

1 [Administrative Code - City Contracting and Grant Reform]

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

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6 NOTE: Additions are *single-underline italics Times New Roman*;  
7 deletions are ~~*strike-through italics Times New Roman*~~.  
8 Board amendment additions are double-underlined;  
9 Board amendment deletions are ~~strike through normal~~.

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

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11 Section 1. The Administrative Code is hereby amended by amending Section 21.05,  
12 Section 21.4, and adding Section 21.43 to read as follows:

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14 **SEC. 21.05. POWERS OF DEPARTMENTS.**

15 (a) **Estimates of Requirements.** All departments shall file estimates of required  
16 Commodities and services at such time and in such manner as shall be determined by the  
17 Purchaser.

18 (b) **Procurement of Professional Services.** Departments shall be responsible for  
19 defining the scope of a project for contracting purposes, establishing fair evaluation criteria  
20 and selection processes for Solicitations, and for the negotiation and award of contracts for  
21 Professional Services, with the assistance of the Purchaser and the City Attorney, provided,  
22 however, that:

23 (1) If a proposed contract for Professional Services includes the procurement of  
24 Commodities, then the department shall seek prior Purchasing approval of the Solicitation  
25 document; and

1 (2) The Director of Purchasing shall be the Contracting Officer for Professional  
2 Service contracts unless a Contracting Officer other than the Purchaser is authorized to enter  
3 into the contract directly.

4 (c) As-Needed Contracts.

5 Departments authorized to enter into Professional Service contracts may procure as-needed  
6 Professional Service contracts as follows:

7 (1) As-Needed Contracts Generally. As-needed contracts are intended to provide  
8 temporary services on a task order basis. Departments may solicit bids and/or proposals for services  
9 on an as-needed basis, with definite and/or indefinite quantities of work. The RFQ and/or RFP for an  
10 as-needed contract shall include a description of the anticipated projects or matters (or category or  
11 type of projects or matters) and the anticipated scope and possible range of services to be performed.  
12 As-needed contracts shall provide for a not-to-exceed price and include a schedule of the hourly rates  
13 that shall be charged throughout the term of the contract. As-needed contracts shall include a  
14 provision stating there is no guarantee that any tasks shall be issued. None of the requirements  
15 otherwise applicable to Professional Service contracts is waived for as-needed contracts.

16 (2) As-Needed Contract Task Orders. The department shall assign work under an as-  
17 needed contract on a task order basis. Each task order shall specify the scope of work to be performed  
18 and identify the associated fee and time to perform such services as mutually agreed by the parties and  
19 may contain a not-to-exceed price. Before any item of work is commenced under an as-needed  
20 contract, the cost of such work must be certified by the Controller as to the availability of funds.

21 (3) Multiple or Single Project As-Needed Contracts. The department shall specify in  
22 the solicitation and in any resulting as-needed contract whether the as-needed contract is for multiple  
23 projects or a single project. Multiple project as-needed contracts are intended to provide temporary  
24 services for multiple projects or matters on a task order basis. Single project as-needed contracts are  
25 intended to provide temporary services for a single project or matter on a task order basis.

1                    (4) Limitations for Multiple Project As-Needed Contracts. Multiple project as-needed  
2 contracts shall provide for an expiration term of not more than five years, including all modifications,  
3 with all task orders issued within three years from the date of award. The cumulative modifications to  
4 a multiple project as-needed contract shall result in a contract sum not to exceed one hundred-fifty  
5 percent of the original contract amount. No task order or multiple task orders for any single project or  
6 matter, whether in one phase or multiple phases, shall cumulatively exceed \$400,000, including all  
7 modifications. A department may issue or modify any task order to exceed the foregoing \$400,000  
8 limitation only upon the department head's written determination establishing the urgency of the work  
9 and the justification for proceeding under this Section 21.05(c) rather than by formal competitive  
10 process.

11                    ~~(e)~~(d) **Cancellation of Purchase Contracts.** The Contracting Officer shall be the  
12 only person authorized to terminate a contract for cause or convenience.

13                    ~~(d)~~(e) **Inspection of Purchases.** Departments shall make adequate inspection of all  
14 purchases.

15                    (f) Use of Purchase Orders for Professional Services. A department may not issue Purchase  
16 Orders for the purchase of Professional Services unless it has the approval of the Director of  
17 Administrative Services and the total cost of such Services is less than the Minimum Competitive  
18 Amount.

19  
20 **SEC. 21.4. INVITATIONS FOR COMPETITIVE PROPOSALS OR QUALIFICATIONS.**

21                    (a) **Authorization; Evaluation Criteria.** A Contracting Officer may issue a request for  
22 Proposals, or request for qualifications, for the selection of Professional Service Contractors  
23 following consideration of the evaluation factors set forth in the request for Proposals, which  
24 may include cost, except as prohibited by law. If a department determines that it would be in  
25 the best interests of the City to acquire combined Commodities and Services or General

1 Services by means of a request for Proposals or qualifications, rather than an invitation for  
2 Bids, such request for Proposals or qualifications shall be issued by the Purchaser. A request  
3 for Proposals or qualifications for Professional Services ~~may~~may be issued directly by the  
4 department.

