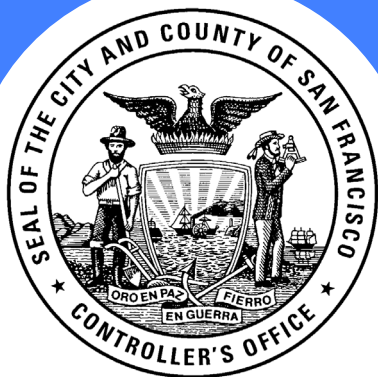


Public Integrity Review

Preliminary Assessment:

Criminal Conduct by Former San Francisco Public Utilities
Commission General Manager Harlan Kelly
Undermined the Integrity of City Procurements
Despite Existing Rules Governing Gifts, Disclosures, and
Sole Source Waivers



CITY & COUNTY OF SAN FRANCISCO

Controller's Office

March 28, 2024

Assessment Summary

The Controller's Office (Controller), in conjunction with the City Attorney's Office, conducted this preliminary limited-scope assessment of three specific procurements of the San Francisco Public Utilities Commission (SFPUC) under former General Manager (GM) Harlan Kelly:

- San Francisco Online Invoicing System (SOLIS)¹
- Smart Streetlights Project²
- Holiday Lights²

These three procurements were at issue in a federal criminal investigation of former GM Kelly. The first procurement was identified in the federal grand jury subpoena to SFPUC. The other two procurements were identified in a federal criminal complaint against former GM Kelly filed in November 2020. All three of these procurements were conducted under the San Francisco Administrative Code, Chapter 21 (Chapter 21).

Chapter 21 procurement is under the authority of the Office of Contract Administration (OCA), which was overseen during the time of these procurements by City Administrator Naomi Kelly, former GM Kelly's spouse.

This assessment examines SFPUC's compliance with city contracting regulations in the three procurements and makes preliminary recommendations to further increase accountability and compliance with applicable city rules.

¹ U.S. Department of Justice's Grand Jury Subpoena to SFPUC, June 15, 2020.

² [Criminal complaint against Harlan Kelly](#), November 25, 2020.

Assessment Summary – Preliminary Findings

This preliminary assessment finds that former GM Kelly provided selective assistance to vendors with whom he had a personal relationship and/or from whom he was accepting gifts. As the department head, he had access to information from staff about the procurement processes and was able to influence the decisions of his subordinates.

In July 2023 a federal jury found former GM Kelly guilty of charges that he accepted bribes and gifts in a scheme to provide confidential information about the City's bidding process and steer contracts to a local businessman.¹ When leaders of an organization engage in criminal conduct, it compromises their ability to enforce rules and procedures and hold others in the organization accountable.

We did not find evidence that other SFPUC employees were aware of former GM Kelly's criminal conduct in these three procurements, including his receipt of gifts and sharing of confidential bid information.

In the competitive Smart Streetlights procurement, SFPUC generally followed Chapter 21 processes and the contract was ultimately not awarded to Walter Wong (Wong), despite former GM Kelly's efforts to steer the contract to Wong. In the SOLIS and Holiday Lights procurements, however, former GM Kelly was able to influence the outcome of the awards.

¹ [U.S. Attorney's Office, Northern District of California, press release, July 17, 2023.](#)

Assessment Summary – Preliminary Findings *(continued)*

Former GM Kelly's failure to disclose gifts from and relationships with vendors seeking city contracts violated multiple local, state, and federal laws. In addition to violating the federal prohibition on accepting bribes, former GM Kelly violated state and local laws, including provisions of the California Government Code and San Francisco Campaign and Governmental Conduct Code.

Former GM Kelly's actions included:

- Participating in official government decisions related to Melanie Lok (Lok) and her company Mlok Consulting without disclosing his personal and financial relationship with Lok as required by city law.¹
- Providing selective assistance to Wong,² in violation of city law, by providing insider information and intentionally delaying procurements. Because he provided selective assistance in exchange for gifts to Wong, this conduct also violated city law prohibiting bribery³ and receipt of gifts from restricted sources.⁴

¹ San Francisco Campaign and Government Conduct code, Section 3.214.

² San Francisco Campaign and Government Conduct code, Section 3.218, and SFPUC's Statement of Incompatible Activities.

³ San Francisco Campaign and Government Conduct code, Section 3.216(a)

⁴ San Francisco Campaign and Government Conduct code, Section 3.216(b)(1)

Assessment Summary – Recommendations

For the Smart Streetlights procurement, which was subject to a competitive bidding process, former GM Kelly could not influence the outcome of the procurement. Although we make recommendations to SFPUC and OCA regarding sole source and delegated departmental purchases, we find that the misuse of these procurement tools was caused by GM Kelly's corrupt conduct rather than inadequate controls or complicit SFPUC employees.

However, there are still areas of procurement in which the City can improve. SFPUC should better monitor its procurement process, so the department does not violate city rules on order splitting. SFPUC should also ensure it only submits, and OCA only approves, requests to waive competitive solicitation requirements that fully meet the intent of city contracting regulations, including demonstrating sufficient planning for the procurement.

Further, SFPUC and its Commission should foster an ethical organizational culture of transparency in which policy compliance is valued and create controls to restrict senior management's ability to override departmental and city policies. This includes reminding its employees of the Controller's anonymous Whistleblower Program and creating an environment in which employees feel safe to come forward with concerns.

Assessment Summary – Recommendations *(continued)*

SFPUC should also reinforce the importance of departmentwide compliance with city rules regarding:

- Restrictions on accepting gifts from restricted sources (per the Campaign and Governmental Conduct Code, Section 3.216).
- Prohibitions against affording competitive advantages to one supplier (per the Campaign and Government Conduct Code, Section 3.218 and the department's Statement of Incompatible Activities).
- Regulations around waiving competitive solicitation requirements and restrictions on delegated departmental purchasing authority, including the prohibition on order splitting.

Under new leadership, SFPUC and OCA report that they have initiated departmental reforms to strengthen procurement oversight, as referenced on slides 16 and 17.

Federal Criminal Charges Alleging Public Corruption Prompted Joint Controller/City Attorney Investigation

In January 2020 former Public Works Director Mohammed Nuru was criminally charged with a scheme to defraud the City of his honest services by providing official action in exchange for bribes. In response to those criminal charges, the City Attorney and Controller launched a joint investigation into public corruption identified in the criminal complaint. While the City Attorney focused on employee and contractor wrongdoing across multiple departments, the Controller undertook a Public Integrity review of city contracts, purchase orders, and grants to identify red flags possibly indicating process failures. The Controller also created a Public Integrity Tip Line to facilitate the anonymous reporting of any information regarding the joint Public Integrity investigation.

