# OFFICE OF THE CITY ATTORNEY:

The San Francisco League of Urban Gardeners Mismanaged Grant and Contract Funds From the City



Audit Number 03005 July 22, 2004

Ed Harrington Controller

Monique Zmuda Deputy Controller

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Dennis Herrera, City Attorney Office of the City Attorney City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102

Dear Mr. Herrera:

The Office of the Controller (Controller) presents its report on the financial review of the grants and contracts that the San Francisco League of Urban Gardeners (SLUG) has with the City and County of San Francisco (City). This report also presents the results of investigating several allegations that the Office of the City Attorney (City Attorney) asked the Controller's Audits Division to assess.

The auditors found that SLUG mismanaged some of its city funds and as a result, owes the City \$71,978 for overbilling some city departments and receiving overpayments from the departments in connection with two grants and one contract that the agency had with the City in fiscal year 2002-03. In investigating the allegations, the auditors substantiated the allegation that SLUG has not paid its payroll taxes, and owed \$643,003 in payroll taxes as of June 30, 2003, not including interest or penalties. The auditors also found that the Department of Public Works (Public Works) improperly used SLUG's contract with Public Works to purchase a \$62,508 portable building for Public Works own use. There were a number of other allegations that auditors either could not substantiate or found that they did not violate the terms of SLUG's agreements with the City.

The Department of Public Works' response and SLUG's response are attached to this report. The Controller's Audits Division will be working with SLUG to follow up on the status of the recommendations made in this report.

Respectfully submitted

Ed Harrington

Controller

#### SUMMARY

#### Audit Highlights...

We found the following during our review of the San Francisco League of Urban Gardeners (SLUG):

- ✓ SLUG overbilled the Department of Public Works by \$22,635.
- ☑ SLUG owes the Library \$33,743 and Community Development \$15,600 for overpayments that SLUG did not earn.
- ✓ SLUG overstated its net income by more than \$275,000 for 2001.
- ✓ SLUG owed taxing authorities \$643,003 of payroll taxes at June 30, 2003.

#### **RESULTS IN BRIEF**

ur review revealed that the San Francisco League of Urban Gardeners (SLUG) mismanaged some of its city grants and contracts and overbilled or received overpayments from some city departments, and as a result, owes the City \$71,978. Further, SLUG does not have complete and accurate accounting records, and does not maintain proper internal controls over its cash or its financial reporting.

SLUG describes itself as a grassroots organization that educates and employs individuals while providing communities with urban gardening. In July 2003, SLUG announced that it would be closing down and reorganizing in an attempt to avoid bankruptcy. As a result, the Office of the City Attorney (City Attorney) asked the Controller's Audits Division to perform a financial review of SLUG's invoices to the City under its grant and contract agreements with SLUG for fiscal year 2002-03 services.

Our review of SLUG's accounting records showed that SLUG does not have an adequate financial accounting system in place. We determined that SLUG failed to accurately record all transactions and properly allocate its expenses for each of its city grants. Also, SLUG overstated its net income for 2001 by more than \$275,000 in its audited financial statements. In reviewing the accounting records we also noted that SLUG lacks many basic policies, procedures and practices for internal and administrative control that organizations follow to help ensure that the organization safeguards its assets and reports accurately on its operations.

Finally, we investigated several allegations that whistleblowers made to the Office of the City Attorney, many of which we could not substantiate. We did verify, however, the allegation that SLUG owed a large amount of unpaid payroll taxes. As of June 30, 2003, SLUG owed \$643,003 of withheld and accrued payroll taxes, not including interest and penalties. We also substantiated the allegation that the Department of Public Works (Public Works) improperly used SLUG's contract with Public Works to purchase a \$62,508 portable building for Public Works' own use.

SLUG's board president, who was elected to the board on that date, issued a rescue plan for SLUG, which detailed the organization's plans to sell one of its gardens, pay off its debts, and obtain the City's support for fiscal year 2003-04 to continue to fund programs.

#### SCOPE AND METHODOLOGY

The purpose of our review was to determine whether SLUG's claims for reimbursements for city grants and contracts during the period from July 1, 2002, through June 30, 2003, were accurate and based upon actual services SLUG provided. As part of our review, we determined whether SLUG had adequate financial and management systems in place to manage its operations and ensure that it complied with the terms of its grants and contracts with the City.

To conduct the financial review, we selected five agreements from the City's Public Library, Department of Public Works (Public Works), Mayor's Office of Community Development (Community Development), Recreation and Park Department, and the Department of the Environment for review. The payments made by the City for the grants and contracts we reviewed represented \$1,796,549 out of the \$2,204,257 total city payments paid to SLUG in fiscal year 2002-03. We examined applicable terms of the contracts and grants and interviewed appropriate personnel from SLUG and city departments.

