File No. 240301 **Committee Item No.** 2
Board Item No. 29

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Rules Committee **Date** April 29, 2024

Board of Supervisors Meeting **Date** May 7, 2024

Cmte Board

Cmte	Board	
☐	☐	**Motion**
☐	☐	**Resolution**
☒	☐	**Ordinance**
☒	☐	**Legislative Digest**
☐	☐	**Budget and Legislative Analyst Report**
☐	☐	**Youth Commission Report**
☐	☐	**Introduction Form**
☒	☐	**Department/Agency Cover Letter and/or Report**
☐	☐	**Memorandum of Understanding (MOU)**
☐	☐	**Grant Information Form**
☐	☐	**Grant Budget**
☐	☐	**Subcontract Budget**
☐	☐	**Contract/Agreement**
☐	☐	**Form 126 - Ethics Commission**
☐	☐	**Award Letter**
☐	☐	**Application**
☐	☐	**Form 700**
☐	☐	**Information/Vacancies (Boards/Commissions)**
☐	☐	**Public Correspondence**

OTHER **(Use back side if additional space is needed)**

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Completed by: Victor Young **Date** April 25, 2024
Completed by: _____ **Date** _____

[Administrative Code - Agreements with Government Entities]

Ordinance amending the Administrative Code to allow City departments to enter into and amend agreements for construction, goods, and services, and real property leases with government entities without complying with solicitation requirements that would otherwise apply, and without adhering to provisions in the Municipal Code that impose obligations on contracting parties as a condition to agreement with the City.

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

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

Section 1. Findings.

(a) The City regularly partners with federal, state, regional, and local government agencies. These partnerships allow the City to combine its knowledge and resources with those of other government entities to develop creative, cost-effective, and successful approaches, and to perform essential inter-governmental functions, such as the operation of San Francisco International Airport, the maintenance of watershed lands in Yosemite National Park in connection with Hetch Hetchy, or the administration of City medical facilities in collaboration with the University of California. These are but a few illustrations of the intergovernmental dimensions of City government.

(b) City law governing the execution of agreements relating to the purchase of goods and services, or the use of real estate, typically requires that the City engage in a competitive procurement process and include a variety of contract terms that may not be

necessary for inclusion in agreements with government agencies, which, like the City, owe a duty to the public, are subject to open government laws, do not seek to profit from agreements with other governmental entities, and often have enlightened policies toward their employees. While many City contracting policies contain exemptions for contracts with other government entities, these exemptions often require waivers and other administrative processes that delay the agreement. In other instances, the applicable City social or economic policy does not contain an exception for agreements with other government entities.

(c) This ordinance streamlines City contracting by authorizing City departments to enter into agreements with other governmental entities without having to comply with the contracting requirements or obligations imposed on contractors in the Municipal Code, while still requiring that departments exercise discretion to ensure that final agreements benefit and protect the City.

Section 2. Chapter 1 of the Administrative Code is hereby revised by amending Section 1.24, to read as follows:

SEC. 1.24. HOLD HARMLESS AGREEMENTS.

(a) The City's Risk Manager is authorized to approve hold harmless agreements between the City and other persons or entities, if the Risk Manager determines that: (1) entering into such an agreement either (a) falls within normal business practices or (b) represents a prudent decision in light of all the circumstances; (2) the cost of the hold harmless provision is reflected in the price of the agreement; and (3) the hold harmless provision is necessary in order for the City to carry out a public purpose. The Risk Manager shall confer with the Controller and the City Attorney as necessary and appropriate in making determinations *in accordance with this Section 1.24*.

(b) The Risk Manager may approve hold harmless agreements by specific transaction or by general category. Any prior authorization for hold harmless agreements granted by the Board of Supervisors, either for specific transactions or for general categories of transactions, shall remain in effect.

(c) The Risk Manager shall maintain a record of all hold harmless agreements *the Risk Manager* ~~*he or she*~~ has approved and shall submit a copy of that list to the Board of Supervisors, with copies to the Controller and the City Attorney, on a quarterly basis.

(d) City Risk Manager approval shall not be required for hold harmless agreements entered into between the City and a Government Entity or Government Entities. For purposes of this Section 1.24, a Government Entity is as defined in Section 1.25.

Section 3. Chapter 1 of the Administrative Code is hereby revised by adding Section 1.25, to read as follows:

SEC. 1.25. GOVERNMENT ENTITY AGREEMENTS.

