

File No. 201089

Committee Item No. 1

Board Item No. 57

COMMITTEE/BOARD OF SUPERVISORS

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Committee: Rules Committee

Date July 12, 2021

Board of Supervisors Meeting

Date July 20, 2021

Cmte Board

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OTHER (Use back side if additional space is needed)

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Completed by: Victor Young Date July 8, 2021

Completed by: _____ Date _____

1 [Administrative Code - Rules for Awarding Grants]

2
3 **Ordinance amending the Administrative Code by codifying a grant award process to,**
4 **among other things, 1) require, with certain exceptions, a competitive solicitation;** 2)
5 **require advertisement of solicitations and set forth evaluation criteria of grant**
6 **proposals;** 3) **reserve the City’s right to cancel, reject, and/or readvertise solicitations;**
7 **4) list required grant terms;** 5) **set forth requirements for the head of a granting agency**
8 **in making a sole source grant determination;** 6) **authorize the Purchaser to promulgate**
9 **rules and regulations for effectively carrying out the requirements of this ordinance;** 7)
10 **set forth grant requirements based on a grant’s funding source; and 8) set forth**
11 **administrative debarment procedures; and 9) set forth the requirements for the**
12 **advertisement and notice of availability of rebate and incentive programs.**

13 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
14 **Additions to Codes** are in *single-underline italics Times New Roman font*.
15 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
16 **Board amendment additions** are in double-underlined Arial font.
17 **Board amendment deletions** are in ~~strikethrough Arial font~~.
18 **Asterisks (* * * *)** indicate the omission of unchanged Code
19 subsections or parts of tables.

18 Be it ordained by the People of the City and County of San Francisco:

19
20 Section 1. The Administrative Code is hereby amended by adding Chapter 21G,
21 consisting of Sections 21G.1 through 21G.142, to read as follows:

22
23 **CHAPTER 21G: GRANTS**

24
25 **SEC. 21G.1. SCOPE OF CHAPTER.**

1 (a) Chapter 21G governs Grants awarded by Granting Agencies.

2 (b) Grants awarded under Chapter 21G may not involve the contracting out of, or delegation
3 of the responsibility for, any services (1) for the benefit of the Granting Agency, as opposed to the
4 public, or (2) that are routinely performed by City employees of the Granting Agency.

5 (c) Chapter 21G applies to all Grants first advertised, solicited, or initiated if no
6 advertisement or solicitation is required, on or after the operativeeffective date of the
7 ordinance in Board File No. 201089 establishing Chapter 21G.

8 ~~(e) "Grant" does not include, and hence Chapter 21G does not apply to, contracts (1)~~
9 ~~for public works or improvements under Administrative Code Chapter 6; (2) for the purchase,~~
10 ~~sale, lease, use, or development of real property; (3) for the purchase of Commodities or~~
11 ~~Services under Administrative Code Chapter 21; or (4) to provide financial assistance such as~~
12 ~~a loan or loan guarantee, an interest rate subsidy, tax relief, or tax credit. "Grant" also does~~
13 ~~not include, and hence Chapter 21G also does not apply to, grants or assistance given to~~
14 ~~individuals under City service or assistance programs.~~

15
16 **SEC. 21G.2. DEFINITIONS.**

17 As used in this Chapter 21G, the following terms shall have the following meanings:

18 "City" means the City and County of San Francisco.

19 "Grant" means an award of funds to a Grantee for, or in furtherance of, a Public Purpose,
20 which is paid from monies deposited in the treasury of the City, and which is not required to be repaid
21 except upon default by the Grantee. "Grant" does not include contracts (1) for public works or
22 improvements under Administrative Code Chapter 6; (2) for the City purchase, sale, lease,
23 use, or development of real property; (3) for the City purchase of Commodities or Services
24 under Administrative Code Chapter 21; or (4) to provide financial assistance such as a loan or
25 loan guarantee, an interest rate subsidy, tax relief, or tax credit. "Grant" also does not include

1 grants or assistance to individuals under City service or assistance programs, rebates or
2 incentives. Departments administering rebate or incentive programs must comply with
3 Section 21G.12.

