



DAVID CHIU
City Attorney

CHRISTINA FLETES-ROMO
Deputy City Attorney

Direct Dial: (415) 554-4637
Email: christina.fletes@sfcityattorney.org

MEMORANDUM

TO: Members of City Commissions That Oversee Grantmaking Departments

FROM: Christina Fletes-Romo
Sarah Fabian
Mary Kamikihara
Deputy City Attorneys

DATE: April 9, 2024

RE: Guidance to Commissions Reviewing Requests to Approve Sole Source Grants

Under Chapter 21G of the Administrative Code, City departments generally must award grants through an open and competitive process. But a department may award a grant without a competitive process if the commission that oversees the department adopts a resolution approving a sole source justification for the grant. In the two years since the Board of Supervisors adopted Chapter 21, several departments have sought approval for sole source grants from their commissions. When a commission approves a sole source justification, the commission is certifying that: (1) the department provided sufficient justification to forego an open and competitive solicitation process; and (2) the commission is convinced that only one entity can fulfill the grant's public purpose and scope of work. In this memorandum we provide legal guidance to commissioners considering these requests and recommend questions for commissioners to ask and departments to address in the process to help ensure the proposed sole source grant satisfies the City's legal requirements for sole source grants.

Background Regarding Competitive Solicitation Rules

Chapter 21G of the Administrative Code governs grants awarded by City departments. A grant is "an award of funds to a Grantee for, or in furtherance of, a Public Purpose, which is paid from monies deposited in the treasury of the City, and which is not required to be repaid except upon default by the Grantee." Administrative Code § 21G.2. City departments must award grants through an open and competitive process, except if one of the limited exceptions set forth in Administrative Code Section 21G.3 or 21G.8 applies.

The Board of Supervisors adopted Chapter 21G in part because open and competitive solicitation processes benefit the City, its residents, and potential grantees. Although conducting open and competitive solicitations take time and effort, the process helps ensure fairness and efficiency and guard against favoritism, collusion, and corruption. Solicitations equalize the playing field by allowing all potentially qualified entities to submit a bid that in turn must be evaluated in a fair, consistent, and transparent manner. For example, a department may seek to provide a grant to an entity to conduct community outreach. The department may have previous experience working with a non-profit that has done a good job performing similar work and the department is convinced that this non-profit is the only entity that can effectively reach the residents department seeks to target. But the department may not be aware of a new non-profit that may be even more effective at conducting community outreach. Without a competitive

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solicitation process, the department might not learn of this new non-profit, and as a consequence may fail to reach more community members. Open and competitive solicitations allow every potentially qualified proposer an opportunity to submit a bid, thereby ensuring that departments are using public money in the most efficient, effective, transparent, and fair way by allowing the City to review a variety of options and award a grant to the most qualified proposer.

Departments may forego the solicitation process under rare circumstances, including where a commission concludes that there is a justification to award a grant to a “sole source” because it is the only available and qualified entity that can perform the needed work. Admin. Code § 21G.8(a). Sole source determinations are fact-specific, but are typically appropriate if the services required by the grant are truly unique and available only from one source. When a commission approves a sole source justification, the commission is certifying that: (1) the department provided sufficient justification to forego an open and competitive solicitation process; and (2) the commission is convinced that only one entity can fulfill the grant’s public purpose and scope of work.

Recommendations

When considering approving a sole source justification, commissioners should consider asking and departments should address the following questions:

- **What steps did the department take to ensure the proposed grantee is the only entity that can practically accomplish the public purpose?**
 - What type of research did the department do to determine availability of competition? Was that research adequate?
 - How many other entities or experts did the department reach out to?
 - Did the department consider other entities as possible alternatives?
 - Did the department make efforts for a competitive solicitation? If so, what were the results?
 - Are there other steps the department could reasonably take to ensure the proposed grantee is the only one that can achieve the public purpose?
- **Is the grant’s public purpose clear?** Unless the grant has a clear and well-defined public purpose, commissioners are unlikely to be able to fully assess the sole source justification. It is good practice for the grant to clearly state a well-defined public purpose. (For example, a grant that seeks to improve the health of children is likely too vague to allow the commission to assess whether a sole source agreement is appropriate. A grant that seeks to reduce Type 2 diabetes in children by educating parents in four different languages is a more appropriate level of detail for a public purpose.)
- **What is the grant’s scope of work? Are the programs, activities, or services contemplated by the grant so unusual that only one entity can provide them?** Understanding this information, including answers to the questions below, can help commissioners assess whether the department adequately explained why only one entity can do the work contemplated by the grant. (For example, if the department wishes to reduce Type 2 diabetes in Filipino communities and the grant will require hosting a series

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of workshops in Tagalog, then commissioners can better review the department's justification for why only one entity is able to host these types of workshops.)

- What are the required skills/expertise needed to accomplish the programs, activities, or services?
 - Can only one entity practically perform the programs, activities, or services contemplated by the grant?
 - Even if the proposed grantee has experience achieving the grant's public purpose, is that experience so specialized that no other entity can perform the work contemplated by the grant?
- **Can the scope of the grant be slightly modified to allow for a competitive process?** While as mentioned above it is good practice to have a well-defined public purpose, in some instances the grant may be so specific and potentially tailored for a particular entity that it excludes other entities that could perform the service.
 - Is the public purpose unnecessarily narrow?
 - Are there ways the public purpose can be broadened, consistent with the main objective of the grant, to allow for a competitive solicitation for the grant?
- **What would happen if another entity complained?** If another entity were to later complain about not having the opportunity to apply for the grant, does the commission feel confident in its decision that only one entity could perform the programs, activities, or services contemplated by the grant?

Conclusion

Chapter 21G requires open and transparent solicitations unless an exception applies. True sole source awards are rare and a commission's role in this process is to assess whether the department has provided adequate sole source justifications. We encourage commissioners to reach out to the City Attorney's Office in advance if they have legal questions about competitive solicitations, sole source agreements, or the City's requirements for grants.