

CITY AND COUNTY OF SAN FRANCISCO OFFICE OF THE CITY CONTROLLER

Before Hearing Officer Janice L. Sperow

HEARING OFFICER'S FINDINGS AND DECISION

In the Matter of Debarment Proceedings against LeAndrew Jenkins, an individual, Susan Murphy, an individual, and J&J Community Resource Center, a California Nonprofit Corporation under Chapter 28 of the City's Administrative Code

Hearing Date: June 24, 2024

INTRODUCTION

The charging official seeks debarment based upon invoices respondents allegedly falsely submitted for payment. Respondents maintain that they innocently erred and never knowingly submitted false invoices.

FACTUAL BACKGROUND & PROCEDURAL HISTORY

The Parties

The City and County of San Francisco (City) supports its communities in part through grants issued to nonprofit, community-based organizations (CBOs) providing vital, local services. J&J Community Resource Center (J&J), a City grantee and subgrantee, is a registered nonprofit CBO serving the Sunnydale and Visitacion Valley communities of San Francisco. LeAndrew Jenkins (Jenkins), a Sunnydale and Visitacion Valley community leader, served as J&J's Executive Director and Chief Executive Officer (CEO) and as a Safety Administrator for the non-profit affordable housing developer Mercy Housing (Mercy), also a City grantee, during the relevant times. Susan Murphy (Murphy) worked at FACES SF (FACES), another City grantee and a San Francisco non-profit that sub-contracted with J&J. J&J's filings with the State of California listed Murphy as J&J's Secretary and/or Chief Financial Officer (CFO) during the relevant times.

The Debarment Process

On February 26, 2024, City Attorney David Chiu, as the charging official under Sections 28.1 and 28.2 of the San Francisco Administrative Code, issued an Order of Suspension and Counts and Allegations Seeking Debarment against J&J, Jenkins, and Murphy, for a five-year term for submitting false claims to the City. The charging official cited two grounds for debarment: false claims under Chapter 28 of the San Francisco Administrative Code and false claims under the California False Claims Act (CFCA) as codified in California Government Code Section 12651. See Order of Suspension and Counts and Allegations Seeking Debarment, dated 02/26/24.

Pursuant to Chapter 28's debarment procedures, the Controller appointed the undersigned as the Hearing Officer in this matter. The Hearing Officer set the hearing for June 24, 2024, commencing at 9:00 a.m. and required each party to submit a pre-hearing statement, including a statement of issues to be adjudicated; a statement of the facts; legal argument with citations; a list describing and a copy of each piece of evidence; and a list of witnesses with a summary of their anticipated testimony. Per party request, the Hearing Officer extended the deadline for the pre-hearing submissions to June 14, 2024. The Hearing Officer advised that each party will be allotted approximately 90 minutes of total hearing time to present their case, including an opening statement, direct and cross-examination of witnesses, rebuttal, and closing argument after which the Hearing Officer would issue a written decision based upon her findings within 14 days from the hearing's closure. See S.F. Admin. Code § 28.10(c).

Prehearing Submissions

Pursuant to the Hearing Officer's order, the parties submitted their pre-hearing statements and supporting evidence on June 14, 2024. The City proffered exhibits A-N with its brief and provided its list of witnesses and exhibits. J&J and Jenkins included their witness lists in their pre-hearing statement and reserved the right to proffer exhibits in rebuttal and impeachment. Murphy proffered exhibits 1-6 and her witness list, including an affidavit from Pastor Sonya Brunswick. The Hearing Officer received and reviewed all pre-hearing submissions before the hearing.

THE HEARING

The Hearing Officer conducted the public hearing on June 24, 2024 via videoconference on the Teams platform. Claire Stone, with support from Gabriela Shiferaw and Ayeesha Hossain, hosted and recorded the hearing on behalf of the City's Controller's Office. Hunter W. Sims III and Keslie Stewart represented the City; Lauren Kramer Sujeeth and Ruby Zapien of Rogers Joseph O'Donnell represented J&J and Jenkins. Murphy appeared *pro se*. Paul Zarefsky of the City Attorney's Office assisted the Hearing Officer. Eric Wall of the City Attorney's Office technically assisted with exhibits on behalf of the charging official. Summer interns, the public, and press members also attended and observed the public hearing. The Controller's Office transcribed the proceedings and made the transcript publicly available.