(a) Purpose. *The City from time to time enters into agreements with other Government Entities. This Section 1.25 sets forth basic principles concerning such agreements.*

(b) Exemption from Obligations. *Agreements with Government Entities entered into pursuant to Chapter 2A: Article IX, Chapter 6, Chapter 21, and Chapter 23, are not subject to the provisions in the Municipal Code, including but not limited to the Administrative, Labor and Employment, Environment, or Police Codes, imposing obligations or other restrictions on contractors.*

(c) List of Obligations. *The City Administrator, in consultation with the City Attorney, is authorized to publish and maintain a list of obligations or other restrictions imposed upon parties entering into expenditure contracts with the City. Said list shall serve the purposes of reference and convenience, but shall not be deemed an authoritative statement of all such obligations. Failure to*

include an obligation on the list shall not be deemed a statement that the obligation is not within the exemption established in subsection (b).

(d) Government Entity Defined. *For the purposes of this Section 1.25, a "Government Entity" is any national, federal, state, regional, or local government agency, including but not limited to a joint powers authority, a special district and/or a utility district, a public health or public education district or institution, a public entity, a designee of a federal or state agency, or a quasi-governmental agency.*

Section 4. Chapter 2A, Article IX, of the Administrative Code is hereby revised by adding Section 2A.172, to read as follows:

SEC. 2A.172. GOVERNMENT ENTITY AGREEMENTS.

As set forth in Section 1.25 of this Code, any agreement for the acquisition, lease, or permit of real property authorized under Administrative Code Chapter 2A, Article IX, with a Government Entity is exempt from any competitive process requirements under Chapter 2A, Article IX, or elsewhere in the Administrative Code and is not subject to the provisions in the Municipal Code, including but not limited to the Administrative, Labor and Employment, Environment, or Police Codes, imposing obligations or other restrictionson contractors. This Section 2A.172 applies to all agreements for an acquisition, lease, or permit of real property, however they are titled, including any contract, memorandum of understanding, or similar instrument, memorializing mutual obligations between the Airport Commission and a Government Entity or Government Entities. For purposes of this Section 2A.172, "Government Entity" has the meaning set forth in Administrative Code Section 1.25(d), as may be amended from time to time..

Section 5. Chapter 6, Article I, of the Administrative Code is hereby amended by revising Section 6.1 and Section 6.6, to read as follows:

SEC. 6.1. DEFINITIONS.

* * * *

Department Head. The duly appointed General Manager, Director, or Executive Director of a City department authorized to perform Public Work or Improvements under Section 6.2. For purposes of this Chapter only, ~~*an authorized*~~ *a* Department Head may designate an individual to execute on ~~*his or her*~~ *the Department Head's* behalf any document referenced in this Chapter 6, including but not limited to Contracts, change orders, modifications, service orders, task orders, approvals, progress payments, and certificates of acceptance. Such designation shall be in writing and shall identify the individual by name and title and the scope and term of the designation.

Government Entity. *Has the meaning set forth in Administrative Code Section 1.25(d), as may be amended from time to time.*

* * * *

SEC. 6.6. FEDERALLY-FUNDED OR STATE-FUNDED CONTRACTS*; PUBLIC WORK OR RELATED PROFESSIONAL SERVICES PERFORMED BY ANOTHER GOVERNMENT ENTITY*.

(a) Time for Award. For all Contracts that are fully or partially funded by Federal or State grants, loans, or other governmental source, the department concerned shall not be required to award such Contracts until 120 days from the date Bids are received. Such time may only be extended prior to award of the Contract and only upon (1) written agreement of the apparent Responsible Bidder with the lowest Responsive Bid; (2) approval by the Mayor or by resolution of the board or commission concerned; and (3) any necessary approvals of the Federal, State, or other governmental funding agency.

(b) Contract Terms. In all Contracts for the construction of any Public Work or Improvement which involves the use of any funds furnished, given, or loaned by the government of the United States or the State of California, all laws, rules, and regulations of the government of the United States or the State of California or of any of its departments relative to the performance of such work and the conditions under which the work is to be performed, shall prevail over the requirements of this Chapter 6 when such laws, rules, or regulations are in conflict.

