

Public Integrity Review

Preliminary Assessment:

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

Presentation to the Board of Supervisors
Government Audit & Oversight Committee



CITY & COUNTY OF SAN FRANCISCO

Office of the Controller

February 4, 2021

Public Integrity Review & Investigations Introduction

- The Controller continues to conduct assessments of targeted internal controls, processes, and practices related to the Mohammed Nuru and Harlan Kelley, Jr. investigations, offering 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.
- This Controller report summarizes our review of city commissions' and boards' ethical standards for awarding contracts, with a focus on the Airport Commission and other relevant entities.
- This assessment is the fourth in the series, is offered for public comment and review, and may be revised in the future as our work continues.
- Although we found no substantial structural problems that impair the overall control environment, we do note changes that could improve these processes.

Criminal Complaint Against Mr. Nuru and Mr. Bovis

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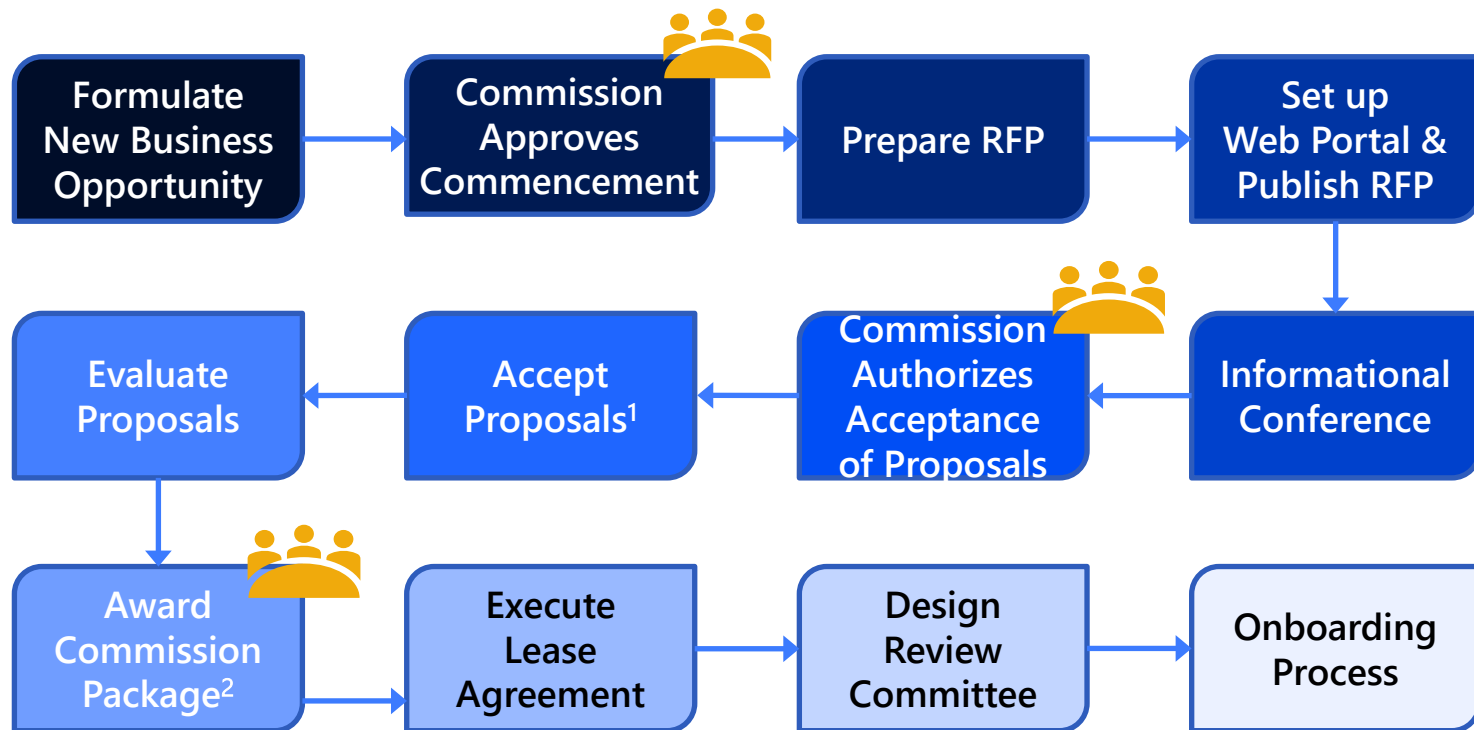
- The federal criminal complaint alleges that Mr. Nuru and Mr. Nick Bovis tried to bribe Airport Commissioner Linda Crayton in exchange for assistance in obtaining a city lease at the Airport.
- At the April 2018 meeting Mr. Bovis explained to the undercover agents that Ms. Crayton controls the Airport Commission and knows “the vote before the Commission make the decision on Airport bids.”
- The affidavit states that allegedly Ms. Crayton said she would find out who will be on the selection committee and “do everything I can” to assist Mr. Bovis in securing the lease.
- The complaint also notes that Mr. Nuru was the chair of the Transbay Joint Powers Authority (TJPA) and allegedly used this position to try to secure a desirable lease for Mr. Bovis in the Transbay Transit Center in exchange for benefits provided by Mr. Bovis but was unsuccessful.