After introduction of all participants, the Hearing Officer reviewed the applicable procedures, agenda, case presentation order, and other preliminary matters. The Hearing Officer identified the documentary evidence received and asked the parties if they objected to any of the evidence offered into the record as part of the pre-hearing submissions. Receiving no objections, the Hearing Officer admitted the charging official's exhibits A-N and Murphy's exhibits 1-6. At the hearing, Jenkins and J&J proffered a set of exhibits to which the City objected as untimely. The Hearing Officer overruled the objection and admitted the exhibits as J&J 1-12 in rebuttal. The Hearing Officer also received a copy of the parties' demonstrative power points as argument but did not admit them as evidence.

During the Hearing, the parties also proffered additional emails and documents in rebuttal and impeachment. The Hearing Officer admitted all proffered exhibits except for FACES' DCI Executive Summary. The Hearing Officer excluded the DCI Executive Summary after an *in camera* inspection on the grounds of confidentiality, privacy, and non-impeachment. In sum, the Hearing Officer admitted all proffered evidence apart from the excluded confidential summary.

The City called Lead Auditor Amanda Sobrepena and Senior Investigator Maureen Robinson as witnesses during the hearing. J&J and Jenkins called Dr. Kim Felder Rhodes of the University of California San Francisco Medical Center (UCSF) as a witness. Murphy testified on her own behalf. All witnesses testified upon oath or affirmation. The Hearing Officer afforded both parties a full opportunity to examine, cross-examine, redirect, and recross each witness as well as to ask additional questions if the Hearing Officer questioned the witness.

All parties introduced additional testimonial evidence by way of sworn declarations. The City introduced the declarations of Tracy Dixon, owner of Dixon Delites, Ex. D; Giang Pham, owner of the Recovery Room, Ex. E; Mamadou Gning, the CFO of San Francisco Housing Authority, Ex. F; Tom Eachus, owner of TEACO Amusements, Ex. G; Mary Vance, Accounting Manager for Abbey Party Rentals, Ex. H; Laura Fernandez, the Director of People and Culture for FACES, Ex. I; Daniel Poore, Assistant Accountant and Contract Coordinator for FACES, Ex. J; Devika Nair, Director of Finance for the San Francisco Boys & Girls Club, Ex. K; Doug Shoemaker, President of Mercy Housing California, Ex. L, and Maureen Robinson, City Attorney Senior Investigator, Ex. M. J&J and Jenkins introduced the declarations of Tom Eachus, owner of TEACO Amusements, Rebuttal Ex. 2; Nichole Sanders, former J&J Board member and Secretary, Rebuttal Ex. 3; Jeffrey Breiz, a J&J meal and groceries deliverer, Rebuttal Ex. 9; and James Walker, President and Founder of Diogenes Community Solutions, Inc., Rebuttal Ex. 10. Murphy introduced the declaration of Sonya Brunswick, Senior Pastor of Greater Life Church, Ex. 1.

The parties presented opening arguments, their cases-in-chief, their rebuttal cases, and closing arguments before submitting the matter to the Hearing Officer for adjudication. The Hearing Officer closed the record at end of the business day on June 24, 2024. The Hearing Officer read and considered all admitted evidence, testimony, and declarations in adjudicating the below issues.

STATEMENT OF ISSUES

- ❖ Does Chapter 28's Debarment Procedure apply to J&J?
 - If yes, did the City sustain its burden to prove willful misconduct by J&J?
 - If yes, does Chapter 28 authorize debarment for a five-year term?

- ❖ Does Chapter 28’s Debarment Procedure apply to Jenkins?
 - If yes, did the City sustain its burden to prove willful misconduct by Jenkins?
 - If yes, does Chapter 28 authorize debarment for a five-year term?
- ❖ Does Chapter 28’s Debarment Procedure apply to Murphy?
 - If yes, did the City sustain its burden to prove willful misconduct by Murphy?
 - If yes, does Chapter 28 authorize debarment for a five-year term?
 - Should debarment prohibitions extend to Murphy as a J&J affiliate?
 - Should Murphy be deemed irresponsible and disqualified from City contracts and grants as a J&J affiliate?
- ❖ Did the City sustain its burden to prove a violation of the California False Claims Act?

FINDINGS & LEGAL ANALYSIS

Preliminary Findings

Finding: All parties had a full and fair opportunity to present their respective evidence, positions, and arguments.

