



City and County of San Francisco

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Policy [February 7, 2023]:

Policy and Procedures regarding City Nonprofit Supplier Compliance with California Attorney General Registry of Charitable Trusts

Executive Summary

Notice to City Nonprofit Suppliers of City Policy:

- Beginning February 7, 2023, the City Administrator's Office and Controller's Office will contact City Nonprofit Suppliers that do not have current status with the California Attorney General ("State AG") Registry of Charitable Trusts (the "Registry"). This notice will include each City Nonprofit Supplier with a status of delinquent, suspended, or revoked on the Registry.
- The State AG has indicated to the City that it will work with City Nonprofit Suppliers attempting to comply with the Registry's requirements. Delinquent City Nonprofit Suppliers may contact the Registry at: <https://oag.ca.gov/charities/contacts/delinquency>.
 - City Nonprofit Suppliers who have attempted to cure and are at risk of losing City funding may be referred to a specific contact at the State AG with questions about the status of their filings (departments may provide contact to suppliers as relevant).
 - City Nonprofit Suppliers who have attempted to cure and are at risk of losing City funding may request that the Registry provide them with temporary probation status to allow them to continue operating while in the process of curing their noncompliance.

Nonprofits with Existing City Contracts and State AG Registry Status of Suspended or Revoked:

- The City may not enter into any new contracts or grants, or amend existing contracts or grants, with nonprofit suppliers that are not in current or probationary status with the State AG, including those in suspended or revoked status. Additionally, in cases where a City department has established a fiscal sponsorship relationship between a Prime Contractor/Grantee and a subcontractor/subgrantee, the department will treat those nonprofits the same as a City Nonprofit Supplier under this policy, and the City may not enter into new contracts, grants or amendments if the subcontractor/subgrantee is in suspended or revoked status.
- For existing contracts with City Nonprofit Suppliers in suspended or revoked status, and for contracts where the City has established a fiscal sponsorship arrangement with a subcontractor in suspended or revoked status, departments shall determine, in consultation with the City Attorney and Controller, the proper escalation path for a contract or grant award agreement based on the particular status and impacts of the contract/grant, including operational and public service impacts.

- Escalation options include immediate termination, a plan to transfer some or all contracted services to another provider, or, if the City Nonprofit Supplier has a confirmed plan in place with the Registry to cure the suspension or revocation, the department may afford the nonprofit more time to comply.
- The City will make payments to City Nonprofit Suppliers for services as per contract and purchase order terms for a limited period (consistent with the timeframes set forth below for next steps) to allow services to continue while the City evaluates the reason for the suspension or revocation and to determine whether the nonprofit can regain current status on the Registry.
- **Next Steps:** Departments must develop transition plans within 30 days of the issuance of this policy, and all contracts with suspended or revoked nonprofit suppliers must be terminated by departments as soon as possible, and no later than June 30, 2023.

Nonprofits with Existing City Contracts and State AG Registry Status of Delinquent:

- Nonprofits must remedy noncompliance status by June 30, 2023.
- The City will pay City Nonprofit Suppliers for services under the contract, including new Purchase Orders authorizing spending under the contract, through June 30, 2023.
- Any necessary amendments to existing agreements must comply with requirements for new contracts and grants (see below).
- **Next Steps:** The City will initiate noticing of nonprofits as of February 7, 2023 (as provided above), and nonprofits in delinquent status must cure that status (meaning it has “current” status with the Registry) by or before June 30, 2023.

New City Contracts with Nonprofits with Registry Status of Delinquent, Suspended or Revoked:

- For all new solicitations, agreements and/or amendments to existing agreements, the nonprofit supplier must attest – as required under a new clause to be included in all City contracts – that it has “current” or “probationary” status with the Registry and that it will immediately notify the City if it becomes delinquent, suspended, or revoked.
- Departments must include notice of compliance requirements in all new solicitations, and agreements will require each nonprofit supplier to represent that it is in compliance with the Registry requirements and will remain so for the term of the agreement.
- City departments must confirm a nonprofit supplier is in “current” or “probationary” status by searching the State AG Registry before submitting contract materials to the City Attorney for approval as to form, for every contract with that nonprofit supplier.
- **Next Steps:** Updated contract compliance provisions will be included in the City’s standard contract terms and conditions as of March 1, 2023 and be required for all departments to use for new solicitations issued after that date, as well as any amendments to existing contracts beginning March 1, 2023.