5 (b) Selection of Highest Ranked Professional Services Contractor. The evaluation of either  
6 Proposals or responses to a request for qualifications shall be performed by a selection panel  
7 consisting of at least three panel members. The Contracting Officer shall designate the members to  
8 serve on the selection panel, and must endeavor to include among the panel members at least one  
9 individual who is not employed by the City, and among any panel members who are City employees, at  
10 least one individual who is not employed by the same department conducting the Solicitation. The  
11 designation of any selection panel member who is not employed by the City, as required herein, is  
12 subject to approval of the board or commission to whom the department head reports and if the  
13 department head does not report to a board or commission, then the approval of the Director of  
14 Administrative Services.

15 ~~(b)(c)~~ **Negotiation.** The Contracting Officer is authorized to negotiate terms and  
16 conditions, including price, with the highest ranked Proposer. If the Contracting Officer cannot  
17 conclude a contract that, in the opinion of the Contracting Officer is in the City's best interest,  
18 the Contracting Officer may terminate negotiations with the highest ranked Proposer. In the  
19 event that the Contracting Officer cannot conclude negotiations with the next highest ranked  
20 Proposer on terms acceptable to the City, then the Contracting Officer may negotiate with  
21 each successively ranked proposer.

22 ~~(e)(d)~~ **Requests for Qualifications.** A department may issue a request for  
23 qualification<sub>s</sub> to determine the qualifications of prospective Contractors for particular types of  
24 Commodities and/or Services to be provided to that department. Prequalification may be for  
25 the purpose of issuing a further Solicitation to select from among the prequalified entities for a

1 particular contract, or it may be for the purpose of maintaining a list from which Contractors  
2 will be selected for future contracts as needed by the department, or the department may  
3 select Contractor(s) based on ranking of responses to the request for qualifications. ~~For the~~  
4 ~~procurement of Commodities and Services for which lists of prequalified entities are created by a~~  
5 ~~department, selection of a Contractor for a particular contract may be made without the use of a~~  
6 ~~further Solicitation if the list is maintained by issuing a new request for qualifications at least once~~  
7 ~~every two years.~~—The Purchaser may also maintain City-wide lists of prequalified contractors.  
8 The prequalified status of any entity or any prequalified list may remain in effect no longer than two  
9 years and may not be renewed except in response to a new request for qualifications issued by the  
10 department.

11 ~~(d)~~(e) **Content of Requests for Proposals.** A request for Proposals shall specify  
12 evaluation criteria for selection, and shall reserve the right to reject or cancel the request for  
13 Proposals in whole or in part.

14 ~~(e)~~(f) **Mass-transit Vehicles.** Notwithstanding any other provision of the charter or  
15 laws of the City, the Public Transportation Department, through its department head and  
16 through the Purchaser is authorized to include among its purchasing specifications the use of  
17 negotiated procurement procedures for the purchase of mass-transit vehicles.

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19 **SEC. 21.43. MODIFICATIONS TO THOSE PROFESSIONAL SERVICES CONTRACTS OVER**  
20 **THE MINIMUM COMPETITIVE AMOUNT – REQUIREMENTS.**

21 (a) Required Approvals. For Professional Services contracts in excess of the Minimum  
22 Competitive Amount, whether as awarded or as modified, necessary modifications shall be made only  
23 on written recommendation of the department head responsible for the supervision of the contract,  
24 together with the approval of the Director of Administrative Services, and also the approval of the  
25 Controller, except as provided in this Section 21.43. The Director of Administrative Services may

1 delegate in writing the authority to approve such alterations, modifications or extras to the department  
2 head, except as provided below. The Controller may delegate in writing the authority to encumber  
3 funds from prior appropriations for such modifications to the department head prior to the certification  
4 for payment. Such authority, when granted, will clearly state the limitations of the type or category of  
5 modifications to be encompassed.

6 (b) **Increasing or Decreasing Price.** For any cumulative increase or decrease in price in  
7 excess of fifteen percent of the original contract price or scope, the department head shall obtain the  
8 approval of the board or commission to whom the department head reports or, if the department head  
9 does not report to a board or commission, then the approval of the Director of Administrative Services.

10 (c) **Extensions of Time.** Except when exercising options to extend the contract term as  
11 provided in the original contract, modifications under this Section 21.43 that provide for cumulative  
12 extensions of time in excess of fifty percent of the original contract duration require the written  
13 approval of the department head responsible for the supervision of the contract stating the time  
14 extension and basis for such extension and the approval of the board or commission to whom the  
15 department head reports or, if the department head does not report to a board or commission, then the  
16 approval of the Director of Administrative Services.