Although the regulations contemplate 90 minutes of hearing time all-inclusive per party, the Hearing Officer repeatedly advised the parties that she would afford them both as much time as necessary to prove their respective cases. As a result, the total hearing time lasted over six hours, exclusive of breaks. During that time, each party presented witnesses, exhibits, direct and cross examinations, and rebuttals. The proceedings did not continue until each party exhausted their questioning of each witness and rested their cases. Accordingly, the Hearing Officer finds that the process afforded the parties a full and fair opportunity to present their evidence and argument.

Finding: The City has the burden of proof.

The Hearing Officer finds that the City bears the burden of producing evidence and of proving grounds for debarment. Although Chapter 28 does not specify the applicable burden of proof, the Hearing Officer rules that the City bears the burden of proving the charges by a preponderance of the evidence.

Issue: Chapter 28’s Applicability

- ❖ Do Chapter 28's debarment procedures apply to J&J?

Finding: Yes, Chapter 28 applies to J&J.

Chapter 28 of the San Francisco Administrative Code authorizes a charging official to issue orders of debarment or suspension against a contractor pursuant to its procedures. SF Admin. Code § 28.2. Chapter 28 defines a contractor for debarment purposes as:

Any individual person, business entity, or organization that submits a qualification statement, proposal, bid, or grant request, or that contracts directly or indirectly with the City for the purpose of providing any goods or services or construction work to or for, or applies for or receives a grant from, the City including without limitation any Contractor, subcontractor, consultant, subconsultant or supplier at any tier, or grantee.

Id. at § 28.1. The Hearing Officer rules that J&J qualifies as a contractor for Chapter 28 debarment purposes because it undisputedly applied for and received grant funds both directly and indirectly from the City. See id.; Murphy Testimony (T); Ex. N; Sobrepena T. Accordingly, the disbarment procedures apply to J&J as a corporate grantee and subgrantee.

Issue: Chapter 28's Applicability

- ❖ Do Chapter 28's debarment procedures apply to Jenkins?

Finding: Yes, Chapter 28 applies to Jenkins.

Under Chapter 28, the term "contractor" includes any responsible managing corporate officer, responsible managing employee, or other owner or officer who has personal involvement and/or responsibility in seeking or obtaining a contract with the City or in supervising and/or performing the work prescribed by the contract or grant.

Applying this definition, the Hearing Officer rules that Jenkins qualifies as a contractor for debarment purposes because he undisputedly served as an officer and managing employee of J&J, a City grantee and subgrantee. The City introduced unrefuted, credible documentary evidence filed with the State of California listing Jenkins as the responsible officer for J&J in the relevant years. Specifically, J&J's 2023 registration form lists Jenkins as its CEO and Jenkins' email as J&J's email address. See Ex. A, C. Jenkins also executed the registration form as J&J's Executive Director. See id. J&J listed Jenkins as its CEO and CFO on its official corporate tax filings with the State during the relevant years of 2021 through 2023. See Ex. B. Vendors also delivered goods to Jenkins at an address he shared with J&J. See, e.g., Ex. M. Accordingly, the debarment procedures apply to Jenkins as a J&J "responsible managing corporate officer" and employee.

Issue: Chapter 28's Applicability

- ❖ Do Chapter 28's debarment procedures apply to Murphy?

Finding: No, Chapter 28 does not directly apply to Murphy.

As noted above, a contractor subject to debarment includes: (1) any responsible managing corporate officer; (2) any responsible managing employee; (3) any other contractor owner who has personal involvement and/or responsibility in seeking or obtaining a contract with the City or in supervising and/or performing the work prescribed by the contract or grant; or (4) any contractor officer who has personal involvement and/or responsibility in seeking or obtaining a contract with the City or in supervising and/or performing the work prescribed by the contract or grant.

The Hearing Officer finds that the City failed to prove that Murphy satisfies the Chapter 28's definition of a contractor for debarment purposes. While, according to her own testimony, Murphy actively participated in and received remuneration for coordinating J&J's Family Day and White Gala events as the Day of Coordinator, the City did not establish her role as a City "contractor." Murphy provided services to J&J as an independent contractor through her corporate alter ego entity Murphy Management. J&J did not hire Murphy as an employee. Therefore, she does not qualify as a "responsible managing employee" of J&J. Nor did the City establish that Murphy owns any portion of J&J.

Instead, the City maintains that Murphy functioned as a J&J corporate officer, citing J&J's State filings listing her as J&J's Secretary and CFO. See Ex. A, C. The City argues that Murphy therefore qualifies as a contractor as a "managing corporate officer" or officer with "personal involvement and/or responsibility in seeking or obtaining a contract with the City or in supervising and/or performing the work prescribed by the contract or grant." See Ex. A, C. Murphy, however, denied serving as a corporate officer and testified that she did not know that J&J had erroneously listed her as a corporate official until the investigation began. Murphy T.