Updates to City Policy

- Through the coming fiscal year, the City will assess the time required to remedy a delinquent status, explore nonprofits’ reasons for noncompliance, and establish any necessary operational procedures for monitoring and appropriate escalation, consistent with this policy.
- By November 2023, the Controller’s Office will conduct a review of State AG compliance status for City Nonprofit Suppliers with existing agreements and publicly report findings of that review.
- **Next Steps:** The policy is subject to modification as discussions with the State AG evolve.

Policy [February 7, 2023]:

Policy and Procedures regarding City Nonprofit Supplier Compliance with California Attorney General Registry of Charitable Trusts

I. Overview

The California Attorney General’s website notes that every charitable corporation, unincorporated association, charitable trustee and other legal entities holding property for charitable purposes, must register with the Attorney General, as required under Government Code section 12585. Initial registration and annual renewal reporting also apply to all foreign charitable organizations (i.e., corporations formed under the laws of other states) doing business or holding property in California for charitable purposes. Doing business in California includes active solicitation, such as soliciting donations in California by mail, by advertisements in publications, applying for grants from public agencies, or by any other means of targeting California residents for donations. Other examples of doing business in California include engaging in any of the following activities: holding meetings of the board of directors or corporate members in California, maintaining an office in California, having officers or employees who perform work in California, and/or conducting charitable programs in California.

Accordingly, nonprofit organizations, suppliers and grantees, must comply with all filings required by the State Attorney General (AG) Registry of Charitable Trusts to operate and do business in California. The following policy and guidance outline the processes the City and County of San Francisco (City) departments will use to ensure the City’s nonprofit suppliers, including both contractors and subcontractors, as well as grantees and subgrantees, comply with State law. The policy and guidance establish the steps for current nonprofit suppliers that are not in good standing with the State AG’s Registry to come into and sustain their compliance, as well as the process to ensure compliance for any new agreements and/or amendments with nonprofit suppliers entered into by the City.

City suppliers with State AG statuses of Delinquent, Suspended, or Revoked will be subject to the compliance procedures outlined below.

II. City Nonprofit Suppliers in Revoked or Suspended Status with Existing Agreements in Fiscal Year 2022-2023 (FY22-23)

As nonprofit organizations, suppliers and grantees are required to be in compliance with all filings to the State Attorney General (AG) Charity Registry in order to operate and do business in California. The City is not authorized to continue to do business with any City nonprofit supplier in Suspended, Revoked or Delinquent status on the State AG Registry. Additionally, in cases where a City department has established a fiscal sponsorship relationship between a Prime Contractor/Grantee and a subcontractor/subgrantee, the City may not continue to do business with any subcontractor/subgrantee in Suspended, Revoked or Delinquent status. Through this policy, it is the intention of the City to terminate contracts, grants, and fiscal sponsorship arrangements with nonprofits in Revoked or Suspended status.

The Controller’s Office has developed a list of City Nonprofit Suppliers with FY22-23 contracts with the City who are in Revoked or Suspended status. However, it could create significant disruption to client services and may harm or disadvantage individuals receiving services to terminate such contracts immediately.

The following section outlines the policy and procedures for any City Nonprofit Suppliers in Revoked or Suspended status that have existing contracts or grant agreements in FY22-23. The following section also applies in cases where the City has established a fiscal sponsorship arrangement between a Prime Contractor or Grantee and a Subcontractor or Subgrantee that is in Revoked or Suspended status.

