

BOARD of SUPERVISORS



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 544-5227

September 15, 2005

Honorable Robert L. Dondero  
Presiding Judge  
Superior Court  
Department 206  
400 McAllister Street  
San Francisco, CA 94102

Dear Judge Dondero:

The following is a report on the 2004-2005 Civil Grand Jury Report, "What is the Difference between a Contract and a Grant?".

The Board of Supervisors' Government Audit and Oversight Committee conducted a public hearing on Monday, September 12, 2005, to discuss the findings and recommendations of the Civil Grand Jury and the responses of the Controller's Office, City Attorney's Office, and Ethics Commission to the report. Ed Harrington, Controller, and Robert Bryan, Deputy City Attorney, presented at the hearing. The Controller's Office and the City Attorney's Office will work on this matter. The Committee filed this item.

If you have questions please contact me at 554-7722.

Sincerely,

A handwritten signature in cursive script that reads "Madeleine Licavoli".

Madeleine Licavoli  
Deputy Clerk

c: Mayor's Office  
Members, Board of Supervisors  
Mary McAllister, Foreperson, Civil Grand Jury  
Gloria Young, Clerk of the Board  
John St. Croix, Ethics Commission  
Ed Harrington, Controller  
Ted Lakey, Deputy City Attorney  
Cheryl Adams, Deputy City Attorney  
Robert Bryan, Deputy City Attorney  
Gary Giubbini, Civil Grand Jury  
Kay Gulbengay, Deputy Clerk





ggiubbini@sftc.org  
08/11/2005 08:27 AM

To adele.destro@sfgov.org  
cc madelinelicavoli@sfgov.org  
bcc  
Subject Hearing Re: Grand Jury Re[ports]

Dear Adele,

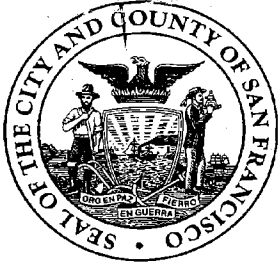
Per our conversation, this will confirm the hearing on the grand jury reports has been continued to September 12 due to the bomb threat Aug. 8 which necessitated the evacuation of the City Hall.

Pusuant to the stipulation between the committtee and the grand jury Foreperson Mary Mcallister, the Board's responses will be required not later than Friday, September 16.

Thanks for your help.

Gary





# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

July 12, 2005

EMI GUSUKUMA  
CHAIRPERSON  
WAUKEEN Q. MCCOY  
VICE-CHAIRPERSON  
MICHELE ANGLADE  
COMMISSIONER  
EILEEN HANSEN  
COMMISSIONER  
JOE LYNN  
COMMISSIONER  
JOHN ST. CROIX  
EXECUTIVE DIRECTOR

Honorable Robert Dondero  
Presiding Judge  
San Francisco Superior Court  
Department 206  
400 McAllister Street  
San Francisco, CA 94102

Dear Judge Dondero:

Re: Ethics Commission Response to the 2004-4005 Civil Grand Jury Report  
"What is the Difference Between a Contract and a Grant?" released May  
24, 2005

Pursuant to Penal Code sections 933 and 933.05, the San Francisco Ethics Commission submits the following response to the recommendation related to the Civil Grand Jury's finding that "The City's conflict of interest law (Charter 3.2220), which prohibits City officials from contracting with the City, specifically exempts grantees from this prohibition."

Recommendation 9. The Ethics Commission should recommend a Charter Amendment to the voters that would remove the exemption for grants from Charter Section 3.2220 regarding conflict of interest of public employees and officials.

Ethics Commission response:

*The Ethics Commission believes that the Civil Grand Jury meant to address section 3.222 of the San Francisco Campaign and Governmental Conduct Code ("S.F. C&GC Code"), which prohibits members of boards and commissions from contracting with the City and County of San Francisco, the San Francisco Redevelopment Agency, the San Francisco Housing Authority, the San Francisco Unified School District or the San Francisco Community College District, where the amount of the contract or subcontract exceeds \$10,000. Under subsection (a)(4), a contract is "any agreement to which the City and County is a party, other than a grant funded in whole or in part by the City and County or an agreement for employment with the City and County in exchange for salary and benefits."*

*By prohibiting members of boards and commissions of the City and County from contracting with the City and County, the ordinance sought to eliminate both actual and perceived favoritism or preferential treatment in contracting. However, the ordinance also sought to ensure that no unnecessary barriers to public service were*



*created by its enactment. See S.F. C&GC Code § 3.200(d) (formerly § 3.200(a)). Thus, the exception of “grant” in the definition of “contracts” was made after a balancing of the interest of eliminating preferential treatment and the need to get qualified persons to serve on boards and commissions took place.*

*The Civil Grand Jury has recommended that the Controller’s Office and the City Attorney’s Office conduct an analysis of grants made from City resources to determine if there is – or ought to be – any legal or functional distinction between contracts and grants. The Grand Jury has also recommended that if there is a meaningful or functional distinction between contracts and grants, the Board of Supervisors should pass legislation to define “grants” and provide for procedures for the application and award process for grants to ensure the most efficient use of public funds. The Ethics Commission supports the Grand Jury’s recommendations and will recommend the removal of the exemption of grants from section 3.222 if this change to the law would address actual or perceived favoritism or preferential treatment in the award of grants and at the same time, ensure that qualified persons are available to serve on the City’s boards and commissions.*

Please contact us if you have questions regarding the Ethics Commission’s response to the recommendation set forth in the above-cited Civil Grand Jury Report.