Since the corruption charges against former Public Works Director Nuru were filed in January 2020, the U.S. Attorney's Office has criminally charged 18 other city employees and contractors of the City. Among those charged are **former GM Kelly**, who had served in this capacity since 2012 and previously had been the SFPUC's assistant general manager of infrastructure since May 2003.

Former General Manager Kelly Accepted Bribes from Walter Wong in Exchange for Assistance with City Contracting

In June 2020 **Wong** was criminally charged with conspiracy to commit honest services fraud and conspiracy to commit money laundering with former Public Works Director Nuru and other city officials. In July 2020 Wong pled guilty and agreed to cooperate with the federal investigation.

In November 2020 federal criminal charges were filed against **former GM Kelly** alleging that he and **Wong** engaged in a scheme¹ wherein Wong provided gifts and services to **former GM Kelly**, including meals, flights, lodging, jewelry, private transportation, and discounted construction services in exchange for confidential bid information for SFPUC contracts, such as pre-proposal information, deadline extensions, other bidders' proposals, and respective bid scores. On November 20, 2020, **former GM Kelly** resigned as SFPUC general manager.

In July 2023 a federal jury found former GM Kelly guilty of one count of conspiracy to commit honest services wire fraud through bribery and kickbacks in breach of his fiduciary duty, and one count of wire fraud related to receipt of a \$615 meal at a restaurant in Hong Kong. The jury heard evidence about work Wong's employees performed on former GM Kelly's personal residence, Wong's assistance with visas for entry into China, as well as how Wong's personal assistant scheduled the family's travel and accommodations. Evidence at trial also showed former GM Kelly had access to confidential information about city contract bidding processes and the ability to influence the awarding of some city contracts.²

¹ [Criminal complaint against Harlan Kelly](#), November 25, 2020.

² [United States Attorney's Office press release](#), July 17, 2023.

Former General Manager Kelly Accepted Bribes from Walter Wong in Exchange for Assistance with City Contracting *(continued)*

In June 2021 the City and Wong reached a settlement in which he agreed not to do business with the City for five years, the maximum debarment period allowed under city law, and to pay restitution and ethics fines to the City for contracts his companies obtained through bribery.

In October 2021 former GM Kelly was criminally charged with loan fraud. Former GM Kelly and Victor Makras (Makras), a real estate developer, were charged with defrauding Quicken Loans on an application for financing for former GM Kelly's personal residence.¹ Since the 1990s, Makras has served on San Francisco boards and commissions, including the Port Commission, the Police Commission, the Fire Commission, the Retirement Board, and the SFPUC Commission. In August 2022 a federal jury found Makras guilty, and he has appealed the conviction. In July 2023 a federal jury found former GM Kelly guilty of four counts of bank fraud related to the loan application. On March 18th, 2024, former GM Kelly was sentenced to four years in prison and ordered to pay a \$10,000 fine.

¹ Kelly and Makras Indictment. This matter is outside of this assessment's scope and is not analyzed here.

Overview of SFPUC's Oversight and Organization

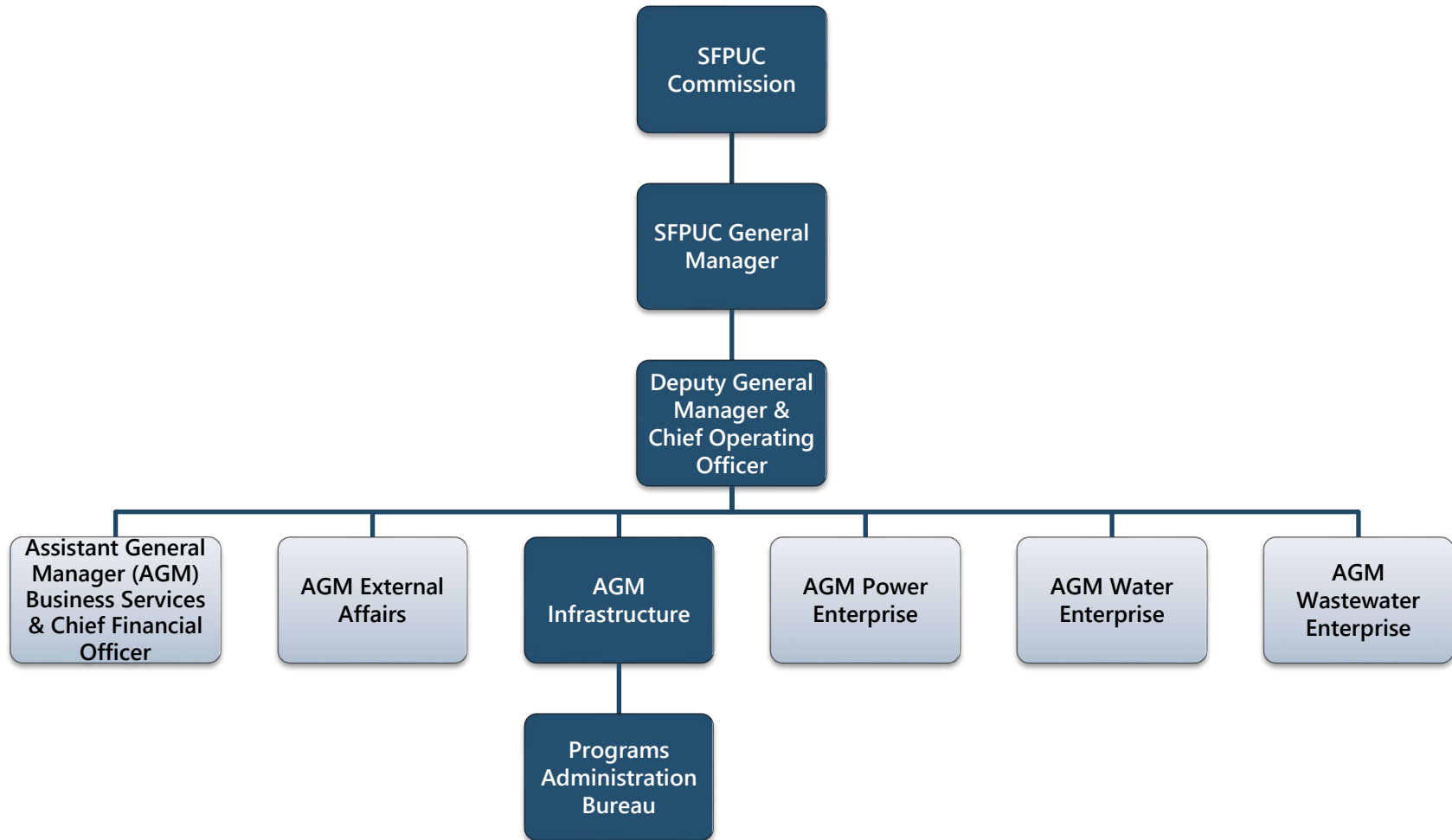
San Francisco Public Utilities Commission (SFPUC): SFPUC provides retail drinking water and wastewater services to San Francisco residents, wholesale water to three Bay Area counties, green hydroelectric and solar power to Hetch Hetchy electric customers, and power to city residents and businesses.

