recordkeeping, and auditing provisions.
- The Controller’s Systems Division enhanced the tracking, reporting, and transparency capabilities of the City’s financial, procurement, and human resources systems. This included creating a Form 700 required filers dashboard.
- The Mayor and Supervisor Peskin have initiated a Refuse Working Group process to review changes to the City’s process for providing refuse services and summarize findings to inform needed changes.

Findings of 1st Public Integrity Review

**San Francisco Public Works
Contracting**

Issued June 29, 2020

Findings Highlights

Public Works Procurement Has No External Oversight

- Unlike the other departments given special contracting authority by Chapter 6 of the San Francisco Administrative Code, Public Works is not overseen by a board or commission. Also, in 2011 the Mayor gave the director of Public Works authority to approve contracts over the threshold amount. Due to the lack of a commission and the mayoral delegation of authority, there is no oversight above the director regarding Public Works' Chapter 6 procurement.

An Unethical Tone at the Top and Lack of Centralized Monitoring

- Although some of the opportunities to commit the schemes alleged in the federal government's complaint were created by control weaknesses outlined in the assessment, it was the "tone at the top," lack of cross-functional sharing of information, and disregard of ethics and gift laws propagated by the former director of Public Works that provided the pressure, rationalization, and ability necessary to carry out these actions.
- Because no one entity has full oversight over procurement, the City lacks centralized monitoring to ensure procedures are performed in accordance with the Administrative Code and any corresponding policies.

Gaps Exist in City Laws, Requirements, and Monitoring

- Loopholes in city and state restrictions around gifts create avenues for unethical behavior and manipulation through the giving of gifts that are permitted and are difficult to enforce against.
- The processes used to award the contract that is the subject of the federal complaint against Mr. Nuru generally complied with Chapter 21 requirements for competitive solicitations. However, these processes would not have identified the behind-the-scenes bid steering that allegedly occurred.
- City requirements for competitive solicitation of grants and use of selection methods within prequalified contracting pools need improvement to reduce risks of fraud and abuse.

Status of Recommendation Implementation

Recommendation	Status
<p>1. Under Chapter 6 of the Administrative Code, the Mayor should delegate final approval for Public Works construction contracts to an official other than the department director. The Mayor and Board of Supervisors should amend Chapter 6 to prohibit delegation to the department head for these contracting activities.</p>	<p> Implemented</p> <p>On June 29, 2020, Mayor London Breed rescinded the delegation of authority granted to the Director of Public Works in 2011.</p> <p>Board- and Mayor-Approved Legislation (11/6/2020): <i>(Sponsors: Supervisors Haney, Mandelman, Mar, Ronen, Stefani, Peskin, Walton)</i> Amended the Administrative Code to prohibit the Mayor from designating department heads as the Mayor’s designee regarding contracting decisions and other matters in which the Mayor has discretion to delegate.</p>
<p>2. The Ethics Commission should examine and close loopholes in the San Francisco Campaign and Governmental Conduct Code to ensure that city law does not create avenues for unethical behavior in acceptance of gifts.</p>	<p> In Progress</p> <p>Analysis of the City’s gift laws is underway as part of the Ethics Commission’s efforts to implement its ongoing priority of policy and legislative development work. Also, the Controller’s Office will review citywide ethics reporting in an upcoming assessment.</p>

Status of Recommendation Implementation

Recommendation	Status
<p>3. The Ethics Commission should expeditiously enable and require that all Statements of Economic Interests (Form 700s) are filed electronically by all required filers and conduct annual compliance reviews of these filings. The Mayor and Board of Supervisors should prioritize funding and other support necessary to accomplish this goal.</p>	<p> In Progress</p> <p>The Ethics Commission plans to expand electronic filing for all Statements of Economic Interests (Form 700s) by January 2022 and to enable filings to be viewed and searched on its website include an annual compliance review of these filings in its audit work plan for fiscal year 2022.</p> <p>In coordination with the Department of Human Resources and the Ethics Commission, the Controller's Systems Division created a Form 700 dashboard that reports departmental filers.</p>
<p>4. The Mayor, Board of Supervisors, and Office of Contract Administration should establish clear guidelines for selecting a vendor or vendors from a pre-qualified pool. Possible methods for such selections include soliciting quotes for a defined item or scope of work from all vendors in the pool.</p>	<p> Implemented</p> <p><i>Board- and Mayor-Approved Legislation (12/18/2020): (Sponsors: Supervisors Stefani, Safai, Haney, Peskin, Mar, Mandelman, Yee)</i> Amended the Administrative Code to require notification to prequalified contractors and written documentation of contractor selection from pre-qualified lists, and written documentation of contractor selection for work assigned under as-needed Public Works professional services contracts, and to require the Controller to audit such selection documentation.</p>