- a. Beginning February 7, 2023, the City Administrator and Controller's Office will initiate notification of all Revoked and Suspended suppliers and relevant Contracting Departments of their status.
- b. For City Nonprofit Suppliers in Revoked and Suspended status, Contracting Departments with existing agreements and existing purchase orders may continue to issue payments to the supplier for services rendered. However, no new contracts, grants and/or new amendments may be established by any Contracting Department until the supplier's status has been remedied to "Current" or "Probationary" status. Additionally, for City Nonprofit Suppliers in Revoked and Suspended status, no new purchase orders may be issued off of existing contracts until the supplier's status has changed to a "Current" or "Probationary" status, as determined by and reflected on the State AG's website.
- c. Contracting Departments with an active contract, grant agreement and/or purchase order with a City nonprofit supplier in Revoked or Suspended status should work with their Deputy City Attorney to determine the appropriate escalation path for each contract or grant agreement based on the conditions of the services being delivered. Escalation paths may include:
 - i. Immediate communication to the nonprofit to terminate services, if this is appropriate based on the Contracting Department and City Attorney assessment of the contract.
 1. The Contracting Department should immediately notify the nonprofit to cease any new service delivery. The nonprofit will be paid for any services rendered up to that notification.
 - ii. Development of a plan to transfer services to an alternate City Nonprofit Supplier in "Current" status with the State AG within a reasonable timeframe.
 1. Transition plans should ensure continuity of services without undue disruption to individuals served while balancing the need to comply with State law.
 2. Contracting Departments must clearly notify the nonprofit in Revoked or Suspended status as to when they should cease service delivery as part of the transition plan. The nonprofit will receive payment for any service rendered in alignment with this notification.
 3. Contracting Departments must adopt a transition plan in consultation with their Deputy City Attorney and the Controller's Office within 30 days of the issuance of this policy. All transition plans must be fully implemented (i.e., services transferred and the existing contract with the City Nonprofit Supplier in Revoked or Suspended status terminated) as soon as is feasible per the circumstances of the contract, and no later than June 30, 2023.
 - iii. Development of an action plan for the City Nonprofit Supplier to remedy its status with the State AG.
 1. The Contracting Department and Deputy City Attorney should assess the likelihood of a nonprofit's ability to remedy its Suspended or Revoked status by June 30, 2023 prior to choosing this escalation path. No new purchase orders may be issued for this supplier until its status has been remedied.

- d. To support future contracting with these nonprofits, the Controller's Office may provide technical assistance via the Citywide Nonprofit Monitoring and Capacity Building Program consultants to support City Nonprofit Suppliers in Revoked or Suspended status to remedy their status with the State AG, including developing and submitting any required filings. Contracting Departments may submit a referral to the Controller's Office during the escalation process.
- e. The City and its Contracting Departments may not enter into any new contracts or grant agreements with any City Nonprofit Supplier in Suspended or Revoked Status and may not establish any new fiscal sponsorship arrangements to do business with a nonprofit in Suspended or Revoked Status. For these nonprofits, no new City contracts, grant awards and/or purchase orders can be entered into or issued until a nonprofit supplier is in compliance with the State AG's requirements, and listed as "Current" on the State AG's website.

III. City Nonprofit Suppliers in Delinquent Status with Existing Agreements in FY22-23

As nonprofit organizations, suppliers and grantees are required to be in compliance with all filings to the State Attorney General (AG) Charity Registry in order to operate and do business in California. The City is not authorized to continue to do business with any City nonprofit supplier in Delinquent status on the State AG Registry.

The Controller's Office has developed a list of City Nonprofit Suppliers with FY22-23 contracts with the City who are in Delinquent status. However, it could create significant disruption to client services and may harm or disadvantage individuals receiving services to terminate such contracts immediately.

The following section outlines the policy and procedures for any City Nonprofit Suppliers in Delinquent status that have existing contracts or grant agreements in FY22-23.

- a. Beginning February 7, 2023, the City Administrator and Controller's Office will notify all City nonprofit Suppliers regarding City policy and the requirement to maintain compliance with State AG filings in order to do business with the City. Additionally, the City Administrator and Controller's Office will initiate notification to all Delinquent City Nonprofit Suppliers of their State AG reported status. The notice will include the following information:
 - i. City Nonprofit Suppliers are required to be in compliance with State AG filings in order to operate in California and do business with the City and County of San Francisco.
 - ii. City Nonprofit Suppliers in Delinquent status must remedy this status to "current" or "probationary" with the State AG by June 30, 2023.
 - iii. The State AG's Office documents all processes necessary for compliance on its website, including explanatory videos and detailed forms. Nonprofit suppliers are directed to review State AG's Office materials here: <https://oag.ca.gov/charities/delinquency>.
 - iv. All new solicitations, contracts and/or amendments will require City Nonprofit Suppliers to attest to being in and maintaining compliance, with either a "current" or "probationary" status with the State AG.
 - v. Failure to comply with State AG filing requirements will limit the City Nonprofit Supplier from being eligible for new City grants or amendments.
- b. During this period, Contracting Departments may need to issue a new purchase order against an existing contract or grant. In these cases, Contracting Departments may issue new purchase

orders against contracts with City Nonprofit Suppliers in Delinquent status through to June 30, 2023.

- c. The City and its Contracting Departments may not enter into any new contracts or grant agreements with any City Nonprofit Supplier in Delinquent Status. Any necessary amendments to existing agreements must comply with requirements for new contracts and grants, per Section IV.

