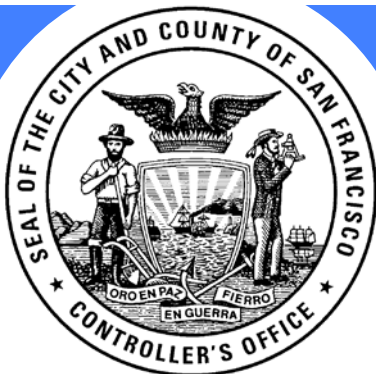


Public Integrity Review

Preliminary Assessment:

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



CITY & COUNTY OF SAN FRANCISCO

Controller's Office

January 11, 2021

Assessment Summary

This preliminary assessment summarizes ethical standards for contract award and focuses on the:

- Airport Commission (referred to here as *the Commission* and distinct from the Airport as a department; the Commission oversees the department).
- Airport's Commercial Division, Revenue Development and Management (RDM), at San Francisco International Airport. (The department is referred to here as *the Airport*).

This document also summarizes:

- The results of our survey of five city commissions/boards, including the Airport Commission, and the Transbay Joint Powers Authority (TJPA) on ethical standards.
- The role of commissions and boards in the contract award process.

More reviews of other internal control processes will be released as our Public Integrity Review progresses. 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.

Assessment Summary

Background

In 2018 then-Airport Commissioner Linda Crayton allegedly agreed to meet with and help a potential bidder, Nick Bovis, 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) instructions, which prohibit any attempt by the proposer to communicate with or solicit any city elected official, Airport commissioner, and/or any other city or Airport personnel during the quiet period, except as instructed in the RFP, with the intent to influence the outcome of the selection process or award of the lease.

Highlights: Preliminary Findings

This assessment was conducted because of the seriousness of the allegations in the federal complaint but, in contrast to our previous public integrity assessments, we found no substantial structural problems that impair the overall control environment regarding commission and boards' involvement in procurement processes. However, we do note changes that could improve these processes.

Assessment Summary

- Although the criminal complaint states that during the meeting Ms. Crayton claimed she could influence the contract award process, the Airport confirmed that commissioners have no direct contact with Revenue Development and Management staff. Also, the identities of evaluation panelists are kept confidential, so a commissioner would not have been able to influence them.
- Of surveyed city commissions/boards and the TJPA, the Airport* and the San Francisco Municipal Transportation Agency's Board of Directors have separate policies prohibiting communications with potential bidders. All of the surveyed organizations' RFPs contain instructions that prohibit potential bidders from contacting any member of the organization. Every city department has a statement of incompatible activities that applies to commissioners or directors and prohibits giving selective assistance to bidders or proposers, but none of these documents prohibits selective assistance to *potential* bidders or proposers, such as Mr. Bovis.

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

Background on the Public Integrity Investigation

The City Attorney's Office (City Attorney) is leading the investigation into alleged wrongdoing by city employees outlined in criminal charges brought by the U.S. Attorney's Office against:

- Mohammed Nuru, former director of San Francisco 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, former member of the Immigrant Rights Commission
- Balmore 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 Bill Gilmartin, officers of ProVen Management, Inc.
- Paul Giusti, former group government and community relations manager for Recology
- Harlan Kelly, Jr., former general manager of the San Francisco Public Utilities Commission

Background on the Public Integrity Investigation *(continued)*

Mr. Bovis and Mr. Wong have pled guilty to schemes to defraud the City using bribery and kickbacks. Mr. Wong admitted to conspiring with Mr. Nuru and other unnamed city officials since 2004. Both are now cooperating with the ongoing federal investigation. Also, Mr. Hernandez has pled guilty and will cooperate, and Ms. Kong has pled guilty to providing bribes to Mr. Nuru.

Beyond involving those facing criminal charges, the investigation led Tom Hui, then the director of the Department of Building Inspection, to resign in March 2020 because of evidence showing he had accepted improper gifts, violated city law by giving preferential treatment to a developer and a permit expediter, and abused his official position to help his son and his son's girlfriend obtain city jobs.

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 or policy violations.

