

**WORKFORCE DEVELOPMENT
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Sacramento Employment & Training Agency

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SAFE Credit Union

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ANETTE SMITH
Five Star Bank

AMANDA TAYLOR
Association of General Contractors

RICK WYLIE – Chair
Villara Building Systems



SACRAMENTOWORKS

Meeting of the Sacramento Works Fund Development Committee

Date: Wednesday, December 16, 2020

Time: 1:00 p.m.

Location: Zoom Meeting Link:

<https://us02web.zoom.us/j/81400873898?pwd=aW5wQWhSL1N2T1c2O2p5aGZXMzlxUT09>

In response to the Governor's Executive Order N-29-20 relating to the COVID-19 Pandemic, the Sacramento Works Youth Committee is conducting this meeting on Zoom at <https://us02web.zoom.us/j/81400873898?pwd=aW5wQWhSL1N2T1c2O2p5aGZXMzlxUT09> Members of the public may join the meeting by clicking the link above or typing the meeting address above into their web browser, or listen to the meeting by telephone; one tap mobile +16699006833,81400873898# US (San Jose). Webinar ID: 814 0087 3898; Passcode: 224177. Find your local number: <https://us02web.zoom.us/j/81400873898?pwd=aW5wQWhSL1N2T1c2O2p5aGZXMzlxUT09>. Members of the public are encouraged to participate in the meeting by submitting written comments by email to: Nancy.Hogan@seta.net. Any member of the public who wishes to speak directly to the board regarding any item on the agenda may contact Nancy Hogan at (916) 263-3827, or Nancy.Hogan@seta.net. Please include in your request which item you would like to participate on. Additionally, during the meeting any questions or comments may be submitted via the Q&A or chat features on Zoom. Public comments will be accepted until the adjournment of the meeting, distributed to the Fund Development Committee and included in the record.

Closed captioning will be available. This document and other Board meeting information may be accessed through the Internet by accessing the SETA home page: www.seta.net.

AGENDA

1. Call to Order/Roll Call
2. Review current documents on Fundraising from Legal Counsel and identify the proper way to approach
3. Identify the goals for fund development
4. Flesh out the specifics of the desired funds
5. Identify an initial list of fund-raising campaigns
6. Identify seed money donors to provide the initial launch funds needed

(PROPOSED) SACRAMENTO WORKS, INC.
FUNDRAISING POLICIES AND GUIDELINES

Both Rick Wylie, the newly elected chair of the Workforce Development Board (“WDB”), and Ron Ellis, the newly appointed chair of the Employer Outreach Committee, have expressed an interest in developing a more robust fundraising program on the part of the WDB. Mr. Wylie has proposed establishing a new Fund Development Committee and Mr. Ellis has led his committee in developing a new “Introduction, Solicitation and Sponsorship” package for use by the Employer Outreach Committee during its employer outreach efforts.

In light of these efforts Phillip M. Cunningham, Counsel for Sacramento Works, Inc. (“SWI”) and for the WDB, has begun reviewing the various issues affected by this strategy, as well as the publications being developed to represent SWI and the WDB in these efforts. The goal of this review is to recommend a set of fundraising policies and guidelines for consideration by the WDB and SWI. As a result of this review and counsel’s discussions with Mr. Wylie and Mr. Ellis, it has become clear that many members of the WDB, especially the newer members, do not fully understand and appreciate the differences between their service as WDB members, their service as SWI corporate directors, and the roles and responsibilities of the Sacramento Employment and Training Agency (“SETA”) and its Governing Board. So before getting to the recommended policies and guidelines it seems prudent to provide an overview of the roles of the SETA, the Governing Board, SWI and the WDB.

BACKGROUND

I

THE NEW LAW

In early 2014 Congress adopted, and the President signed, a new law to replace the existing Workforce Investment Act which had been in place since 1998. In adopting the new “Workforce Innovation and Opportunity Act” (“WIOA”) Congress said its purpose was to better align the workforce system with education and economic development in order to create a collective response to economic and labor market challenges on the national, state, and local levels. Congress also indicated that the changes under WIOA were intended to prompt Boards such as yours to become more engaged in designing effective workforce development programs that fit the local area’s needs. Quoting directly from WIOA the purposes of the new Act consist of the following:

To increase, for individuals in the United States, particularly those individuals with barriers to employment access to and opportunities for the employment, education, training, and support services they need to succeed in the labor market.