Status of Recommendation Implementation

Recommendation	Status
<p>5. Public Works should adhere to the new procurement procedures implemented by its acting director for projects addressing homelessness and emergency procurement. The City should implement similar procedures for such purchases citywide.</p>	<p> In Progress</p> <p><i>Implemented by Public Works (2/3/2020):</i> Implemented revised procedures for professional service and construction contracts for shelter and transitional housing, as well as contracts under an emergency declaration.</p> <p><u>Proposed Legislation (BOS 200734)</u> with the Board of Supervisors: (Sponsors: Supervisors Peskin and Haney) Amend the Administrative Code to require Public Works and the Department of Homelessness and Supportive Housing to competitively bid professional and other services related to people experiencing homelessness, which would effectively rescind emergency streamlined procurement for navigation centers.</p>
<p>6. The Mayor, Board of Supervisors, and Office of Contract Administration should establish minimum requirements to ensure competitive solicitation of grants, similar to requirements for contracts, and formalize these requirements in code and policy.</p>	<p> Implemented</p> <p><u>Board-Approved Legislation</u> (7/27/2021) with the Mayor: (Sponsors: Supervisors Stefani and Chan) Amend the Administrative Code by codifying grant award processes, including requiring competitive solicitation with certain exceptions, set forth criteria for administrative debarment procedures, authorize the purchaser to promulgate rules and regulations to carry this ordinance, and advertise rebate and incentive programs.</p>

Status of Recommendation Implementation

Recommendation	Status
<p>7. To promote data-driven decisions and transparency, city departments should be required to use the City’s centralized systems throughout the purchasing life cycle, from planning through contract award. To enable this change, these systems should be improved to better meet department needs.</p>	<p> In Progress</p> <p>The Controller is determining the next steps to facilitate departmental use of the procurement system to track the procurement life cycle. The Controller plans to enhance the financial and procurement system functionalities to support transparency in the procurement process and collect and streamline additional data fields in bid and contract award requirements, and then educate departments on functionalities to ensure citywide use. To fully implement this recommendation, departments will need to adopt the procurement system to track the procurement life cycle.</p>
<p>8. The City should close gaps in centralized monitoring of all procurement activities by strengthening and resourcing the Office of Contract Administration (OCA) or some other city entity to expand its monitoring and oversight to all city procurement activities.</p>	<p> In Progress</p> <p>OCA implemented numerous policies and procedures to strengthen and standardize departments’ compliance with Chapter 21. In conjunction with the Controller, OCA launched a new dashboard for Proposition Q Delegated Departmental Purchasing and two new mandatory contracting trainings to ensure greater transparency, with the Department of Technology’s and COIT’s assistance, implemented new procedures to enforce Administrative Code Chapter 19B (Acquisition of Surveillance Technology), and revamped its website to provide improved contracting guidance to city departments and suppliers. In addition, the City’s Purchaser is currently authorized to approve Public Works’ Administrative Code Chapter 6 public works agreements, providing additional oversight over the department’s contracting activities. In fiscal year 2021-22 OCA will staff a new Contract Compliance, Oversight, and Reporting team to conduct citywide procurement audits and compliance reporting.</p>

Findings of 2nd Public Integrity Review

Gifts to Departments Through Non-City Organizations Lack Transparency and Create "Pay to Play" Risk

Issued September 24, 2020

Findings Highlights

No Restrictions Exist on Department Heads' Solicitation of Behested Payments

- Mr. Nuru solicited funds from interested parties, including businesses that had contracts with Public Works or held city building permits. When parties with a city contract or permit donate to non-city organizations, it can create a "pay-to-play" relationship.
- The City does not require appointed department heads to file behested payment Form SFEC-3610(b).
- The City needs to improve compliance with restrictions on and reporting requirements for acceptance of gifts from outside sources.

