County of Los Angeles
CHIEF ADMINISTRATIVE OFFICE
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DAVID E. JANSSEN
Chief Administrative Officer

Board of Supervisors
GLORIA MOLINA
First District

YVONNE B. BURKE
Second District

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Third District

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Fifth District

June 17, 2005

To: Supervisor Gloria Molina, Chair
Supervisor Yvonne B. Burke
Supervisor Zev Yaroslavsky
Supervisor Don Knabe
Supervisor Michael D. Antonovich

From: David E. Janssen
Chief Administrative Officer

SENATE BILL 1262 - THE NONPROFIT INTEGRITY ACT OF 2004

On February 8, 2005, on motion by Supervisor Burke, your Board instructed this Office to report back in 120 days on various actions to help ensure appropriate compliance with the Nonprofit Integrity Act of 2004 (SB 1262) as it relates to the County's nonprofit contractors (Attachment I).

In response to your Board's instructions, this Office convened a Task Force of representatives from departments with significant experience in contracting with nonprofits and social services agencies including County Counsel, the Department of Health Services (DHS), the Community Development Commission (CDC), the Internal Services Department (ISD), the Auditor-Controller, the Department of Children and Family Services (DCFS), the Department of Public Works (DPW), the Department of Mental Health (DMH), and the Department of Public Social Services (DPSS). This Task Force was charged with developing recommendations and countywide guidelines to ensure contractors' compliance with the mandates of SB 1262 (Attachment II).

Our recommendations are summarized as follows:

- Departments are to be responsible, at the time of granting or renewing a contract, for: 1) Reviewing the Attorney General's (AG's) Website (http://caag.state.ca.us) to determine if a nonprofit contractor or proposed contractor has registered and filed articles of incorporation with the AG's Registry of Charitable Trusts (GC 12585) and is current in its reporting; and 2) Informing those contractors that they are subject to all provisions under the Nonprofit Integrity Act of 2004.

- Departments must include mandatory language in all solicitation documents (Attachment III) and all new and renewal contracts (Attachment IV), including Sole Source, Master Agreement, and Delegated Authority contracts, advising existing and new contractors of their responsibilities under the Nonprofit Integrity Act of 2004.

- Departments must require a compliance statement from new contractors (Attachment V), certifying whether or not they are currently subject to the Nonprofit Integrity Act of 2004. Existing contractors will also be requested to sign the form. All existing and potential contractors will be informed that it is *their* responsibility to determine if their activities are subject to the Act. In the event a new contractor fails to complete the compliance statement, then the contractor will be disqualified from the contract award and any contractor who fails to comply with the provisions of the Act, may be subject to contract termination and/or debarment proceedings.

- Departments are to provide an informational fact sheet to all existing contractors subject to SB 1262. Also, departments will be required to include the fact sheet in all future solicitations. The fact sheet identifies several organizations that provide both complimentary and fee-based assistance with regard to compliance with the Nonprofit Integrity Act of 2004, (Attachment VI).

- Departments may refer existing and proposed nonprofits to the California Association of Nonprofits (http://www.cnmsocal.org), a statewide organization, and the Center for Nonprofit Management (http://www.canonprofits.org), a local organization, for comprehensive assistance including seminars and conferences on the Nonprofit Integrity Act of 2004. In addition, Departments may refer nonprofits to other resources, such as the Legal Aid Foundation of Los Angeles (http://www.lafla.org/home.asp) and the Public Counsel Office (http://www.publiccounsel.org) for support services to nonprofit organizations.

- The County, with staff from the AG's office, will present a forum focused on the Nonprofit Integrity Act of 2004 mandates and compliance for nonprofits and charitable organizations. This office will provide notice to all departments regarding the meeting date for the forum and it will be the responsibility of County departments to notify their nonprofit contractors.

- The Auditor-Controller will be responsible for updating the Contract Accounting and Administration Handbook to reflect the mandates of the Nonprofit Integrity Act of 2004. As part of this process, the major provisions of SB 1262, including: 1) executive compensation; 2) Audit Committee requirements; and 3) nonprofit board oversight will be thoroughly examined and recommendations will be incorporated into the Handbook. The updated Handbook will be incorporated as an attachment to all subsequent social service contracts to promote compliance with these provisions for all such contracts.

- All departments must identify the nonprofit organizations subject to SB 1262 with which they contract in the electronic Countywide Accounting and Purchasing System (eCAPS). A reporting category entitled "Nonprofits/SB 1262" has been developed in eCAPS in response to this Board order and will allow for systematic tracking of nonprofit organizations subject to SB 1262, while providing greater accountability to the County to ensure compliance with the Act.