(1) To support the alignment of workforce investment, education, and economic development systems in support of a comprehensive, accessible, and high-quality workforce development system in the United States.

(2) To improve the quality and labor market relevance of workforce investment, education, and economic development efforts to provide America’s workers with the skills and credentials necessary to secure and advance in employment with family-sustaining wages and to provide America’s employers with the skilled workers the employers need to succeed in a global

economy.

(3) *To promote improvement in the structure of and delivery of services through the United States workforce development system to better address the employment and skill needs of workers, jobseekers, and employers.*

(4) *To increase the prosperity of workers and employers in the United States, the economic growth of communities, regions, and States, and the global competitiveness of the United States.*

(5) *For purposes of subtitle A and B of title I, to provide workforce investment activities, through statewide and local workforce development systems, that increase the employment, retention, and earnings of participants, and increase attainment of recognized postsecondary credentials by participants, and as a result, improve the quality of the workforce, reduce welfare dependency, increase economic self-sufficiency, meet the skill requirements of employers, and enhance the productivity and competitiveness of the Nation.*

II

THE SACRAMENTO EMPLOYMENT AND TRAINING AGENCY

Designated Federal Workforce Development Funds granted to the Sacramento County region under WIOA are administered by the Sacramento Employment and Training Agency (“SETA”).

SETA is a Joint Powers Agency, formed under state law. In this case it is a consortium of two governmental entities; the City of Sacramento and the County of Sacramento. Under state law, as a joint powers authority, SETA is a distinct governmental entity which operates separately from both of its sponsoring agencies. It is not a part of the City of Sacramento nor is it a part of the County of Sacramento; it is its own distinct legal entity, separate and apart from the City and the County. SETA is governed by a five-member board consisting of two elected officials from the City, two from the County and one additional outside member. This board is known as the SETA Governing Board.

SETA was formed in 1978 and has operated continuously ever since. It has two major operating departments;

1) *The Children and Family Services Department* which operates a number of Head Start Early Learning Centers and is the grantee for the entire Head Start program in Sacramento County, and

2) *The Workforce Development Department* which administers WIOA funded programs and oversees other federal programs such as the Community Services Block Grant program and the Refugee Social Services program. WIOA programs operated by SETA are advertised and marketed under the brand name “*Sacramento Works*”.

As the designated grant administrator for WIOA in the Sacramento Region SETA provides all staffing and administrative services necessary to operate the WIOA programs funded in this region. It also staffs the Governing Board, the WDB and Sacramento Works, Inc. Actual services to consumers are delivered under a number of different scenarios using direct SETA staff, independent subcontractors (often referred to as “Program Operators”) and various “partner” agencies, such as the Employment Development Department, the Department of Rehabilitation, and local education agencies at all levels.

SETA is responsible for the actual day to day implementation, administration, and service delivery under WIOA for the Sacramento area. SETA staff work under the direction of the SETA Governing Board, which is ultimately responsible for the operation of SETA. This means they are hired, fired, paid by and answerable to the Governing Board, not the WDB. Kathy Kossick is the Executive director of SETA and Roy Kim is the Deputy Director in charge of the Workforce Development Department.

To further complicate matters, it is the SETA Governing Board who is legally liable for all funds received by SETA, including WIOA funds. To help the Governing Board fulfill its legal responsibilities regarding management and use of SETA funds the SETA Fiscal Department reports to the County Director of Finance and advises SETA's Executive Director. All SETA funds are maintained in the County Treasury and all SETA payments are issued via the County Department of Finance.

III

THE SETA GOVERNING BOARD

The SETA Governing Board is a five-member board of directors comprised of local elected officials and one public representative responsible for the oversight and administration of the federal Workforce Innovation and Opportunity Act (WIOA), Head Start (HS), Community Services Block Grant (CSBG), Refugee funds and any other federal or state statutes under which financial assistance is provided, or under which financial assistance is received by SETA from private sources.

The Governing Board consists of five members, each serving in an individual capacity as a member of the Governing Board. Two members are appointed by the Board of Supervisors of the County of Sacramento, and two members are appointed by the City Council of the City of Sacramento, and one member is jointly appointed by the Board and Council. Members are appointed in November of even numbered calendar years. The current members are

- Councilmember Larry Carr, City of Sacramento;
- Supervisor Patrick Kennedy, County of Sacramento;
- Supervisor Don Nottoli – Chair, County of Sacramento;
- Councilmember Jay Schenirer, City of Sacramento; and
- Sophia Scherman – Vice Chair, Public Representative.