Sincerely,

Emi Gusukuma  
Chairperson

John St. Croix  
Executive Director

cc: Board of Supervisors  
Mayor Gavin Newsom  
Controller Ed Harrington  
City Attorney Dennis Herrera  
Civil Grand Jury

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BOARD of SUPERVISORS



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Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
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Fax No. 554-5163  
TDD/TTY No. 544-5227

May 20, 2005

The Honorable Board of Supervisors  
City and County of San Francisco  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102

SUBJECT: 2004-2005 Civil Grand Jury Report

Dear Supervisors:

**RECOMMENDATION:**

The Clerk of the Board's Office has received a report from the San Francisco Civil Grand Jury (CGJ) released on May 19, 2005:

What is the Difference Between a Contract and a Grant?

I recommend the following in accordance with San Francisco Administrative Code Section 2.10 and the California Penal Code Section 933:

1. Schedule a hearing before the Government Audits and Oversight, City Services or another Committee(s) to review and respond to the 2004-2005 Civil Grand Jury (CGJ) Report; and
2. Direct the Clerk of the Board to report to the Civil Grand Jury the Board's responses to their recommendations (Attachment A), no later than Monday, August 22, 2005, pursuant to California Penal Code Section 933.

**BACKGROUND:**

Pursuant to California Penal Code Section 933, the Board of Supervisors must respond to the recommendations outlined in the 2004-2005 Civil Grand Jury Report within 90 days of receipt of the report. In addition, Board members either called for a hearing at the Committee level, or contacted the Civil Grand Jury directly with information comments.

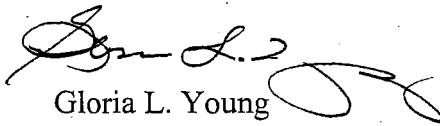
Administrative Code Section 2.10. Public Hearings – Reports Submitted by the Civil Grand Jury states that “(a) A public hearing by a committee of the Board of Supervisors shall be conducted to consider a final report of findings and recommendations that is submitted by the civil grand jury to the Board of Supervisors. The Clerk of the Board of Supervisors shall notify the current foreman of the civil grand jury and the immediate past foreman of the civil grand jury of any such hearing that is scheduled by the Board of Supervisors. (b) The Controller shall report to the



Board of Supervisors  
May 20, 2005  
Page 2

Board of Supervisors on the implementation of recommendations that pertain to fiscal matters that were considered at a public hearing. The report by the Controller shall be submitted no later than one year following the date of the public hearing.”

Respectfully,



Gloria L. Young  
Clerk of the Board

Attachment

C: Honorable Members, Board of Supervisors  
Honorable Robert Dondero, Presiding Judge (without Attachments (w/o Att.))  
Mary McAllister, Foreperson, San Francisco Civil Grand Jury (w/o Att.)  
Mayor's Office  
Ed Harrington, City Controller  
Ted Lakey, Deputy City Attorney (w/o Att.)  
Cheryl Adams, Deputy City Attorney (w/o Att.)  
Adele Destro, Assistant Clerk of the Board (w/o Att.)  
Kay Gulbengay, Deputy Clerk




CITY AND COUNTY OF SAN FRANCISCO  
GRAND JURY

OFFICE  
400 MCALLISTER ST., ROOM 008  
SAN FRANCISCO, CA 94102  
TELEPHONE: (415) 551-3605

May 19, 2005

Ms. Gloria Young  
Clerk of the Board of Supervisors  
#1 Dr. Carleton B. Goodlett Place  
City hall, Room 244  
San Francisco, CA 94102

BY  


2005 MAY 19 PM 3:00

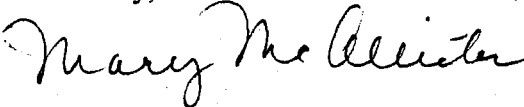
CLERK OF SUPERIOR COURT  
SAN FRANCISCO

Dear Ms. Young:

The 2004-05 San Francisco Civil Grand Jury will publish its report about grants made from City fund sources on May 24, 2005. Enclosed is an advance copy of that report. Please note that by order of Presiding Judge Robert Dondero this report is to be kept confidential until the date of release to the public.

Please respond to the findings and recommendations in this report in accordance with Section 933c of the California Penal Code\* within 90 days of the release date, by Monday, August 22, 2005. Thank you for your cooperation.

Sincerely,



Mary McAllister, Foreperson  
2004-05 San Francisco Civil Grand Jury

Enclosure

\*Departments and agencies identified in the report must respond to the Presiding Judge of the Superior Court within the number of days specified, with a copy sent to the Board of the Supervisors. As to each finding of the Grand Jury, the response must either (1) agree with the finding, or (2) disagree with it, wholly or partially, and explain why. Further as to each recommendation made by the Grand Jury, the responding party must report either (1) that the recommendation has been implemented, with a summary explanation of how it was; (2) the recommendation has not been implemented, but will be implemented in the future, with a timeframe for implementation; (3) the recommendation requires further analysis, with an explanation of the scope of that analysis and a timeframe for the officer or agency head to be prepared to discuss it (less than six months from the release of this Report); or (4) the recommendation will not be implemented because it is not warranted or reasonable, with an explanation of why that is. (Cal. Penal Code, sec. 933, 933.05)



A Report of the 2004-05 Civil Grand Jury  
For the City and County of San Francisco

## What is the Difference Between a Contract and a Grant?

Pursuant to State law, reports of the Civil Grand Jury do not identify the names or identifying information about individuals who provided information to the Civil Grand Jury.