(c) Government Entity Agreements. *As set forth in Section 1.25 of this Code, any department listed in Section 6.2 of this Code may enter into a Contract with a Government Entity, including for work related to a Public Work or Improvement, to be performed by the Government Entity on City-owned property. Contracts with a Government Entity are exempt from the solicitation requirements imposed by Chapters 6 and 14B of this Code. Contracts with a Government Entity are not subject to the provisions of the Municipal Code, including but not limited to the Administrative, Labor and Employment, Environment, or Police Codes, imposing obligations or other restrictions on contractors. This subsection (c) applies to all Contracts with Government Entities entered into under this Chapter 6, however such Contracts are titled, including but not limited to any agreement, memorandum of understanding, or similar instrument memorializing mutual obligations between the City and a Government Entity or Government Entities.*

Section 6. Chapter 21 of the Administrative Code is hereby amended by revising Sections 21.02 and 21.04, and adding Section 21.25, to read as follows:

SEC. 21.02. DEFINITIONS.

As used in this Chapter 21, the following words shall have the following respective meanings:

* * * *

"General Services" shall mean those services that are not Professional Services. General Services include, but are not limited to, janitorial, security guard, pest control, parking lot management, and landscaping services.

"Government Entity" has the meaning set forth in Administrative Code Section 1.25(d), as may be amended from time to time.

* * * *

SEC. 21.04. DIRECT PURCHASING AUTHORITY OF DEPARTMENTS.

(a) Department heads ~~*shall be authorized to*~~ *may* purchase Commodities or Services directly and without the approval of purchasing, as provided in the Charter or Municipal Code ~~*of San Francisco*~~, or in the following circumstances:

(1) *Departments may directly enter into contracts w*~~W~~hen such purchase is recommended by a department head and is approved by the Purchaser. The Purchaser's approval of direct department purchases may be for individual contracts or for classes of contracts anticipated to be required by the department.

(2) Departments may directly enter into contracts with ~~*other public*~~ *Government E*~~e~~ntities for the purpose of fulfilling their governmental functions, which may include the provision or exchange of Commodities or Services ~~*incidental to the purpose of the contract*~~.

(3) Departments may directly enter into contracts for the investment of trust moneys and agreements relating to the management of trust assets.

(4) *Departments may directly enter into contracts to p*~~P~~urchase~~*s of*~~ works of art or artifacts for museums or to display in public areas~~,~~*; and may directly enter into contracts for* specialized art restoration, insuring, transport, storage, curation, and conservation services.

(5) The Risk Manager ~~*is authorized to*~~ *may directly* purchase insurance and expert services ~~*in forms, amounts, and by procedures as approved by the Board of Supervisors in the annual Risk Management Budget*~~.

(6) The General Manager of the Public Utilities Commission may directly purchase water, power, or natural gas, the conveyance or transmission of same, or ancillary services such as spinning reserve, voltage control, or load scheduling, as required for assuring reliable services in accordance with good utility practice, to or on behalf of the San Francisco Public Utilities Commission.

(7) ~~*Officers and employees of the City*~~ *Departments* may contract directly for the provision of services related to travel required for official City business, subject to compliance with rules and regulations established by the approving department and the Controller for reimbursement of such expenses.

(8) ~~*When the purchase is made by the*~~ *The* Director of Health *may contract directly for purchases* under the authority of Chapter 21A of this Code.

(b) *The Purchaser shall determine the scope of direct purchasing authority granted under subsection (a) in the event of ambiguity.*

(c) Nothing in this Section 21.04 is intended to affect the authorities granted to departments elsewhere in this Code or in the Charter.

SEC. 21.25. GOVERNMENT ENTITY AGREEMENTS.

(a) Procurement. *Contracts with a Government Entity are exempt from the solicitation requirements of Chapters 21 and 14B.*

(b) Contractor's Obligations. *As set forth in Section 1.25 of this Code, Contracts with a Government Entity are not subject to provisions of the Municipal Code, including but not limited to the*

Administrative, Labor and Employment, Environment, or Police Codes, imposing obligations or other restrictions on contractors.

(c) Scope. *This Section 21.25 applies to all contracts under Chapter 21, however they are titled, including but not limited to any agreement, memorandum of understanding, or similar instrument memorializing mutual obligations between the City and a Government Entity or Government Entities.*

Section 7. Chapter 23, Article I, of the Administrative Code is hereby amended by revising Section 23.2 and adding Section 23.9, to read as follows:

SEC. 23.2. CHAPTER DEFINITIONS.