The Governing Board is also designated collectively as the “Chief Elected Official for the Sacramento Local Workforce Development Area” as those terms are defined under WIOA. As will be explained below the Governing Board in its capacity as the Chief Elected Official (“CEO”) under WIOA and the WDB as the Local Board under WIOA must work together to implement the requirements of WIOA for this county.

In light of this requirement the Governing Board, acting in its capacity as the CEO under WIOA and SWI, acting in its capacity as the WDB under WIOA, have entered into a written Operating Agreement, which sets forth the terms for how these two boards work together to implement and manage WIOA in this county. Among other things, the Operating Agreement defines the duties and

responsibilities of each Board under WIOA, when and how concurrence is required or agreed to, and how to resolve disputes when concurrence cannot initially be reached.

IV

SACRAMENTO WORKS, INC.

Sacramento Works, Inc. (“SWI”) is a standalone, not for profit, California corporation formed originally in 1979. SWI has obtained IRS and FTB tax exempt status as a 501 (c) 3 charitable entity. SWI was formed to support the mission of SETA’s Workforce Development Services Department. It does not provide any direct workforce services or operate any programs of its own. It has a 27-member board of directors, who are appointed to three-year terms by the Governing Board.

SWI was originally organized as a 501 (c) 4 “social welfare” organization. This means it was recognized by the IRS as tax exempt, but it was not eligible to accept tax deductible donations. On the other hand, it was able to lobby on behalf of its social welfare mission. In 1987 the SWI Board of Directors decided to move in a different direction and converted the entity to a 501 (c) 3 tax exempt charitable organization, eligible to accept tax deductible donations and apply for grants. This change in direction was driven by the stock market crash and the substantial change in economic conditions which resulted in substantial cuts to workforce funding. The Board hoped it could offset some of the federal funding reductions with outside private funds. The Board had limited success in this area and as the economy improved and federal funding increased less and less attention was given to private fundraising by SWI, however the corporation does retain that ability to this day.

With the adoption of WIOA and the need to appoint a local workforce development board as well the long and successful relationship between the Governing Board, SETA and the board of SWI the Governing Board determined that it made sense to designate SWI as the Local Board under WIOA. In addition, since WIOA specifically authorizes and encourages WDBs to pursue grants and solicit non-federal funds to supplement its work SWI was already positioned to implement this provision of WIOA. The Governing Board therefore appointed the board of directors of SWI to serve as the WDB under WIOA and entered into an Operating Agreement with SWI for the administration and implementation of WIOA in this region. SETA serves as the fiscal agent for Sacramento Works, Inc.

V

THE WORKFORCE DEVELOPMENT BOARD “WDB”

The members of the Board of Directors of Sacramento Works, Inc. have also been appointed by the CEO, in accord with the provisions of WIOA as the members of the WDB. The WDB derives its legal authority from the provisions of WIOA. It is a board which is required under the act to represent the local communities in its region. It must be composed of 50% private sector representatives and it must be chaired by a private sector member.

WIOA ascribes to the WDB responsibilities which were implied in the old law, but now are more clearly articulated. Under WIOA the WDB’s responsibility is to serve as a convener, a collaborator,

and the host of community conversations to better align workforce resources and better understand the complexity of local markets. Congress intended that the WDBs have a greater impact in defining the workforce needs of their local communities.

The new law specifically authorized and encouraged the use of committees composed of both WDB board members and *non-board members having appropriate experience and expertise*. It also specifically encourages WDBs *to solicit and accept grants and donations from non-federal fund sources and allows for the incorporation of Boards in order to operate as tax exempt 501 (c) 3 charitable entities*.

