Public Integrity Review

Preliminary Assessment:

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

Presentation to the Board of Supervisors
Government Audit & Oversight Committee

CITY & COUNTY OF SAN FRANCISCO

Office of the Controller

October 1, 2020

Public Integrity Review & Investigations Introduction

- The Controller continues to conduct assessments of targeted processes, procedures, and practices related to the Mohammed Nuru investigation. The goal is to offer recommendations to improve transparency, reduce the risk of fraud, and safeguard public funds.

- City Attorney is leading the investigation into alleged wrongdoing by city employees and contractors outlined in criminal charges brought by the U.S. Attorney's Office against Mr. Nuru. On July 14, 2020, the City Attorney debarred AzulWorks, Inc., a company with large city contracts.

- This Controller report summarizes our review of gifts and support benefitting city departments from city contractors, focusing on San Francisco Public Works' subaccounts held by the San Francisco Parks Alliance, a non-city organization.

- This preliminary assessment is offered for public comment and review and may be revised in the future as our work continues.

Non-City Organizations & the Parks Alliance

- Non-city organizations are nonprofit/third-party organizations providing financial or programmatic support to a city department.

- 33 departments reported having non-city organizations with 588 accounts/subaccounts, including fiscal agents, fiscal sponsors, trustee accounts, contracts, grants, foundations, friends of organizations.

- Friends of organizations are intended to financially support the department and receive donations as primary revenue source

- The Parks Alliance is a 501(c)(3) nonprofit organization that works with 200 groups and city agencies. In 2019, it received grants and contributions of $18.9 million and spent $17.7 million.

- The Parks Alliance states it did not know its fiscal agency was being used unscrupulously by city officials. The Parks Alliance had reached out to Mr. Nuru in 2019 to formalize its relationship but was ignored.

Four Public Works Subaccounts at the Parks Alliance

The Public Works subaccounts at the Parks Alliance operate like a city account. The Public Works log for July 1, 2015, through January 17, 2020, shows the following Public Works subaccounts.

Subaccount	Reported Description & Uses	Contributions	Expenses
DPW Special Projects (8420)	Payments and reimbursements for staff appreciation	$400,216	$370,230
DPW Clean Team (8421)	Payments and reimbursements for monthly Clean Team events	198,114	197,520
DPW Giant Sweep (8423)	Payments and reimbursements related to the Giant Sweep campaign	390,500	402,616
Fix-It Team (8424)	For community outreach and to fix quick, actionable problems in the City	2,000	1,807
	Three subaccounts no longer in use*		8,565
	Total	**$990,830**	**$980,738**

* Three subaccounts had no expenditures after fiscal year 2018-19: DPW Maintenance (8419), DPW Street Parks (8433), and American Community Gardening Association Conference (8422).
Source: Public Works log and Public Works

Donations to the Public Works Subaccounts

Below are city contractors and building permit holders that donated to the Parks Alliance's Public Works subaccounts during review period.

	Donations Made to Public Works Subaccounts at Parks Alliance		Building Permits at Time of Donation	Public Works' Payments to Contractor/Permit Holder		Other Departments' Payments to Contractor/Permit Holder	
Donors	Amount	% Total	Number	Amount	% Total	Amount	% Total
SF Clean City Coalition[1]	$721,250	88%	0	$3,288,175	1%	$1,784,618	0%
Recology[1]	131,948		4	5,775,113	1%	116,493,379	10%
Pacific Gas & Electric	42,083	4%	8	3,236,409	1%	211,720,652	18%
Emerald Fund II LLC[2]	17,000	2%	6	0	0%	22,745,925	2%
Clark Construction	16,266	2%	60	247,209,740	43%	27,706,950	3%
Webcor Construction	15,000	2%	45	193,766,898	34%	762,909,564	66%
Laborer's Int'l Union	11,200	1%	0	273,197	0%	7,145,116	1%
Pankow Construction	10,500	1%	88	118,719,636	20%	966,497	0%
Airbnb	1,000	0%	7	0	0%	0	0%
Total	**$966,247[3]**		**218**	**$572,269,168**		**$1,151,472,701**	

[1] According to the City Attorney's Public Integrity Unit, SF Clean City Coalition received $150,000 from Recology in each of three years—2015, 2017, and 2018—for Public Works' Giant Sweep program, Clean Team program, staff enrichment, and community events. In 2019 Recology donated $180,000 for the Giant Sweep and Clean Team programs to SF Clean City Coalition, which then paid $171,000 to the Parks Alliance.

2 Emerald Fund II LLC, also known as Emerald Fund, Inc., includes 1045 Mission LP, Harrison Fremont Holdings LLC, 100 Van Ness Associates, Hayes Van Ness Associates, Emerald Polk LLC, and EBG II LLC.

3 Other donors contributed an additional $26,583 to the Public Works subaccounts at the Parks Alliance, bringing total donations to $992,830, excluding a Fix-it subaccount adjustment that reduced the amount by $2,000.