Commission Oversight: SFPUC is headed by a five-member board, nominated by the mayor and approved by the Board of Supervisors. The board provides operational oversight (in areas such as rates and charges for services), approval of contracts, and organizational policy.

SFPUC consists of three enterprises (Water, Power, and Wastewater), which are supported by the Business Services, Infrastructure, and External Affairs Divisions. The Infrastructure Division and the Programs Administration Bureau are relevant to this assessment and are shown on the organization chart on the next slide.

- **Infrastructure Division:** Responsible for implementing the \$4.6 billion Water System Improvement Program, the Sewer System Improvement Program, and other capital programs and projects, this division houses the Programs Administration Bureau, among other bureaus.
- **Programs Administration Bureau:** Oversees Chapter 21 procurement — from initiation of solicitation through contract award—for SFPUC's construction and professional services contracts.

Overview of SFPUC's Oversight and Organization *(continued)*



Note: SFPUC Adopted Biennial Budget 2020-2022. Chart adapted to focus on units of interest to this assessment and is not comprehensive.

Overview of City Administrator's Role in Procurement

Office of the City Administrator (City Administrator): The City Administrator oversees over 25 departments and programs that provide a broad range of services to the public and other city departments, including the Office of Contract Administration and the Contract Monitoring Division.

Office of Contract Administration (OCA): The San Francisco Administrative Code, Chapter 21 (Chapter 21), governs the purchase of non-construction commodities, professional services, and general services. OCA is responsible for administering Chapter 21 procurement, which includes establishing rules and regulations for sole source and delegated department purchasing (Proposition Q). The City Purchaser is the department head of OCA.

Contract Monitoring Division (CMD): CMD operates the Chapter 14B Local Business Enterprise (LBE) program, which maximizes opportunities for local small businesses to compete for city contracts by implementing policies such as bid discounts and rating bonuses for certified local small businesses on public contracts. To qualify for LBE benefits, local businesses must be certified by CMD by demonstrating, among other things, they have a fixed location in San Francisco and have gross receipts that fall below certain threshold limits.

Former City Administrator Kelly served as City Purchaser and deputy City Administrator before 2012 when former Mayor Ed Lee appointed her City Administrator. In these roles, she gained significant expertise in the types of procurement identified in the criminal complaint against former GM Kelly.

Impact of Tone at the Top on SFPUC's Organizational Culture

Preliminary Finding: Despite the numerous citywide and departmental ethics rules former GM Kelly was bound to uphold, he abused his official position as General Manager of the SFPUC to provide selective assistance in exchange for bribes or in consideration of his undisclosed personal and business relationships.

As discussed in our previous Controller's Office public integrity reviews, tone at the top is the ethical atmosphere created in the workplace by the organization's leadership.¹ Management's tone has a trickle-down effect on employees. A tone that upholds professional ethical standards and integrity will encourage employees to uphold those same values. Compliance with ethics rules must start at the top.² Moreover, when a department head is ethically compromised, they are less able and willing to hold others in the organization accountable.

As discussed in this report, former GM Kelly provided insider knowledge and selective assistance regarding SFPUC procurements to both Wong and Lok without disclosing his personal and business relationship with them. Furthermore, former GM Kelly provided the selective assistance to Wong in exchange for his personal financial gain. Former GM Kelly's official actions and instructions to staff to ensure that both Wong and Lok received advantages over other prospective bidders set an unethical tone for SFPUC. Although some SFPUC staff admitted to being aware of a prior relationship between former GM Kelly and Lok and did not report it, our preliminary assessment did not find evidence that SFPUC staff was aware of any gifts received by former GM Kelly. Subordinates will ordinarily be reluctant to confront or question a department head, so SFPUC should reinforce the options for its employees to report any concerns anonymously.

¹ Tone at the Top: How Management Can Prevent Fraud in the Workplace, Dannible & McKee, LLP; Tone at the Top Conveying Responsibility and Accountability, ACFE, Suzanne Mahadeo.

² A Resource Guide to the U.S. Foreign Corrupt Practices Act, Second Edition, U.S. Department of Justice and U.S. Securities and Exchange Commission, July 2020.

Former General Manager Kelly Accepted Unreported Gifts From Restricted Sources

Preliminary Finding: Former GM Kelly, as a department head, was responsible for setting an ethical climate at SFPUC. Instead, he accepted gifts without reporting them and, worse, accepted gifts from restricted sources.

City officers are prohibited from receiving gifts from a person whom they know or have reason to know is a restricted source.¹

A **restricted source** is a person (or company):

- Doing business with or seeking to do business with the public official's department; or
- Who during the previous 12 months knowingly attempted to influence the public official in any legislative or administrative action.

Wong and his companies were a restricted source for former GM Kelly because, since 2010 or earlier, Wong and his companies had sought to contract with SFPUC. In exchange for the insider information and assistance about the Smart Streetlights procurement from former GM Kelly, Wong provided former GM Kelly and his family with almost \$16,000 worth of gifts in 2016 and 2017, including international travel, jewelry, cash, and meals.² However, former GM Kelly did not report the gifts he received on the annually required Statement of Economic Interest (Form 700) in those two years.

¹ San Francisco Campaign and Governmental Conduct Code, Section 3.216(b)(1); [SFPUC Statement of Incompatible Activities \(2015\)](#)

² [Federal complaint, Harlan Kelly Jr.](#), issued November 30, 2020; SFPUC public records of former GM Kelly's text and e-mail messages with Wong.