Departments and agencies identified in the report must respond to the Presiding Judge of the Superior Court within the number of days specified, with a copy sent to the Board of the Supervisors. As to each finding of the Grand Jury, the response must either (1) agree with the finding, or (2) disagree with it, wholly or partially, and explain why. Further as to each recommendation made by the Grand Jury, the responding party must report either (1) that the recommendation has been implemented, with a summary explanation of how it was; (2) the recommendation has not been implemented, but will be implemented in the future, with a timeframe for implementation; (3) the recommendation requires further analysis, with an explanation of the scope of that analysis and a timeframe for the officer or agency head to be prepared to discuss it (less than six months from the release of this Report); or (4) the recommendation will not be implemented because it is not warranted or reasonable, with an explanation of why that is. (Cal. Penal Code, sec. 933, 933.05)





## **Summary of Recommendations**

The Controller's Office and the City's Attorney's Office should conduct an analysis of grants made from City fund sources to determine if there is—or ought to be—any legal or functional distinction between contracts and grants.

The analysis by the Controller's Office should address the question of whether or not all grants presently reported as grants to for-profit entities are properly categorized as such.

The City Attorney's Office should not approve grants to for-profit entities unless existing policies are revised to permit them. If these policies are revised, they must provide specific justification for grants to for-profit entities.

If there is a meaningful or functional distinction between contracts and grants, the Board of Supervisors should pass legislation to define grants.

Such legislation should also include procedures for the application and selection process for grants.

Such legislation should define criteria for competitively awarding grants that ensure the most efficient use of public funds. For example:

- that grantees are capable of performing the work for which the grant is awarded.
- that grantees are the most qualified applicant, capable of performing the work for the lowest price.

The process of selecting the most competitive grantee must ensure that knowledgeable City officials with no conflict of interest make these decisions transparently.

The posting on the Controller's website of contract and grant awards made to non-profits should indicate if the awarding mechanism was a contract or a grant.

The Ethics Commission should recommend a Charter Amendment to the voters that would remove an exemption for grants from Charter Section 3.2220 regarding conflict of interest of public employees and officials.

## **Introduction**

The interest of the 2004-05 Civil Grand Jury in the administration of grants originates with the Chronicle's report in August 2004 that the non-profit organization of a prominent San Franciscan, Julie Lee, was awarded a \$500,000 grant by the State of California for the purpose of building a community center in San Francisco that was never built. The Chronicle subsequently reported the results of the audit of the state grant program that made this award and concluded that oversight of such grants is inadequate.<sup>1</sup>

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<sup>1</sup> "Audit finds lax monitoring of grant funds. State parks department rebuked for lack of controls in overseeing public money," Chronicle, April 6, 2005.

The Chronicle also reported that much of this grant funding appeared to be funneled to the campaign fund of Kevin Shelley, who was then California Secretary of State.<sup>2</sup> These and related allegations eventually resulted in Kevin Shelley's resignation. Ms. Lee was indicted on 8 felony charges on April 7, 2005, in connection with these incidents.<sup>3</sup>

The City and County of San Francisco was implicated in this scandal. The City leased one of its properties to Ms. Lee's non-profit at the token cost of \$1 per year for the purpose of building the community center. Furthermore, the City had also awarded Ms. Lee's non-profit organization grants totaling \$200,000 to provide services to immigrants, although these services had not actually been provided, according to the Chronicle.<sup>4</sup>

Weeks after the Chronicle first reported this story, the 2004-05 Civil Grand Jury received a letter from a citizen alleging that this incident was just the tip of the proverbial iceberg.

"The problem I wish to bring to your attention is one of accountability to the public of the fiduciary responsibility each grantor department has, the need for transparency in the grant selection process, and the need to eliminate poor business practices which could lead to wasting the public's money or worse, fraud."<sup>5</sup>

The citizen's letter described several examples of how different City departments are administering grant programs in very different ways. These allegations were corroborated by our interviews. We were unable to corroborate allegations that specific grants are not benefiting the public (in the opinion of the citizen lodging this complaint) because we do not have the analytical resources to conduct such an investigation. We therefore write this report to recommend that appropriate City officials conduct such an investigation.

Our report will ask, but not answer, the following questions:

- What is a grant?
- How is a grant different from a contract?
- Would City funds being disbursed by the City as grants be more appropriately disbursed as contracts?

We have focused our inquiry on grants funded by the City, as opposed to those funded by the state or federal government. We do so because state and federal governments usually require that grants they award to the City be disbursed in the form of grants. In contrast, grants awarded by the City could, and perhaps should, be disbursed as contracts.

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<sup>2</sup> "Secretary of State Shelley received dubious donations. SF nonprofit that got big state grant brokered by politician is linked to sources who gave \$100,000 to his campaign," Chronicle, August 8, 2004.

<sup>3</sup> "Criminal charges against S.F. official," Chronicle, April 8, 2004/

<sup>4</sup> "Newsom calls for city audit of center. Nearly \$200,000 in grants was meant to aid immigrants," Chronicle, August 13, 2004

<sup>5</sup> Citizen's Complaint to the San Francisco Civil Grand Jury, August 23, 2004

## **Background**

The San Francisco Civil Grand Jury has had an interest in the City's contracting policies since 2001-02, when two reports were published on the subject. The first report observed, "...a lack of distinction between professional services contracts and grants—the latter having no legal requirements in the Charter or the Administrative Code."<sup>6</sup> The report explained the significance of the fact that there are no legal requirements regarding grants:

"Since there is no city legislation covering grants, there is no requirement for competitive bids for many of the nonprofit agencies (or technically, even for profit companies) providing social services to San Francisco residents. This gap contributes to widely different approaches to contracts affecting social services."<sup>7</sup>

The report recommended that, "The Board of Supervisors should enact legislation governing grants of city funds to private entities for the purpose of providing a benefit to the public."<sup>8</sup> The Board of Supervisors "...concurred in general with the CGJ report..."<sup>9</sup> However, legislation regarding grants and their administration has yet to be enacted by the Board of Supervisors.