IV. New City Contracting Procedures regarding the State AG Charity Registry

The following policies and procedures apply to all new contracts, grants and amendments entered into by Contracting Departments with City Nonprofit Suppliers, as well as to any agreements established using a prequalified pool.

- a. **Contract Terms and Conditions.** By or before March 1, 2023, the City Attorney will work with the City Administrator's Office and Contracting Departments to update solicitation, contract, and contract amendment standard terms and conditions to include a new provision for inclusion in all new agreements and amendments with City Nonprofit Suppliers requiring nonprofits to maintain compliance with the State AG's required filings for the duration of the term of any agreement with the City.
 - i. By signing any new contract or amendment, nonprofit suppliers will attest to their compliance with State law by the time of contract execution and commit to maintain compliance over the term of the City contract or be subject to contract termination at the discretion of the City.
- b. **Department Verification.** Contracting Departments must confirm a City Nonprofit Supplier is in "current" or "probationary" status by searching the State AG registry at the time of submission of contract materials to the City Attorney for every contract submitted with that nonprofit supplier.
 - i. The Registry search functionality is available here:
<https://rct.doj.ca.gov/Verification/Web/Search.aspx?facility=Y>
- c. **Prequalified Lists.** Contracting Departments that administer prequalified lists of nonprofit suppliers should notify the prequalified list about the requirement to be in "Current" status with the State AG Registry to do business with Contracting Departments.
 - i. No new City contracts, grant awards and/or purchase orders can be entered into or issued until a nonprofit supplier is listed as "current" or "probationary" on the Registry.
- d. **Controller's Office Procedures.** The Controller's Office will update Accounting Policies and Procedures to reflect the guidance and system tracking requirements included in this policy.
- e. The Controller's Office coordinates the Citywide Nonprofit Monitoring and Capacity Building Program, which monitors fiscal and compliance standards across City Nonprofit Suppliers. The Controller's Office will incorporate a review of each City Nonprofit Suppliers' State AG Registry status into the Monitoring Program for the next monitoring cycle, including developing corrective actions associated with findings in this area which may include application of Red Flag or Elevated Concern statuses.
- f. The Controller's Office may provide technical assistance via the Citywide Nonprofit Monitoring and Capacity Building Program consultants to support City Nonprofit Suppliers

in Delinquent, Revoked or Suspended status to remedy their status with the State AG, including developing and submitting any required filings. Contracting Departments may submit a referral to the Controller's Office as needed. Technical assistance may be limited based on availability of providers.

V. City Nonprofit Suppliers in Revoked, Suspended or Delinquent Status who are not Prime Contractors, e.g., Subcontractors and Subgrantees

City Suppliers may receive City funding as a Prime Contractor, Subcontractor, Grantee, Subgrantee and/or Subrecipient. Prime Contractors and Grantees have a contract directly with the City to deliver services. Subcontractors, Subgrantees and/or Subrecipients may receive City funding, with the Prime Contractor/Prime Grantee serving as a Fiscal Intermediary, Fiscal Sponsor or Fiscal Agent.

All nonprofits doing business in California, regardless of contracting relationship with the City, are required to register with the Secretary of State to receive a business license, and to register with the Attorney General in order to receive charitable donations and to operate in the state as a nonprofit.

- a. When signing new contracts with the City, it will be the responsibility of Prime Contractors or Grantees to ensure any Subcontractors, Subgrantees and Subrecipients receiving City funding via the contract are eligible to do business within California and have submitted all required filings to the State AG, using the State AG's Registry website to verify the status of each as "current" or "probationary."
- b. During contract execution, Prime Contractors/Grantees that are nonprofits will be required to affirm their own "current" or "probationary" status through the contract terms and conditions. On or before this time, Prime Contractors and/or Grantees should notify the Contracting Department about any selected Subcontractors, Subgrantees and/or Subrecipients that are not in good standing prior to entering into a new contract.
- c. If a Subcontractor, Subgrantee and/or Subrecipient is in Delinquent, Revoked or Suspended status, the Prime Contractor/Grantee and Contracting Department should identify an alternate organization in "Current" status to receive City funding.
- d. Subcontractors, Subgrantees and/or Subrecipients may be eligible for City technical assistance to come into compliance.

