



## City and County of San Francisco

### Office of the Controller

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### Policy [December 13, 2023]:

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

#### I. Overview

Government Code section 12585 requires that every charitable corporation, unincorporated association, charitable trustee and other legal entity holding property for charitable purposes, must register with the California Attorney General. 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, maintaining a "Donate" button on any internet platform, 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 must comply with all filings required by the State Attorney General (AG) Registry of Charitable Trusts (Charity Registry) 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 contractors and grantees ("contractors") as well as subcontractors, subgrantees and subrecipients ("subcontractors") comply with State law. The policy and guidance establish the process to ensure compliance for any new agreements and/or amendments with nonprofit contractors entered into by the City, as well as the steps City departments should take when an existing nonprofit contractor is no longer in good standing with the State AG's Registry.

As nonprofit organizations are required to be in compliance with all filings to the State 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 contractor in Not Registered, Suspended, Revoked or Delinquent status on the State AG Charity Registry. Additionally, in cases where nonprofit organizations have established a fiscal sponsorship or similar relationship between a prime contractor and a subcontractor, the City may not continue to do business with any subcontractor in a Not Registered, Suspended, Revoked or Delinquent status, where required under State law.

## II. City Contracting Procedures regarding the State AG Charity Registry

The following policies and procedures apply to all contracts, grants and amendments entered into by contracting departments with City nonprofit contractors, as well as to any agreements established using a prequalified pool.

- a. **Contract Terms and Conditions.** The City Attorney's and City Administrator's Offices have updated solicitation, contract, and contract amendment standard terms and conditions to include a provision for inclusion in all agreements and amendments with City nonprofit contractors 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 contract or amendment, nonprofit contractors will attest to their compliance with State law at 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 contractor is in good standing by searching the State AG Charity Registry at the time of submission of contract materials to the City Attorney for every agreement submitted with that nonprofit contractor.
  - i. The Registry search functionality is available here:  
<https://rct.doj.ca.gov/Verification/Web/Search.aspx?facility=Y>
  - ii. According to the State AG Charity Registry, good standing includes the following statuses:<sup>1</sup>
    - Current
    - Current – Awaiting Reporting
    - Current – In Process
    - Current – Probationary Registration
    - Current – Reporting Incomplete
- c. **Prequalified Lists.** Contracting departments that administer prequalified lists of nonprofit contractors should notify the prequalified list about the requirement to be in Current status with the State AG Charity Registry to do business with the City.
  - i. No new City contracts, grant awards and/or purchase orders can be entered into or issued until a nonprofit organization is listed as in good standing on the State AG Charity Registry.

## III. Oversight of State AG Charity Registry Status during a Contract Term

- a. **Ongoing Monitoring.** The Controller's Office coordinates the Citywide Nonprofit Monitoring and Capacity Building Program (Monitoring Program), through which contracting departments monitor fiscal and compliance standards across a selected pool of City nonprofit contractors. Beginning in FY23-24, the Controller's Office will incorporate a review of a City nonprofit contractors' State AG Charity Registry status into the Monitoring Program checklist, including developing corrective actions associated with findings in this area which may include application of Red Flag or Elevated Concern statuses.
  - i. The Controller's Office may provide technical assistance via the Monitoring Program consultants to support City nonprofit contractors who are not in good standing to remedy their status with

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<sup>1</sup> <https://oag.ca.gov/charities/content/info#status>

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 the availability of providers.

- b. Noncompliance during Contract Term.** Contracting departments are not required to verify compliance with the State AG Charity Registry during the contract term except, as dictated in Section II, at contract execution and upon any amendments to that contract, as well as during any annual monitoring process per Section III.a. above. However, should a contracting department become aware of noncompliance by one of its nonprofit contractors during the contract term, such as through the annual monitoring process, contracting departments should take the following steps:
- i. Using the template provided in the Appendix of this policy, contracting departments are responsible for notifying the contractor that they are not in good standing with the State AG, and this is out of compliance with the terms of that contractor's agreement with the City which requires the nonprofit contractor to remain in good standing throughout the term of the agreement.
  - ii. Per the template provided in the Appendix of this policy, City nonprofit contractors will be provided reasonable time to cure their status with the State AG as it could create significant disruption to client services and may harm or disadvantage individuals receiving services to terminate such contracts immediately.
  - iii. If the City nonprofit contractor does not return to good standing within the time period provided, the contracting department must stop doing business with the noncompliant contractor immediately.
    1. If the contractor can show due diligence in its efforts to cure its status throughout the period provided, contracting departments have the option to hold any pending payments and pause activities but maintain the contract in an active status until the contractor comes into compliance.
    2. If the contractor has not attempted to cure its status in the time provided, contracting departments should engage their Deputy City Attorney, and initiate a termination of the agreement.