~~***Chapter Definitions.***~~ As used in this Chapter 23, the following initially capitalized terms shall have the meanings ascribed to them in this Section 23.2:

* * * *

"Convey" *shall mean to convey, sell, transfer, grant, or relinquish an easement or fee title in Real Property. "Conveyance" shall have a correlative meaning.*

"Government Entity" *has the meaning set forth in Administrative Code Section 1.25(d), as may be amended from time to time.*

* * * *

SEC. 23.9 GOVERNMENT ENTITY AGREEMENTS.

(a) Agreements with Government Entities for an Acquisition, Conveyance, or Lease of Real Property are exempt from the Competitive Bidding Process and Competitive Bidding Procedures requirements of Chapter 23.

(b) As set forth in Section 1.25 of this Code, agreements with Government Entities for an Acquisition, Conveyance, or Lease of Real Property are not subject to provisions of the Municipal

Code, including but not limited to the Administrative, Labor and Employment, Environment, or Police Codes, imposing obligations or other restrictions on contractors.

(c) This Section 23.9 applies to all agreements for an Acquisition, Conveyance, or Lease of Real Property under Chapter 23, however they are titled, including but not limited to any Lease, contract, memorandum of understanding, or similar instrument memorializing mutual obligations between the City and a Government Entity or Government Entities.

Section 8. Effective Date. This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

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

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: /s/ Gustin R. Guibert
GUSTIN R. GUIBERT
Deputy City Attorney

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FILE NO. 240301

LEGISLATIVE DIGEST

[Administrative Code - Agreements with Government Entities]

Ordinance amending the Administrative Code to allow City departments to enter into and amend agreements for construction, goods, and services, and real property leases, with government entities without complying with solicitation requirements that would otherwise apply, and without adhering to provisions in the Municipal Code that impose obligations on contracting parties as a condition to agreement with the City.

Existing Law

Parties that enter into an agreement with the City of San Francisco are often required to adhere to specialized obligations imposed by virtue of contracting with the City that are not generally found in commercial agreements. The obligations can be affirmative steps to be taken, or restrictions imposed on the contractor's practices. The non-commercial special obligations are usually imposed by power found San Francisco's participation in the market economy as a buyer, not the City's police power. The obligations are found in various chapters of the Administrative, Environment, Labor and Employment, and Police Codes. Some sections apply widely, some are for very limited circumstances. Some of the codes have expansive waivers or exemptions, while others do not. The exemptions are not uniform or consistent.

The City may enter into agreements with other government entities such as other cities or universities. Agreements may include payment, or may be for joint purposes and cooperation. There is limited law governing such agreements, though Administrative Code 21.04(a)(2) allows some direct purchasing by departments entering into expenditure agreements.

Amendments to Current Law

This legislation removes contracting barriers with agreements with other government entities. Chapters 2A Article IX (Airport Agreements), 6 (Public Works), 21 (Goods and Services) and 23 (Real Property) now address the potential for an agreement with government entities and eliminates the requirement of competitive procurement for such agreements.

In addition, obligations and requirements that the City imposes on contractors, including but not limited to those found in the following sections:

- Admin. Code Chapter 6
- Admin. Code Chapter 12E (Ban on City Use of Gas-Powered Landscaping Equipment)
- Admin. Code Chapter 12F (MacBride Principles);
- Admin. Code Chapter 12G (Prohibition on Use of Public Funds for Political Activity by Recipients of City Contracts, Grants, and Loans);

- Admin. Code Chapter 12L (Public Access to Meetings and Records of Nonprofit Organizations);
- Admin. Code Chapter 12M (Protection of Private Information);
- Admin. Code Chapter 12N (Lesbian, Gay, Bisexual, Transgender, Queer, and Questioning Youth: Youth Services Sensitivity Training);
- Admin. Code Chapter 12Y (San Francisco Slavery Disclosure Ordinance);
- Admin. Code Chapter 14B (Local Business Enterprise Utilization and Non-Discrimination in Contracting Ordinance);
- Admin. Code Chapter 21 (Acquisition of Commodities and Services), Sections 21.1, 21.17, 21.18, 21.19, 21.20, 21.21, 21.22, 21.23, 21.28, and 21.35;
- Admin. Code Chapter 23;
- Admin. Code Chapter 83 (First Source Hiring Program);
- Admin. Code Chapter 101 (Restricting the Purchase, Sale, or Distribution of Sugar-Sweetened Beverages by or for the City);
- Admin. Code Chapter 104 (Collection of Sexual Orientation And Gender Identity Data);
- Environ. Code Chapter 5 (Resource Conservation Ordinance);
- Environ. Code Chapter 8 (Tropical Hardwood and Virgin Redwood Ban);
- Environ. Code Chapter 16 (Food Service Waste Reduction);
- Labor and Employment Code Article 111 (Minimum Compensation Ordinance);
- Labor and Employment Code Article 121 (Health Care Accountability Ordinance);
- Labor and Employment Code Article 131 (Nondiscrimination in Contracts);
- Labor and Employment Code Article 141 (Consideration of Salary History in Hiring);
- Labor and Employment Code Article 142 (Consideration of Criminal History in Hiring); and
- Labor and Employment Code Article 151 (Sweatfree Contracting)