The Criminal Complaint Against Mr. Nuru and Mr. Bovis

The FBI affidavit in support of the criminal complaint alleges that Mr. Nuru and Mr. Bovis tried to bribe Airport Commissioner Crayton in exchange for assistance in obtaining a city lease at San Francisco International Airport for a company of Mr. Bovis. The affidavit details recorded conversations between Mr. Nuru, Mr. Bovis, Ms. Crayton, confidential sources, and undercover agents at a dinner meeting discussing the possibility of Ms. Crayton securing the Airport Commission's votes to grant Lease #5 to Mr. Bovis and his investors. The affidavit alludes to the fact that Mr. Nuru and Ms. Crayton had a relationship when Mr. Bovis states she told him "Nuru has never asked her for any favors before so whatever he wants because he does a lot of things for her." According to the affidavit, 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 check to make sure the lease was not promised to others, 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 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.**

Background on the Airport Commission

The Airport Commission is the policy body that oversees San Francisco International Airport as a city department. The Airport director is the chief executive officer of the department and has full power and authority to administer the Airport's affairs.

The Commission is made up of five members appointed by the mayor to staggered four-year terms. There is no limit on the number of terms that can be served. Mayor Breed has appointed two commissioners who are serving their first term, reappointed two commissioners, and one commissioner's term expires in 2021. Under the San Francisco Charter, Section 3.100(18), the Board of Supervisors may reject mayoral appointments. Of the three long-serving Airport commissioners, each has been on the Commission for at least 14 years. Former Commissioner Crayton served from 1996 until 2020.

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 Commission may not—nor may its members—interfere with the Airport director's day-to-day management of the Airport's administrative affairs.

Airport Revenue Development and Management's Contract Award Functions

As a unit of the Airport's Commercial Division, Revenue Development and Management (RDM):

- Manages the use and leasing activities of concessionaires and related businesses on Airport property.
- Develops, implements, and administers proposals for use, bid packages, leases, permits, and other documents related to the Airport's concession property rental.
- Obtains required approvals from the Commission and Board of Supervisors for concession tenant revenue contracts.
- Is the primary contact for concession tenants.

Revenue contracts are agreements between the City and suppliers that generate income for the City. The City's financial system is not yet configured to store revenue contract information but should be. Historically, departments have used their own websites and subsystems for departmental revenue contracts.

RDM Competitive Solicitation Requirements at the Airport

The San Francisco Administrative Code, Section 2A.173, requires that concessionaires at the Airport be chosen through a competitive solicitation and selection process. According to RDM, it complies with this requirement by:

- Issuing RFPs as a standard practice to select tenants for retail and food and beverage concessions.
- Relying on its established concession program and continually seeking new concessions to maximize goods and services available to passengers. These concessions offer goods and services including:
 - Retail (shops selling items to meet travelers' needs)
 - Food and beverage
 - Rental cars
 - Services such as banking, currency exchange, and luggage carts

Also, 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).