VI. Oversight and Process for Updating this Policy

While no new contracts and no new purchase orders should be entered into with a City Nonprofit Supplier who is not in compliance with the State AG's requirements, including those that are Delinquent, a transition period is needed for the City to assess the time it takes to remedy a Delinquent status, to better understand reasons for failure to comply, and to establish operational procedures for both monitoring and appropriate escalation. The following policies and procedures outline steps the City will take to monitor and notify City Nonprofit Suppliers about their Delinquent status and to develop operational strategies to ensure the City aligns with State AG regulations in the future. This policy is subject to modification by the Controller's Office, City Administrator's Office and City Attorney's Office as discussions with the State AG evolve.

- a. By November 2023, the Controller's Office will conduct a review of the State AG's Charity Registry compared with contracts and purchase orders established for that fiscal year. This review will identify whether any nonprofits suppliers currently receiving payments from the City or with an active contract with the City have a Delinquent, Revoked or Suspended status. The Controller's Office will publish and maintain documentation of this review.
 - i. To support accuracy and effectiveness of the Controller's Office review, Contracting Departments should document within existing fields of the Financial System (PeopleSoft) all levels of City Suppliers, including Prime Contractors, Subcontractors, Grantees, Subgrantees, Subrecipients, etc. at contract set-up, as well as maintain and update the information within PeopleSoft post-award if the Contracting/Project Team changes. A job aid is available in the PeopleSoft Knowledge Center related to Procurement.
- b. Over the coming calendar year, Controller's Office, City Administrator's Office and City Attorney's Office will assess the impact of the new noticing process and may develop new policies and procedures to ensure compliance.
 - i. By October 2023, the Controller's Office will survey City Nonprofit Suppliers remaining in Delinquent status to identify reasons for noncompliance.
 - ii. Throughout this period, the Controller's Office, City Administrator's Office and City Attorney's Office will convene to develop operational procedures for escalation for City Nonprofit Suppliers in Delinquent status. Escalation may include additional oversight measures, timelines for compliance, and/or procedures for termination of contracts as relevant and aligned with analysis since the initiation of the policy.
 - iii. By December 31, 2023, the City may issue any necessary revisions to the policy per this process.

VII. Roles and Responsibilities

- a. **The Office of the City Administrator is responsible for:**
 - i. Supporting development of the State AG Registry Policy.
 - ii. Drafting communications to departments about the new policy.
 - iii. Drafting communications to nonprofits that have an active contract with the City who are in the Delinquent, Revoked or Suspended status.
- b. **The Controller's Office is responsible for:**
 - i. Periodic review to identify any nonprofit suppliers and associated contracts, award agreements or payments to nonprofit suppliers that not in compliance with State AG Registry transparency reporting requirements.
 - ii. Providing technical assistance to nonprofit suppliers to come into conformance with the standard on a limited basis.
 - iii. Incorporate any City Attorney or City Administrator guidance regarding contracting regulations into the Controller's Office's Accounting Policies and Procedures.
 - iv. Incorporate new standards regarding State AG Registry status into the Citywide Nonprofit Monitoring and Capacity Building Program monitoring process, including developing corrective actions and possible escalation paths such as Red Flag and Elevated Concern status.
- c. **Contracting Departments are responsible for:**
 - i. Adhering to the policy and responding to contractor questions on implementation.

- ii. Offering technical assistance to nonprofit suppliers the department is doing business with to support them to come into compliance, including making relevant referrals to the Controller's Office for technical assistance.
 - iii. Validating compliance with filing requirements during the development of the contract, for every contract or grant with a nonprofit supplier at <https://rct.doj.ca.gov/Verification/Web/Search.aspx?facility=Y> to ensure no new contracts, amendments to existing contracts, and/or new purchase orders are developed with a nonprofit supplier not in "current or "probationary" status until its status has been cured.
 - iv. For Contracting Departments that administer prequalified pools, notifying nonprofits previously prequalified through a pool about the policy.
- d. **City Nonprofit Suppliers are responsible for:**
 - i. Coming into and maintaining compliance with the State AG Registry requirements.
 - ii. Affirming through contract language that the contractor is responsible for staying in compliance during term of contract.
- e. **City Attorney's Office is responsible for:**
 - i. Working with departments to determine the appropriate escalation path to address non-compliance with Registry requirements.
 - ii. Working with the City Administrator's Office and departments to update solicitation and contract amendment terms and conditions to include the new provisions required by this policy.
- f. **Other Partners**
 - i. Contract Monitoring Division: Update/incorporate the noted procedures into its Local Business Enterprise – Non-Profit Enterprise (LBE-NPE) Certification and Compliance program.