4 “Grant Agreement” means a written agreement between the Granting Agency and Grantee
5 wherein the Granting Agency agrees to provide a Grant to the Grantee in return for work to be
6 performed by the Grantee in furtherance of a Public Purpose.

7 “Grantee” means the party entering into a Grant Agreement with the City. A Grantee may be a
8 for-profit or nonprofit entity, an individual, or a governmental entity. All Grantees (other than
9 governmental entities) must be registered to do business in the State of California and the City and
10 County of San Francisco.

11 “Granting Agency” means the City department or office that enters into a Grant Agreement.

12 “Grants Officer” means either the head of the Granting Agency or the head’s designee.

13 “Proposal” means a response to a Solicitation following guidelines outlined in the
14 Solicitation describing how the Proposer will use any Grant funds awarded.

15 “Proposer” means an entity or individual that submits a Proposal in response to a Solicitation.

16 “Public Purpose” means a benefit in the interests of one or more communities in the City or for
17 the general good of the people of the City, as determined by the Granting Agency in its judgment.

18 “Purchaser” means the Director of the Office of Contract Administration of the City, or the
19 Purchaser’s designee.

20 “Risk Manager” means the Director of the Risk Management Program Division of the General
21 Services Agency City.

22 “Solicitation” means an invitation to submit a Proposal to receive a Grant.

23
24 **SEC. 21G.3. COMPETITIVE SOLICITATION.**

1 (a) Granting Agencies shall award all Grants through an open and competitive process under
2 Sections 21G.4, 21G.5, and 21G.6, except for Grants (1) to a governmental entity for programs,
3 activities, or services that can be practically performed only by that particular entity, (2) made to a
4 specific entity as required to comply with applicable law or contract, or as a result of the requirements
5 of the funding source, (3) made for improvement to property by to a private property owner or for a
6 neighborhood improvement as designated by the Granting Agency, or (4) awarded on a sole
7 source basis pursuant to Section 21G.8.

8 (b) All Grants, including those excepted from competitive solicitation under subsection (a),
9 shall comply with applicable rules and regulations made by the Purchaser.

10 (c) Each Granting Agency shall submit an annual ~~quarterly~~ report by June 1 of each year,
11 commencing on June 1, 2023~~2~~, to the Board of Supervisors ~~Controller~~, listing each Grant that the
12 Granting Agency awarded during the preceding ~~calendar year~~ ~~quarter~~ without following an open and
13 competitive process, and with the exception relied on for making each such Grant without said process.

14
15 **SEC. 21G.4. ADVERTISING SOLICITATIONS.**

16 (a) Notices of Solicitations shall be published in accordance with Section 2.98 of the
17 Administrative Code.

18 (b) The deadline for Proposers to submit Proposals in response to a Solicitation shall be not
19 less than 21 days following publication of the notice of Solicitation; provided, however, the Grants
20 Officer shall have the discretion, for good cause, to shorten this time period to not less than ~~40~~five
21 days following publication.

22 (c) The notice of Solicitation shall contain a general description of the Public Purpose of the
23 proposed Grant, the deadline for submitting Proposals, a link to complete information about the Grant
24 on the applicable City website, contact information for the Granting Agency, and such other
25 information in the notice of Solicitation that the Granting Agency deems appropriate.

1 **SEC. 21G.5. INVITATIONS FOR COMPETITIVE GRANT PROPOSALS; GRANT**

2 **AGREEMENTS.**

3 (a) **Evaluation Criteria.** Each Solicitation shall include a clear statement of the process for
4 submitting Proposals and for evaluating Proposals, including the evaluation criteria to be used by the
5 Granting Agency for the ranking of Proposals and for awarding one or more Grants under the
6 Solicitation. The Solicitation shall reserve the Granting Agency’s right to reject or cancel the
7 Solicitation in whole or in part at any time before a Grant Agreement is entered into.