Further, unlike Jenkins' signature which appears both electronically and in script on multiple corporate filings, Murphy's signature does not. Not a single document filed with the State and admitted into evidence purports to include Murphy's signature as a corporate officer. Nothing on the face of the State filings suggests that Murphy authorized J&J to list her as its CFO and Secretary. Nor did the City introduce minutes, agendas, bank statements, bylaws, or other records confirming Murphy's role as CFO and Secretary.

Contrarily, Murphy submitted a declaration from Pastor Sonya Brunswick under penalty of perjury confirming that J&J had recently listed the Pastor as its CFO without her knowledge, consent, or authorization, in support of her own testimony that J&J also listed her – Murphy – without her knowledge, consent, or prior authorization. See Ex. 1. In sum, while Murphy was admittedly personally involved with J&J's activities, the City

did not demonstrate that her involvement stemmed from her capacity as a J&J officer, employee, or owner. Accordingly, the Hearing Officer finds the evidence of Murphy's role as J&J's CFO and Secretary equivocal and hence rules that the City did not sustain its burden to prove Murphy falls within Chapter 28's definition of a contractor subject to debarment.

Issue: Willful Misconduct

Finding: Chapter 28 requires willful misconduct for debarment.

"Debarment" administratively determines a contractor "irresponsible and disqualified" from directly or indirectly participating in, entering, applying for, or receiving grants, procurements, contracts, or other benefits from the City for a specified period up to a maximum of five years. SF Admin. Code §§ 28.1, 28.11(a). Chapter 28 requires the charging official to debar any contractor which the Hearing Officer finds upon the evidence presented to have engaged in "willful misconduct" with respect to any contract, purchase order, or grant. Id. at § 28.3(a). Accordingly, the Hearing Officer rules that the City must prove by a preponderance that the charged parties engaged in "willful misconduct" to sustain an order of debarment.

Issue: Willful Misconduct

Finding: Willful misconduct for debarment purposes includes the submission of false claims as defined in Chapter 21 and other laws.

Pursuant to Chapter 28, willful misconduct includes, but is not limited to:

- (1) submission of false information in response to an advertisement or invitation for bids or quotes, a request for qualifications, or a request for proposals;
- (2) failure to comply with the terms of a contract or with provisions of the Municipal Code;
- (3) a pattern and practice of disregarding or repudiating terms or conditions of City contracts or grants, including without limitation repeated unexcused delays and poor performance;
- (4) failure to abide by any rules and/or regulations adopted pursuant to the Municipal Code;
- (5) submission of false claims as defined in this Administrative Code, Chapter 6, Article V, or Chapter 21, Section 21.35, or other applicable federal, state, or municipal false claims laws;
- (6) a verdict, judgment, settlement, stipulation, or plea agreement establishing the Contractor's violation of any civil or criminal law or regulation against any government entity relevant to the Contractor's ability or capacity honestly to perform under or comply with the terms and conditions of a City contract or grant;
- (7) an order, decision, verdict, judgment, settlement, stipulation, or plea

agreement establishing the Contractor's intentional or willful violation of any civil or criminal law or regulation governing wages or unfair labor practices, including, but not limited to, violations under California Labor Code sections 98.1, 1771.1 and 1775, San Francisco Administrative Code Chapters 12P, 12R.4, 12W and 14, and 29 U.S.C. § 158(a);
(8) collusion in obtaining award of any City contract or grant, or payment or approval thereunder; and/or
(9) the offer or provision of any gift or money to a public official, if that public official is prohibited from accepting the gift or money by any law or regulation.

SF Admin. Code § 28.3(a).

The Hearing Officer finds that willful misconduct explicitly includes, under section 28.3(a)(5) above, the submission of false claims as defined by "Section 21.35, or other applicable federal, state, or municipal false claims laws." Accordingly, the Hearing Officer rules that Chapter 28's debarment procedures incorporate by statutory reference the definitions set forth in Section 21.35 of the San Francisco Administrative Code, the CFCA, and all other false claims laws, thereby permitting the charging official to pursue contractor debarment based on a false claim submission as defined therein.

Issue: Willful Misconduct

Finding: Willful misconduct for debarment purposes includes knowingly making a false record for payment by the City.