WIOA defines 13 specific functions which WDBs are responsible for, either alone or in concert with the Governing Board. Those 13 functions are as follows:

1. In partnership with the Governing Board to develop and submit to the Governor a Local/Regional Plan;

2. To carry out research and conduct regional labor market analysis;

3. To convene, broker, and leverage local workforce development stakeholders to assist in the development of the Local Plan;

4. To engage employers;

5. To develop and implement, with representatives of local secondary and post-secondary education programs, career pathways;

6. To identify and promote proven and promising practices;

7. To develop strategies for using technology to maximize accessibility and effectiveness of local workforce programs;

8. In partnership with the Governing Board to provide program oversight;

9. To negotiate local performance accountability measures in conjunction with the Governing Board and the Governor;

10. To select One-Stop Operators and Youth Providers, with concurrence of the Governing Board, and to identify eligible training and career services providers;

11. To coordinate with local education providers;

12. To develop a budget and plan for administration of its programs with the approval of the Governing Board;

13. To annually assess the physical and programmatic accessibility of all one stop centers in its jurisdiction.

The WDB has several committees:

- 1. The Executive Committee is a committee of the Board with limited legislative authority to act on behalf of the Board between meetings. This committee is limited to members of the board only;*
- 2. The Youth Committee, composed of both Board and non-board members;*
- 3. The Planning/Oversight Committee, which may be composed of both Board and non-board members;*
- 4. The Employer Outreach Committee, composed of both Board and non-board members;*
- 5. The Board Development Committee, which may be composed of both Board and non-board members;*
- 6. The Fund Development Committee (in formation) which may be composed of both Board and non-board members.*

The WDB has assigned these committees various tasks to better accomplish the above 13 functions of the WDB. These assignments overlap in some cases but generally work as follows:

The full Board:

- Function 1: development, negotiation, and approval of a local/regional plan with the Governing Board;*
- Function 3: Convening, Brokering and Leveraging local workforce development stakeholders;*
- Function 7: Technology;*
- Function 8: Program Oversight;*
- Function 9: Negotiation of Local Performance Accountability;*
- Function 10: Selection of Operators and Providers;*
- Function 12: Budget and Administration; and*
- Function 13: Accessibility for Individuals with Disabilities.*

The Planning/Oversight Committee:

- Function 2: Workforce Research and Regional Labor Market Analysis is led by the Planning and Oversight Committee with assistance from the Youth Committee and the Employer Outreach Committee.*
- Function 5: Career Pathways Development is led by the Planning/Oversight Committee*
- Function 6: Proven and Promising Practices is led by the Planning/Oversight Committee with input from the Employer Outreach Committee and the Youth Committee;*

Function 11: Coordination with Education Providers is led by the Planning/Oversight Committee with assistance from the Employer Outreach Committee and the Youth Committee

The Employer Outreach Committee:

Function 2: Workforce Research and Regional Labor Market Analysis

Function 4: Employer Engagement is led by the Employer Outreach Committee with assistance from the Planning/Oversight Committee and Youth Committee.

Function 5: Career Pathways Development

Function 6: Proven and Promising Practices

Function 11: Coordination with Education Providers

The Youth Committee:

Function 2: Workforce Research and Regional Labor Market Analysis

Function 4: Employer Engagement

Function 5: Career Pathways Development

Function 6: Proven and Promising Practices

Function 11: Coordination with Education Providers.

In its capacity as the WDB, SWI, in conjunction with the Governing Board, provides oversight and planning direction to SETA staff who are responsible for carrying out the general administration and day to day operation of the WIOA grants administered by SETA.

VI

FUNDRAISING

It is clear to me that any major fundraising activities intended to supplement, or benefit WIOA programs operated by SETA, the Governing Board and the WDB should be conducted under the auspices of SWI. In support of this proposition I point out that federal rules governing allowable costs under WIOA prohibit fundraising activities by SETA. In addition, elected officials, such as most of the Governing Board members, are subject to much more oversight and regulation when it comes to fundraising. This is part of the reason that Congress included a provision allowing the formation of separate 501 (c) 3 corporations by WDBs under WIOA. SWI is uniquely situated as an established and viable charitable organization with established 501 (c) 3 tax exempt status to conduct fundraising activities.

As most of you are already aware, fundraising, which is what “fund development” really means, is not an easy task. The Sacramento Region is not known as an overly generous community. In addition, there are a few minefields which must be negotiated before embarking on any fundraising campaign.

WIOA has given SWI, in its capacity as the WDB, a green light to fundraise under the Act. However, under California state law WDB members are considered “appointed public officials”. As “appointed public officials” you are all subject to various state “good government” laws and regulations, including conflicts of interest rules and regulations. That is why you are required to

complete the FPPC Form 700 Statement of Economic Interests before being seated on the board and annually thereafter. In addition to applicable state and federal laws, SETA has adopted its own internal Conflict of Interest Code which applies to all members of the WDB.