Summary of Airport Concession Agreements *(continued)*

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

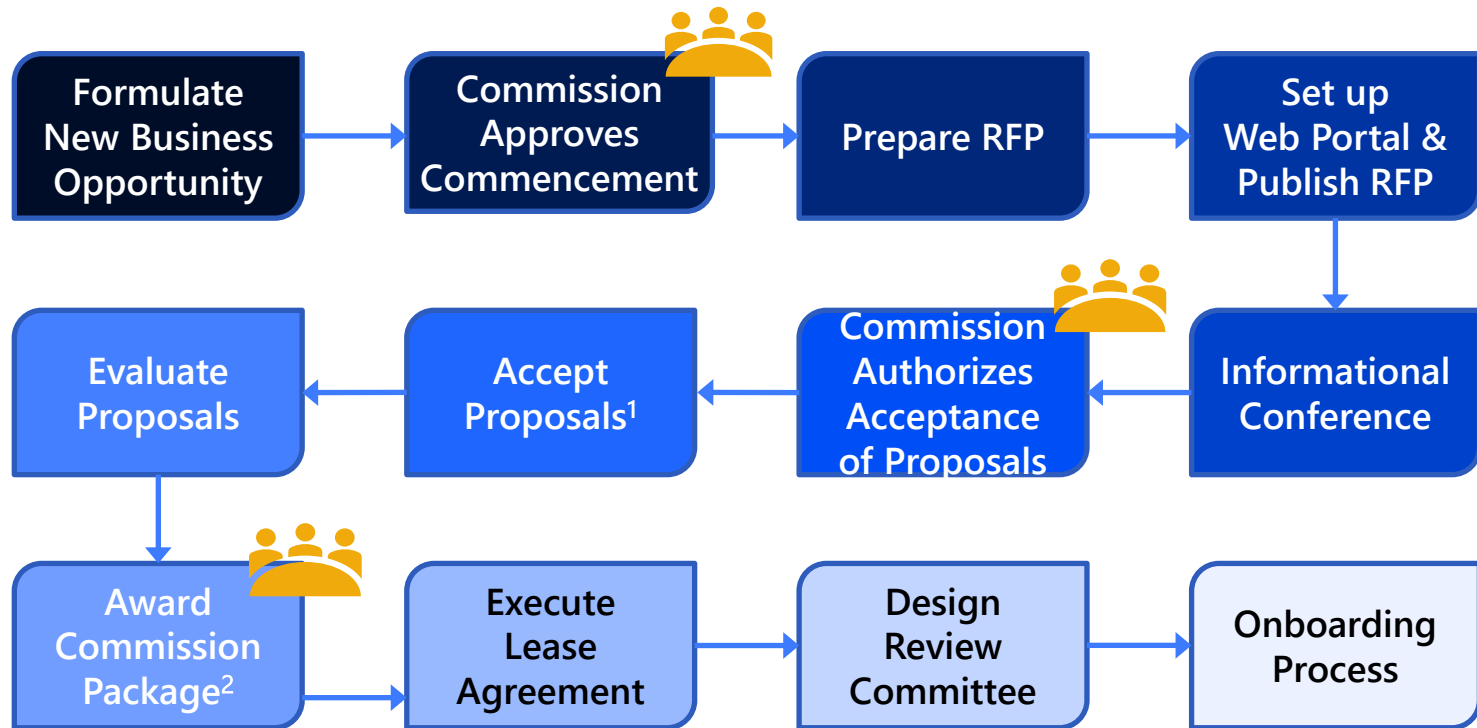
Category	Number of Agreements	Year Awarded					Average Term (Years)	Minimum Annual Guarantee ^b
		2015-16	2016-17	2017-18	2018-19	2019-20		
Retail	41	3	3	12 ^a	17	6	6.9	\$57,190,905
Food and Beverage	45	14	9	4	11	7	8.6	15,015,736
Rental Car	4	0	0	0	4	0	5.0	47,166,392
Service	9	2	0	5	2	0	4.1	3,838,500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

The Airport Commission's Involvement in RDM's 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.

The Airport Commission's Involvement in RDM's Contract Award Process *(continued)*

The Commission is notified of Airport lease solicitations from the pre-proposal stage to the final stage of lease award. According to RDM, its staff obtains Commission approval at the following decision points:

1. RFP Commencement

RDM submits a leasing opportunity package to the Commission to seek its approval to "Commence Proposal/Bid Process" for proposed terms and qualifications and to allow RDM to hold an informational conference.

2. After Informational Conference/Accept Commission Package

RDM updates the Commission on any comments and recommendations from the informational conference. The Commission then approves the final minimum qualifications and business terms and authorizes RDM to accept proposals/bids for the lease.

3. Lease Award

After evaluating the qualifying proposals/bids, RDM submits the results to the Commission to formally award the lease.

Concession Leases Awarded Based on Solicitation Results

Preliminary Finding:

Despite Ms. Crayton's alleged assurances to Mr. Bovis, the Airport did not award Lease #5 (or any other lease during this solicitation) to him—nor could it have—because Mr. Bovis did not ultimately submit a proposal. **The concession lease (Lease #5) was awarded to a bidder based on the results of the competitive solicitation process.**

Moreover, Ms. Crayton would not have had the opportunity to ensure Mr. Bovis was awarded Lease #5. According to the Airport's director of RDM, Airport commissioners have no direct contact with RDM staff administering solicitations or with solicitation panelists. Also, the identities of evaluation panelists are kept confidential, so Ms. Crayton could not have influenced them because she was not allowed to know who they were.

Concession Leases Awarded Based on Solicitation Results

(continued)

The July 2019 audit report, *The Airport Complied With Solicitation Procedures for Concession Leases but Can Better Track Small and Local Business Participation*, found that Airport's solicitation process complies with city and departmental rules and regulations. The audit:

- Assessed the competitive solicitation process used to select tenants for food and beverage and retail concession leases at the Airport.
- Concluded that the Airport properly administers the solicitation process in accordance with city policy and procedures and grants concession leases in accordance with departmental policies for food and beverage and retail concession leases.