The Supervisors created the Not-for-Profit Task Force in October 2001 in response to the recommendations of the grand jury report and it met for the first time March 28, 2002.<sup>10</sup> The recently published "Finance Guide for Nonprofit Organizations" is one of the results of the task force. This comprehensive guide is available on the Controller's website and should be helpful to non-profits in San Francisco to meet more rigorous accounting standards in their operations. However, the task force has not addressed the issue of the application and selection process or the administration of grants.

As a result of the public scandal regarding the alleged misuse of grant funds described in the Introduction of this report, the Board of Supervisors held a hearing on October 5, 2004. The Chronicle reported, "Supervisor Fiona Ma called for a hearing on how well the government oversees city grant money used by nonprofit organizations." The foreman of the 2001-02 Civil Grand Jury that issued the report regarding contracting testified at the hearing that grants made in San Francisco continue to be undefined and unregulated. Several members of the public echoed comments of this former juror about the lack of control of grants made by the City. One urged that performance audits be conducted prior to the award of grants to ensure that grantees are capable of delivering the services being funded by the grant. Once again, no legislation regarding grants resulted from this hearing.

Simultaneously, public and political pressure to change the City's contracting policies was mounting. Sole source contracting without competitive bids became more of an issue, as it was perceived to be a potential source of unnecessary cost. The political process added many new regulations intended to achieve a wide range of environmental and social goals, such as prohibiting the importation of tropical hard woods and achieving affirmative action goals.

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<sup>6</sup> "Professional Services Contracting," 2001-02 San Francisco Civil Grand Jury, page 2.

<sup>7</sup> *Ibid.*, page 4.

<sup>8</sup> *Ibid.*, page 5.

<sup>9</sup> Response to the CGJ report from the Clerk of the Board, 5/8/03

<sup>10</sup> Response to the CGJ report from Judith Blackwell, Office of Contract Administration, 5/23/03

Consequently, contracting policies and procedures became more complex and onerous for those wishing to do business with the City.

Shortly after Gavin Newsom was sworn in as mayor on January 26, 2004, the Controller's Office issued a "White Paper" regarding contracting, "From Hindering to Helping: Transforming the City's Contracting Process." This document was very critical of the City's contracting process, concluding that it had finally become so cumbersome that it was dysfunctional. For example, the "White Paper" reported that "...the estimated time between identification of the need for contractual services and actual receipt of services...can range anywhere from 16 to 89 weeks."<sup>11</sup>

The 2004-05 Civil Grand Jury believes that there is a consequence of the following observations:

- There are no regulations regarding the award and disbursement of grants.
- The requirements for contracting with the City have become increasingly burdensome.

The consequence is that **it appears that City departments are increasingly using unregulated grants as a more convenient mechanism than contracts for purchasing goods and services.**

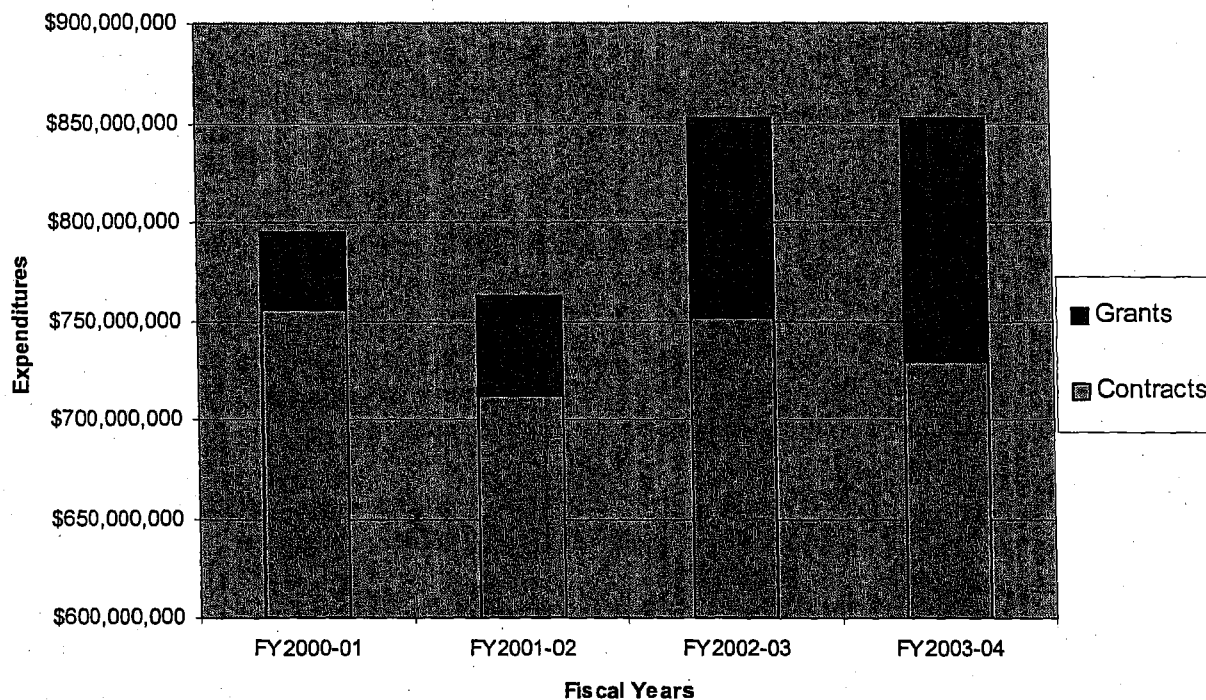
### **Grants From City Fund Sources Are Increasing**

We obtained data from the Controller's Office about the increase in grants made from City fund sources (see Appendix B). From these data, we learned that grant expenditures from City fund sources increased from 5% of combined contract and grant expenditures in FY 2000-01 to 15% in FY 2003-04.