Airport Commission & Contract Award Process

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- The Airport Commission is a five-member policy body that oversees the San Francisco International Airport.
- The Commission's purpose is to formulate, evaluate, and approve goals, objectives, plans, and programs, and set policies for the Airport. It also awards contracts and leases.
- The Airport's Revenue Development and Management (RDM) manages the use and leasing activities of concessionaires and related businesses on Airport property.
- The San Francisco Administrative Code, Section 2A.173, requires that concessionaires at the Airport be chosen through a competitive solicitation and selection process.
- Contracts with anticipated revenue of \$1 million or more are subject to additional review and approval by the Board of Supervisors per the San Francisco Charter, Section 9.118(c).

Airport Commission's Involvement in Contract Award Process



 Airport staff presents before Commission to get contract award approval to proceed.

¹ The RDM director must file Form SFEC-126f2 with the Ethics Commission within 30 days of receipt of the proposal if the RFP has anticipated revenue of \$1 million or more.

² Contracts with anticipated revenue of \$1 million or more also require the Board of Supervisors' approval per the San Francisco Charter, Section 9.118. Within 5 days of contract award approval, city elective officers who approve the contract must file Form SFEC-126f4 with the Ethics Commission.

Airport's Revenue Contracts

From July 1, 2015, through August 21, 2020, the Airport Commission awarded 99 concession agreements.

Category	Number of Agreements	Year Awarded					Average Term (Years)	Minimum Annual Guarantee ^b
		2015-16	2016-17	2017-18	2018-19	2019-20		
Retail	41	3	3	12 ^a	17	6	6.9	\$57,190,905
Food and Beverage	45	14	9	4	11	7	8.6	15,015,736
Rental Car	4	0	0	0	4	0	5.0	47,166,392
Service	9	2	0	5	2	0	4.1	3,838,500
Total	99	19	12	21	34	13^c	7.3	\$123,211,533

^a One retail lease was rescinded because the owner retired and sold the business.

^b Minimum Annual Guarantee (MAG) is the minimum rent/fee the tenant is required to remit to the Airport per agreement year. Most agreements have multiyear terms. The Airport's revenue per agreement may exceed the MAG because most agreements also include a percentage rent provision.

^c Since January 1, 2019, city departments have been required to submit Form SFEC-126f2 to the Ethics Commission for any proposal with anticipated revenue of \$1 million or more. For fiscal year 2019-20, the Airport was required to submit this form for 12 of the 13 concession agreements executed and obtain the Board of Supervisors' approval.

Concession Leases Awarded Appropriately

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Preliminary Findings

- Despite Ms. Crayton's alleged assurances to Mr. Bovis, the Airport did not award the subject lease because Mr. Bovis did not ultimately submit a proposal. The subject concession lease was awarded to a bidder based on the results of the competitive solicitation process.
- Airport commissioners have no direct contact with RDM staff administering solicitations or with solicitation panelists.
- Airport commissioners are appropriately excluded from participating in the selection process for evaluation panels, and identities of evaluation panelists are kept confidential.
- A separate Controller's audit completed in July 2019 found that Airport's solicitation process complies with city and departmental rules and regulations.

Preliminary Findings

- Ms. Crayton allegedly agreed to meet during the “quiet period” with and help a potential bidder by leveraging her position and authority and did not report the improper request for preferential assistance.
- The meeting described in the complaint violated the request for proposal (RFP), prohibiting any attempt by proposer to communicate with or solicit any city elected official, Airport commissioner, and/or any other city/Airport personnel during quiet period
- Ms. Crayton should have reported the improper request for preferential assistance from a potential bidder and a city official to the City Attorney.
- Statement of Incompatible Activities (SIA) prohibits officers, including commissioners and employees from knowingly providing selective assistance to individuals/entities in a manner that confers a competitive advantage on a bidder/proposer competing for a city contract.