The Administrative Code requires all contractors and subcontractors to "deal in good faith with the City" and submit claims" and requests of any kind seeking increased compensation on a City contract only upon a good-faith, honest evaluation of the underlying circumstances and a good-faith, honest calculation of the amount sought. See SF Admin. Code § 21.35(a). A contractor submits a false claim in violation of this good faith duty when it engages in any one of the five enumerated acts set forth in Section 21.35(a):

- (1) Knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval;
- (2) Knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City;
- (3) Conspires to defraud the City by getting a false claim allowed or paid by the City;
- (4) Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or
- (5) Is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the

false claim.

SF Admin. Code § 21.35(a)(1)-(5). Based upon this statutory definition and its incorporation by reference into Chapter 28, the Hearing Officer holds that the charging official may debar a contractor who knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City.

Issue: Willful Misconduct

Finding: Willful misconduct for debarment purposes includes the inadvertent submission of a false claim without reasonably timely correction.

Pursuant to Section 21.35(a)(5) above and as incorporated into Chapter 28 by reference, the Hearing Officer further finds that the charging official may debar a contractor who benefits from the inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

Issue: Willful Misconduct

❖ Did the City prove willful misconduct by J&J?

Finding: Yes, the City proved willful misconduct by J&J by a preponderance of the evidence.

The City investigated J&J's grant submissions through both the City Attorney's Office and the Controller's Fiscal Auditor for the City Services Division. City Attorney Senior Investigator Robinson investigated J&J's invoices, receipts, and grant payments by contacting J&J's vendors directly for confirmation of services rendered, receipts provided, invoices generated, cash payments made, and amounts paid by J&J. Robinson T. She exchanged emails with and spoke directly to several J&J vendors and grant partners. Id. She also requested, and in some cases subpoenaed, documents from third-parties as part of her investigation. Id. Robinson also used internet resources and accessed third-party investigations. Id. Robinson then drafted, in conjunction with the City Attorney's Office, declarations for review, editing, and final approval by the interviewed vendors and grant partners. Id.

For her part, Lead Auditor Sobrepena reviewed all the grant agreements and documentation for which J&J was a grantee or subgrantee so she could determine the scope of the grant and eligible expenses. She then audited J&J's grant submissions for accuracy and eligible scope. Sobrepena T. She found concerns regarding six grants specifically: the Department of Public Health (DPH) COVID grant, the DKI Community grant, the DKI Business Incubator grant, and Mayor's Office of Housing & Community Development (MOHCD) Boys & Girls Club Family Day grant, the MOHCD Mercy Family Day grant, and the MOHCD Youth Center grant, with the DPH COVID grant having

most of the issues. See Ex. N. Sobrepena did not investigate J&J salaries but rather assumed their accuracy. Sobrepena T.

Based upon these two extensive investigations, the City introduced testimonial and documentary evidence of four types of false claims in support of debarment: (1) double billing; (2) ineligible claims; (3) fake invoices; and (4) questionable invoices. See Ex. N; Sobrepena T. Sobrepena documented each invoice by type and grant in chart form. See Ex. N. Sobrepena identified “questionable” invoices as those for which she had insufficient information to determine their eligibility and/or accuracy for payment by the City under the applicable grant, even after further investigation. Sobrepena T. Based upon this definition, the Hearing Officer disregards the questionable invoices as a basis for debarment given their admittedly equivocal evidentiary value.

Sobrepena described the “double billed” invoices as those J&J submitted for repayment under more than one City grant, typically the DPH COVID grant and another City grant. Sobrepena T. She categorized invoices as “fake” if the City Attorney investigator confirmed directly with the vendor that it did not provide the service and/or receipt. Id. She defined ineligible invoices as those for expenses unrelated to the grant’s scope or listed as unallowable based upon her grant review. Id.

Robinson confirmed Sobrepena’s categorizations of ineligible, double billed, and fake invoices. She testified by way of example, that J&J, through Jenkins, had obtained approval and repayment for a Tahoe youth trip under the Youth grant but later Mercy learned that Jenkins had turned the trip into a staff retreat, which would be ineligible for repayment under the Youth grant. Robinson T; Murphy T. As another example, Robinson testified that the Recovery Room provided services to Jenkins but only as a Mercy employee, not in his J&J capacity; yet, J&J submitted the Recovery Room invoice for City payment. Robinson T. Similarly, Robinson verified that J&J never paid Walker’s second invoice for \$1,000 because the training never occurred and, while J&J did pay Walker’s first invoice for \$5,000, the invoice had zero connection with COVID testing or vaccinations and thus should not have been submitted for repayment under the DPH COVID grant. Id.; see Ex. M.