- The CAO's, Intergovernmental Relations Branch will monitor implementation and enforcement of SB 1262 and pursue and support any efforts for program funding in response to this initiative.

Unless otherwise instructed, we will issue these directives to all County departments within the next 30 days. If you have any questions regarding this report, please contact me or your staff may contact Vincent Amerson of this office at (213) 974-1168 or via email to vamerson@cao.co.la.ca.us.

DEJ:MKZ
VLA:os

Attachments (6)

c: All Department Heads
Administrative Deputies **(via electronic mail)**

MINUTES OF THE BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

Violet Varona-Lukens, Executive Officer
Clerk of the Board of Supervisors
383 Kenneth Hahn Hall of Administration
Los Angeles, California 90012

All Department/District Heads

At its meeting held February 8, 2005, the Board took the following action:

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Supervisor Burke made the following statement:

"In light of numerous high profile private and nonprofit sector fiscal scandals, the State Legislature, in an effort to curb fraud and increase accountability in the nonprofit and charitable giving industry, has adopted the Nonprofit Integrity Act of 2004 (SB 1262). Effective January 1, 2005, SB 1262 has addressed and imposed new mandates in the areas of governance and fundraising for nonprofit corporations, unincorporated associations, and charitable trusts.

"Mirroring the Federal Sarbanes-Oxley Act of 2002 which dictates corporate financial disclosure and fiscal accountability in the private sector, SB 1262 extends similar requirements to certain charitable organizations. In summary, SB 1262 requires:

- Mandatory audit of annual financial statements by an independent certified public accountant(s) and an appointment of an audit committee for those charitable organizations which receive or accrue a gross annual revenue of $2 million or more ('...exclusive of grants from, and contracts for services with, governmental entities for which the governmental entities require an accounting of the funds received...');

- Public disclosure of any audited financial statements;

- Review and approval of executive compensations by the Board of Directors;

(Continued on Page 2)

10 (Continued)

- Full disclosure and proper representation of intended and actual use of solicited charitable contributions; and

- Numerous revisions, recasts and additions to the preexisting laws regulating commercial fundraisers and fundraising counsel.

"While I fully embrace the intent of this legislation, I am concerned it will be local governments that will be burdened with potential associated consequences and/or costs. Furthermore, this legislation focuses more on the reactive measures, without proactive ones that seek to assist and/or prevent organizations from noncompliance with SB 1262. As seen too often, when an agency faces fiscal mismanagement and/or dissolution, it is ultimately our County residents that are adversely affected. Thus, it is imperative that this Board take every step necessary to ensure our County nonprofit contractors are made aware of these new State requirements, and if feasible, provide guidance and compliance training."

Therefore, on motion of Supervisor Burke, seconded by Supervisor Knabe, unanimously carried, the Board took the following actions:

1. Instructed each Department/District Head to:

   - At the time of granting or renewing contracts, to review County contracts to identify and inform those organizations that are subject to the Nonprofit Integrity Act of 2004 (SB 1262) regulations; and

   - Institute a standardized SB 1262 compliance statement, in a format approved by County Counsel, for all existing and future contractors; and

2. Instructed the Chief Administrative Officer to report back to the Board within 120 days on the following:

   - Developing a Countywide and/or Department specific "incubator" type program that seeks to mentor and develop proper organizational capacity for our small- to mid-sized nonprofit contractors, so they may be better prepared to comply with State, Federal and existing or new County policies;

(Continued on Page 3)

10 (Continued)

- Exploring funding and/or cost-effective mechanisms, such as Community Services Block Grant funding and collaborations with State and/or nonprofit entities such as the State Attorney General or Board of Equalization, to fund the program; and

- Reviewing and assessing the effectiveness of current County contract policies and guidelines, and determining whether additional County requirements similar to SB 1262 are warranted to strengthen existing contract monitoring and accountability; and

3. Instructed the County's Legislative Advocates in Sacramento to monitor SB 1262, specifically its implementation and enforcement plan, as they are developed by the Attorney General, and to pursue and support any efforts for fiscal appropriations and/or commitments to this mandate.

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Copies distributed:
Each Supervisor

THE NONPROFIT INTEGRITY ACT OF 2004

SB 1262 Background

- SB 1262, the Nonprofit Integrity Act of 2004, mandates certain financial disclosure and fiscal accountability requirements for certain charitable/nonprofit organizations.

- SB 1262 was signed into law on September 30, 2004 and took effect January 1, 2005. The Act increases governmental oversight of charities, increases the transparency of charities' financial statements, and increases the standards that protect both charities and their donors with respect to charitable solicitations.