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18 Section 2. The Administrative Code is hereby amended by adding Chapter 21A:  
19 GRANTS, to read as follows:

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21 **21A: GRANTS**

22 **SEC. 21A.1. SCOPE OF CHAPTER.**

23 Chapter 21A governs Grants made by departments, boards, or commissions from monies in the  
24 City Treasury. Chapter 21A shall not apply to (1) contracts for public works or improvements; (2)  
25 contracts for the purchase, sale, lease, or use of real property, or the development of real property; (3)

1 contracts for the procurement of Commodities or Services under Administrative Code Chapter 2I; or  
2 (4) contracts to provide financial assistance such as a loan or loan guarantee, an interest rate subsidy,  
3 tax relief or tax credit.

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5 **SEC. 21A.2. DEFINITIONS.**

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

7 (a) "Grant" shall mean an award of funds from the City Treasury, which is not expected to be  
8 repaid, to a recipient for a Public Purpose.

9 (b) "Grant-in-aid" shall mean an award of funds from the City Treasury, which is not expected  
10 to be repaid, to or on behalf of an individual who is entitled to the award as an aid payment for which  
11 he or she is eligible pursuant to a social service benefit program established by local, State, or federal  
12 law and administered by the City and County of San Francisco.

13 (c) "Public Purpose" shall mean a benefit in the interests of the citizenry, the community, the  
14 natural or built environment, or for the general good of the City and County of San Francisco, as  
15 determined by a City department, board or commission. "Public Purpose" shall not include the  
16 procurement of commodities or services for the benefit of the granting agency.

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18 **SEC. 21A.3. REQUIREMENTS FOR GRANTS.**

19 (a) Use of Grant Funds. A department, board, or commission may issue a Grant to a recipient  
20 only for a Public Purpose. Nothing in this Section shall limit or affect any acceptance or expenditure  
21 of Grant funds in accordance with Administrative Code section 10.170-1.

22 (b) Grant Regulations. Grants funded solely by the City must satisfy all applicable  
23 requirements set forth in the Municipal Code. Grants funded in whole or in part by local agency, State,  
24 or federal funds must satisfy all applicable requirements set forth in the Municipal Code to the extent  
25 that such requirements are not inconsistent with any restrictions or conditions placed by the funding

1 source on any portion of the Grant funds. Grants funded in whole or in part by other funding sources,  
2 such as donations made to the City, or other funds received by the City from third parties, that are  
3 designated for or restricted to a specific purpose must satisfy all applicable requirements set forth in  
4 the Municipal Code except to the extent exempted by the Board of Supervisors in the governing accept  
5 and expend legislation. In addition, the Controller shall, in consultation with the Director of the  
6 Department of Administrative Services and those departments that disburse Grants, promulgate  
7 regulations under which departments, boards, and commissions may issue Grants. Such regulations  
8 shall include, at a minimum, the following requirements: (i) Grants must be disbursed according to the  
9 terms of a written Grant agreement approved as to form by the City Attorney and subject to  
10 appropriation and certification of funds by the Controller's Office; (ii) the recipient must use the funds  
11 for, or in furtherance of, a Public Purpose, and the Public Purpose must be stated in the applicable  
12 Grant agreement; (iii) the Grant agreement shall specify performance requirements, eligible expenses,  
13 and appropriate City remedies if the recipient violates the terms of the Grant agreement; and (iv) for  
14 Grants under \$15,000 the Grant agreement must be approved by the department head issuing the  
15 Grant, and for Grants of \$15,000 or more, must be approved by the department head and, where  
16 applicable, approved by the Board or Commission to whom the department head reports.

17 The Controller's regulations may include conditions and limitations on the issuance of Grants  
18 to for-profit corporations to ensure that the use of funds is limited to a Public Purpose.

19 (c) **Prohibition on the Submission of False Claims.** Grant recipients shall be subject to the  
20 provisions and penalties contained in Administrative Code sections 21.35, 21.37, 21.38, and 21.39.

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22 **SEC. 21A.4. GRANTS-IN-AID.**

23 Grants-in-aid are exempt from the requirements of Section 21A.3 and other provisions of City law  
24 applicable to Grants and shall be governed instead by regulations promulgated by the Controller in  
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1 consultation with the department issuing the Grants-in-aid and approved by the board or commission  
2 to which the head of that department reports.

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4 Section 3. Effective Date. This ordinance shall become effective 30 days from the  
5 date of passage.

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7 Section 4. This section is uncodified. In enacting this Ordinance, the Board intends to  
8 amend only those words, phrases, paragraphs, subsections, sections, articles, numbers,  
9 punctuation, charts, diagrams, or any other constituent part of the Administrative Code that  
10 are explicitly shown in this legislation as additions, deletions, Board amendment additions,  
11 and Board amendment deletions in accordance with the "Note" that appears under the official  
12 title of the legislation.

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

15 By: \_\_\_\_\_  
16 ROBERT S. MAERZ  
17 Deputy City Attorney  
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