8 (b) **Content of Proposals.** A Solicitation shall specify the materials and information that must
9 be included in each Proposal. A Granting Agency shall reject Proposals that do not meet the
10 requirements of the Solicitation, except that it may waive nonmaterial defects or omissions in any
11 Proposal, as determined by the Grants Officer.

12 (c) **Negotiation.** The Granting Agency may negotiate a Grant Agreement with one or more
13 selected Proposers consistent with the Solicitation. If, in the judgment of the Grants Officer, an
14 agreement cannot be reached with a selected Proposer, then the Granting Agency may terminate
15 negotiations with that Proposer and begin negotiations with the next highest ranked Proposer. If there
16 will be more than one Grantee, the Granting Agency may negotiate with multiple Proposers
17 simultaneously. All Grantees must be capable of performing the work described in the Grant
18 Agreement, as determined by the Granting Agency.

19 (d) **Grant Agreement.** All Grant funds shall be disbursed according to the terms of a Grant
20 Agreement. The Grant Agreement shall be subject to the Controller’s certification of funds, and shall
21 be subject to the City Attorney’s approval as to form.

22
23 **SEC. 21G.6. CANCELLATION, REJECTION, READVERTISING, AND AMENDMENTS.**

24 The Granting Agency may cancel any Solicitation or reject all Proposals, at any time prior to
25 execution of the Grant Agreement, and may in its discretion republish the notice of Solicitation under

1 Section 21G.4. The Granting Agency may amend any Solicitation prior to the date that Proposals
2 become due; provided, that any such amendment shall be republished and provide additional time to
3 all potential Proposers, as determined by the Granting Agency, to respond to the Solicitation as
4 amended.

5
6 **SEC. 21G.7. GRANT TERMS.**

7 (a) The Grant Agreement shall specify performance requirements and deliverables for the
8 Grantee, the manner and timing of payments by the Granting Agency, eligible and prohibited
9 reimbursements, and the Granting Agency's remedies for default by the Grantee.

10 (b) **Insurance.** All Grant Agreements shall require the Grantee to maintain insurance for the
11 City's benefit, as determined by the Risk Manager. The Risk Manager shall develop insurance
12 requirements for Grants and shall publish such requirements in the Risk Manager's Manual. The Risk
13 Manager shall review and, if appropriate, update such insurance requirements annually or, in the Risk
14 Manager's judgment, more frequently.

15 (c) **Infringement Indemnity.** Each Grant Agreement shall require any Grantee that provides
16 intellectual property to the City to indemnify the City for any violation of copyright, trademark, patent,
17 or other intellectual property rights resulting from the City's use of that intellectual property.

18 (d) **Assignment.** Each Grant Agreement shall prohibit assignments by the Grantee, except by
19 written instrument approved by the Granting Agency. Before granting any such approval, the Granting
20 Agency shall determine whether the assignee is ~~generally~~ capable of performing the work set forth in
21 the Grant Agreement, and whether the assignee satisfies all other requirements of the Grant
22 Agreement. The Granting Agency shall notify the Controller quarterly by January 1, April 1, July 1,
23 and October 1 of each year, commencing on April ~~October~~ 1, 2022, ~~4~~ of such assignments.

24 (e) **Audit Of Grantee's Records.** Each Grant Agreement shall require the Grantee to maintain
25 records documenting the work performed and the payments received under the Grant Agreement, and

1 allow the City, at reasonable places and times, to audit such records. The Grant Agreement shall
2 require the Grantee to maintain such records for five years from the date of final payment under the
3 Grant, unless the Granting Agency authorizes a shorter period in writing. But the Grant Agreement
4 shall also require that the Grantee shall maintain records for such period as required by
5 federal or state funding agencies, if longer than the period required in accordance with the
6 preceding sentence.

7 **(f) Submitting False Claims; Monetary Penalties.**

8 **(1) Covenant of Good Faith and Fair Dealing.** Each Grant Agreement shall include a
9 covenant of good faith and fair dealing requiring Grantees at all times to act in good faith with the City
10 and to submit claims, requests for equitable adjustments, requests for Grant modifications, or requests
11 of any kind seeking increased compensation under a Grant, only upon a good-faith, honest evaluation
12 of the underlying circumstances and a good-faith, honest calculation of the amount sought.