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<sup>11</sup> "From Hindering to Helping: Transforming the City's Contracting Process," Office of the Controller, January 26, 2004.

### Contracts & Grants from City Fund Sources



Expenditures of City funds on grants increased from \$39.5 million in FY 2000-01 to \$123.7 million in FY 2003-04. During the same period contract expenditures from City fund sources decreased from \$755.7 million to \$729.3 million. Thus, the **213% increase in grant expenditures** was accompanied by a **3.5% decrease in contract** expenditures during the same period.

### Grants Are Being Awarded to For-Profit Entities

Over six percent or \$7.8 million of payments to grantees in FY 2003-04 were to for-profit entities, according to data from the Controller's Office. There may be some logical explanation for awarding grants to for-profit entities, including individuals, but we have not found one during our investigation. Absent such an explanation we believe that a contract is likely to have been a more appropriate mechanism for disbursing City funds to for-profit entities.

The list of grants we were given by the Controller's Office indicates that some grants may not have been properly categorized as grants to for-profit entities. For example, grants to the Episcopal Sanctuary, San Francisco Housing Authority, San Francisco Community College District, San Francisco Unified School District, etc. may be more properly categorized as grants to non-profits. However, there are also many individuals reported as grantees. We therefore assume that even if all grants were properly categorized, some grants are being awarded to for-profit entities.

We note that the boilerplate grant agreement (G-100) explicitly states that a grantee will be a non-profit corporation: "Grantee represents and warrants [that] ... Grantee is a nonprofit

corporation, duly organized and validly existing..."<sup>12</sup> This implies that the City also believes that grants should be awarded solely to non-profit organizations, although this is apparently not being enforced.

Furthermore, the sole Citywide legal opinion regarding grants specifically states that grantees are non-profit entities: "The non-profit recipient designs a program it wants funded and applies to a special grant-giving/planning department of the City...for funding."<sup>13</sup>

### **City Policies Governing Grants**

As noted earlier, neither the Administrative Codes nor the City Charter contain any information about grants, except as exemptions from requirements for contracts. (See Appendix C) Seeking information regarding grants from City officials, we eventually unearthed the Citywide document that first defined grants. This document takes the form of a legal opinion of the City Attorney regarding the jurisdiction of the Civil Service Commission over grants.<sup>14</sup> This document, which is over 20 years old, defines the purpose of a grant as:

"...for the rendition of services or the provision of facilities to, for or on behalf of individuals in the community rather than the governmental entity..."

We do not find that this definition of purpose makes any meaningful distinction between a contract and a grant. We would like to believe that all goods and services purchased by the City, whether by contract or grant, ultimately provide service to the community rather than to the governmental entity and that many provide service directly to the community. For example, the social worker employed by the City, who provides social services directly to his/her clients, is obviously providing service to the community rather than to the governmental entity.

The City Attorney's opinion of 1984, was subsequently interpreted by an agreement between the City Attorney's Office, Controller's Office, Human Resources Department, and Purchasing<sup>15</sup> Department in 1997.<sup>16</sup> This agreement specifies that grants may not be awarded for the purpose of purchasing services that have at any time been performed by employees of the "Department or Commission."<sup>17</sup>

In practice, we find no meaningful distinction between services provided by a private organization and those provided by City employees. Some grants may meet the criterion of the 1997 agreement referenced above. Many of those of which we are aware do not appear to meet such criterion.

For example, when the City awards grants to non-profit agencies to provide service to youth in the juvenile justice system in San Francisco, it is not clear how such service is different from the

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<sup>12</sup> G-100 (12-04), page 9

<sup>13</sup> Opinion No. 84-29, Civil Service Commission Jurisdiction over Grant Funded Programs, Burk Delventhal and Mara Rosales, Deputy City Attorneys, November 27, 1984.

<sup>14</sup> Ibid.

<sup>15</sup> Now called Office of Contract Administration

<sup>16</sup> "Summary of Consensus Reached in July 1997 re Grant Agreements"

<sup>17</sup> The agreement does not specify which "Department or Commission."

services of a probation officer that is an employee of the City. As we have learned in an earlier investigation of the 2004-05 Civil Grand Jury,<sup>18</sup> juvenile probation officers believe they are more qualified to provide such services.

Since all grants are exempt from review of the Civil Service Commission, there is no public review of the “scope of service” of a grant. The Civil Service Commission reviews the “scope of service” of contracts to establish that a City employee cannot provide the services. This review also requires notification of the relevant bargaining agents of City employees, ensuring that they are aware of the services provided by private organizations. The bargaining agents have the right to appeal the determination of the Civil Service Commission on the grounds that City employees can render the services for which the contract is being made.

### **Administration of Grants vs. Contracts**

We cannot generalize about the administration of grants because the City’s Charter and Administrative Codes provide no guidance to City departments, which make these awards. The City Attorney has developed a boilerplate agreement (G-100 form) for departments to use. Some departments told us they use this form. Others said they adapted the form to their needs and still others said they developed their own form. The G-100 form contains many of the same requirements as other contractual agreements with the City, such as:

- Grantee must maintain insurance
- Grantee is subject to the City’s Sunshine Ordinance
- Grantee is subject to the City’s non-discrimination laws
- Grantee may not use tropical hardwoods
- Grantee must observe the City’s minimum compensation law

One section of the G-100 form (Section 6.7) specifically designates a grantee as a contractor: “Grantee acknowledges and agrees that it is a ‘contractor’ under and is subject to San Francisco Administrative Code 21.35.” Representatives of the City Attorney’s Office as well as contracting agents in City departments expressed their opinion that there is no legal or functional distinction between a grant and a contract. Some representatives of City departments acknowledged that the granting mechanism is preferred to the contracting mechanism because grants are awarded more quickly and easily.