Concession Leases Awarded Based on Solicitation Results

(continued)

Preliminary Finding:

Based on the 2019 audit and this review, Airport concession leases are awarded based on evaluation results from the competitive solicitation process.

Beyond the findings of our 2019 audit, this review found further evidence that the Airport awards concession leases based on its evaluation of proposals as part of the competitive solicitation process, including:

- From July 1, 2015, through August 21, 2020, Airport records show that the Airport Commission awarded 99 concession agreements as recommended by RDM through its competitive solicitation process and evaluation results; the Commission did not reject any of the recommended proposers RDM submitted.
- According to the Airport's former chief business and finance officer and the current RDM director, during their tenures the Commission did not reject a lease award proposed by the evaluation team based on the competitive solicitation process. *(The former chief business and finance officer held the position for 30 years. The RDM director has held that position for 13 years.)*

Evaluation Panels for Solicitations

According to the criminal complaint, confidential sources mentioned they previously had lost bids for restaurants at the Airport. Ms. Crayton allegedly stated she would have to make sure she had “everyone onboard” and would find out who would be on the selection committee.

Preliminary Finding:

Airport commissioners are appropriately excluded from participating in the selection process for evaluation panels.

- Successful proposers are selected based on final scores evaluated by the RFP evaluation panel. The panels are generally made up of other Airport division staff and may include industry professionals or staff from another airport. RDM staff selects the panelists; the Airport Commission is not involved in the selection process. According to the Airport’s former chief business and finance officer, panelists’ identities are confidential. Thus, they are not disclosed to commissioners, and only high-level details are shared about panelists’ experience. According to the commission secretary, she ensures that panelist names do not appear in the commissioners’ package.

Former Commissioner Crayton Did Not Report Improper Communications With the Potential Bidder

According to the criminal complaint, on April 4, 2018, then-Commissioner Crayton had a dinner meeting during which Mr. Nuru and Mr. Bovis sought preferential assistance to obtain a concession lease at the Airport for a business belonging to Mr. Bovis.

Preliminary Finding:

Ms. 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. According to the complaint, Ms. Crayton met with a proposer during the “quiet period” related to the RFP for the Terminal 1 food and beverage concession lease. This period, in 2018, began on January 29th, the day the RFP was issued, and ended on May 2nd, the due date for proposals. The meeting described in the complaint violated the RFP instructions, which prohibit any attempt by the proposer to communicate with or solicit any city elected official, Airport commissioner, and/or any other city or Airport personnel during the quiet period, except as instructed in the RFP, with the intent to influence the outcome of the selection process or award of the lease.

Former Commissioner Crayton Did Not Report Improper Communications With the Potential Bidder *(continued)*

Preliminary Finding *(continued)*:

According to the Airport, Mr. Bovis ultimately did not submit a proposal for the lease in question. Regardless, Ms. Crayton should have reported the improper request for preferential assistance from a potential bidder and a city official to the City Attorney. She could also have reported it to the Controller's Whistleblower Program and the Ethics Commission. The [Controller's Whistleblower Program](#) website states it will respond to specific allegations of administrative wrongdoing by city employees and those who do business with the City.

The Airport's Statement of Incompatible Activities Does Not Expressly Prohibit Ms. Crayton's Actions

Preliminary Finding:

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. The SIA prohibits officers, including commissioners, and employees from knowingly providing selective assistance to individuals or entities in a manner that confers a competitive advantage on a bidder or proposer who is competing for a city contract. As Mr. Bovis did not ultimately submit a bid, Ms. Crayton's alleged actions did not violate the SIA. Yet, these alleged actions are unethical, so should be clearly disallowed.

Departmental SIAs do not universally prohibit knowingly providing selective assistance to individuals or entities that confers a competitive advantage on a *potential* or actual bidder or proposer who competes or may compete for a city contract. To remedy this gap and to ensure the universal application of this rule, the City should codify in the San Francisco Campaign and Governmental Conduct Code some of the major SIA rules, such as those around selective assistance to potential or actual bidders or proposers.