13 **(2) Prohibition of False Claims.** A Grantee shall not submit a False Claim to the City
14 related in any manner to the Grant. Payment or reliance by the City is not required for an act to be
15 considered a False Claim. For purposes of this subsection 21G.7(f):

16 **(A) Submitting a “False Claim” means to:**

17 **(i) Knowingly present or cause to be presented to an officer or employee**
18 **of the City a claim or request for payment or approval that is false or fraudulent;**

19 **(ii) Knowingly make, use, or cause to be made or used a false record or**
20 **statement to get a claim paid or approved by the City;**

21 **(iii) Conspire to defraud the City by getting a claim allowed or paid by**
22 **the City that is false or fraudulent;**

23 **(iv) Knowingly make, use, or cause to be made or used a false record or**
24 **statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City;**

1 _____ (v) Knowingly receive the benefit of a false claim made to the City, or
2 receiving the benefit without knowledge of the falsity of the claim but subsequently discovering its
3 falsity and failing to disclose the false claim to the City within a reasonable time after discovering it.

4 _____ (B) A “claim” means any request or demand for money, property, or services
5 made to any employee, officer, or agent of the City in connection with a Grant.

6 _____ (C) “Known” or “knowingly” means (1) having actual knowledge of
7 information, (2) acting in deliberate ignorance of the truth or falsity of information, or (3) acting in
8 reckless disregard of the truth or falsity of information. “Known” or “knowingly” does not require
9 proof of specific intent.

10 _____ (3) **Damages for False Claims.** Any Grantee who makes a False Claim shall be liable
11 to the City for three times the higher of (A) the amount of damages that the City sustains due to the
12 False Claim, or (B) the amount of the False Claim. Any such Grantee shall also be liable to the City
13 for all costs, including attorneys’ fees, of a civil action brought to recover any penalties or damages,
14 and may be liable to the City for a civil penalty of up to \$10,000 for each False Claim.

15 _____ (4) Liability under this Section 21G.7(f) shall be joint and several for any False Claim
16 made by two or more persons.

17
18 **SEC. 21G.8. SOLE SOURCE GRANTS.**

19 (a) Notwithstanding any other provision of this Chapter 21G, a Granting Agency may award a
20 Grant without conducting an open and competitive process under Sections 21G.4, 21G.5, and 21G.6, in
21 accordance with the Purchaser’s rules and regulations if the Grants Officer determines in
22 writing that a competitive process is infeasible or impracticable, or that the identified Public
23 Purpose may reasonably be accomplished only by one particular Grantee. For Granting
24 Agencies under the jurisdiction of a commission or a board, the Granting Agency shall not
25 award a Grant without conducting an open and competitive process unless the commission or

1 board approves the Granting Agency's recommendation that the Grant be awarded as a sole
2 source. Before awarding such a Grant, the Granting Agency shall recommend to the
3 commission or board concerned the approval and award of a Grant pursuant to this
4 subsection (a) and such commission or board may then adopt a resolution approving the
5 justification of the sole source and awarding the Grant.

6 (b) If the form of the Grant is recurring to the same recipient, a determination made
7 pursuant to subsection (a) must be supported by either a formal or informal documented
8 competitive process within the last five years demonstrating the lack of potential Grantees.

9 (c) Grants for the four City-owned community cultural centers may be awarded as sole
10 source Grants under this Section 21G.8 without complying with subsections (a) or (b).

11
12 **SEC. 21G.9. RULES AND REGULATIONS REQUIREMENTS FOR GRANTS.**

13 The Purchaser may shall promulgate rules and regulations for effectively carrying out this
14 Chapter 21G no later than December 31, 2021. These rules and regulations shall, among
15 other things, permit sole source Grants when a competitive process is infeasible or
16 impracticable, or when Public Purpose may reasonably be accomplished by one particular
17 Grantee. The Purchaser may update these rules and regulations from time to time, as
18 needed.