Non-City Organizations Lack City Oversight

- Because the City does not consistently impose requirements for non-city organizations, a lack of transparency and inconsistent practices exist among Public Works and the Parks Alliance, and potentially among the 33 other city departments that report having relationships with non-city organizations.
- The Public Works subaccounts at the Parks Alliance operate like a city account, although they are outside of the City's procurement and financial system and not subject to the City's accounting and procurement policies and procedures.

Donors of All Gifts Accepted by the City Should Be Disclosed; Anonymous Donations Are Already Prohibited by Law and Should Not Be Accepted

- To avoid the real and perceived risk of facilitating "pay-to-play" relationships, any donations that will be used to benefit a city department or city employees should be publicly reported in a manner that permits public transparency. Besides being a violation of the City's Sunshine Ordinance, accepting anonymous donations puts the City at risk of taking payments from donors with a financial interest in the City's business (and who may expect favorable treatment in return).

Status of Recommendation Implementation

Recommendation	Status
<p>1. The City should amend the San Francisco Campaign and Governmental Conduct Code to prohibit non-elected department heads and employees from soliciting donations from interested parties (to be further defined in legislation) of their department, unless specifically authorized by the Board of Supervisors. Those authorized to solicit donations must file Form SFEC-3610(b) for behested payments. Consequences for failure to report should be enforced.</p>	<p> In Progress</p> <p>The Mayor issued an Executive Directive 20-02 requiring all department heads to comply with the City's behested payment reporting requirements, including the filing of Form SFEC-3610(b).</p> <p>The Ethics Commission proposed legislation BOS 201132 (<i>sponsors: Supervisors Haney, Peskin, Chan</i>), which is pending with with the Board of Supervisors. The Ordinance would amend the Campaign and Governmental Conduct Code to expand the definition of "interested party" to include city contractors and persons seeking to influence city officers and employees, and to prohibit department heads, commissioners and designated employees from soliciting behested payments.</p>
<p>2. The Ethics Commission should expand the definition of who is considered an "interested party" so that it includes all city contractors.</p>	

Status of Recommendation Implementation

Recommendation	Status
<p>3. The City should require departments and non-city organizations to formalize their relationships through memorandums of understanding that are posted to departmental websites and include:</p> <ul style="list-style-type: none"> a. A requirement to adhere to city law on the acceptance of gifts, including the Administrative Code, Section 10.100-305, or other sections that apply to the department. b. An agreement to comply with the Sunshine Ordinance, Section 67.29-6. c. A clause granting the Controller audit authority and access to the organization's records. d. Regular public reporting on these funds to occur not less than annually, at the donor or payee recipient level, and posted on the recipient department's website. e. A requirement to report donations, including grants, on the organization's website f. Clearly defined roles regarding expenditures, including prohibitions against spending directed or controlled by the recipient. 	<p> In Progress</p> <p>The Mayor issued an Executive Directive 20-02 requiring all departments to formalize through an MOU any relationship they have with a non-city organization that receives donations on behalf of the department, where such agreement does not already exist.</p> <p>The City Attorney drafted a template to formalize MOUs for departments to use. The Public Library previously had an MOU with the Friends of the Library and is working with the City Attorney and Controller to amend it to incorporate the Controller's required disclosure obligations and recordkeeping and auditing provisions. The Airport previously had an MOU with the San Francisco Aeronautical Society and is working with the City Attorney and Controller to amend it to incorporate the Controller's required disclosure obligations and recordkeeping and auditing provisions.</p> <p>The following departments and associated non-city organizations now have formalized MOUs: Recreation and Park Department and San Francisco Parks Alliance. The following departments have pending MOUs with non-city organizations: the Airport Commission, Animal Care and Control Department, Department of Public Health, Human Rights Commission, and Public Defender's Office.</p>