- The Act also includes provisions that regulate nonprofit corporations in two main areas: governance and charitable fundraising. The Act's provisions apply to all charitable corporations, charitable trusts, and unincorporated associations that are required to register with and annually report to the Attorney General's Registry of Charitable Trusts. Its provisions do not, however, apply to entities primarily organized as hospitals, educational institutions, or religious organizations.

- The Act also applies to foreign charities doing business or holding property in California. In the realm of governance, the Act has two layers of provisions: An initial set of requirements applies to all charities. A second set of requirements applies to charities with gross revenues over $2 million not including audited revenues from governmental entities.

It should be noted that a large percentage of nonprofits that contract with the County will not be subject to the set of requirements specific to charities with gross annual revenues over $2 million. Typically, these nonprofits have been audited per *OMB Circular 133-A*. This Circular sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of States, local governments, and nonprofit organizations expending Federal awards and requires that non-Federal entities that expend $300,000 or more in a year in Federal awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of this policy.

Response to February 8, 2005 Board Order Regarding the Nonprofit Integrity Act of 2004 (SB 1262)

1. **Board Instruction:** Each Department/District Head, at the time of granting or renewing contracts, should review County contracts to identify and inform those organizations that are subject to SB 1262 regulations.

Task Force Recommendation/Action Plan: At the time of granting or renewing a contract, departments shall be responsible for:

- Reviewing the Attorney General's (AG's) Website (http://caag.state.ca.us) to determine if a nonprofit contractor or proposed contractor has registered and filed articles of incorporation with the AG's Registry of Charitable Trusts (GC 12585) and is current in its reporting; and

- Informing those contractors that they are subject to all provisions under the Nonprofit Integrity Act of 2004.

2. **Board Instruction**: Each Department/District Head should institute a standardized SB 1262 compliance statement, in a format approved by County Counsel, for all existing and future contractors.

   Task Force Recommendation/Action Plan:

   - Mandatory language will be included in all solicitation documents and all new and renewal contracts including Sole Source, Master Agreement, and Delegated Authority contracts, advising existing and potential contractors of their responsibilities under the Nonprofit Integrity Act of 2004.

   - A compliance statement will be required for all new contractors to certify whether or not they are currently subject to the Nonprofit Integrity Act of 2004. Existing contractors will also be requested to sign the statement. Contractors will be informed that it is *their* responsibility to determine if their activities are subject to the Act. In the event a new contractor fails to complete the compliance statement, then the contractor will be disqualified from the contract award and any contractor who fails to comply with provisions of the Act, may be subject to contract termination and/or debarment proceedings.

3. **Board Instruction:** The Chief Administrative Office (CAO) will develop a countywide and/or department-specific "incubator" type program that seeks to mentor and develop proper organizational capacity for our small- to mid-sized nonprofit contractors, so they may be better prepared to comply with State, Federal, and existing or new County policies.

Task Force Recommendation/Action Plan:

- The County, in conjunction with staff from the AG's office, will present a forum focused on the Nonprofit Integrity Act of 2004 mandates and compliance for nonprofits and charitable organizations. This office will provide notice to all departments regarding the meeting date for the forum and it will be the responsibility of all County departments to provide appropriate notification to their nonprofit contractors.

- County departments will provide a fact sheet to existing contractors subject to SB 1262 identifying several organizations that provide both complimentary and fee-based assistance with regards to the Nonprofit Integrity Act of 2004. The fact sheet will also be included in all future solicitation packages in the event affected nonprofits submit proposals.

- Departments may refer existing and proposed contractors to the California Association of Nonprofits (http://www.cnmsocal.org), a statewide organization, and the Center for Nonprofit Management (http://www.canonprofits.org), a local organization, that provide comprehensive assistance including seminars and conferences on the Nonprofit Integrity Act of 2004. In addition, departments may refer those contractors to other resources, such as the Legal Aid Foundation of Los Angeles (http://www.lafla.org/home.asp) and the Public Counsel Office (http://www.publiccounsel.org), that provide support services to nonprofit organizations.

4. **Board Instruction:** The CAO will explore funding and/or cost-effective mechanisms, such as Community Services Block Grant funding and collaborations with State and/or nonprofit entities such as the State Attorney General or Board of Equalization, to fund the program.

Task Force Recommendation/Action Plan:

- Funding for the program has not been identified at this time. However, consistent with our recommendation to your Board instruction (No. 6, below), the CAO's Intergovernmental Relations Branch will monitor implementation and enforcement of SB 1262 and pursue and support any efforts for program funding in response to this initiative.