The Controller’s Office conducts post-transaction audits of both contracts and grants, sampling from their data on an equal basis. Such audits theoretically confirm that transactions conform to agreements and that they are supported by budgetary authority. These audits would not reveal if a grant were an appropriate mechanism for making the expenditure.

The Controller’s Office reports both contract and grant awards to non-profits on its website quarterly. However, the reporting does not indicate if the award was made in the form of a grant or a contract. We believe that such reporting would improve compliance with existing City policies governing the use of the grant mechanism by making grants more transparent.

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<sup>18</sup> “A New Chief of the Juvenile Probation Department: An Opportunity for Reform,” 2004-05 Civil Grand Jury, May 10, 2005

## **Application and Selection Process for Grants**

We therefore conclude that the administration of a grant after its award is apparently similar to the administration of a contract. It is primarily the pre-award process of a grant that is distinct from a contract. Again, we cannot generalize about the award process because there is no Citywide policy. However, there are no requirements that departments publicize grant opportunities that would be the equivalent of a request for proposal, inviting private entities to bid on contracts with the City.<sup>19</sup>

Publicizing grant opportunities is more likely to produce multiple applicants, which in turn ensures competition. Absent such competition, taxpayers cannot be assured that they are purchasing the best quality services at the lowest price. The Citywide legal opinion, to which we have referred earlier, explicitly states that price is not an important factor in the award of a grant: "...price or estimated cost of project plays a small role in selection of recipient..."<sup>20</sup> To the extent that multiple applicants are not competing for grants, they become the equivalent of sole source contracts. Sole source contracts can increase costs unnecessarily.

Furthermore, there is no explicit selection process comparable to the complex process that is defined by Administrative Codes to award contracts. The public therefore does not know who or what entity selects grantees from a pool of applicants or what criteria are used to make that selection.

The City's conflict of interest laws prohibit City officials from contracting with the City.<sup>21</sup> Both grants (whether to for-profits or non-profits) and contracts with non-profits are exempt from this Charter provision. (Weaker standards are provided by state conflict of interest laws, which require grantees and members of non-profits to recuse themselves from specific decisions directly benefiting them.) We find this exemption alarming in view of the substantial increase in the number of grants and the evidence that grants are being awarded to for-profit entities. If grants continue to be awarded to for-profit entities in the future, we believe that this exemption is inappropriate and should be revised by the voters of San Francisco upon recommendation of the Ethics Commission.

In addition to a completely decentralized and unspecified selection process, the approval process for grant awards is a much-abbreviated version of the approval of contracts. The approval requirements for contracts are complex and vary by type and size of the contract. We will generalize here that many contracts require the approval of the Civil Service Commission, the Human Rights Commission, the Office of Contract Administration, and the City Attorney.

In contrast, grants require only the approval of the City Attorney "as to form." According to the Controller's "White Paper" of January 2004, the role that the City Attorney's Office plays in approval of contracts varies considerably from one contract to another and is not well defined. We assume this observation applies equally to the role of the City Attorney's Office in the

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<sup>19</sup> The "Summary of Consensus Reached in July 1997 re Grant Agreements" states, "The grantee must be selected through a grant application and award process." However, it does not define this process.

<sup>20</sup> Ibid.

<sup>21</sup> Charter 3.2220



approval of grants, since the deputy city attorneys with whom we spoke told us that there is no legal distinction between the two mechanisms for buying goods and services for the City.

### **An Example: The Department of Aging & Adult Services**

The Controller's Office recently published a performance audit of the "contracting" practices of the Department of Aging & Adult Services (DAAS) "to determine whether DAAS is effectively managing the process of providing services to seniors and adults with disabilities through granting Federal, State and local funds to community and non-profit organizations."<sup>22</sup> The results of this audit are:

"The overall audit conclusions are that improvements are needed in the way the Department of Aging and Adult Services researches the needs of seniors and adults with disabilities, prioritizes and allocates it [sic] funding, conducts its grant award processes and monitors the performance of its community-based contractors."<sup>23</sup>

Although the audit report consistently refers to "contracting" procedures, we have confirmed that DAAS awards grants to purchase services for seniors and disabled adults. According to the Controller's Office, grant payments totaling over \$12.5 million were awarded by DAAS from City fund sources in FY 2003-04.

Monitoring of performance of grantees was appallingly poor, according to the audit. Since we are not in a position to compare monitoring practices of grants with those of contracts, we will not describe those inadequacies. It is conceivable that monitoring would have been inadequate in either case. Although this is a matter of some concern, it is outside the scope of this report.

However, the process used by DAAS to select grantees is immediately relevant to this report. The audit found that selection criteria were developed by DAAS, but not reported to bidders in advance, nor were they actually used in the selection process. Of the 5 established selection criteria, 4 were not followed. One of the criterion required a minimum score of 70 points for funding. Sixteen grants were awarded to applicants receiving less than 70 points. Four applicants did not receive funding although they scored more points than those that were awarded grants. One of the organizations scoring below 70 points that was awarded a grant for approximately \$109,000 was subsequently unable to provide the services and was de-funded.

The only criterion that was followed in the awarding process was non-competitive in the sense that it gave preference to organizations that had received grants in the past, even though their scores were lower than those of other applicants.

The audit determined that the explanation for these apparently inappropriate awards was the lobbying of the organizations that received grants: "Both the Department and the Commission appeared to have been influenced by advocacy efforts and special considerations were given to

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<sup>22</sup> "Department of Aging & Adult Services: The Department Needs to Improve Its Needs Assessment and Contracting Processes to Better Serve Seniors & Adults with Disabilities," Office of the Controller, City Services Auditor, May 2, 2005

<sup>23</sup> Ibid., Cover letter, page 2.

certain bidders that were not analyzed for accuracy and applied equally to all bidders within the service categories.”<sup>24</sup>

It is reasonable to assume that the City’s funds were not used optimally in the award of these grants. Seniors and adults with disabilities were probably not served as well as they might have been if competitive procedures had been used to make the grant awards.