The Hearing Officer finds witnesses Sobrepena and Robinson credible. Indeed, Sobrepena explicitly declined to comment on the charged parties’ intent because she did not have sufficient evidence to determine state of mind. She also afforded J&J the “benefit of doubt” when an invoice raised red flags but she could not confirm its falsity. Robinson also declined to exaggerate the extent of her personal knowledge but instead reported information gleaned directly from vendors and documentation. Both witnesses testified credibly and fairly in the Hearing Officer’s assessment. The Hearing Officers finds that both witnesses also provided ample evidence of false claims submitted by J&J and Jenkins as defined by Chapters 21 and 28 of the Administrative Code.

The documentary evidence and third-party declarations further confirm the weight and credibility of their testimony. For example, the owner of Dixson’s Delights, the owner of the Recovery Room, the CFO of the SFHA, the owner of TEACO Amusements, and the

Accounting Manager of Abbey Party Rentals all confirmed under penalty of perjury that the invoices submitted under their names by J&J and Jenkins did not constitute genuine, authentic, or accurate invoices. See Ex. D at ¶¶5-7; Ex. E at ¶¶12-17; Ex. F at ¶¶4-9; Ex. G at ¶4; Ex. H at ¶5.

Other third-parties, such as the President of Mercy Housing California and the Finance Director of the SF Boys & Girls Club, confirmed under penalty of perjury that their organizations paid the invoices that J&J and Jenkins submitted under the J&J name for payment by the City. See Ex. K at ¶¶6-10; Ex. L. at ¶¶7-20; compare Ex. J. The Hearing Officer finds that this declaratory evidence both corroborates the testimonial evidence of Sobrepena and Robinson and independently satisfies the City's burden to prove the submission of false claims and willful misconduct by J&J and Jenkins.

Issue: Willful Misconduct

- ❖ Did J&J and Jenkins have the required scienter necessary for debarment?

Finding: Yes, J&J and Jenkins had the requisite state of mind needed to support debarment.

J&J and Jenkins conceded that Jenkins submitted some erroneous and inauthentic invoices for payment by the City, including by mistake at least one receipt for the personal purchase of alcohol and cigars. J&J also acknowledged that it created invoices and receipts for payment by the City to reflect cash legitimately paid to vendors for grant-eligible activities. In other words, J&J admitted that it submitted invoices not genuinely issued by the vendors and third-parties but instead drawn up by Jenkins for J&J's submission. J&J emphasizes, however, that the fabricated invoices reflected actual payments made to the vendors and hence did not contain false content. Consequently, J&J challenged debarment on the grounds that it did not knowingly submit any false claims but rather innocently erred due to inexperience with grant procedures and overreliance on its senior grant partners' approval processes. Accordingly, J&J contended that the City did not sustain its burden to prove that it had the requisite scienter for debarment.

Under Chapter 28, the contractor engages in willful misconduct when it submits a false claim for payment as defined by Chapter 21 or other law. SF Admin. Code § 28.3(a)(5). Chapter 21 in turn describes a false claim to include, *inter alia*, "knowingly" making or using a "false record or statement" for payment by the City. Id. at § 21.35(a)(2). The statute defines "knowingly" for Chapter 28 debarment purposes. Under the statutory definition, the contractor knowingly submits false claims when it:

- (1) Has actual knowledge of the information;
- (2) Acts in deliberate ignorance of the truth or falsity of the information;
- (3) Acts in reckless disregard of the truth or falsity of the information.

Id. at § 21.35(g). The statute also expressly provides that “proof of specific intent is not required.” Id. Accordingly, the Hearing Officer finds that a contractor knowingly submits a false claim when it affirmatively knows the falsity of the information, deliberately ignores the information’s truth or falsity, or recklessly disregard’s the information’s truth or falsity. See id.

Applying this standard, the Hearing Officer finds that J&J and Jenkins knowingly made and used a false record for payment when they created and submitted inauthentic invoices for payment under the names of third-party vendors which had neither prepared, issued, nor authorized the invoices. See Ex. D at ¶¶5-7; Ex. E at ¶¶12-17; Ex. F at ¶¶4-9; Ex. G at ¶4; Ex. H at ¶5. J&J and Jenkins knew that the vendors had not prepared the invoices because Jenkins had manufactured them on J&J’s behalf under the vendors’ names. The Hearing Officer further finds that the City need not prove the underlying falsity of the invoices’ contents to sustain debarment, as J&J and Jenkins advocate, although the City did so in some instances, because Chapter 28 permits debarment based upon the fabrication and submission of a false record alone. See SF Admin. Code § 21.35(a)(2).