- According to a spokesperson from the Attorney General's Charitable Trusts Section regarding SB 1262, there are currently no pending regulations specifically implementing the bill, either at the AG's Office or the Office of Administrative Law (OAL). However, the AG's Office did submit a regulations package relative to reporting by charitable organizations to the OAL in February 2004. That package was subsequently withdrawn for technical modifications, and resubmitted to the OAL on April 29, 2005. The OAL has until

June 30, 2005 to render a decision on the resubmitted package. The AG's Office generally believes that SB 1262 is self-executing and they are waiting to see if any implementation issues or problems arise during the first year the statute is in effect. If significant problems do arise, then they will develop regulations. At this time, there is no State funding available or being requested for SB 1262 implementation because the AG's Office does not see this as an issue. They are, however, conducting extensive outreach throughout the State via staff presentations, an email outreach campaign, and frequent meetings with the State Bar Exempt Organizations Committee and the California Association of Nonprofits to identify any potential implementation problems. Our Sacramento advocates will continue to monitor SB 1262 implementation and funding issues.

5. **Board Instruction:** The CAO will review and assess the effectiveness of current County contract policies and guidelines, and determine whether additional county requirements similar to SB 1262 are warranted to strengthen existing contract monitoring and accountability.

Task Force Recommendation/Action Plan:

- The Auditor-Controller's Contract Accounting and Administration Handbook is currently being revised to reflect the mandates of SB 1262. As part of this process, the major provisions of SB 1262, including: 1) executive compensation; 2) Audit Committee requirements; and 3) nonprofit board oversight will be thoroughly examined and recommendations will be incorporated into the Handbook. The updated Handbook will be incorporated as an attachment to all subsequent social service contracts to promote compliance with these provisions for all such contracts.

- All departments shall be required to identify the nonprofit organizations subject to SB 1262 with which they contract in the electronic Countywide Accounting and Purchasing System (eCAPS). A reporting category titled "Nonprofits/SB1262" has been developed in eCAPS in response to this Board order and will allow for systematic tracking of nonprofit organizations subject to SB 1262, while providing greater accountability to the County to ensure compliance with the Act.

6. **Board Instruction:** The County's Legislative Advocates in Sacramento shall monitor SB 1262, specifically its implementation and enforcement plan, as they are developed by the Attorney General, and pursue and support any efforts for fiscal appropriations and/or commitments to this mandate.

Task Force Recommendation/Action Plan:

- As referenced above, the CAO's Intergovernmental Relations Branch will monitor implementation and enforcement of SB 1262 and pursue and support any efforts for program funding in response to this initiative.

X.XX Proposer's Charitable Contributions Compliance

California's "Supervision of Trustees and Fundraisers for Charitable Purposes Act" regulates receiving and raising charitable contributions. Among other requirements, those subject to the Charitable Purposes Act must register. The 2004 Nonprofit Integrity Act (SB 1262, Chapter 919) increased Charitable Purposes Act requirements. New rules cover California public benefit corporations, unincorporated associations, and trustee entities and may include similar foreign corporations doing business or holding property in California. Key Nonprofit Integrity Act requirements affect executive compensation, fund-raising practices and documentation. Charities with over $2 million of revenues (excluding funds that must be accounted for to a governmental entity) have new audit requirements.

All prospective contractors must determine if they receive or raise charitable contributions which subject them to the Charitable Purposes Act and complete the certification form attached as Exhibit #. A completed Exhibit # is a required part of any agreement with the County.

In Exhibit #, prospective contractors certify either that:

- ✓ they have determined that they do not now receive or raise charitable contributions regulated under the California Charitable Purposes Act, (including the Nonprofit Integrity Act) but will comply if they become subject to coverage of those laws during the term of a County agreement,

Or:

- ✓ they are currently complying with their obligations under the Charitable Purposes Act, attaching a copy of their most recent filing with the Registry of Charitable Trusts.

Prospective County contractors that do not complete Exhibit # as part of the solicitation process may, in the County's sole discretion, be disqualified from contract award. A County contractor that fails to comply with its obligations under the Charitable Purposes Act is subject to either contract termination or debarment proceedings or both. (County Code Chapter 2.202)

X.XX CONTRACTOR'S CHARITABLE ACTIVITIES COMPLIANCE

X.XX.1 The Supervision of Trustees and Fundraisers for Charitable Purposes Act regulates entities receiving or raising charitable contributions. The "Nonprofit Integrity Act of 2004" (SB 1262, Chapter 919) increased Charitable Purposes Act requirements. By requiring Contractors to complete the certification in Exhibit #, the County seeks to ensure that all County contractors which receive or raise charitable contributions comply with California law in order to protect the County and its taxpayers. A Contractor which receives or raises charitable contributions without complying with its obligations under California law commits a material breach subjecting it to either contract termination or debarment proceedings or both. (County Code Chapter 2.202)