Status of Recommendation Implementation

Recommendation	Status
<p>4. Departments should comply with the Administrative Code, Section 10.100-305, or other sections specifically related to the department, by uniformly obtaining advance acceptance of any gifts from outside sources greater than \$10,000 for the department through non-city organizations, including explicit authorization for uses of these funds for employee recognition or appreciation.</p>	<p> In Progress</p> <p>The Mayor issued an Executive Directive 20-02 requiring all departments to ensure compliance with the Administrative Code, Section 10.100-305, or other applicable sections of Administrative Code Chapter 10, Article XIII.</p> <p>The Controller will update its Accounting Policies & Procedures on gifts and donations to implement Administrative Code Section 10.100-305, which requires departments to report all gifts, including those worth less than \$10,000, to their Controller’s fund accountant. The Controller will upload the updated policies and procedures by August 20, 2021. The Controller also presented gift/donation updates to department heads and financial officers at the monthly chief financial officer meeting of February 16, 2021.</p> <p>The Controller's Financial System (SF Financials) has the functionality to assist with gift reporting, and Controller staff will provide citywide training to departments on how to record gift and grant transactions. Departments must adopt and enforce their own policies to ensure compliance and citywide transparency.</p>

Status of Recommendation Implementation

Recommendation	Status
<p>5. The City should require annual certification from department heads that all gifts of goods, services, and funds have been approved by the Board of Supervisors and reported on time, as required.</p>	<p> In Progress</p> <p>The Mayor issued an Executive Directive 20-02 requiring all departments to ensure compliance with the Administrative Code, Section 10.100-305, to certify in their annual reports that all gifts they received in the preceding fiscal year were approved by the Board of Supervisors, if required, and were reported in a timely manner.</p> <p>Additional joint efforts by the Controller and Ethics Commission are underway to determine departments' compliance with the Administrative Code, Section 10.100-305(c), and whether additional steps should be taken to ensure compliance.</p>
<p>6. The City should make it easier for departments to use city funds for employee recognition and appreciation events and provide explicit (line-item) appropriations for this purpose.</p>	<p> In Progress</p> <p>The Mayor's Consolidated Budget and Annual Appropriation Ordinance provides funding for employee appreciation events. The Controller is determining the next steps to implement this recommendation.</p>
<p>7. The Controller should, on a sample basis, annually audit organizations that both give gifts to the City and have a financial interest with the City, including a contract, grant, permit, permit application, or other entitlement.</p>	<p> In Progress</p> <p>The Controller's Audits Division has relevant audits and assessments in its fiscal year 2021-22 work plan.</p>

Status of Recommendation Implementation

Recommendation	Status
<p>8. Departments should comply with the Sunshine Ordinance, Section 67.29-6, for their non-city organizations by not accepting any donation through anonymous donors or for which they cannot identify the true source.</p>	<p> In Progress</p> <p>The City Attorney has provided existing guidance on the Sunshine Ordinance, Section 67.29-6, to departments that receive donations from non-City organizations and through its Good Government Guide. This guidance concerns non-City organizations' disclosure of their donors (the "agreement requirement"). Departments' MOUs will now explicitly require non-city organizations to comply with the Sunshine Ordinance, which, in turn, should increase compliance with this recommendation. The Controller's Audits Division will verify this in future years.</p>
<p>9. The City should amend the Sunshine Ordinance, Section 67.29-6, to clearly define "financial interest" so that it is aligned with the City's updated "interested party" definition.</p>	<p> In Progress</p> <p>The Ethics Commission is analyzing the disclosure requirement contained in section 67.29-6 and will determine next steps to implement changes to the term "financial interest" in conjunction with other city stakeholders.</p>
<p>10. For all recommendations made as part of this assessment that require reporting, the City should review and strengthen its consequences for noncompliance.</p>	<p> In Progress</p> <p>The Ethics Commission is determining the status of the City's compliance, how to improve departmental compliance, and what consequences will adequately deter noncompliance.</p>

Findings of 3rd Public Integrity Review

San Francisco's Debarment Process

Issued November 5, 2020

Findings Highlights

San Francisco's Debarment Process Is Similar to Those of the State and Federal Governments

- San Francisco's debarment procedures are consistent with those of the State of California and the federal government, except the City does not require an investigation as the initial step, although in practice an investigation is conducted.