Although we cannot say with certainty that the outcome would have been different if a contracting mechanism had been used, we assume that the more rigorous approval process for contracts might have prevented inappropriate awards from being made by a Commission that is directly subject to political pressure.

### **In Conclusion**

As in all public policy decisions, there are advantages and disadvantages to using the grant mechanism as a substitute for contracts. We do not assume that the citizens of San Francisco would be better served by subjecting all grants to the same rigorous process used to award contracts. As the Controller’s Office observed in the “White Paper” of January 2004, there is considerable evidence that the contractual process is no longer functional and that “The solution to the City’s contracting problems is not to heap additional controls onto an already burdensome process.”<sup>25</sup> Clearly, the Controller’s Office would not support the application of current contracting requirements to grants.

However, the absence of guidance to departments regarding the appropriate use of grants invites abuse. Available evidence indicates that the grant mechanism is being used as a means of circumventing the difficult and lengthy process of awarding contracts. The Board of Supervisors has been aware of this lack of guidance for several years and they have recently witnessed the embarrassing and costly consequences of inadequate monitoring of grants in the incident involving Julie Lee. It is time to define the difference between a grant and a contract and to develop Citywide procedures for departments to follow in the awarding of grants. These procedures must ensure multiple applicants and a selection process that awards grants to the most cost-effective provider of services.

Although it is outside the scope of our investigation, we note that the extreme complexity of the contracting process in San Francisco is the probable, underlying cause of this apparent retreat into grants. To the extent that the contracting process can be improved, we would expect the grant process to be more appropriately used. We therefore urge City officials to continue to scrutinize the contracting process for opportunities to make it more efficient.

### **Findings and Recommendations**

#### **Findings**

1. The recent indictment of a prominent San Franciscan for alleged misuse of grant funds illustrates the potential for fraud and abuse of public funds in the awarding of grants.

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<sup>24</sup> *Ibid.*, page 41

<sup>25</sup> “From Hindering to Helping: Transforming the City’s Contracting Process,” Office of the Controller, January 26, 2004, page 1.

2. There are no apparent legal or functional differences between contracts and grants.
3. As contracting procedures have become more cumbersome, the granting mechanism for purchasing goods and services has been used increasingly.
4. There are no Citywide rules and regulations regarding the awarding of grants. Therefore, procedures vary from one City department to another.
5. Grants are apparently being awarded to for-profit entities, in violation of existing policies regarding grants.
6. The procedures being used to award grants do not ensure on a Citywide basis adequate competition amongst potential applicants because they do not require publication of opportunities to compete for grants. Inadequate competition can increase price unnecessarily.
7. The procedures being used to select grantees from amongst applicants do not ensure on a Citywide basis that grantees are capable of performing the services being purchased, or that the grantee is the most competitive with respect to quality and price.
8. The City's conflict of interest law (Charter 3.2220), which prohibits City officials from contracting with the City, specifically exempts grantees from this prohibition.

#### **Recommendations**

1. The Controller's Office and the City Attorney's Office should conduct an analysis of grants made from City fund sources to determine if there is—or ought to be—any legal or functional distinction between contracts and grants.
2. The analysis by the Controller's Office should address the question of whether or not all grants presently reported as grants to for-profit entities are properly categorized as such.
3. The City Attorney's Office should not approve grants to for-profit entities unless existing policies are revised to permit them. If these policies are revised, they must provide specific justification for grants to for-profit entities.
4. If there is a meaningful or functional distinction between contracts and grants, the Board of Supervisors should pass legislation to define grants.
5. Such legislation should include Citywide procedures for the application and award process for grants.
6. Such legislation should define criteria for competitively awarding grants that ensure the most efficient use of public funds. For example:
  - That grantees are capable of performing the work for which the grant is awarded.

- That grantees are the most qualified applicant, capable of performing the work for the lowest price.
7. The process of selecting the most competitive grantee must ensure that knowledgeable City officials with no conflict of interest make these decisions transparently.
  8. The posting of contract and grant awards to non-profits on the Controller's website, should indicate if the awarding mechanism was a contract or a grant.
  9. The Ethics Commission should recommend a Charter Amendment to the voters that would remove an exemption for grants from Charter Section 3.2220 regarding conflict of interest of public employees and officials

**Required Responses (Please respond to those Findings and Recommendations within your jurisdiction.)**

Board of Supervisors – 90 days

City Attorney – 60 days

Controller's Office – 60 days

Ethics Commission – 60 days

## Appendix A

### Investigative Scope and Process

#### Documents

Boilerplate grant agreement, G-100 (12-04)  
Citizen's Complaint to the San Francisco Civil Grand Jury, August 23, 2004  
"From Hindering to Helping: Transforming the City's Contracting Process," Office of the Controller, January 26, 2004.  
"Department of Aging & Adult Services: The Department Needs to Improve Its Needs Assessment and Contracting Processes to Better Serve Seniors & Adults with Disabilities," Office of the Controller, City Services Auditor, May 2, 2005  
Opinion No. 84-29, Civil Service Commission Jurisdiction over Grant Funded Programs, Burk Delventhal and Mara Rosales, Deputy City Attorneys, November 27, 1984.  
"Professional Services Contracting," 2001-02 San Francisco Civil Grand Jury  
Reports of Not-For-Profit Task Force  
Reports of Grant Expenditures, FY 2000-01 to FY 2003-04  
Responses to the CGJ report of 2001-02  
San Francisco Administrative Codes  
San Francisco City Charter  
"Summary of Consensus Reached in July 1997 re Grant Agreements"

#### Press

"Audit finds lax monitoring of grant funds. State parks department rebuked for lack of controls in overseeing public money," Chronicle, April 6, 2005.  
"Criminal charges against S.F. official," Chronicle, April 8, 2004/  
"Newsom calls for city audit of center. Nearly \$200,000 in grants was meant to aid immigrants," Chronicle, August 13, 2004  
"Secretary of State Shelley received dubious donations. SF nonprofit that got big state grant brokered by politician is linked to sources who gave \$100,000 to his campaign," Chronicle, August 8, 2004.  
"The nonprofit gold rush," Bay Guardian, March 9, 2005.