These laws, rules and regulations affect the manner and method by which SWI might conduct fundraising. There are two main concerns which I believe must be addressed in any fundraising campaign undertaken by SWI; 1) the direct solicitation of gifts to SWI by WDB members, and 2) applying for grants. My concerns are almost exclusively centered around direct solicitations.

Grants are a different animal from direct solicitations. I am generally not concerned about grant applications filed with any national, state, or local grant fund, such as the Irvine Foundation, the Wallace Foundation, the Sacramento Region Community Foundation, the Gates Foundation, or some other charitable organization. Unless one of our WDB members is connected to the grantor (in which case a private consultation with counsel would likely lead to a way to proceed without triggering a conflict situation which could lead to avoidance of any award) grants are not likely to trigger direct conflicts of interest or the appearance of a conflict .

On the other hand, direct solicitations present a multitude of concerns. I am talking about a situation where a WDB member directly solicits a donation to Sacramento Works, Inc. When a public official requests or recommends a donation to a charitable entity named by the public official the resulting donation is termed a "Behested Payment". Behested Payments are not illegal per se, but they are of concern for two reasons; 1) they raise the specter that the public official is selling a service or vote, and, 2) they raise the possibility the donor expects a quid pro quo favor in return.

If you were an elected official, you would be required to report all "behested" payments which equal or exceed \$5,000 in a twelve-month period by each donor who gives that amount or more. Fortunately, WDB members are appointed rather than elected so the reporting requirements do not apply directly to you. However, just because you do not have to report "behested" payments this does not mean you are free from scrutiny.

The SETA Governing Board has intentionally adopted a conservative approach to conflicts of interest **and the appearance of a conflict**. Under SETA's Conflict of Interest Code, which applies to all WDB members, every WDB member is disqualified from using his/her official position as a WDB member to influence the making of a decision to donate to SWI because every WDB member is also a Director of the recipient charitable entity, SWI.

Therefore, I believe it would be prudent for SWI, in running any fundraising campaign directly soliciting donations, to follow the guidelines applicable to behested payments relating to elected officials. That rule provides that to be considered a "Behested Payment" the solicitation must "feature" a public official. A solicitation "features" a public official if it contains his or her: 1) photograph, 2) signature, 3) otherwise singles out the official by name or office; or 4) includes a roster or letterhead listing the public official.

To avoid the appearance of any conflict of interest I am proposing that SWI and the WDB adopt a strict policy against any solicitation sent out on behalf of SWI or the WDB or any of its committees that features any WDB members. I believe there are numerous outside entities and individuals who have benefitted from the receipt of SETA's services and would be happy to provide testimonials.

The WDB does not need self-serving testimonials and by prohibiting them it avoids even the appearance of a conflict of interest.

I am therefore recommending that the Sacramento Works, Inc. board of directors adopt formal written policies to guide the board in its future fundraising efforts. Given the unique nature of the relationship between Sacramento Works, Inc. and the WDB, wherein the same people serve as both public officials who are members of the WDB and are also the corporate directors of Sacramento Works, Inc., a 501 (c) 3 tax exempt charitable entity the overlap between these roles dictates the need for specific policies and guidelines to avoid conflict and misunderstanding.

I am proposing that SWI and the WDB adopt the following set of policies and guidelines:

1. No fundraising campaign on behalf of Sacramento Works, Inc. or the WDB shall be launched without the approval of the Board of Directors;
2. Every campaign proposal presented to the Board for approval shall contain a statement describing how the campaign is intended to benefit Sacramento Works, Inc. and further its mission. In addition, the proposal shall set forth which function(s) of the WDB under the Workforce Innovation and Opportunity Act the funds raised through the campaign will help to fulfill and how the funds will be used to fulfill such function(s), together with an official request from the WDB for such financial support by Sacramento Works, Inc.;
3. Every campaign proposal shall include a section describing the impact of the campaign on local workforce development system stakeholders or provide their approval for the campaign;
4. Each campaign shall be fully defined as to purpose, fundraising goal, time-period for fundraising, budget, and solicitation materials;
5. No member of the WDB or his or her company, agency, or employer, nor a member of his or her immediate family, shall be featured in any fundraising solicitation by Sacramento Works, Inc. or the WDB.