Source: Public Works log; City's financial system for contractor/permit holder payments; DataSF for permits

Much of the Spending Was for Employee Events

The Public Works subaccounts at the Parks Alliance were largely used to pay for staff appreciation, department initiatives with volunteers, and merchandise, generally at Public Works' direction.

Expense Type	Amount
Employee events, appreciation, and training, including holiday parties, picnics, meals, awards, conferences, and Bay to Breakers participation	$375,631
Purchases for volunteer programs and campaigns, such as Arbor Day, Love Our City, Community Clean Team, and Giant Sweep	284,906
Merchandise, including shirts, hats, tote bags, key tags, and pins	249,693
Community support or events for neighborhoods or community groups	42,906
Employee attendance at community events, such as luncheons and galas for community organizations	17,542
Other miscellaneous or vague reimbursements	10,060
Total	**$980,738**

Source: Public Works log

Flow of Funds Between the City & Public Works Subaccounts

The flow of funds between the City and the Public Works subaccounts at the Parks Alliance is complex.

Inappropriate Fundraising

Preliminary Findings

- Mr. Nuru solicited funds from interested parties, including businesses that had contracts with the department or city building permits.
  - The gifts, create a perceived "pay-to-play" relationship.
  - Mr. Nuru solicited donations to fund the 2019 Office of the City Administrator and Public Works holiday party.
    ~ $33,000 (or 80%) of the event's $40,000 cost was donated by restricted sources, including Recology, Inc.

- City ***does not*** require appointed department heads to file a behested payment form (Form SFEC-3610(b))

- The City needs to improve compliance with restrictions on and reporting requirements for acceptance of gifts from outside sources.
  - The City has laws requiring acceptance and reporting of gifts for public purposes, but adherence to these laws is not uniform.
  - Existing policies and procedures should be reviewed and strengthened.

Inappropriate Fundraising

Recommendations

- 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.
- 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.
- 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.
- 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.
- For all recommendations made as part of this assessment that require reporting, the City should review and strengthen its consequences for noncompliance.

"Interested Party" Definition is Unclear

Preliminary Findings

- The City's definition of an interested party does not explicitly include all city contracts because certain contracts are excluded under the California Government Code, Section 84308. This regulation specifies that a license, permit, or other entitlement includes, "all entitlements for land use, all contracts (other than competitively bid, labor, or personal employment contracts), and all franchises." When city contractors with any contract type donate to non-city organizations, it can create a "pay-to-play" relationship.

Recommendation

- The Ethics Commission should expand the definition of who is considered an "interested party" so that it includes all city contractors.

Anonymous Donations Prohibition

Preliminary Findings

- The *Friends of* organizations either did not publicly report donors or those that publicly reported their donors also reported anonymous donors, sometimes as funds or matching gifts.
- If funds spent for city purposes, non-city organizations that either do not publicly report donations or do so but allow anonymous donations violate the disclosure requirement of the Sunshine Ordinance, Section 67.29-6, and prevent the detection of any financial interest of anonymous donors.
- Voter approval is needed to change the requirements to accept anonymous donations.

Recommendations

- 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.
- 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.

Public Works Subaccount Lacked City Oversight

Preliminary Findings

- Because the City does not consistently impose requirements for non-city organizations, there is a lack of transparency and inconsistent practices, creating the opportunity for unethical steering of purchases.

- The Public Works subaccounts at the Parks Alliance operate like a city account, although all outside the City's procurement and financial system and not subject to City policies and procedures.

Policy, Process, or Reporting Requirement Involving the City	San Francisco Parks Alliance		Friends of the San Francisco Public Library
	Public Works	Recreation and Park	Public Library
Memorandum of Understanding Defining Its Relationship With City	No	Yes*	Yes
Gift Reporting to Board of Supervisors, Including Formal Process for Accept and Expend	No	Yes	Yes
Existing Agreement to Comply With San Francisco Sunshine Ordinance, Section 67.29-6	No	No	Yes

* Recreation and Park and the Parks Alliance set up memorandums of understanding for individual projects.

Public Works Subaccount Lacked City Oversight

Recommendation

- 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:
  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.

Public Works Subaccounts Funded Staff Appreciation

Preliminary Findings

- Public Works used its Parks Alliance subaccounts to fund employee events. The City's practice of avoiding staff appreciation costs in departmental budgets may have contributed to Public Works' reliance on the subaccounts.
- The City does not usually promote staff appreciation through departmental funds. Such appreciation may increase employee morale and recognize good work in an environment where it is often impossible to grant additional pay.

Recommendation

- The City should make it easier for departments to use city funds for staff appreciation events and provide explicit appropriations for this purpose.

Next Steps

Our Public Integrity Review, performed in consultation with the City Attorney, will continue to conduct assessments of various city procedures and policies to assess their adequacy to prevent abuse and fraud.

Future reports and assessments are underway on the following topics:

1. Ethical standards for commissioners regarding procurement processes of the Airport Commission and other city commissions
2. The City's contractor debarment process
3. The Department of Building Inspection's policies and practices to award permits
4. A final report on the topics covered in this preliminary assessment

Additional reviews and assessments will be determined and performed as the Nuru investigation proceeds.

Any questions or comments?

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