The City Has No Procedures for Suspension or Minimum Qualifications for Hearing Officers, but its Debarment Procedures Are Similar to Federal and State Rules

- The City's debarment period of up to five years is the same as or similar to others.
- Unlike the federal government, the City and the state cannot suspend contractors.
- Although it does not require debarred contractors to pay administrative costs or other penalties, the City can pursue claims against contractors under state law or bring other civil actions.
- Unlike the state government and federal government, the City has no minimum qualifications for hearing officers.
- Consistent with state and federal requirements, San Francisco publicly lists contractors it has debarred *but should add suspended contractors*.

Status of Recommendation Implementation

Recommendation	Status
<p>1. To be consistent with what the federal and state governments require, and as proposed by the Office of the City Attorney, the Board of Supervisors should amend the San Francisco Administrative Code to add:</p> <ul style="list-style-type: none"> a. Suspension to its debarment procedures. b. Minimum qualifications for debarment hearing officers, such as that a hearing officer must be a licensed attorney. c. A requirement for a public listing of suspended city contractors. 	<p> Implemented</p> <p><i>Legislation Board and Mayor approved (11/25/2020): (Introduced by the City Attorney)</i> Amended the Administrative Code by adding prohibited gifts from a contractor to a public official as express grounds for debarment, revising debarment procedures, amending the definition of "contractor" to include grant applicants and grantees, and adding provisions authorizing suspension of a contractor from participating in the procurement process for entering into city contracts or grants if the contractor is the subject of a criminal or civil charge brought by a government agency.</p> <p>The Controller has implemented updated procedures to record and track debarred and suspended bidders, suppliers, and contractors. It has also issued two semiannual reports and has enhanced its website to maintain a list of debarred or suspended suppliers/contractors. The Controller will also update its accounting policies to refer to the aforementioned procedures and website. The Controller intends to upload the updated policies and procedures by August 20, 2021.</p>

Findings of 4th Public Integrity Review

Ethical Standards for Contract Award
Processes of the Airport Commission
and Other Commissions and Boards

Issued January 11, 2021

Findings Highlights

Concession Leases Are Awarded Based on Solicitation Results

- Based on a Controller's 2019 audit and this assessment, Airport concession leases are awarded based on evaluation results from the competitive solicitation process.

An Airport Commissioner Allegedly Improperly Communicated With a Potential Bidder

- Former Airport Commissioner Linda Crayton allegedly agreed to meet with and help a potential bidder by leveraging her position and authority and did not report the improper request for preferential assistance.

The Airport's SIA Does Not Expressly Prohibit Ms. Crayton's Alleged Actions

- Ms. Crayton allegedly promised to provide selective assistance to a potential bidder, but the Airport's statement of incompatible activities (SIA) does not prohibit communications with potential bidders and proposers.

New Airport Contracting Policies and Procedures

- The Airport has strengthened its contracting policies and continues to make improvements.

Contract Approvers Can Consider Information on Form SFEC-126(f)4

- Before a contract is awarded, departmental and commission contract approvers may not know of contractor information that could help them avoid conflicts of interest.

Status of Recommendation Implementation

Recommendation	Status
<p>1. City commissions and boards should revise their policies and procedures to include requirements to address members' involvement in contract award processes and prohibit communications during competitive selection.</p>	<p> In Progress</p> <p>Of the city commissions and boards surveyed for this assessment, those of the Airport, SFPUC, and Transbay Joint Powers Authority revised their policies and procedures to prohibit communications during competitive solicitation processes. The San Francisco Municipal Transportation Agency had an existing policy that fulfills this recommendation. The Recreation and Park and Port commissions are working to implement this recommendation.</p>
<p>2. In consultation with the Ethics Commission, each city commission and board should annually train its members on the department's statement of incompatible activities. The training should state that if proposers request inappropriate assistance, commissioners should report this to the commission secretary on public record and consult with the City Attorney's Office and the Ethics Commission for next steps.</p>	<p> Not Yet Started</p> <p>The Ethics Commission reports that the fiscal year 2021-22 city budget added funding to enable expansion of its training and outreach beginning this fiscal year. The Ethics Commission plans to include expanded training on incompatible activities for commissioners as a part of that work.</p>
<p>3. City law should be amended to codify that city officials and employees shall not knowingly provide selective assistance to individuals or entities that confers a competitive advantage on a proposer or potential proposer for a city contract.</p>	<p> In Progress</p> <p>Supervisor Mar is working with the City Attorney regarding his request for proposed legislation to implement this recommendation.</p>