#### Interviews with representatives of

Board of Supervisors  
Budget Analyst  
City Attorney's Office  
City departments  
Controller's Office  
Office of Contract Administration  
Unions representing City employees

## Appendix B

Contracts and Grants awarded by City/County of San Francisco from City funds***									
	FY2003-04**				FY2000-2001**				
	To Non-Profits		To For-Profits		To Non-Profits		To For-Profits		
Contracts from:	Count	Amount	Count	Amount	Count	Amount	Count	Amount	
General Funds	252	130,226,107	1001	72,927,082	473	194,386,696	1309	76,346,547	
Other CCSF sources	96	20,639,675	1165	505,486,784	185	45,412,983	1377	439,509,790	
<b>Total</b>	<b>348</b>	<b>150,865,783</b>	<b>2166</b>	<b>578,413,866</b>	<b>658</b>	<b>239,799,678</b>	<b>2686</b>	<b>515,856,336</b>	
Percent Change from FY01 to FY04	-47.11%	-37.09%	-19.36%	12.13%					
Grants from:									
General Funds	575	82,390,279	58	3,487,819	318	22,411,584	28	822,767	
Other CCSF sources	277	33,502,845	122	4,328,392	158	15,380,214	16	870,049	
<b>Total</b>	<b>852</b>	<b>115,893,124</b>	<b>180</b>	<b>7,816,210</b>	<b>476</b>	<b>37,791,798</b>	<b>44</b>	<b>1,692,816</b>	
Percent Change from FY01 to FY04	78.99%	206.66%	309.09%	361.73%					
** Payments									
***Source: Office of the Controller @ 12/28/04									

Summary	Comments	
Charter	There are no references to grants in the Charter.	
Admin. Code		
Sec. 10.170-1	Grants must be approved by the Board. Recurring grants shall be included in the annual budget submission. Indirect cost rate approved by Controller.	Controller responsibility for IC rates.
Sec. 10.170-2	Agencies, commissions, etc., that receive grants shall notify the Controller who shall keep accounts of grants.	Controller responsibility for grant accounting.
Sec. 12D.A.5 HRC-M/W/LBE Utilization-Definition of "Contract"	Contracts are any agreement between an entity and the City to provide or procure labor, materials, equipment, supplies or services to, for or on behalf of the City. A contract shall include an agreement between the City and a person or nonprofit entity to perform construction-related services or fund the performance of such services. A "contract" does not include awards made by the City with federal/state grant or City general fund monies to a nonprofit entity where the City offers assistance, guidance, or supervision on a project or program and the recipient of the grant uses the grant monies to provide services to the community.	Grants provided to nonprofit organizations for professional services are not "contracts" and not under HRC purview for M/W/LBE utilization.
Sec. 12P-2 HRC-MCO Definitions	"Contracts" shall include subcontracts and agreements such as grant agreements pursuant to which agreements the City grants funds to a contractor for services to be rendered to the public rather than to City government. Grant agreements are not "contracts" when they are with entities having fewer than 20 employees and nonprofit corporations with grant agreements under \$50,000, or when terms of a grant agreement require less than minimum compensation, or when maintenance of current level of services would require supplementing the grant with general fund revenues.	(note: HRC cannot certify NPs as M/W/LBE because there is no "ownership").  Unlike M/W/LBE above, HRC defines grant agreements as contracts (with exceptions) for purposes of MCO. MCO is applied to nonprofit contractors with over 20 employees and with contracts over \$50,000.
Sec. 12Q.2.4 HRC-HCOA Definitions	"Contracts" shall mean an agreement between a Contracting Department and any entity for services to be performed at the expense of the City. "Contract" does not include agreements that require expenditure of grant funds awarded to the City by another entity. If contract is funded by grant and non-grant funds the entire contract is exempt (except when grant funded portion is severable and only that part is exempt).	Contracts do not include agreements funded by grants from outside the City. Therefore, HCOA would not apply to many contracts with many nonprofit organizations.
Sec. 21.02 Acquisition of Commodities and Services - Definitions	"Contractor" means any entity, which enters into a contract to sell commodities or services to the City.	"Contractor" includes providers of all commodities and services selling to the City. This does not include nonprofits providing services to the public.
	"Professional Services" are services requiring extended analysis, exercise of discretion and independent judgment, and/or application of advanced, specialized knowledge, expertise or training usually acquired through prolonged course of study or equivalent experience. Examples: architects, engineers, accountants, software developers, consultants.	This definition describes traditional professional disciplines and does not include nonprofit organizations providing services.
	"General Services" are not professional services: examples are janitorial, security guard, pest control, parking lot attendant, landscaping services.	
	"Services" means Professional Service and General Services. "Services" does not include agreements making a grant of City funds to private entities for the purpose of providing a benefit to the public, which may include incidental purchases of commodities, legal and litigation related services, service related to employee benefits provided by or through DHR or the Retirement Board.	This definition separates the professional services described above and excludes those services provided by a nonprofit organization receiving a grant and serving the public.