Former General Manager Kelly Accepted Unreported Gifts From Restricted Sources *(continued)*

Former GM Kelly accepted these gifts despite the fact that, as a department head, he provided annual reminders to SFPUC staff regarding mandatory compliance with the department's Statement of Incompatible Activities, as well as annual reporting requirements related to the Form 700. He also regularly certified that he received mandatory ethics training required of department heads, which covered limits on gifts, disclosure requirements, and conflicts of interest.

SFPUC Efforts to Improve Internal Controls

Preliminary Finding: SFPUC reports it has made changes to strengthen its internal controls and ethical environment.

In response to the federal allegations against the former general manager, SFPUC reports it implemented additional practices and procedures to ensure an appropriate tone at the top exists at the department:

- Ending the former general manager's practice of meeting informally with contractors or vendors
- Requiring potential contracts to include a memorandum to the general manager explaining the business need and procurement method to be used.
- Established the Audit Bureau in 2022, with oversight over the department's compliance with applicable rules and regulations.

Changes at the City Administrator

In January 2021 Naomi Kelly resigned as City Administrator, and Mayor London Breed appointed Carmen Chu to the position. Since she took office in February 2021, City Administrator Chu has made changes including:

- Restructured the organization and streamlined the reporting structure and organization of functions.
- Implemented improvements at OCA, including:
 - Developed a checklist for Proposition Q procurements to ensure departments use this procurement authority in accordance with city rules and regulations.
 - Launched the ServiceNow contracting application to process all Chapter 21 solicitation waivers and contract reviews, and all other contracting program waiver approvals (12B, 12O, 12P, 14B, etc.) to increase transparency, accountability, and compliance with contracting regulations.
 - Updated contract and solicitation templates that clearly identify the department's responsibilities.
 - Implemented Chapter 21 contracting training curriculum, with online trainings available to any city employee.
- Hired a new CMD director.

San Francisco Online Invoice System (SOLIS)

Background on San Francisco Online Invoicing System

During 2006 and 2007 SFPUC's Infrastructure Division and former GM Kelly, then assistant general manager, sought to create an online invoicing system to ensure prompt payment of vendors, a functionality that the City's financial system could not provide at that time. This system later became SFPUC's **San Francisco Online Invoicing System (SOLIS)**.

Former GM Kelly privately discussed his interest in creating an online invoicing system with, **Melanie Lok**, the president and chief executive officer of **mlok consulting, inc.**, (mlok consulting), and a financial partner with whom he also owned a home. Lok previously developed a payment system integration in another jurisdiction with a firm called **Stellar Services, Inc.**, (Stellar Services). As discussed below, former GM Kelly failed to disclose his personal and business relationship with Lok and actively participated in multiple government decisions to award her firm multiple contracts, the first three as a subcontractor and the last as the prime contractor. These contracts are valued at almost \$20 million.¹

¹ Because it was a subcontractor for the first three SOLIS projects, mlok consulting did not earn \$20 million. The amount mlok consulting received as a subcontractor is unknown because the City's financial system did not previously capture this data.

The Former General Manager Failed to Disclose His Personal Relationship When Making Procurement Decisions

Preliminary Finding: Contrary to city law, former GM Kelly failed to disclose a close personal relationship with Lok, despite participating in official government decisions that benefited Lok financially.

City employees must disclose on the public record any personal, professional, or business relationship with any individual who has a financial interest in the government decision being made by the employee, where the employee's ability to act for the public's benefit could be questioned.¹

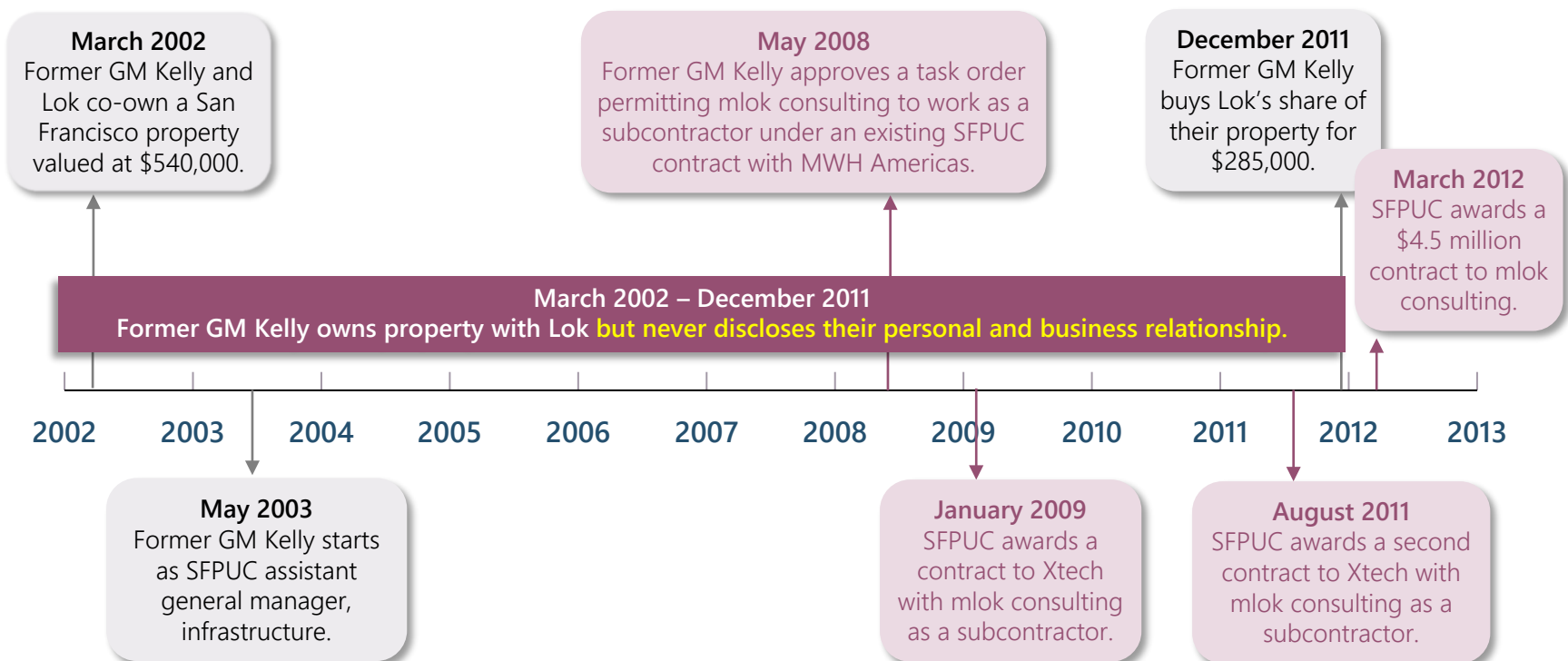
Former GM Kelly and Lok had a close personal relationship, but **GM Kelly did not disclose** this relationship. Despite this, **former GM Kelly made government decisions** that financially enriched Lok via her firm, mlok consulting, which was a subcontractor and, eventually, the prime contractor on the three SFPUC contracts addressed by this assessment.²

¹ San Francisco Campaign and Governmental Conduct Code, Section 3.214(a).