New Airport Contracting Policies and Procedures

Preliminary Finding:

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

In response to the allegations in the federal criminal complaint and to ensure transparency and further strengthen its competitive solicitation and contracting processes, the Airport reports that it has implemented the following procedural changes:

- Added restrictions on communications by bidders and proposers during the quiet period to all RFPs and Requests for Bid (RFBs). Previously, according to the Airport, RFPs did not specifically designate a quiet period, rather a quiet period has been a longstanding practice.
- On December 19, 2020, implemented a Competitive Selection Process Communications Policy prohibiting communication with potential and actual proposers during the restricted communications period. This policy supplements the Airport's Statement of Incompatible Activities.

New Airport Contracting Policies and Procedures *(continued)*

The following are among the additional implemented processes:

- Updated solicitation documents to incorporate the new Competitive Selection Process Communications Policy.
- Added (as a witness) an employee of the Social Responsibility & Community Sustainability office to the kickoff meeting of each evaluation panel.
- Trained staff involved in all processes described above.
- Updated guidelines to ensure evaluation panelists' names are confidential and do not appear in commission memorandums, which according to the Airport, has also been a longstanding practice within RDM.

New Airport Contracting Policies and Procedures *(continued)*

The following are among the additional processes that are not yet implemented:

- Add language to Commission package memorandums about quiet periods and no contact before any RFP or RFB issuance.
- Improve screening of potential evaluation panelists by requiring panelists to sign certifications about the quiet period and the prohibition of contact with proposers.
- Have the Airport director or Commission president make a public statement about the prohibition against contacting officials or staff and the quiet period. This statement would occur during the Commission's open session when the Commission approves the commencement of an RFP or bid solicitation process.
- Require that an officer of each proposer attest in the proposer's bid or proposal that the proposer has not violated any rule of the City or Commission governing the competitive solicitation process.

Other Organizations Surveyed on Contract Award Process

We conducted a survey to compare the Airport Commission's contract award process with those of four other city commissions/boards—the Port Commission (Port), Recreation and Park Commission (Rec & Park), San Francisco Municipal Transportation Agency Board of Directors (SFMTA), and San Francisco Public Utilities Commission (PUC)—and the TJPA.

Preliminary Finding:

Similar to the Airport, other surveyed city commissions and the TJPA are not involved in the solicitation process or evaluation panels' selection process.

Category	Airport	Port	Rec & Park	SFMTA	PUC	TJPA
Commission/board involved in solicitation process or proposal evaluation?	No ¹	No ²	No ³	No	No	No

¹ Approves solicitation commencement, bid acceptance, and contract award, but is not involved in administering solicitation or solicitation process.

² Approves solicitation commencement and contract award.

³ May approve solicitation in advance if it involves new business concepts or may raise community concerns regarding park use and its impact.

Other Organizations' Thresholds and Policies

Surveyed organizations 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.

Other Organizations' Roles in the Contract Award Process

Preliminary Finding:

Surveyed organizations have policies to define thresholds for awards requiring board or commission approval. All have SIAs that apply to commissioners or directors and prohibit selective assistance, but none of the SIAs prohibit communicating with potential proposers or bidders. Only one organization has separate policies on prohibitions of communications with potential bidders. However, all organizations' RFPs prohibit potential bidders from contacting any member of the organization.

From our survey and review, we learned that:

- All surveyed organizations have policies to define thresholds for awards requiring board or commission approval. The thresholds differ but appear reasonable.
- Like the Airport Commission, no other surveyed organization reports having rejected a lease or other contract recommended by department staff for contract award approval.

Other Organizations' Roles in the Contract Award Process

(continued)

- No departmental SIA we reviewed prohibits the organization's officials or employees from communicating with potential bidders. All surveyed city departments' SIAs have the same language on selective assistance. The City should codify some major SIA provisions, including the prohibition of selective assistance to potential and actual bidders or proposers.
- Of the commissions/boards we reviewed, the Airport* and SFMTA's Board of Directors have written policies prohibiting their members from communicating with potential bidders during the RFP process through the date of contract award, but all boards and commissions should have policies that include this.
- All organizations include written communication instructions in their RFPs that prohibit potential bidders from contacting any member of the organization. However, departments' RFPs are inconsistent regarding with whom potential bidders cannot communicate. Although all the RFPs specify a quiet period during which potential bidders and department staff cannot communicate, the Port and TJPA's RFPs also prohibit bidders from contacting members of boards or commissions, consultants, and RFP evaluation panel members.