Moreover, even if J&J and Jenkins innocently submitted false claims to the City for payment, they had a duty to correct their falsity and the failure to do so within a reasonable timeframe after the falsity’s discovery statutorily converts an otherwise inadvertently submitted false claim into a knowingly submitted false claim. See id. at § 21.35(a)(5). Here, J&J and Jenkins admittedly realized that they had erred at least by February 2024 when the charging official issued the order of suspension and debarment but did not correct those errors directly and promptly with the City, but rather waited until the hearing to proffer their explanations.

Without waiving any privileges, J&J and Jenkins intimated that they conceded the errors during confidential settlement negotiations with the City. The Hearing Officer finds, however, that the statute requires reasonably prompt correction, not merely acknowledged errors. See id. No party presented any evidence of corrected invoices submitted by J&J or Jenkins, letters of correction submitted by J&J or Jenkins, or any other records documenting J&J and Jenkins correction efforts. Conversely, the Hearing Officer finds that the City submitted ample, credible evidence of false claims submitted by J&J and Jenkins as statutorily defined for debarment purposes without later correction.

❖ Did the City prove willful misconduct by Jenkins?

Finding: Yes, the City proved willful misconduct by Jenkins by a preponderance of the evidence.

For the reasons analyzed in detail above, the Hearing Officer finds that the City also sustained its burden to prove willful misconduct by Jenkins sufficient to warrant debarment under Chapter 28. Jenkins operates J&J, approved all repayment

submissions to the City, and acted on behalf of J&J. In sum, J&J operated through Jenkins. Accordingly, the Hearing Officer finds Jenkins jointly and severally liable for J&J's false claims submissions as well as directly liable for his own willful misconduct.

- ❖ Did the City prove willful misconduct by Murphy?

Finding: Not adjudicated. The City did not demonstrate debarment directly applies to Murphy as a Chapter 28 contractor.

The Hearing Officer declines to adjudicate the issue of willful misconduct by Murphy because the City failed to prove the statutory prerequisite of her contractor status for direct debarment.

Issue: Debarment Term

- ❖ Is a five-year debarment of J&J and Jenkins statutorily authorized?

Finding: Yes, Chapter 28 authorizes debarment up to five years.

The City seeks debarment of J&J and Jenkins for a five-year term. Chapter 28 authorizes a debarment order for a term not to exceed five years from the date of the order. See SF Admin. Code § 28.11(a). The statute provides no other guidance on how the charging official should determine the length of the debarment term. See id. Accordingly, the Hearing Officer finds that the statute duly authorized the charging official to determine the appropriate length of the debarment if the length does not exceed the statutory maximum of five years. See id. The Hearing Officer further finds that the willful misconduct in this case warrants a five-year debarment.

Issue: Debarment Term

- ❖ Is a five-year debarment of Murphy warranted?

Finding: No, the City did not prove Murphy's status as a contractor, a necessary prerequisite to direct debarment.

For the reasons set forth above, the Hearing Officer finds that the charging official may not directly debar Murphy because the City did not first prove that Murphy satisfied the statutory definition of a contractor subject to debarment.

Issue: Debarment Scope & Effect

- ❖ Does the debarment of J&J and/or Jenkins prohibit Murphy as an "affiliate" from participating in any contract or grant at any tier, directly or indirectly, with or for the City?

Finding: No, the City did not establish that Murphy satisfied the statutory definition of affiliate for debarment purposes.

A debarment order prohibits the contractor and the contractor's "affiliates" from directly or indirectly participating in any City contract or grant. SF Admin. Code § 28.11(c). Chapter 28 defines an affiliate as

Any individual person or business entity related to a Contractor where such individual or business entity, directly or indirectly, controls or has the power to control the other, or where a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership; identity of interests among family members; shared facilities and equipment; common use of employees or a business entity organized following the Suspension, Debarment, bankruptcy, dissolution or reorganization of a person which has the same or similar management; and/or ownership or principal employee as the Contractor.

Id. at § 28.1.