For each contract or grant, we examined selected invoices from one month of the 12-month period under review and the associated charges submitted by SLUG for reimbursement of expenditures to evaluate SLUG's compliance with the city agreements. We traced these charges to invoices, cancelled checks, and payroll records. After our initial review, we expanded our testwork to test one additional month for the grant from Community Development and transactions for all 12 months for the contracts and grants from Public Works.

The City Attorney also requested that we investigate certain allegations raised by employees of SLUG and the City related to improper expenditures and possible failure of one city department to maintain an arms-length relationship with SLUG. To conduct our investigation, we interviewed current and past SLUG staff, reviewed minutes of meetings of SLUG's board of directors, and examined payroll and disbursement records. We also reviewed various federal information filings by several

#### **AUDIT RESULTS**

# THE SAN FRANCISCO LEAGUE OF URBAN GARDENERS IMPROPERLY BILLED THE CITY FOR SOME COSTS AND RECEIVED ADVANCES IT DID NOT EARN

Ithough the San Francisco League of Urban Gardeners (SLUG) correctly billed city departments for one grant and two contracts of the five grants and contracts that we reviewed, we found that SLUG overbilled the City \$22,635 under the contract it receives from the Department of Public Works (Public Works). Also, SLUG owes the San Francisco Public Library (Library) \$33,743 for unearned costs and owes the Mayor's Office of Community Development (Community Development) \$15,600 for an advance given to SLUG that it did not earn.

### SLUG Correctly Billed the City for Three of Its City Agreements

In three of five agreements we examined, we found that SLUG properly billed city departments for the direct costs of services SLUG provided under the terms of its grants and contracts. We examined a sample of SLUG's invoices to city departments under its agreements with the Mayor's Office of Community Development, the Recreation and Park Department, and the Department of the Environment. We found that SLUG billed correct amounts in our tests of salaries and wages and other direct expenses. The total amount of reimbursements made in fiscal year 2002-03 is \$623,312 for the three agreements.

#### SLUG Improperly Billed Some Costs to the Department of Public Works

By not properly charging Public Works for appropriate and actual costs, SLUG violated the terms of its funding agreement. SLUG made errors on several of its invoices to Public Works, which resulted in overpayments to SLUG for wages and benefits of \$22,635. Further, SLUG could not provide documentation for other costs of \$18,273.

In addition, SLUG received an advance of \$38,000 from Community Development in connection with its \$229,160 grant for 2002-03.

On September 17, 2003, Community Development's director wrote that it would suspend all payments to SLUG if SLUG did not submit audited financial statements for calendar year 2002 to Community Development by October 1, 2003. Community Development had already extended SLUG's grant to September 30, 2003, as requested by the executive director of SLUG. Furthermore, the director wrote that if Community Development did not receive the statements by October 1, 2003, Community Development would not be able to enter into a new grant agreement with SLUG for the 2003 Community Development Block Grant Program. On February 26, 2004, Community Development's fiscal director notified SLUG that Community Development was terminating the grant effective immediately and requested repayment of the remaining \$15,600 advance that SLUG did not earned.

## SLUG MANAGES POORLY ITS FINANCIAL OPERATIONS

The San Francisco League of Urban Gardeners could not adequately perform its financial duties. We found that SLUG misstated its net income for 2001, has not submitted the required single audit for 2002, and has not maintained accurate accounting records in 2003.

## SLUG Overstated Its Net Income for 2001 by More Than \$275,000

SLUG overstated its revenues in its 2001 audited financial statements by \$275,124 because it recognized as income the full amount of a \$324,074 contract amendment from Public Works. However, it had not earned the entire amount as of December 2001, and should only have recognized the \$48,950 it had actually earned through that date. This error resulted in SLUG incorrectly showing net income of \$102,382 rather than correctly showing a net loss of \$172,742 for 2001. If SLUG had correctly represented its financial position, its board of directors and city departments providing funding to SLUG may have been alerted sooner that SLUG was in serious financial difficulty.

SLUG's interim accounting manager could not provide an explanation why the balances did not match. SLUG was also not able to provide us any bank reconciliations for the period from January 2003 through June 2003, nor could it provide us accounting records which showed the same amount of wages as shown on the payroll tax returns prepared by SLUG's outside payroll service for the first two quarters of 2003.