Status of Recommendation Implementation

Recommendation	Status
<p>4. The Ethics Commission should work with the City Attorney's Office to consider codifying prohibitions in the statement of incompatible activities to ensure citywide consistency in their enforcement and increase the visibility of these prohibitions.</p>	<p> In Progress</p> <p>Analysis of the City's Statement of Incompatible Activities program is underway as part of the Ethics Commission's ongoing policy and legislative development work.</p>
<p>5. City departments should include in their competitive solicitation documents the restrictions on communication by and with potential bidders and enforce the restrictions by requiring commissions and board members to affirm compliance in writing annually.</p>	<p> Implemented</p> <p>The Airport updated its solicitation documents to incorporate its policy and directive restricting communication by and with potential bidders for all Airport divisions.</p>

Status of Recommendation Implementation

Recommendation	Status
<p>6. The Airport should regularly issue reports to the Airport Commission listing published solicitation documents, so commissioners are aware of the pending restricted communications period for each solicitation, pursuant to the Airport's Competitive Selection Process Communications Policy.</p>	<p> Implemented</p> <p>On December 15, 2020, by Resolution No. 20-0247, the Airport Commission adopted a Competitive Process Communications Policy to support the integrity of the competitive selection process for Airport contracts and leases. The policy commits members of the Airport Commission to not engage in communications regarding any specific business opportunity at the Airport at any time except in a public meeting. Under the policy, a restricted communications period commences at the issuance of any competitive solicitation for a contract or a lease and ends when the contract is awarded or the solicitation is terminated. The Commission also requested the Airport Director to implement the policy and to provide regular reports to the Airport Commission as to pending restricted communications periods. Accordingly, before each Airport Commission meeting, Commissioners receive in their meeting packet a Restricted Communications Period Report listing all open procurements subject to the Competitive Process Communications Policy, the date the commission approved the procurement, and the date the procurement document was published. And at each Commission meeting, the Airport Director references the Report. Additionally, on December 15, 2020, the Airport Director issued Executive Directive 20-10, to implement the policy to highlight the duties of Airport Commission employees in maintaining the integrity of the competitive process and to require that (1) every solicitation document include instructions for communications with the department during the pendency of the competitive process; (2) every solicitation document include a prohibition against communications in a manner other than as instructed; (3) bidders/proposers in submitting their proposals attest compliance with the restricted communications provisions of the solicitation document; and (4) selection panel members acknowledge and attest compliance with the restricted communications policy.</p>

Status of Recommendation Implementation

Recommendation	Status
<p>7. The Airport should implement the remaining newly proposed aspects of the department's competitive solicitation process.</p>	<p> Implemented</p> <p>The Airport has implemented its Competitive Selection Process Communications Policy as described in the status of Recommendation 6.</p>
<p>8. The City should consider whether it would be warranted to codify the roles of commission and board members, including the limitations thereon, in the contract award process.</p>	<p> Not Yet Started</p> <p>Efforts to implement this recommendation are not yet underway.</p>
<p>9. To promote data-driven decisions and consistency and transparency in city contracting:</p> <ul style="list-style-type: none"> a. City departments should work with the Controller's Office to develop and implement plans for enhancing the City's financial system to accommodate management of departmental revenue contracts, including bid opportunities, outreach, contract award, revenue collection, and revenue recognition. b. The Controller's Office should, to enable this change, improve the City's financial system to better meet departments' needs. 	<p> In Progress</p> <p>As the City's financial and procurement system can record departmental revenue contracts, the Controller is working with other departments to determine revenue contract use and needs. Once complete, the Controller will train departments on these features. Departments will need to adopt processes to ensure compliance and citywide transparency.</p>