19
20 **SEC. 21G.10. REQUIREMENTS BASED ON FUNDING SOURCE.**

21 (a) Grants funded in whole or in part by a local, State, or federal governmental agency entity
22 shall satisfy all applicable requirements of this Chapter 21G and of the Municipal Code funding
23 agency. In the event of a conflict between the funding agency's requirements and this Chapter 21G or
24 the Municipal Code, the requirements of the funding agency shall prevail.

1 (b) Grants funded in whole or in part by private agencies shall satisfy all applicable
2 requirements of this Chapter 21G and of the ~~Municipal Code~~ private agency.

3
4 **SEC. 21G.11. ADMINISTRATIVE DEBARMENT PROCEDURE.**

5 Grantees shall be subject to the provisions and penalties contained in Administrative Code
6 Chapter 28 (Administrative Debarment Procedures). Any order of debarment or suspension
7 issued under Chapter 28 shall be a public record. The Controller shall maintain and publish
8 on the City's Internet website a current list of Grantees subject to orders of debarment or
9 suspension and the expiration dates for the respective debarment or suspension terms. The
10 Controller shall submit a semi-annual report by January 1 and July 1 of each year,
11 commencing on July ~~January~~ 1, 2022, to the Board of Supervisors that includes (a) the
12 Grantees then subject to an order of debarment or suspension and the expiration dates for the
13 respective debarment terms; (b) the status of any pending debarment or suspension matters;
14 and (c) any order of debarment or suspension received by the Controller since the date of the
15 last report.

16
17 **SEC. 21G.12. REBATE AND INCENTIVE PROGRAMS.**

18 Departments administering rebate and/or incentive programs shall widely advertise the
19 availability of rebates and/or incentives. Notices of available rebates and/or incentives shall
20 be published in accordance with Section 2.98 of the Administrative Code. The Controller shall
21 periodically audit rebate programs as provided in Appendix F of the Charter.

22
23 Section 2. Effective Date; Operative Date.

24 (a)_____ This ordinance shall become effective 30 days after enactment. Enactment
25 occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or

1 does not sign the ordinance within ten days of receiving it, or the Board of Supervisors
2 overrides the Mayor’s veto of the ordinance.

3 (b) This ordinance shall become operative on January 1, 2022, or on its effective
4 date, whichever is later, except that the operative date for Administrative Code Section 21G.9
5 shall be the effective date of the ordinance.

6
7 ~~Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors~~
8 ~~intends to amend only those words, phrases, paragraphs, subsections, sections, articles,~~
9 ~~numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal~~
10 ~~Code that are explicitly shown in this ordinance as additions, deletions, Board amendment~~
11 ~~additions, and Board amendment deletions in accordance with the “Note” that appears under~~
12 ~~the official title of the ordinance.~~

13
14 APPROVED AS TO FORM:
15 DENNIS J. HERRERA, City Attorney

16 By: /s/ Rosa M. Sánchez
17 ROSA M. SANCHEZ
18 Deputy City Attorney

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LEGISLATIVE DIGEST

(Revised 7/12/21)

[Administrative Code - Rules for Awarding Grants]

Ordinance amending the Administrative Code by codifying a grant award process to, among other things, 1) require, with certain exceptions, a competitive solicitation; 2) require advertisement of solicitations and set forth evaluation criteria of grant proposals; 3) reserve the City's right to cancel, reject and/or readvertise solicitations; 4) list required grant terms; 5) set forth requirements for the head of a granting agency in making a sole source grant determination; 6) authorize the purchaser to promulgate rules and regulations for effectively carrying out the requirements of this Ordinance; 7) set forth grant requirements based on a grant's funding source; 8) set forth administrative debarment procedures; and 9) set forth the requirements for the advertisement and notice of availability of rebate and incentive programs.

Existing Law

There are no existing laws addressing procedures for awarding grants. City awarded grants have been governed by an informal consensus agreement between four City departments since 1997.