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

The City May Benefit From Codifying Limitations on Commissioner and Board Director Involvement in the Contract Award Process

The San Francisco Charter, Section 4.102, outlines the powers and duties of boards and commissions, but says very little about what boards and 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...”

In contrast, 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...”

Preliminary Finding:

The City may benefit from codifying requirements to make explicit directors’ and commissioners’ roles, including the limitations thereon, in the contract award process.

SF Campaign and Governmental Conduct Code, Section 1.126

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, a candidate for a city elective office, or a committee controlled by such an individual.

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 and requires the approval of a city elective officer.

- Departments must comply with Section 1.126(f)(2) and file Form SFEC-126f2 within 30 days of receipt of the proposal.
- City elective officers must comply with Section 1.126(f)(4) and file Form SFEC-126f4 within 5 business days of the approval of a contract.

Forms SFEC-126f2 and SFEC-126f4 are not in the City's financial system; they are submitted separately to the Ethics Commission.

* City elective officers include the assessor, city attorney, district attorney, mayor, public defender, sheriff, treasurer, and members of the Board of Supervisors

SF Charter, Section 9.118

Under the San Francisco Charter, Section 9.118, certain contracts and actions require Board of Supervisors' approval, including:

- Contracts with anticipated revenue of \$1 million or more or the modification, amendment, or termination of any such contract.
- Excluding construction contracts, contracts with a term of ten years or more, contracts requiring anticipated expenditures of \$10 million or more, or the modification of a contract with an impact of more than \$500,000.
- Leases of real property for a period of ten or more years, including options to renew, or having anticipated revenue of \$1 million or more; the modification, amendment, or termination of any covered lease.
- Any sale or other transfer of city-owned real property.

Such contracts, which may be entered into by any department, may be subject to the Campaign and Governmental Conduct Code, Section 1.126.

Ethics Forms SFEC-126f2 and SFEC-126f4

Form	Required Filers	Information Required to File
SFEC-126f2	City departments	<ul style="list-style-type: none"> • Filing information • City contract information • Contract information, including RFP number, file number, and nature of the contract • Contractor information, including contractor or subcontractor name, contractor type, and date of proposal submission • Verification signature
SFEC-126f4	City elective officers	<ul style="list-style-type: none"> • Filing information • City elective office or board • Filer's contact information • Contracting department contact • Contractor information • Contract information, including RFP number, file number, contract amount, and nature of the contract • Contract approvals • Affiliates and subcontractors, including members of the contractor's board of directors; contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; any individual or entity who has an ownership interest of 10 percent or more in the contractor; and any subcontractor listed in the bid or contract • Verification signature

Increased Sightline for Contract Approvers by Using Information on Form SFEC-126f4

Preliminary Finding:

Before a contract is awarded, departmental and commission contract approvers may not know of contractor information that could help them avoid conflicts of interest. 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.* If this information was collected when the bid proposal was submitted and through the City's financial system instead of through departmental subsystems, this information could then be distributed to contract approvers before award approval so they know who is subject to the City's competitive selection policies.

This information would increase transparency, may help avoid violations of competitive selection policies, and should facilitate the completion of Form SFEC-126f4. If sharing this information with contract approvers proves useful to help prevent conflicts of interest, the City should consider requiring that this information be obtained for other contracts and enter it in the City's financial system.

* A bidder may already be required to file this information as part of its business registration and tax filings, such as on IRS tax returns for nonprofit organizations, in Securities and Exchange Commission filings for publicly traded corporations, and in business registration filings with the State of California and the City.

Recommendations

Given the findings of our preliminary assessment, we offer the following preliminary recommendations, which we may refine as the investigation and review continue and we consider the feedback we receive in the review process.

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.**
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.**
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.**

Recommendations *(continued)*

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

Recommendations *(continued)*

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.
9. To promote data-driven decisions and consistency and transparency in city contracting:
 - 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.

Recommendations *(continued)*

10. The City should:

- 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).

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](#) (report issued on June 29, 2020)
2. [Gifts to Departments Through Non-City Organizations Lack Transparency and Create “Pay-to-Play” Risk](#) (report issued on September 24, 2020)
3. [San Francisco’s Debarment Process](#) (report issued on November 5, 2020)
4. Citywide ethics reporting requirements
5. The San Francisco Public Utilities Commission contracting process
6. The Department of Building Inspection’s policies and practices to award permits
7. 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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