Many of the problems we identified can be attributed to SLUG assigning accounting responsibilities to someone not experienced in accounting matters. According to Jonathan Gomwalk, SLUG's executive director who resigned in April 2004, SLUG decided to perform its accounting function in-house starting in January 2003, rather than continue paying an outside consultant to keep its accounting records and produce its financial statements. However, the staff person assigned these responsibilities did not have a degree in accounting or any equivalent professional experience. According to minutes from SLUG's July 22, 2003 board of directors meeting, this employee resigned from the organization in July of 2003.

### SLUG Has Poor Internal Control Procedures and Practices

SLUG lacks a number of the basic policies, procedures and practices for internal and administrative control that organizations follow to help ensure that the organization safeguards assets and that the use of and access to assets are in accordance with management's authorization.

We found that SLUG does not have formal written financial policies or procedures and, during fiscal year 2002-03, lacked qualified financial staff to perform SLUG's accounting and financial functions. We also identified instances where checks issued to an administrative staff person were signed by that person. This practice increases the risk that inappropriate payments may be made or errors not identified. In addition, SLUG only requires one signature on its checks. Requiring two signatures is a common internal control that may decrease the risk of loss of funds through errors or irregularities.

We also found that SLUG's tool-lending program supported by a grant from the Library did not have adequate controls in place to prevent losses of fines collected and to ensure that SLUG properly accounted for program expenses. According to the ex-director of the tool-lending program, all tool-lending staff had access to the cash box, in which staff retained fines collected, and day-to-day

center for the Community Development grant. Since SLUG is the recipient of federal funds, it is required to comply with OMB Circular A-122, Cost Principles for Non-Profit Organizations, and should use one of the circular's acceptable indirect cost and shared cost methodologies to allocate its various actual administrative costs to all its contracts and grants.

Furthermore, we could not determine on what basis SLUG allocated program staff wages to individual contracts and grants. For example, within SLUG's Design and Restoration Division, four program staff provided services to five different projects that were funded by Community Development and seven projects that were funded by Recreation and Parks. In addition to these twelve projects funded by city departments, the Design and Restoration Division provided billable services to private entities on a fee for service basis. We could not determine how much time SLUG staff worked on any one grant or contract because SLUG does not require its staff to record on timesheets the hours they work each week. In addition, SLUG does not allocate to contract and grant cost centers the wages for these staff in its accounting records.

## WE SUBSTANTIATED SOME ALLEGATIONS MADE TO THE CITY ATTORNEY'S OFFICE CONCERNING SLUG'S ACTIVITIES

Among a number of allegations that whistleblowers made to the Office of the City Attorney, we were able to substantiate three. One allegation we substantiated was that SLUG owed federal and state taxing agencies for employees' payroll taxes. We found that SLUG owed \$643,003 in payroll taxes as of June 30, 2003, not including interest or penalties. The \$520,860 federal portion of this amount has since been paid by SLUG. We also substantiated a second allegation that Public Works improperly used funds from SLUG's contract to buy a portable building for Public Works. Also, we corroborated that former SLUG executive director Mohammed Nuru, who now works for Public Works, remained the contractor of record on SLUG's contractors license long after he no longer worked for SLUG.

## Slug Failed to Pay Payroll Taxes from The Funds Provided by the City

In paying SLUG to provide various services through city grants and contracts, city departments included as payment the portion of staff wages that should be remitted to taxing authorities as payroll housing a Public Works equal employment officer, some Public Works training staff, and the Public Works maintenance yard's public information officer. In addition, according to the director of community programs, the building is the site of meetings and trainings, some of which are attended by SLUG staff. Furthermore, the acting deputy director of engineering at Public Works stated that the contract seemed to be an appropriate and expedient funding source for the building because Public Works was evaluating its relationship with SLUG and the possible creation of other transitional employment programs. However, the acting deputy director of engineering also stated that the building has never been used for purposes related to SLUG's contract.

## SLUG Continued to Use Improperly the Contractor's License of Its Former Director Long After He Became an Employee of the Department of Public Works

We also substantiated the allegation that former SLUG Executive Director Mohammed Nuru, who was hired by Public Works in September of 2000, remained the contractor of record on SLUG's state contractor's license until May 31, 2003. Effective that date, Jonathan Gomwalk submitted a notice with the California Contractors State License Board (licensing board), stating that the former SLUG executive director was disassociated with SLUG. According to Mr. Gomwalk, none of SLUG's contracts or grants in 2002-03 required that SLUG have a contractor licensed with the licensing board on staff. He further explained that SLUG had in the past registered with the licensing board in anticipation of providing services that SLUG never did bid for.