REQUIRED FORMS - EXHIBIT

CHARITABLE CONTRIBUTIONS CERTIFICATION

_____

Company Name

_____

Address

_____

Internal Revenue Service Employer Identification Number

_____

California Registry of Charitable Trusts "CT" number (if applicable)

The Nonprofit Integrity Act (SB 1262, Chapter 919) added requirements to California's Supervision of Trustees and Fundraisers for Charitable Purposes Act which regulates those receiving and raising charitable contributions.

CERTIFICATION	YES	NO
Proposer or Contractor has examined its activities and determined that it does not now receive or raise charitable contributions regulated under California's Supervision of Trustees and Fundraisers for Charitable Purposes Act. If Proposer engages in activities subjecting it to those laws during the term of a County contract, it will timely comply with them and provide County a copy of its initial registration with the California State Attorney General's Registry of Charitable Trusts when filed.	( )	( )
OR		
Proposer or Contractor is registered with the California Registry of Charitable Trusts under the CT number listed above and is in compliance with its registration and reporting requirements under California law. Attached is a copy of its most recent filing with the Registry of Charitable Trusts as required by Title 11 California Code of Regulations, sections 300-301 and Government Code sections 12585-12586.	( )	( )

_____ _____

Signature Date

_____

Name and Title (please type or print)

BACKGROUND AND RESOURCES: CALIFORNIA CHARITIES REGULATION

There is a keen public interest in preventing misuse of charitable contributions. California's "Supervision of Trustees and Fundraisers for Charitable Purposes Act" regulates those raising and receiving charitable contributions. The "Nonprofit Integrity Act of 2004" (SB 1262, Chapter 919) tightened Charitable Purposes Act requirements for charitable organization administration and fundraising.

The Charitable Purposes Act rules cover California public benefit corporations, unincorporated associations, and trustee entities. They may include similar foreign corporations doing business or holding property in California. Generally, an organization is subject to the registration and reporting requirements of the Charitable Purposes Act if it is a California nonprofit public benefit corporation or is tax exempt under Internal Revenue Code § 501(c)(3), and not exempt from reporting under Government Code §12583. Most educational institutions, hospitals, cemeteries, and religious organizations are exempt from Supervision of Trustees Act requirements.

Key new Charitable Purposes Act requirements affect executive compensation, fund-raising practices and documentation. Charities with over $2 million of revenues (excluding grants and service-contract funds a governmental entity requires to be accounted for) have new audit requirements. Charities required to have audits must also establish an audit committee whose members have no material financial interest in any entity doing business with the charity.

Organizations or persons that receive or raise charitable contributions are likely to be subject to the Charitable Purposes Act. A Proposer on Los Angeles County contracts must determine if it is subject to the Charitable Purposes Act and certify either that:

- It is not presently subject to the Act, but will comply if later activities make it subject, or,

- If subject, it is currently in compliance.

RESOURCES

The following references to resources are offered to assist Proposers who engage in charitable contributions activities. Each Proposer, however, is ultimately responsible to research and determine its own legal obligations and properly complete its compliance certification (Exhibit #).

In California, supervision of charities is the responsibility of the Attorney General, whose website, http://caag.state.ca.us/ , contains much information helpful to regulated charitable organizations.

1. LAWS AFFECTING NONPROFITS

The "Supervision of Trustees and Fundraisers for Charitable Purposes Act" is found at California Government Code §§ 12580 through 12599.7. Implementing regulations are found at Title 11, California Code of Regulations, §§ 300 through 312. In California, charitable solicitations ("advertising") are governed by Business & Professions Code §§ 17510 through 17510.95. Regulation of nonprofit corporations is found at Title 11, California Code of Regulations, §§ 999.1 through 999.5. (Amended regulations are pending.) Links to all of these rules are at: http://caag.state.ca.us/charities/statutes.htm .

2. SUPPORT FOR NONPROFIT ORGANIZATIONS

Several organizations offer both complimentary and fee-based assistance to nonprofits, including in Los Angeles, the *Center for Nonprofit Management,* 606 S. Olive St #2450, Los Angeles, CA 90014 (213) 623-7080 http://www.cnmsocal.org/., and statewide, the *California Association of Nonprofits*, http://www.canonprofits.org/. Both organizations' websites offer information about how to establish and manage a charitable organization.