Amendments to Current Law

The Administrative Code will be amended to add Chapter 21G codifying a grant award process for City departments to follow. Departments are required, with certain exceptions, to issue competitive solicitations setting forth the evaluation of grant proposals. Grant solicitations shall be advertised and proposals evaluated prior to grant award. Departments are required to submit an annual report to the Board of Supervisors, listing each grant that the granting department awarded during the preceding calendar year without following an open and competitive process, and with the exception relied on for making each such grant without said process. The Purchaser is required to promulgate rules and regulations for effectively carrying out this Chapter 21G. Departments will need to follow the Purchaser's rules and regulations in awarding sole source grants. Departments under a jurisdiction of a commission or a board will need to obtain the commission's or board's approval, via a resolution, of such sole source grants. Grants for the four City-owned community cultural centers may be awarded as sole source grants. Grantees are subject to the provisions and penalties contained in Administrative Code Chapter 28 (Administrative Debarment Procedures). Departments administering rebate and/or incentive programs shall widely advertise the availability of rebates and/or incentives.

Background Information

This legislative digest reflects amendments made in the Rules Committee on June 7, 2021. Those changes include:

- Revising the definition of “grant” to exclude rebates and incentives.
- Revising the definition of “grantee” to add individuals.
- Revising the list of grants excluded from the open and competitive process to include grants made for the improvement of property by property owners.
- Requiring departments to submit an annual report to the Board of Supervisors listing each grant awarded during the preceding calendar year without following an open and competitive process.
- Requiring departments to follow the Purchaser’s regulations in awarding sole source grants.
- Requiring departments under the jurisdiction of a commission or a board, to obtain approval from the commission or board, via resolution, approving the justification of the sole source and awarding the grant.
- Requiring the sole source justification for recurring grants to the same recipient be supported by either a formal or informal documented competitive process demonstrating the lack of potential grantees.
- Adding grants for the four City-owned community cultural centers as approved sole source grants.
- Revising the administrative debarment procedure to require the Controller to publish on the City’s Internet website a current list of debarred grantees, and requiring the Controller to submit a semi-annual report to the Board of Supervisors that includes the grantees subject to debarment or suspension.
- Requiring departments that operate rebates and incentive programs to advertise the rebates and incentive programs by publishing notices in accordance with the Administrative Code.

This legislative digest additionally reflects amendments introduced in the Rules Committee on July 12, 2021. Those changes include:

- Updating the operative date of the ordinance to be January 1, 2022.

- Coordinating the different required reporting dates by departments and Controller to the operative date of the ordinance.
- Clarifying that a department shall not award a grant without conducting an open and competitive process unless the commission or board overseeing the department approves the department's recommendation that the grant be awarded as a sole source.
- Updating the title to Section 21G.9 to be "Rules and Regulations," and allowing the Purchaser to update the rules and regulations from time to time as needed.
- Requiring the specific issuance of rules and regulations for sole source grants.

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BOARD of SUPERVISORS



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MEMORANDUM

TO: Ben Rosenfield, City Controller
Sailaja Kurella, Acting Director and Purchaser, Office of Contract Administration

FROM: Victor Young, Assistant Clerk *Victor Young*
Rules Committee

DATE: September 25, 2020
SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Rules Committee received the following proposed legislation:

File No. 201089

Ordinance amending the Administrative Code by codifying a grant award process to, among other things: 1) require, with certain exceptions, a competitive solicitation; 2) require advertisement of solicitations and set forth evaluation criteria of grant proposals; 3) reserve the City's right to cancel, reject and/or readvertise solicitations; 4) list required grant terms; 5) set forth requirements for the head of a granting agency in making a sole source grant determination; 6) authorize the purchaser to promulgate rules and regulations for effectively carrying out the requirements of this Ordinance; 7) set forth grant requirements based on a grant's funding source; and 8) set forth administrative debarment procedures.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: victor.young@sfgov.org.

c: Michelle Allersman, Controller's Office
Carol Lu, Controller's Office
Taraneh Moayed, Office of Contract Administration