#### **IV. City Nonprofit Contractors who are not Prime Contractors, e.g., Subcontractors, Subgrantees, and Subrecipients**

City contractors 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/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 Charity Registry website to verify the status of each as in good standing.
- b. During contract execution, prime contractors/grantees that are nonprofits will be required to affirm their own good standing 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 not in good standing, the prime contractor/grantee and contracting department should identify an alternate organization in good standing to receive City funding.
- d. Subcontractors, subgrantees and/or subrecipients may be eligible for City technical assistance to come into compliance.

## V. Roles and Responsibilities

### a. The Controller's Office is responsible for:

- i. Incorporating 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.
- ii. Providing technical assistance to nonprofit contractors to come into conformance with the standard on a limited basis.
- iii. Periodic review via the Citywide Nonprofit Monitoring and Capacity Building Program to identify any nonprofit contractors and associated contracts, award agreements or payments to nonprofit contractors that not in compliance with State AG Registry transparency reporting requirements, and reporting on the results of this review via that program's annual report.
- iv. Incorporating any City Attorney or City Administrator guidance regarding contracting regulations into the Controller's Office's Accounting Policies and Procedures.

### b. Contracting Departments are responsible for:

- i. Adhering to the policy and responding to contractor questions on implementation.
- ii. Offering technical assistance to nonprofit contractors 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 every contract or grant with a nonprofit contractor 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 contractor that is not in good standing until its status has been cured.
- iv. When made aware of noncompliance with the State AG Charity Registry during the term of a contract (e.g., via an annual monitoring process), using the notification template in the Appendix of this policy to notify nonprofit contractors under contract about noncompliance with terms of the contract including maintaining Current status with the State AG Charity Registry, and providing that nonprofit contractor with instructions and a timeline to cure their status or risk contract termination.
- v. For Contracting departments that administer prequalified pools, notifying nonprofits previously prequalified through a pool about the policy.

### c. City Nonprofit Contractors are responsible for:

- i. Coming into and maintaining compliance with the State AG Charity Registry requirements.
- ii. Affirming through contract language that the contractor is responsible for staying in compliance during the term of contract.

- iii. Notifying contracting departments if the contractor falls out of compliance during the contract term, and timely carrying out necessary activities to reinstate compliance with State AG Charity Registry requirements.
  - iv. Ensuring any subcontractors are compliant for the duration of the contract term, and notifying the contracting department if a subcontractor is no longer compliant and escalation procedures may be warranted.
- d. 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 develop City procurement documents and contract templates as needed to incorporate any new provisions required by this policy.
- e. The Office of the City Administrator is responsible for:**
- i. Supporting development of the State AG Registry Policy.
  - ii. Contract Monitoring Division: Updating/incorporating the noted procedures into its Local Business Enterprise – Non-Profit Enterprise (LBE-NPE) Certification and Compliance program.

## **VI. Updates to City Policy**

Throughout the coming fiscal year, the City will assess the time required to remedy a Delinquent, Revoked or Suspended status, explore nonprofits' reasons for noncompliance, and establish any additional needed operational procedures for monitoring and appropriate escalation, consistent with this policy. This policy is subject to modification as the City continues its implementation.

## Appendix: Noncompliance Notification Template

### Instructions to Contracting Departments

Once a nonprofit contractor's State AG Charity Registry status is confirmed at the time an agreement is circulated for signatures, contracting departments are not required to verify nonprofit contractors' status on the AG Charity Registry during the term of the contract. However, contracting departments may become aware that a nonprofit contractor is no longer in good standing on the State AG Charity Registry during a contract term, e.g., during an annual monitoring review or by other means. On these occasions, contracting departments should undertake the following steps:

1. Update the highlighted items in the notification template below with relevant details, including establishing a due date of four months after the notification date. Departments may make other edits to the draft as relevant and necessary for specific circumstances.
2. Distribute the notification template to relevant contacts at the nonprofit organization, including executive director and others who are point on contract administration with your department.
  - a. Departments do not need to include the Controller's Office or City Attorney on these distributions or otherwise inform the Controller's Office or City Attorney about contractor noncompliance upon initial notification.
  - b. Departments should maintain records of notification of nonprofits about their status in case future escalation is necessary.
3. If a nonprofit contractor requests technical assistance, submit this request to the Citywide Nonprofit Monitoring and Capacity Building Program by emailing [nonprofit.monitoring@sfgov.org](mailto:nonprofit.monitoring@sfgov.org).
4. Schedule a review of the contractor's State AG Charity Registry status on the four-month due date, unless you have previously been notified by the nonprofit that its status has been cured.
  - a. If the nonprofit contractor's status is Current or Probationary, no further action is needed.
  - b. If the nonprofit contractor's status is any other status (e.g., Delinquent, Suspended or Revoked), continue to the next step.
5. Notify the relevant contacts at the nonprofit organization that the time to cure has expired, and your department will begin the process of terminating the contract. Provide the nonprofit contractor the opportunity to share details of due diligence in coming into compliance, including:
  - a. Documentation showing submission of required forms to the State AG Charity Registry significantly prior to the due date.
  - b. Documentation showing communications with the State AG's Office regarding issues or challenges with coming into compliance significantly prior to the due date.
  - c. Documented requests for technical assistance significantly prior to the due date.
  - d. A documented timeline and plan for developing and/or gathering documents required for compliance (e.g., certified audit, IRS Form 990 submission timeline, etc.).
6. If the contractor provides relevant documentation showing due diligence, departments are authorized to provide an additional two-month extension when warranted and when a nonprofit contractor can offer reasonable assurance that it will regain compliance within that extension period.
7. If the timeline and plan for compliance is likely to take longer than two additional months, or if the nonprofit contractor does not respond to provide a plan and remains out of compliance,

departments must immediately contact their Deputy City Attorney to develop an escalation approach.

- a. For nonprofit contractors with a timeline and plan for compliance that may require an extended duration for completion, the escalation approach may include offering an additional extension, or may include pausing services and payments but maintaining the contact as active until the contractor can come into compliance. The exact escalation approach will be determined in consultation between the department and Deputy City Attorney on a case-by-case basis.
- b. For nonprofit contractors that do not come into compliance and do not demonstrate due diligence in attempting to come into compliance, the escalation approach may include initiating contract termination and transfer of services to a provider in compliance with State law.

Note: if noncompliance is identified through annual fiscal and compliance monitoring procedures coordinated by the Controller's Office, a single notification template may be prepared and issued in conjunction with the joint monitoring report letter and copied to relevant staff across contracting departments. Each contracting department will be individually responsible for steps 4-7 above, even if the initial notification is disseminated as part of joint monitoring activities.

*Notification Template:*

To [Nonprofit Executive Director]:

On [DATE], [NONPROFIT NAME] was found to have a State AG Charity Registry status of [STATUS], making the nonprofit out of compliance with the terms of your agreement(s) with our department.

City nonprofit contractors, grantees, subcontractors, subgrantees and subrecipients are required to be in compliance with the State AG Charity Registry in order to operate in California and do business with the City and County of San Francisco. All new solicitations, contracts, grant awards and/or amendments require City nonprofit contractors to attest to being in and maintaining either a Current or Probationary status with the State AG for the term of the agreement.

To minimize impacts on service delivery, we are providing you with four months from the date of this notice to establish compliance with the State AG Charity Registry. The due date for coming into Current or Probationary status is [DATE].

The State AG's Office documents all processes necessary for compliance on its website, including explanatory videos and detailed forms. Nonprofit contractors are directed to review State AG's Office materials here: <https://oag.ca.gov/charities/delinquency>.

Technical assistance may be available via the Citywide Nonprofit Monitoring and Capacity Building Program. Please indicate if you would like a referral for technical assistance regarding your State AG Charity Registry status and the process for curing that status.

Per Section V of the City's policy, nonprofit contractors are responsible for notifying contracting departments if the contractor falls out of compliance during the contract term. If you have not already engaged with them about this instance of noncompliance, please promptly notify all other City departments with which you have an active contract about your change in status with the State AG Charity Registry.

Please reply to this email to notify us when your status on the State AG Charity Registry website has changed to Current or Probationary on or before the due date.

If you do not cure your organization's status with the State AG by the due date, City policy dictates that we must initiate contract termination proceedings, as contracting departments are not authorized to do business with nonprofit contractors out of compliance with State law.

If there are extenuating circumstances for why the organization is unable to cure its status by the deadline, please provide a summary of your efforts and anticipated timeline for coming into compliance. If, in the City's discretion, your organization has shown due diligence in your efforts to cure its status throughout the cure period provided, our department may allow additional time to cure, or may pause contracted services, activities and payments but maintain the contract in an active status until you have cured the status and are legally allowed to operate in California.



If you do not provide information showing due diligence in your organization's attempts to cure the status during the cure period, we will engage with the City Attorney's Office and initiate a termination of our agreement(s) involving the noncompliant organization.

For more information:

- The City has issued policy regarding these procedures here: [link to policy]
- The State AG Charity Registry website includes all required filing templates and instructions:  
<https://oag.ca.gov/charities>