shall not be in effect. Waivers and documentation are not required so long as the contracting party meets the definition of a government entity as specified in the new Administrative Code Section 1.25.

The City Administrator is authorized to publish and update a list of obligations imposed on contractors, such as the one above. The list may not be exhaustive.

A definition of government entity has been created. The definition is meant to be interpreted very broadly to encompass all types of government entities and public bodies.

Approval of mutual indemnity agreements, commonly found in agreements with government entities, no longer require Risk Manager approval.

Background Information

The City often enters into agreements with other government entities generally for non-commercial purposes. There are many reasons for such agreements. The parties may desire to cooperate in joint concerns (such as regional security), may wish to use other entity's resources (such as in emergency prevention and management), may be part of a multi-party agreement (such as for water use and apportion), may need specific expertise (such as working with the United States Geological Service in federal lands), may wish to improve the public health (such as an agreement with a medical school), or may be required to contract with a designated entity (such as security at the Airport). The City has varying degrees of leverage, and negotiating agreements while attempting to require government entities to abide by San Francisco specific obligations can significantly delay or derail the process. Other government entities are not always willing to submit required paperwork or take steps required, or have their own governing law in the subject matter.

This ordinance allows the City to enter into an agreement with a government entity using the other government entity's terms if necessary, so long as it is legally acceptable. Procurement is not required. The process should be significantly simplified and shortened for this subset of agreements.

The City's regular internal procedures relating to contracting such as budgeting, delegation of contracting authority, approval, are still in effect.

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BOARD of SUPERVISORS

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M E M O R A N D U M

TO: All City Department Heads via Tom Paulino, Mayor's Office

FROM: Victor Young, Assistant Clerk

DATE: April 3, 2024

SUBJECT: LEGISLATION INTRODUCED

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

File No. 240301

Ordinance amending the Administrative Code to allow City departments to enter into and amend agreements for construction, goods, and services, and real property leases with government entities without complying with solicitation requirements that would otherwise apply, and without adhering to provisions in the Municipal Code that impose obligations on contracting parties as a condition to agreement with the City.

If you have comments or reports to be included with the file, please forward them to Victor Young 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: Andres Power, Mayors, Office

Agreements with Government Entities
File No. 240301

April 29, 2024

Background

City Departments enter into agreements with a variety of government entities:

- Alameda County
- Bay Area Rapid Transit District
- CA Air Resources Board
- CA Department of Public Health
- CA Employment Development Department
- Caltrans
- City College of San Francisco
- City of Burlingame
- City of Daly City
- City of Millbrae
- City of Oakland
- City of San Jose
- City of South San Francisco
- County of San Mateo
- County of Sonoma
- Marin Clean Energy
- National Park Service
- San Francisco State University
- San Francisco Unified School District
- San Mateo County
- Transbay Joint Powers Authority
- Transportation Safety Administration
- US Geological Survey
- US Postal Service
- University of California
- US Forest Service…

