

FILE NO.

LEGISLATIVE DIGEST

[Administrative Code - City Contracting Reform]

Ordinance amending the Administrative Code, Chapter 21, Sections 21.4 and 21.05, adding 21.43, relating to Contracts, and adding Chapter 21A, relating to Grants.

Existing Law

Administrative Code Section 21.05 establishes rules for departments exercising their purchasing authority for commodities and services. Currently the Code is silent as to rules governing departments issuing as-needed contracts and task orders under those contracts, and the use of purchase orders to procure Professional Services.

Administrative Code Section 21.4 authorizes departments to issue requests for proposals and requests for qualifications and describes generally the department's authority to establish the evaluation criteria for proposals and qualifications. Section 21.4 does not describe how departments are to conduct the evaluation, nor how they should choose selection panel members. Section 21.4(c) defines the rules for creating and maintaining prequalification lists and the necessity to renew such lists every two years. Chapter 21 of the Administrative Code does not currently contain rules governing modifications to Professional Services contracts. There is no codification of the City's requirements for disbursing grants from the City treasury absent specific accept and expend legislation under Administrative Code Section 10.170-1.

Amendments to Current Law

Administrative Code Section 21.05 is amended by adding a new subsection creating rules governing the procurement of as-needed Professional Services and the use of task orders to assign work under such as-needed contracts. The RFQ and/or RFP for an as-needed contract must include a description of the anticipated projects or matters and the anticipated scope and possible range of services to be performed. As-needed contracts shall provide for a not-to-exceed price, include a schedule of the hourly rates that shall be charged throughout the term of the contract, and a provision stating there is no guarantee that any tasks shall be issued. The amendment clarifies the distinction between single project and multiple project as-needed contracts and requires that the department specify in the RFP or RFQ, and in any resulting as-needed contract, whether the as-needed contract is for multiple projects or a single project. Work under an as-needed contract must be assigned using task orders. Each task order must specify the scope of work to be performed and identify the associated fee and time to perform such services, as mutually agreed by the parties, and may contain a not-to-exceed price. Before any item of work is commenced under an as-needed contract, the cost of such work must be certified by the Controller as to the availability of funds. Multiple project as-needed contracts are limited to a term of not more than five years, including all modifications, with all task orders issued within three years from the date of award.

FILE NO.

The cumulative modifications to a multiple project as-needed contract may not exceed one hundred-fifty percent of the original contract amount. No task order or multiple task orders for any single project or matter, whether in one phase or multiple phases, can cumulatively exceed \$400,000, including all modifications and a department can exceed the foregoing \$400,000 limitation only upon the department head's written determination establishing the urgency of the work and explaining the justification for not procuring the work by conducting a new competitive process.

A new section 21.05(f) creates new restrictions on the use of purchase orders to procure Professional Services by requiring the approval of the Director of Administrative Services and limiting the amount of the purchase order to no more than the Minimum Competitive Amount.

Administrative Code Section 21.4 is amended to add a new subsection 21.4(b) which requires use of selection panels to evaluate proposals and responses to requests for qualifications. The Contracting Officer is to designate the members to serve on the selection panel, and must endeavor to include among the panel members at least one individual who is not employed by the City, and among any panel members who are City employees, at least one individual who is not employed by the same department conducting the Solicitation. The designation of any selection panel member who is not employed by the City is subject to approval of the board or commission to whom the department head reports and if the department head does not report to a board or commission, then the approval of the Director of Administrative Services. Former Section 21.4(c), (now 21.4(d)), clarifies that prequalified lists of contractors are limited to two years whether for any individual prequalified contractor, or for any list of multiple prequalified contractors, and cannot be renewed except by issuing a new request for qualifications.

A new Administrative Code Section 21.43 is added which establishes rules for modifications to Professional Services contracts over the Minimum Competitive Amount. Modifications to such contracts may be made only on written recommendation of the department head responsible for the supervision of the contract, and the upon the approvals of both the Director of Administrative Services and the Controller. Additionally, for any cumulative increase or decrease in price in excess of fifteen percent of the original contract price or scope, the department head shall obtain the approval of the board or commission to whom the department head reports or, if the department head does not report to a board or commission, then the approval of the Director of Administrative Services. Except when exercising options to extend the contract term as provided in the original contract, modifications that provide for cumulative extensions of time in excess of fifty percent of the original contract duration would require the written approval of the department head responsible for the supervision of the contract stating the time extension and basis for the extension and the approval of the board or commission to whom the department head reports or, if the department head does not report to a board or commission, then the approval of the Director of Administrative Services.

A new Chapter 21A is added to the Administrative Code which codifies and expands upon current informal rules established for departments issuing grants. A grant is now defined and

FILE NO.

is specifically distinguished from a procurement by the City under Chapter 21 of goods and services. Chapter 21A provides for the promulgation of grant regulations by the Controller to supplement rules adopted by the Controller for grants approved by the Board under Administrative Code section 10.170-1. Grant recipients may only use grant funds for a public purpose which must be stated in the grant agreement. Public purpose means the grant must benefit the citizenry, community, the environment or the general good of the City and may not simply be for the benefit of the grant issuing department. Grants must be memorialized in a written grant agreement approved by the City Attorney and the grant agreement must contain performance requirements, list eligible expenses and provide remedies if the grant recipient violates the terms of the grant agreement. Department heads must approve all grants their department disburses and for grants over \$15,000, the additional approval of the board or commission to whom the department head reports is required. The Controller is authorized to establish conditions and limitations on the issuance of grants to for-profit recipients. This amendment clarifies that grant recipients are subject to false claims penalties. A grant-in-aid is defined, is exempted from the requirements set forth in Chapter 21A.3 due to their unique characteristics as social service aid payments to eligible individuals, and authority is granted for disbursements under social service benefit programs.

Background Information

These amendments are to enhance transparency in City contracting and to create greater accountability and oversight for contracts, procurement and grant-making. The proposed legislation establishes greater oversight and accountability for city contracting, including contract modifications. The reforms would similarly apply more rigorous oversight and transparency to grant-making by city agencies, requiring the City Controller and Director of Administrative Services to develop regulations requiring that grants be disbursed solely for public purposes according to terms written in advance into the grant agreement.