² After amendments increasing the contract amount, the City ultimately paid \$9.5 million to mlok consulting as a prime contractor.

The Former General Manager Failed to Disclose His Personal Relationship When Making Procurement Decisions *(continued)*

As the timeline below shows, from 2008 through 2011, former GM Kelly served the role of assistant general manager of SFPUC leading its Infrastructure Division, during which time he participated in at least three contract decisions involving Lok and her firm, mlok consulting, despite owning real property with Lok in San Francisco that he also did not disclose.



SFPUC afforded Melanie Lok a competitive advantage over other suppliers for the SOLIS procurements

Preliminary Finding: Melanie Lok received a competitive advantage from former General Manager Kelly, which allowed mlok consulting to gain experience in designing a major SFPUC invoicing system with minimal competition, thereby providing a significant competitive advantage for future development and ongoing maintenance of SOLIS.

Through former GM Kelly, SFPUC repeatedly gave Lok an unfair competitive advantage by:

- Privately communicating with Lok regarding her experience developing an invoice system with another jurisdiction (2007).
- Approving Lok (and the vendor she worked with in the other jurisdiction) as subcontractors on an as-needed contract with a broad scope to design the SOLIS pilot project under an existing as-needed contract (2008).
- Ensuring the award of contracts to Xtech with mlok consulting as a subcontractor (2009, 2011), by constructing a solicitation that unfairly advantaged mlok consulting as the original designer of the system.¹

The selective assistance former GM Kelly provided to Lok from 2008 to 2011 gave her a significant bidding advantage in the competitive award of a \$4.5 million SOLIS contract to mlok consulting in 2012. By the time mlok consulting had to compete with other vendors, mlok consulting had already worked on SOLIS for five years as a result of non-competitive awards.

Statements of Incompatible Activities (SIA) did not appear to exist at city departments before 2008. SFPUC's SIA, which prohibits its employees from providing selective assistance that confers a competitive advantage on a bidder competing for a city contract², was therefore not in effect when former GM Kelly first began providing selective assistance to Lok in 2008. However, his failure to disclose his personal and business relationship with Lok as required by city law calls into question whether he appropriately exercised his public duties to the City when he made these government decisions.

In March 2024, voters approved Proposition D, which repealed all existing departmental SIAs and codified a uniform set of prohibited activities in San Francisco Campaign and Governmental Conduct Code that apply to all departments citywide.

¹ Because their document retention policies do not require them to retain records for a decade or more, neither OCA nor SFPUC could provide evidence that SFPUC reached out to all of the City's Computer Store vendors, which was a recommended best practice for city departments at the time.

² San Francisco Campaign and Governmental Conduct Code, Section 3.218; [SFPUC Statement of Incompatible Activities](#).

SFPUC afforded Melanie Lok a competitive advantage over other suppliers for the SOLIS procurements *(continued)*

SFPUC approved at least three contracts under which Lok participated in the development of SOLIS as a subcontractor. Former GM Kelly ensured mlok consulting was a subcontractor under a pre-existing contract with MWH Americas to assess and design the schematics for the system that would become SOLIS. Mlok consulting later became part of a Computer Store¹ contract as a subcontractor for Xtech for subsequent design and implementation of the system. Further, the request for quote preceding the 2011 Computer Store contract required that vendors have at least three years of experience in programming the SOLIS system. This would have restricted the pool of potential bidders because SOLIS was a custom system developed specifically for SFPUC invoicing and payments, making mlok consulting one of the few vendors that met the qualifications. **Ultimately, this could have only occurred because of former GM Kelly's personal relationship with Lok and the selective assistance he provided by approving Lok to be added as a subcontractor on the initial pilot project.**

The table on the following slide summarizes the relevant SOLIS procurements involving Lok.

¹ The City established the Technology Marketplace, formerly known as the Computer Store, in 1998 to serve as the City's primary method for procuring information technology commodities and services. Under this procurement program, departments are typically required to conduct a competitive solicitation to the pool of Technology Marketplace prime contractors.

SFPUC afforded Melanie Lok a competitive advantage over other suppliers for the SOLIS procurements *(continued)*

Year	Contract	Role of mlok consulting	Events	Contract Value to Prime Supplier
2008	MWH Americas Contract <i>(Pilot Phase)</i>	Subcontractor	Former GM Kelly approved SFPUC task order permitting mlok consulting to serve as a subcontractor on an MWH Americas contract for as-needed engineering and design contract.	\$4.5 million
2009	Xtech Contract SOLIS I <i>(Development Phase)</i>	Subcontractor	SFPUC awards contract to Xtech with mlok consulting as its subcontractor.	\$980,631
2011	Xtech Contract SOLIS I <i>(Integration Phase)</i>	Subcontractor	SFPUC awards contract to Xtech with mlok consulting as its subcontractor.	\$5 million
2012	SOLIS II <i>(Administration Phase)</i>	Prime	SFPUC awards two separate agreements: a \$4.5 million contract to both mlok consulting and Westland Management Solutions, Inc. SFPUC later amends mlok consulting's contract to add \$5 million, for a total of \$9.5 million.	\$9.5 million

Smart Streetlights Project

Background on SFPUC's Smart Streetlights Procurements

The City owns—and SFPUC manages—over 18,500 smart streetlights, which use light-emitting diode (LED) technology. In August 2010, SFPUC initiated efforts to replace the City's LED smart streetlights. In June 2012 SFPUC issued a request for proposal (RFP) to pilot test up to five solutions for operationalizing wirelessly controlled LED smart streetlights.

