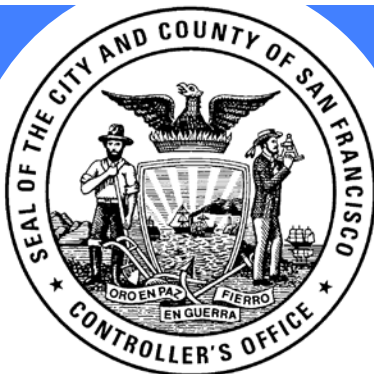


Public Integrity Review

Preliminary Assessment: San Francisco Public Works Contracting

Presentation to the Board of Supervisors
Government Audit & Oversight Committee



CITY & COUNTY OF SAN FRANCISCO

Office of the Controller

July 2, 2020

Public Integrity Review & Investigations Introduction

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- The Controller is conducting **assessments of targeted processes, procedures, and practices** within city contracting related to the Mohammed Nuru investigation. The goal is to offer recommendations to improve transparency, reduce the risk of fraud, and safeguard public funds.
- This preliminary review assesses the adequacy of the internal controls at **Public Works** over **contracting activities**, with a focus on vendor procurement methods.
- The **City Attorney** has:
 - Issued 10 subpoenas to agencies suspected of funneling donations
 - Issued 14 additional subpoenas focused on a mixed-use project at 555 Fulton Street and on Walter Wong
 - Cancelled the \$171,000 portable toilet contract tied to Nick Bovis
 - Contributed to the release of 4 city employees or officials
- From February 4 to June 12, 2020, the **Controller's Public Integrity Tip Line** received 54 tips related to this investigation.

Background on Public Works Contracting

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From July 1, 2017, through March 31, 2020, Public Works awarded **366** contracts worth **\$1.4 billion**.

| Contract Type | Number of Contracts | Percentage of Contracts | Contract Not-to-Exceed Amount | Percentage of Contract Not-to-Exceed Amount |
|--|---------------------|-------------------------|-------------------------------|---|
| Construction | 198 | 54% | \$1.2B | 86% |
| Professional services for construction | 142 | 39% | \$173M | 12% |
| Non-construction professional and general services | 7 | 2% | \$6M | 0% |
| Grants | 19 | 5% | \$24M | 2% |
| Total Contracts Awarded 7/1/17-3/31/20 | 366 | 100% | \$1.4B | 100% |

Background on Public Works Contracting *(continued)*

From July 1, 2017, through March 31, 2020, Public Works paid **\$636 million** for 366 contracts worth \$1.4 billion.

| Contracting Method | Number of Contracts | Contract Not-to-Exceed Amount | Payment Amount |
|---|---------------------|-------------------------------|-----------------|
| Formal Competitive Solicitation (Higher Value) | 298 | \$1.4B* | \$597.3M |
| Construction (non-pool) | 125 | \$1.1B | \$569.7M |
| Construction (pre-qualified pool) | 45 | \$65.9M | \$4.9M |
| Professional services for construction (non-pool) | 7 | \$21.3M | \$5.6M |
| Professional services for construction (pre-qualified pool) | 114 | \$150.7M | \$16.0M |
| Non-construction professional and general services | 7 | \$6.2M | \$1.1M |
| Informal Solicitation (Lower Value) | 26 | \$4.0M | \$2.8M |
| Construction and non-construction | 14 | \$3.9M | \$2.8M |
| Under \$10,000 | 12 | \$0.1M | \$0.07M |
| No Solicitation Required | 23 | \$28.0M | \$25.9M |
| Sole source | 2 | \$0.2M | \$0.2M |
| Emergency authority | 6 | \$3.2M | \$3.0M |
| Projects addressing homelessness | 15 | \$24.6M | \$22.7M |
| Grants | 19 | \$23.8M | \$10.0M |
| Total Contracts and Payments Remitted | 366 | \$1.4B | \$636.0M |

* Rounded

Preliminary Finding

- Public Works is not overseen by a board or commission. Also, the director of Public Works has authority to approve contracts over the threshold amount resulting in no external oversight over Public Works' Chapter 6 procurement.

Recommendation

- 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 should amend Chapter 6 to prohibit delegation to the department head for these contracting activities.

Preliminary Findings

- Public Works lacks controls over the competitive solicitation process
- 15 contracts or \$24.6 million awarded through this allowance. 11 of these contracts worth \$14 million had no discernible selection process.

Recommendation

- 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.

Preliminary Finding

- The City has no standard procedures for selecting vendors once they are in a pre-qualified contracting pool. According to Public Works, same vendors were selected repeatedly from a pre-qualified pool, at times by the direction of Mohammed Nuru. This practice presents opportunities for ethical breaches and unethical favors.

Recommendation

- The Mayor, Board, 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.

Preliminary Findings

- The only citywide guidance on the procurement process for grants awarded to nonprofit organizations is a nonbinding agreement that has no force of law to require competitive solicitation.
- Before September 2018, only two guidance were developed to help departments distinguish a grant award from a contract for goods or services.
 - 1984 City Attorney opinion
 - 1997 “Summary of Consensus”

Recommendation

- The Mayor, Board, 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.

Preliminary Findings

- Because no one entity has full oversight over procurement, the City lacks centralized monitoring to ensure procedures are performed in accordance with city law and policies.
- City departments do not fully utilize the City's centralized procurement systems.

Recommendations

- The City should close gaps in centralized monitoring of all procurement activities by strengthening and resourcing the Office of Contract Administration or some other city entity to expand its monitoring and oversight to all city procurement activities.
- 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.

Preliminary Finding

- The lack of cross-functional sharing of information at Public Works' "tone at the top", and disregard of ethics and gift laws propagated by the former director of Public Works provided the pressure, rationalization, and ability necessary to carry out the alleged schemes.

Preliminary Findings

- Loopholes in city and state restrictions in this area create avenues for unethical behavior and manipulation.
- The behind-the-scenes bid steering that allegedly occurred were difficult to detect.

Recommendations

- The Ethics Commission should:
 - Examine and close loopholes in the Campaign Code to ensure city law does not create avenues for unethical behavior in the acceptance of gifts.
 - Expediently enable and require that all Statements of Economic Interests are filed electronically by filers and conduct annual compliance. The Mayor and Board should prioritize funding and other support necessary to accomplish this goal.

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. The use of “friends of” organizations to support city operations.
2. Ethical standards for commissions’ contract approval processes at the Airport and other city commissions.
3. The City’s contractor debarment process.
4. Policies and practices to award permits at the Department of Building Inspection.

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

Any questions or comments?

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