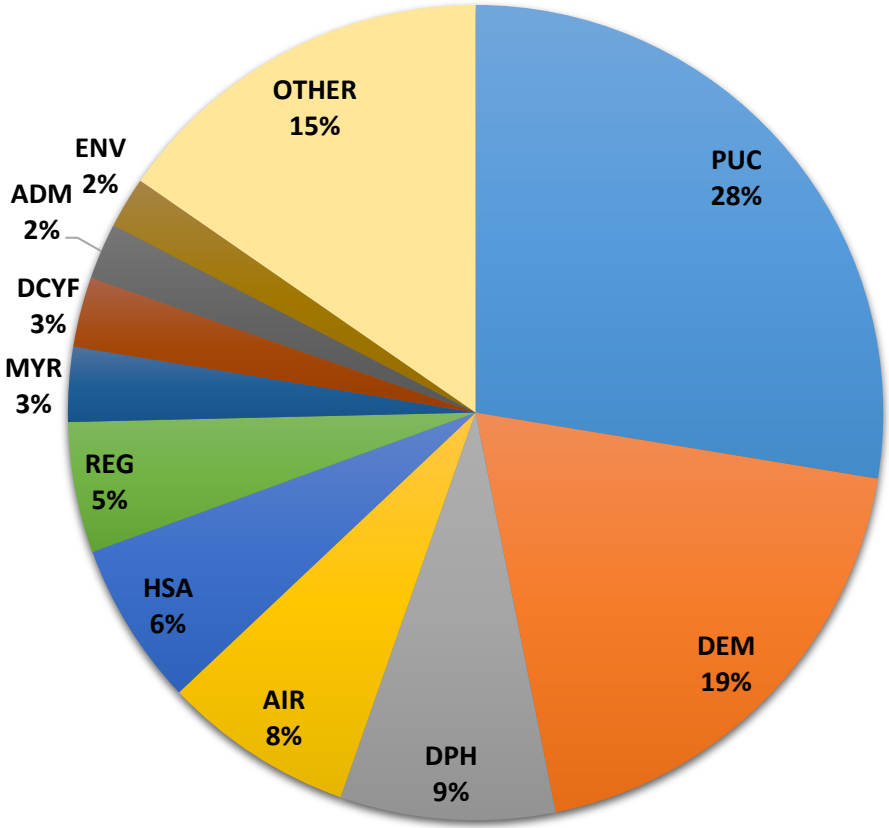
Ordinance Overview

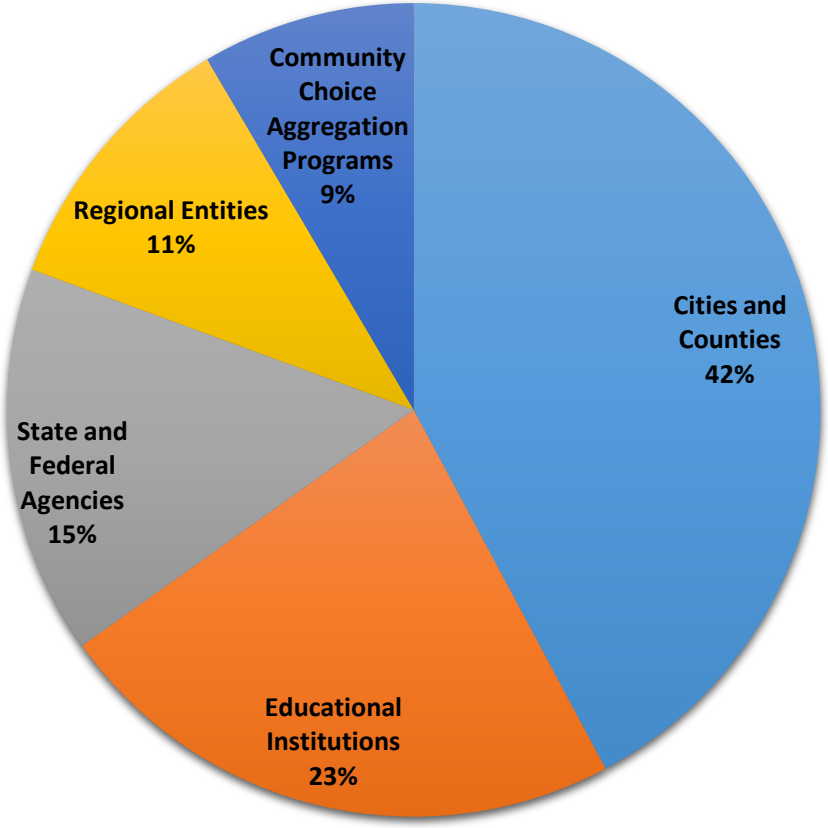
- This ordinance amends the Administrative Code to streamline contracting with government entities
- It gives the City the flexibility to enter into agreements using the other government entity's terms if needed
- It removes solicitation requirements and obligations typically imposed on private contractors
- It eliminates the need for unnecessary and time-consuming waivers
- It does not waive Charter Sec. 9.118

Data

- 540 agreements over the past five years:
    - Combined value: $2.3 million
    - Median agreement value: $200,000
    - 29 departments

Agreement Parties





Thank you!