As a result of the RFP, SFPUC awarded four contracts for the pilot project. One of the contracts was awarded to Wong's company, Alternate Choice, LLC, for a not-to-exceed amount of \$15,000. Following the pilot phase, SFPUC worked with OCA on a formal procurement for LED smart streetlights. The timeline, starting on slide 27, provides an overview of the entire procurement process.

Former General Manager Kelly Disclosed Confidential Bid Information and Delayed the Smart Streetlights RFP for Walter Wong

Preliminary Finding: In exchange for gifts, former General Manager Kelly intentionally delayed the procurement of smart streetlights to support Walter Wong's bid and overrode key controls by sharing confidential information with Walter Wong.

San Francisco Campaign and Governmental Conduct Code, Section 3.216, and Ethics Commission regulations state that no city officer or employee may solicit or receive any gift from any person or entity doing business with or seeking to do business with the department of the officer or employee. Also, SFPUC's Statement of Incompatible Activities states that **no city employee may knowingly provide selective assistance** to individuals or entities in a way that confers a competitive advantage on a bidder or proposer who is competing for a city contract.

As SFPUC general manager, former GM Kelly overrode these restrictions and took various actions to support Wong's bids from September 2014 through November 2016. Based on a limited review of this procurement, it appears that SFPUC generally followed its procedures, such as scoring bids appropriately. **However, as alleged in the criminal complaint and supported by evidence admitted at trial, former GM Kelly provided confidential information about the Smart Streetlights procurement to Wong to inform his bid, in violation of city law.** Support from former GM Kelly included sharing: (1) the amended RFP before it was publicly released, (2) confidential bid review documents identifying the type of LED fixtures in other bidders' proposals, and (3) the costs associated with each proposal.

According to multiple SFPUC employees involved in this procurement, they did not intend for information they provided former GM Kelly to be shared with anyone outside of the City.

Former General Manager Kelly Disclosed Confidential Bid Information and Delayed the Smart Streetlights RFP for Walter Wong *(continued)*

For Wong's benefit, former GM Kelly also delayed the process to procure smart streetlights, which took almost seven years from initial pilot (issued August 2010) to final contract award (signed February 2017). **RFPs were delayed, canceled, and reissued eight times.** The timeline below outlines SFPUC's efforts to solicit bids for the project, highlighting the delays and former GM Kelly's inappropriate, selective assistance to Wong.

Date	Action
August 2010	SFPUC Issues first RFP for LED smart streetlights.
November 2010	Delay: SFPUC cancels first RFP because no bid meets minimum qualifications.
April 2011	SFPUC issues second RFP for LED smart streetlights.
June 2011	Delay: SFPUC cancels second RFP after deciding to pursue a "design-build" procurement, which entails contracting with a single vendor responsible for both designing and constructing a project.
June 2012	SFPUC issues an RFP to pilot test up to five innovative ways to operationalize wirelessly controlled LED smart streetlights.
January 2013	SFPUC awards contracts for the pilot project to four proposers, one of which is Wong's company, Alternate Choice, LLC.

Former General Manager Kelly Disclosed Confidential Bid Information and Delayed the Smart Streetlights RFP for Walter Wong *(continued)*

Date	Event
September 2014	<p>OCA issues RFP 79002 on behalf of SFPUC for LED streetlights with wireless control system capabilities and receives 31 proposals.</p> <p>Selective Assistance: Former GM Kelly texts Wong that the RFP is out and that he should keep former GM Kelly apprised of any problems with his proposal. Former GM Kelly also informs Wong that the evaluation panel is the next step.</p>
November 2014	<p>Delay: OCA cancels RFP 79002.</p> <p>Selective Assistance: Former GM Kelly texts Wong to provide RFP bid review documents before the RFP (now RFP 79002-A) is re-issued to the public. Former GM Kelly provides a memorandum with price differentials, the names of other bidders, types of LED fixtures and controls proposed by other bidders, and costs associated with each bid.</p> <p>OCA re-issues RFP 79002-A, which now offers a 10 percent rating bonus to bidders that qualify as a Local Business Enterprise (LBE), as required by San Francisco Administrative Code, Section 14B.7(E)(1).</p>
January 15, 2015	<p>Selective Assistance: Former GM Kelly texts Wong that bid due dates will be delayed and tells him who to speak to for advice about the bid. Wong states that he will apply to be a LBE and reveals that his light prototype is not available yet. Former GM Kelly replies <i>“You told me that you had everything? I don’t know how to stop the process anymore.”</i></p>

Former General Manager Kelly Disclosed Confidential Bid Information and Delayed the Smart Streetlights RFP for Walter Wong *(continued)*

Date	Event
February 2015	<p>Delay: The bid due date for RFP 79002-A, which now incorporates an LBE rating bonus, is postponed to late February, then postponed again to early March.</p> <p>Wong texted former GM Kelly requesting assistance with the LBE application for his company, Green Source Trading, LLC (separate from his company, Alternate Choice, LLC). Subsequently, SFPUC's LBE program manager communicated with CMD staff regarding the status of CMD's review of the LBE application for Wong's company. Less than two months later, that same manager became the director of CMD and signed CMD's letter formally certifying Green Source Trading, LLC as a minority-owned LBE on February 27, 2015. This means the employee transitioned from a role that reported directly to former GM Kelly to a new role that reported to former City Administrator Naomi Kelly shortly before certifying Wong's company as an LBE.</p> <p>Wong texted former GM Kelly to let him know that Green Source Trading, LLC had been certified as an LBE.</p>
March 2015	<p>OCA receives 20 proposals, including a bid from Green Source Trading, LLC.</p> <p>Selective Assistance: Former GM Kelly gives Wong SFPUC's RFP scoring sheet and notes.</p>

Former General Manager Kelly Disclosed Confidential Bid Information and Delayed the Smart Streetlights RFP for Walter Wong *(continued)*

Date	Event
July 2015	Selective Assistance: Former GM Kelly gives Wong a Summary Score Sheet that ranks bids by their scores and the bidder's LBE discount, if any. The bid of Wong's company ranks near the bottom.
September 2015	Delay: SFPUC decides not to award the contract to any bidder due to inconsistencies in the proposals submitted.
September 2016	SFPUC issues a new RFP (RFP 79004), opting to procure LED fixtures without a wireless control system due to technical challenges.
October 2016	Delay: SFPUC twice postpones bid due date for RFP 79004.
November 2016	Selective Assistance: Former GM Kelly gives Wong bid documents.
November 2016	OCA receives 15 bids. Bid of Green Source Trading, LLC, is deemed non-responsive.
February 2017	Contract is awarded to Maltby Electric Supply Co.