#### WE FOUND NO MERIT IN ONE ALLEGATION AND COULD NOT SUBSTANTIATE OTHER ALLEGATIONS MADE TO THE CITY ATTORNEY'S OFFICE

We did not find merit in one allegation, and were unable to completely investigate another five allegations because of the poor condition of SLUG's accounting records. The allegation without merit involved the SLUG former executive director who held that position between the time Mr. Nuru and Mr. Gomwalk each served as executive director. It was alleged that this executive director had received a large severance package. The allegations we could not either disprove or substantiate due to insufficient evidence include a former executive director now employed at Public Works continuing to be involved with SLUG during city work hours, a

were unable to examine SLUG's accounting records for the years prior to 2002 and are therefore unable to state conclusively that there were no earlier payments.

We could not completely disprove, due to SLUG's incomplete 2003 accounting records, the allegation that SLUG engaged in questionable transactions with several nonprofit organizations. Among the organizations named by the whistleblowers in allegations were San Francisco Clean City Coalition (Clean City), Girls 2000, and the San Francisco Study Center (Study Center). SLUG acted as a fiscal agent for two of the three organizations. As a fiscal agent, SLUG had responsibility for providing accounting and reporting services for those organizations. The third organization acted as a fiscal agent for SLUG.

SLUG provided fiscal services to Clean City in fiscal year 2001. We also found that Clean City was a sub-lessee of SLUG at the tool-lending library, paying \$425 per month for the use of the facilities where the tool-lending library was located. Jonathan Gomwalk is reported as the president of Clean City's board of directors on its 2001 *Return of Organization Exempt From Income Tax*. Mohammed Nuru, the former SLUG executive director who now is employed at Public Works is listed as a director of Clean City.

SLUG also provided fiscal services to Girls 2000 in 2000-01. On March 5, 2001, Mohammed Nuru signed a conference reservation for Girls 2000. The 2001 Return of Organization Exempt From Income Tax for Girls 2000 does not include Mr. Nuru on Statement 4, "List of Officers, Directors, Trustees, and Key Employees." However, the report does not identify any individual as the president.

The Study Center is an independent nonprofit organization that is now serving as the fiscal agent for SLUG for its contract with Public Works. Effective August 2003, Public Works began paying contract funds to the Study Center to be used to pay for expenses related to SLUG's services to Public Works.

We also could not substantiate whether SLUG billed Public Works for excessive uniform expenses that should not have been billed under SLUG's Public Works contract. SLUG submitted a \$25,385 invoice to Public Works for reimbursement for 200 uniforms in November of 2001. Each uniform set included an overall, two t-shirts, a jacket and a hat. Although SLUG's multi-year contract with Public Works included funding for uniforms, it does not appear as though uniforms were included in SLUG's budget for

- Retain the services of a certified public accountant to perform the required OMB Circular A-133 audit for 2002.
- Recreate the financial records for the calendar year 2003.
- Hire a finance team to implement an accounting system with adequate internal controls.
- Adopt an appropriate cost allocation plan.
- Organize the agency's accounting records to accommodate accounting for each of SLUG's sources of funding.

To ensure that the Department of Public Works (Public Works) properly manages public funds, it should take these steps:

- Include only costs that can be documented in cost reimbursement contract budgets.
- Use public funds only for the purpose designated in the approved contract.

We conducted this review according to standards established by the Institute of Internal Auditors. We limited our review to those areas specified in the scope section of this report.

Staff: Elisa Sullivan, Audit Manager Deborah Gordon

## DEPARTMENT OF PUBLIC WORKS' RESPONSE TO THE AUDIT

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Inttp://www.sidbw.com
Department of Public Works
Deputy Director for
Financial Management and Administration
1 Dr. Carilon, Br. Goodlett Places D City and County of San Francisco 🐭 1 Dr. Carlton B. Goodlett Place Room San/Francisco (CA 94 Gavin Newsom, Mavo Edwin M. Lee, Director Robert J. Carlson, Deputy Direc July 19, 2004 . i Edi Harringion (Controller - - - - - - - Room 316 City Hall Room Sie Gity Hall 1-Dr. Carlton B. Goodlett Pl. San Francisco, CA 94102 Dear Mr. Harrington: Thank you for the opportunity to respond to your draft report dated July 16, 2004 concerning the review the San Francisco League of Urban Gardeners (SLUG): Following is the response of our department. Iransitional jobs

15. Advise transitional workers of other employment opportunities.

Although the amendment and our chase were initially consistent with the contract language, DPW agrees the training trailer has been used primarily for department employee; training and related uses, and was not used for SUUG participants to the extent that would have ultimately justified its purchase through the contract. We concur with your recommendations for DPW and will only include costs that can be documented in cost reimbursement contracts, and use funds only for the purpose designated mapproved contracts.

Sincerely:

cc: Mayor
Board of Supervisors
Civil Grand Jury
Budget Analyst
Public Library