The City argues that, at a minimum, Murphy qualifies as a J&J affiliate, even if not a J&J officer. The Hearing Officer finds that the City proved that Murphy actively assisted J&J and Jenkins in many respects, such as working with their attorney, copying materials, answering emails on their behalf, coordinating Family Day and the White Gala, assisting with Dr. Jackson's celebration of life, and much more. The Hearing Officer further finds that the City proved that Murphy received direct compensation from J&J through her alter ego Murphy Management.

Nevertheless, the Hearing Officer finds that the City failed to prove that Murphy controlled or had the power to control J&J or Jenkins. The City did not establish "interlocking management" between Murphy and J&J or Murphy and Jenkins. The City likewise did not introduce evidence that Murphy owned J&J, shared employees with J&J or Jenkins, or shared facilities or equipment with J&J or Jenkins. While the City proved that Murphy and Jenkins seriously dated for an unspecified period approximately five years ago, it did not establish any overlapping family interests or "identity of interests among family members." In sum, the Hearing Officer finds that affiliate status requires more than active engagement with the contractor; it requires some degree of control. Here, the City failed to prove that Murphy exercised any of statutorily enumerated indicia of control over J&J or Jenkins. Accordingly, the Hearing Officer rules that the debarment of J&J and Jenkins does not extend to Murphy.

Issue: Debarment Scope & Effect

- ❖ Should Murphy be deemed "irresponsible and disqualified" for the purposes of all City contracts and grants as an "affiliate" of the debarred J&J or Jenkins?

Finding: No, the City did not establish that Murphy satisfied the statutory definition of affiliate for debarment purposes.

Chapter 28 provides that the contractor's affiliates shall be deemed irresponsible and disqualified for all City grants and contracts. SF Admin. Code § 28.11(c). For the reasons analyzed above, the Hearing Officer finds that Murphy should not be deemed "irresponsible and disqualified" for the purposes of all City contracts and grants as an "affiliate" of the debarred J&J or Jenkins.

Issue: California False Claims Act

- ❖ Did the City sustain its burden to prove a violation of the California False Claims Act?

Finding: Not adjudicated. This debarment proceeding constitutes neither a CFCA Attorney General investigation nor qui tam plaintiff civil court action.

The City relied on the CFCA as a further ground for debarment. While the Hearing Officer acknowledges significant statutory overlap between the CFCA's and Chapters 21 and 28's provisions and definitions, the Hearing Officer declines to adjudicate the CFCA claim because the California Government Code contemplates court action. See, e.g., Cal. Gov't Code §12652(a)(3)(A). The Hearing Officer declines to extend her jurisdiction beyond the current debarment proceeding and procedures. Further, to the extent the CFCA's provisions and definitions overlap and duplicate Chapters 21's and 28's false claims provisions and definitions, the Hearing Officer relied upon the Administrative Code.

DETERMINATION

Wherefore all the evidence having been heard and considered, it is the determination of this Hearing Officer that:

1. J&J Community Resource Center is a contractor for debarment purposes.
2. LeAndrew Jenkins is a contractor for debarment purposes.
3. Susan Murphy is not a contractor for debarment purposes.
4. The City sustained its burden of proof to show by a preponderance of the evidence that J&J Community Resource Center engaged in willful misconduct by submitting false claims to it for payment.
5. The City sustained its burden of proof to show by a preponderance of the evidence that LeAndrew Jenkins engaged in willful misconduct by submitting false claims to it for payment.
6. The City failed to sustain its burden of proof to show by a preponderance of the evidence that Susan Murphy engaged in willful misconduct by submitting false claims to it for payment.
7. J&J Community Resource Center is debarred and deemed "irresponsible" and "disqualified" from participating directly or indirectly in any contract, funding, or

grant at any tier with, from, or for the City for all purposes for the period of five years beginning February 27, 2024 and ending February 26, 2029.

8. LeAndrew Jenkins is debarred and deemed “irresponsible” and “disqualified” from participating directly or indirectly in any contract, funding, or grant at any tier with, from, or for the City for all purposes for the period of five years beginning February 27, 2024 and ending February 26, 2029.
9. The debarments of J&J Community Resource Center and LeAndrew Jenkins do not extend to Susan Murphy.

This decision is final. A party may appeal a final determination only by filing in the San Francisco Superior Court a petition for a writ of mandate under California Code of Civil Procedure, Section 1094.5, et seq.

Dated: June 24, 2024

By: /s/Janice L. Sperow


Janice L. Sperow, Esq. Hearing Officer