Holiday Lights

Background on SFPUC's Holiday Lights Procurements

In 2012 the Third Street Merchants Association gave SFPUC 60 LED holiday light fixtures in the shape of bells and snowflakes. SFPUC installed these fixtures on San Francisco's 3rd Street during the holiday season. In 2019 SFPUC undertook three procurements to obtain more custom holiday light fixtures, asserting that Wong's company, Alternate Choice, LLC, was the only vendor able to provide these fixtures. The table below provides an overview of these three procurements.

Requisition Date	Procurement Authority	Items	Value
August 12, 2019	San Francisco Administrative Code, Section 21.5(b): Sole source request to waive competitive solicitation requirements	77	\$43,000
November 15, 2019	San Francisco Administrative Code, Section 21.03(a): Delegated departmental authority (Proposition Q)	18	\$8,780
November 21, 2019	San Francisco Administrative Code, Section 21.03(a): Delegated departmental authority (Proposition Q)	10	\$5,291
		TOTAL	\$57,071

SFPUC Awarded Walter Wong the Holiday Lights Contract in Exchange for Gifts Given to Former General Manager Kelly

Preliminary Finding: Former General Manager Kelly steered the Holiday Lights contract to ensure its award to Wong.

According to the federal criminal complaint, Wong received the 2019 holiday lights contract in exchange for items of value he provided to former GM Kelly. In March 2019 Wong sent a quote for the holiday lights to former GM Kelly's personal e-mail account. SFPUC then requested, and OCA approved, a sole source waiver of solicitation requirements to procure the holiday lights from Wong's company in April 2019, as discussed further on the next slide. Later in November 2019, it appears that former GM Kelly directed his staff to procure these items from Wong's company. According to OCA and SFPUC, at the time of this procurement no one among the purchasing staff at either department knew about the private communication between former GM Kelly and Wong.

This procurement demonstrates some of the risks inherent in procurement, including that a bad actor can steer contracts to preferred vendors while avoiding detection, in exchange for gifts and other benefits.

SFPUC Awarded Walter Wong the Holiday Lights Contract in Exchange for Gifts Given to Former General Manager Kelly *(continued)*

Preliminary Finding: SFPUC must better adhere to sole source contracting rules to ensure its requests meet the intent of OCA's regulations.

In some cases, the City's competitive solicitation requirements can be waived, including under the sole source purchasing authority.¹ This authority exists for instances in which goods or services can only be obtained from a single source. OCA has oversight over these requests. Departments must submit a **solicitation waiver** to OCA to waive competitive solicitation requirements for these purchases and document the reason the vendor is the sole source of the good or service.

In August 2019 SFPUC submitted a **sole source request to waive competitive solicitation requirements** to procure 77 holiday light fixtures. SFPUC provided documentation that the original manufacturer had stopped manufacturing these bell-shaped fixtures, and stated in its request that Alternate Choice, LLC, was the only vendor that had these fixtures in stock and that it would not be as cost-effective or logistically sound to initiate a new procurement for them. However, SFPUC's reasoning implies that it did not properly plan for this procurement, which is an inappropriate justification for submitting a sole source request to waive competitive solicitation requirements. In August 2019 OCA approved the sole source request to allow the department to procure fixtures that match the existing holiday lights, and SFPUC paid \$43,000 to Alternate Choice, LLC, for 77 of the holiday light fixtures.

¹ San Francisco Administrative Code, Section 21.5(b) and OCA Rules and Regulations

SFPUC Awarded Walter Wong the Holiday Lights Contract in Exchange for Gifts Given to Former General Manager Kelly *(continued)*

Former GM Kelly was involved in the additional holiday light purchases, for which requisitions were issued in November 2019. In September 2019, a month after SFPUC's sole source request for holiday lights was approved, Wong sent a second quote for additional holiday lights to former GM Kelly's personal e-mail account. The events of November 2019 included the following.

- **November 13:** SFPUC senior personnel e-mail SFPUC purchasing staff to ask about the additional purchases: **"Did we already buy the remaining snowflake lights from Alternate Choice LLC? This vendor has only these 28 remaining, so Harlan wants to know if we're going to purchase them."**
- **November 15:** SFPUC approved its first Proposition Q purchase order of 18 holiday lights for \$8,700.
- **November 21:** SFPUC approved its second Proposition Q purchase order of 10 holiday lights for \$4,900.

SFPUC Split an Order for Holiday Lights, Thereby Avoiding City Rules

Preliminary Finding: SFPUC circumvented city procurement rules by splitting its orders of holiday lights from Alternate Choice, LLC.

Departments have “delegated departmental purchasing” (**Proposition Q**) authority to acquire commodities and services under \$10,000.¹ Consistent with this delegation of authority, OCA does not review these purchases. Because departments have discretion in the use of this authority and because this process bypasses the City’s competitive solicitation requirements for commodities over \$10,000, departments must meet OCA’s guidelines for this process. The guidelines include a prohibition on order splitting. The City’s Accounting Policies and Procedures defines **order splitting as the procurement of the same item through separate requests within two to three weeks.**²

Despite having executed a contract for holiday lights less than three months earlier, SFPUC submitted requests in November 2019 to buy more holiday lights using Proposition Q purchasing authority and, in violation of city rules, split its order into two purchases, despite foreknowledge of its intent to purchase an additional 28 lights, which it knew would cost over \$10,000. This order splitting occurred despite OCA’s prior approval of a solicitation waiver for the same items. SFPUC inappropriately used its delegated departmental purchasing authority and should have instead requested a second solicitation waiver for the additional 28 lights from OCA or included those lights in the initial solicitation waiver request.

¹ San Francisco Administrative, Section. 21.03(a)

² San Francisco City and County Controller’s Office’s Accounting Policies and Procedures (August 2020), Section 3.8.