Status of Recommendation Implementation

Recommendation	Status
<p>10. The City should:</p> <ul style="list-style-type: none"> a. Direct departments to require proposers to submit key information about their affiliates and subcontractors, including identification of owners, directors, and officers, for contracts subject to the Campaign and Governmental Conduct Code, Section 1.126(f)(4), in their response to the competitive solicitation process and enter this information in the City's financial system. b. Consider requiring departments to obtain this information for contracts not subject to Section 1.126(f)(4). 	<p> In Progress</p> <p>The Controller is analyzing which data needs to be captured across city systems to enable commissioners, department heads, and elected officials to have access to this information before contract award. Once its analysis is complete, the Controller plans to train departments on this. Also, the Ethics Commission can help departments study how best to implement this recommendation as it pertains to information required on an Ethics Commission-required form.</p>

Findings of 5th Public Integrity Review

Refuse Rate-Setting Process Lacks
Transparency and Timely Safeguards

Issued April 14, 2021

Findings Highlights

The Refuse Rate Methodology and Safeguards Should Be Improved

- The 2017 error in Recology Sunset Scavenger and Recology Golden Gate's rate application that resulted in a settlement of over \$100 million occurred because Recology excluded revenues from a zero waste account and impound account that greatly impacted the operating ratio formula used to determine the rate increase.

Recology's Control of Refuse Collection Services Occurred Pursuant to City Law

- San Francisco voters would have to approve a ballot measure to change the City's process for providing residential refuse collection service. The current process allows Recology to hold all of the City's residential refuse permits and not compete to remain as the exclusive permit holder to provide the service.

The Public Works Director's Role Should Be Revised and Codified

- Although his actions were subject to multiple stakeholders' review at public hearings and comments, Mr. Nuru had significant influence over the City's refuse collection rate-setting process.

The Ratepayer Advocate's Role Should Be Reassessed

- The ratepayer advocate functions primarily as a public liaison and outreach coordinator rather than as an advocate, which may be inconsistent with the intent of the Budget Analyst's recommendation that led to the position's creation.

Status of Recommendation Implementation

Recommendation	Status
<p>1. The Mayor and Board of Supervisors should consider whether the 1932 Refuse Collection and Disposal Initiative Ordinance and the City's arrangement with Recology continue to provide optimal benefits to ratepayers or whether another business model should be employed. Any change to the Refuse Ordinance will require voter approval.</p>	<p> In Progress</p> <p>In coordination with Supervisor Peskin's office and the Mayor's Office, the Controller's Office is convening the Refuse Working Group to review models for providing refuse services, reach a shared understanding of where changes would be most impactful, and summarize findings to inform any needed changes to the City's existing process.</p>
<p>2. The Mayor and Board of Supervisors should codify the extent and limitations of the roles, including oversight roles, in the refuse rate-setting process of the commission, director, and staff of the new Department of Sanitation and Streets and any related contractors, including the ratepayer advocate, rate consultants, and auditors.</p>	
<p>3. The Mayor and Board of Supervisors should consider whether additional changes to the refuse rate-setting process are warranted, such as assigning operational and financial oversight to a department that is further removed from the refuse collector.</p>	
<p>4. To ensure that the public interest is adequately represented in the rate-setting process, the City should review the role of the ratepayer advocate and, if deemed necessary, direct that the role be changed in future competitive solicitation documents and contracts for this service so that the role emphasizes advocacy, as its name implies.</p>	
<p>5. Regarding the refuse rate adjustment process, the City should assess whether the operating ratio or another methodology should be used and should require that:</p> <ul style="list-style-type: none"> a. The refuse company submits documents supporting its rate application, such as: audited financial statements; quarterly and annual rate reports that include all sources (including reserves and special accounts) and costs by ratepayer class, operating ratios, and balancing accounts; and a reconciliation between the audited financial statements and annual rate reports. b. Any quarterly or annual rate report submitted shows the date it was issued and includes a summary of any revisions made if later versions are published. All such reports should be posted to website of Public Works or the Department of Sanitation and Streets (when it begins operations) and filed with the Rate Board in a timely manner. c. Cost of Living Adjustment factors are analyzed based on actual results over the preceding four years. d. Public Works report to the refuse company and file a report with the Rate Board when an error in documentation that had been submitted is identified. e. The refuse company ensures an independent rate analysis is performed that includes a study of comparable jurisdictions' refuse collection rates to support the accuracy and reasonableness of the proposed rate adjustment. This analysis should be considered by the Public Works director, Rate Board, and/or Sanitation and Streets Director and Commission as part of each rate-setting process. 	

Any questions or comments?

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