Improper Communication With Potential Bidder

Surveyed organizations do not involve commissioners in the solicitation process or evaluation panels' selection process. Also, they have policies to define thresholds for awarding revenue contract leases* and policies, though not always consistent, regarding prohibitions of communications with potential bidders.

Category	Airport	Rec & Park	Port	SFMTA	PUC	TJPA
Board or commission approves at contract award (and threshold)*	All concession contracts	Leases and concessions that exceed one year	Retail and maritime leases	Over \$1M (Revenue contract award & amendments)	Over \$1M or 10 or more years (Real estate leases)	Over \$1.8M or 10 or more years (Real estate & retail leases)
Written policy prohibits commission/board members from communicating with potential bidders	Yes**	No	No	Yes	No	No
Departmental SIA prohibits selective assistance	Yes	Yes	Yes	Yes	Yes	Not applicable
RFP instructs potential bidders on how they may communicate with the organization	Yes	Yes	Yes	Yes	Yes	Yes

* Pursuant to San Francisco Charter, Section 9.118, specific contracts may also require Board of Supervisors to approve contract award.

** The Airport implemented its Competitive Selection Process Communications Policy on December 19, 2020.

Recommendations

- 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.
- 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.
- 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.
- 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.
- 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.

Preliminary Findings

- The San Francisco Charter, Section 4.102, outlines the powers and duties of boards and commissions, but says very little about what commissions should not do.
- One of the main limitations is that “Each board or commission... shall deal with administrative matters solely through the department head or his or her designees, and any dictation, suggestion or interference herein prohibited on the part of any member of a board or commission shall constitute official misconduct...”
- Los Angeles County has codified director and commissioner involvement in contracts. The Los Angeles Municipal Code, Section 49.5.11, states that “except at a public meeting, a member of a City board or commission shall not participate in the development, review, evaluation, or negotiation of or the recommendation process for bids, proposals, or any other requests for the award or termination of a contract, amendment, or change order involving that board, commission, or agency...”

Recommendation

- 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.

Preliminary Findings

- To ensure transparency and further strengthen its competitive solicitation and contracting processes, the Airport has taken the following actions:
 - Added restrictions on communications by bidders and proposers during the quiet period to all RFPs and Requests for Bid (RFBs).
 - Implemented a Competitive Selection Process Communications Policy prohibiting communication with potential and actual bidders.
 - Updated guidelines to ensure evaluation panelists' names are confidential.

Recommendations

- 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.
- The Airport should implement the remaining newly proposed aspects of the department's competitive solicitation process.

Preliminary Findings

- The San Francisco Campaign and Governmental Conduct Code, Section 1.126, prohibits city contractors or affiliates from contributing to city elective officers where a contract must be approved by the city elective officer.
- Since January 1, 2019, city departments and city elective officers have been required to report when a contract has a value of \$100,000 or more per fiscal year.
 - File Form SFEC-126f2 within 30 days of receipt of the proposal.
 - File Form SFEC-126f4 within 5 business days of the approval of a contract.
- Forms SFEC-126f2 and SFEC-126f4 are submitted separately to the Ethics Commission and not in the City's financial system.
- Before a contract is awarded, departmental and commission contract approvers may not know of contractor information that could help them avoid conflicts of interest.
- To increase transparency, the City could use information elected officials must provide when filing Form SFEC-126f4, which includes the name of the bidder, its subcontractor(s), subcontractor owner(s), directors, and officers.
- Information collected through the City's financial system can facilitate awareness of entities or individuals subject to the City's competitive selection policies

Recommendations

- The City should:
 - 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.
 - Consider requiring departments to obtain this information for contracts not subject to Section 1.126(f)(4).
- To promote data-driven decisions and consistency and transparency in city contracting:
 - 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.
 - The Controller's Office should, to enable this change, improve the City's financial system to better meet departments' needs.

Completed and Upcoming Public Integrity Reporting

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. Completed, current, and future assessments and reports address the following topics:

1. [San Francisco Public Works Contracting](#) (issued on June 29, 2020)
2. [Gifts to Departments Through Non-City Organizations Lack Transparency and Create “Pay-to-Play” Risk](#) (issued on September 24, 2020)
3. [San Francisco’s Debarment Process](#) (issued on November 5, 2020)
4. [Ethical Standards for Contract Award Processes of the Airport Commission and Other Commissions and Boards](#) (issued on January 11, 2021)
5. Citywide ethics reporting requirements
6. The Department of Building Inspection’s policies and practices to award permits
7. The San Francisco Public Utilities Commission contracting process
8. A final report on the topics covered in these preliminary assessments

Additional reviews and assessments will be determined and performed as the City Attorney’s investigation proceeds.

Any questions or comments?

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