Recommendations

Given the findings of our preliminary assessment, we offer the following preliminary recommendations:

1. The San Francisco Public Utilities Commission and its oversight Commission should:
 - Foster an ethical organizational culture of transparency in which policy compliance is valued and create controls to restrict the ability of senior management to override departmental and city policies.
 - Remind employees of the availability of the Controller's Whistleblower Program and stress the need to protect the anonymity of whistleblowers.
2. The San Francisco Public Utilities Commission should reinforce the importance of department-wide compliance with the following city laws and rules:
 - Campaign and Governmental Conduct Code, Section 3.214, as it requires city employees to disclose relationships with individuals who have a financial interest in a governmental decision being made by the employee.
 - Campaign and Governmental Conduct Code, Section 3.216, as it addresses acceptance of gifts from restricted sources.
 - Campaign and Governmental Conduct Code, Section 3.218, which prohibit affording competitive advantages to one supplier.
 - City contracting regulations around competitive solicitation waivers and delegated departmental purchasing authority restrictions, including the prohibition of order splitting.
3. The Office of Contract Administration should update its guidance to clarify what may or may not constitute justification for a sole source waiver. This guidance should include that poor planning for procurements is not an appropriate justification.

Department Response



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February 23, 2024

Mark de la Rosa
Director of Audits
Office of the Controller
City Hall, Room 476
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San Francisco, CA 94102

Subject: Public Integrity Review: Criminal Conduct by Former SFPUC General Manager Harlan Kelly Affected City Procurements Despite Existing Rules Governing Gifts, Disclosures, and Waivers of the Competitive Procurement Process

Dear Mr. de la Rosa,

Thank you for conducting the public integrity review of the SFPUC, entitled, *Criminal Conduct by Former SFPUC General Manager Harlan Kelly Affected City Procurements Despite Existing Rules Governing Gifts, Disclosures, and Waivers of the Competitive Procurement Process*. The SFPUC acknowledges and appreciates the effort placed in this preparation of this report by the Controller's Office City Services Auditor.

We are pleased to agree with the recommendations listed. In addition to taking any added actions agency wide, the Audit Bureau will work with the internal Communications and Human Resources teams to include reminders of the Controller's Whistleblower Program with existing communication campaigns and training to agency personnel related to SFPUC's Annual Statement of Incompatibility attestation, Form 700 filers, and ethics requirements.

As General Manager, I have led SFPUC in taking significant steps to increase internal oversight efforts, and most importantly, changing the "top at the top" to one with emphasis on integrity and accountability. This message has been communicated clearly to all staff, consultants, and suppliers that SFPUC will conduct business in adherence to City & County of San Francisco policies and ethics and legal requirements.

We have improved activities in key organization areas, inclusive of the following:

- Expanded oversight through the SFPUC Audit Bureau. The Audit Bureau formalized its charter in December 2022 with expanded authority to facilitate and implement performance audits, inclusive of enforcing implementation of resulting audit recommendations. Oversight includes the agency's compliance with internal and

OUR MISSION: To provide our customers with high-quality, efficient and reliable water, power and sewer services in a manner that values environmental and community interests and sustains the resources entrusted to our care.

London N. Breed
Mayor

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Vice President

Newsha K. Ajami
Commissioner

Sophie Maxwell
Commissioner

Kate H. Stacy
Commissioner

Dennis J. Herrera
General Manager



SFPUC Management Response: Public Integrity Review
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external policies, procedures, and regulations, including adherence to industry best practices, standards, and workplace ethics. Activities are communicated in a regular and transparent process for the Commission, ratepayers, and public.

- Improved internal controls for contract administration. The SFPUC Contract Administration Bureau (CAB), who handles all agency construction and professional service contracts, provides routine and transparent communications to me which include: an explanatory memorandum for each contract award and modification that details the need for the contract, procurement method, and justification for any amendment; regular meetings with the CAB manager to discuss and inquire on specific contracts, and assure the agency's commitment to integrity and accountability is priority in how we conduct business. In addition, SFPUC enhanced internal controls by improving documentation requirements throughout the contracting process, including a signed conflict-of-interest form for all participants in the solicitation process.
- Commitment to ethics and integrity. Competitive processes and contract administration must be free of even the perception of favoritism, fraud, or corruption. SFPUC has procedures in place for managing communications with prospective and current contractors and vendors, that I require staff and outside parties to comply with. I also do not meet informally with representatives of prospective or current contractors and vendors.

We continue to seek ways to bolster compliance, oversight, and accountability at the SFPUC and look forward to our continued partnership with the Controller's City Services Auditor.

If there are any questions or additional information is needed, please do not hesitate to contact me at 415-554-1600.

Sincerely,

Dennis J. Herrera
General Manager

cc: Ronald P. Flynn, Deputy General Manager
Nancy L. Hom, Chief Financial Officer and AGM, Business Services
Irella Blackwood, Audit Director

Completed and Upcoming Public Integrity Reporting

The Controller's 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:

- [San Francisco Public Works Contracting](#) (June 29, 2020)
- [Gifts to Departments Through Non-City Organizations Lack Transparency and Create "Pay-to-Play" Risk](#) (September 24, 2020)
- [San Francisco's Debarment Process](#) (November 5, 2020)
- [Ethical Standards for Contract Award Processes of the Airport Commission and Other Commissions and Boards](#) (January 11, 2021)
- [Refuse Rate-Setting Process Lacks Transparency and Timely Safeguards](#) (April 14, 2021)
- [12-Month Status on Public Integrity Recommendations](#) (August 4, 2021)
- [Department of Building Inspection Permitting and Inspection Processes](#) (September 16, 2021)
- [Public Integrity Audit - SFPUC's Social Impact Partnership Program](#) (December 9, 2021)

Completed and Upcoming Public Integrity Reporting *(continued)*

- [Public Integrity Review - San Francisco Department of the Environment's Relationship with Recology and Lack of Compliance with Ethics Rules](#) (April 8, 2022)
- [Public Integrity Review - Preliminary Assessment - Refuse Rate-Setting Process - Update Based on Additional Reviews and Meetings with Recology](#) (May 16, 2022)
- [Public Integrity Reviews 2022 Update: Implementation Status of Recommendations From Assessments to Date](#) (December 21, 2022)
- [Public Integrity Audit – Review of the Landfill Disposal Agreement](#) (July 13, 2023)
- [Public Integrity Review – The Community Challenge Grant Program’s 2023 Solicitation Process Was Deeply Flawed and Needs to Be Redone Properly](#) (October 17, 2023)

The Controller’s Office, in consultation with the City Attorney’s Office, will continue to perform these reviews and assessments when appropriate to assess criminal conduct by City employees, officials, and vendors, and to transparently describe the City’s efforts to root out and prevent corruption in all its forms. Future assessments will include an update on the status of City contracting with suspended entities affiliated with Dwayne Jones and a review of processes related to grant solicitation, monitoring, and oversight.

Any questions or comments?

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