

Annual DPH Sole Source Reports

Health Commission Meeting

8/1/2023

- ▶ For Discussion (Health Commission approval not required):
 - ▶ (1) San Francisco Administrative Code, Chapter 67.24 (Sunshine Ordinance) Annual DPH Sole Source Waiver Usage Report submitted to the Board of Supervisors annually. (Attachment I to the Health Commission Memo)
 - ▶ (2) San Francisco Administrative Code, Chapter 21G requirement to provide to the Board of Supervisors a listing of each grant (contractual agreement) that the Granting Agency (DPH) awarded during the preceding calendar year without following an open and competitive process (Attachment II to the Health Commission Memo).

(Report 1) Chapter 67.24 Sunshine Ordinance Sole Source Report

(DPH FY22-23 Sole Source Waiver Report)

S.F. Administrative Code, Chapter 67.24: “*The Sunshine Ordinance*” DPH Sole Source Usage Report

- ▶ This ordinance requires that:
 - ▶ At the end of each fiscal year, each City department must provide to the Board of Supervisors a list of all professional sole source contracts (selected without a solicitation) entered into during the fiscal year.
 - ▶ Sole Source waivers are subject to approval by the Office of Contract Administration (OCA) (except for DPH’s Chapter 21.42 authority). Each year, OCA prepares a report of all of their approved prior year sole source waivers. In FY22-23, it was requested that City departments tie their annual submissions to the OCA report which is more comprehensive than the Ordinance. This added additional categories that DPH hasn’t traditionally included:
 - ▶ Baseline: Contracts **entered into** during FY22-23, which were selected without competitive solicitations.
 - ▶ New: Sole Source waiver modifications processed in FY22-23 to existing contracts
 - ▶ New: Sole Source waiver approvals for commodities
 - ▶ New: Sole Source waiver modifications for existing commodities
 - ▶ Modification: Previously, DPH reported all existing/ongoing sole source approved contracts, in addition to the required new contracts entered into during the subject fiscal year. Clarification determined this was in excess of the required information, so has not been included, with the exception of Modifications that occurred in FY22-23 to existing contracts.

Chapter 67.24 Sole Source Waiver Reporting Categories

| SF Admin. Code | Sole Source Waiver Criteria | Sole Source Approval Requirements |
|----------------|---|---|
| Chapter 21.5 | <p>The Admin Code provides that commodities or services available only from a sole source shall be procured in accordance with the City Purchaser’s regulations</p> <p>There are four acceptable justifications (and one caveat) for sole source contracting approval:</p> <ul style="list-style-type: none"> • Goods or Services are available from only one source • Only one prospective vendor is willing to enter into a contract with the City • Item has design and/or performance features that are essential to the Department and no other source satisfies the City’s requirements • Licensed or patented good or service • Other- If justifiable under a different reason. (e.g. contract pilot projects with a term of two years or less) | <p>The DPH Contracts Office must submit a sole source waiver request, with supporting documentation to the City’s Office of Contract Administration (OCA) for approval.</p> <p>If denied, then a solicitation will be required before the services can be contracted.</p> |
| Chapter 21.30 | Vendors with proprietary rights to software and hardware and for associated maintenance agreements will be treated as a sole source contract. | Same as above |

Sole Source Waiver Reporting Categories continued (Chapter 67.24 BOS Sole Source Report)

| SF Admin. Code | Sole Source Waiver Criteria | Sole Source Approval Requirements |
|----------------------|--|--|
| Chapter 21.42 | <p>In 2006, the Board of Supervisors amended the Admin. Code to add section 21.42 to Chapter 21 authorizing the <u>SF Health Commission</u> to designate as sole source, professional services contracts for health, behavioral health and support services provided by non-profit organizations when recommended by the Department.</p> <p>This legislation was enacted to cover a potential gap period between the expiration of an authorized contract term, and the completion of a new RFP process.</p> | <p>The Contracts Office submits a list of recommended DPH sole source contracts to the HC annually for approval.</p> <p>OCA uses this list as the contracting authority for them to approve sole source contracts.</p> |

(Report 2) Chapter 21G Sole Source Grant Agreement Report

New in FY22-23

San Francisco Administrative Code, Chapter 21G Sole Source Grant Agreements (and Explanation of Criteria for Sole Source Waiver Approval Exemptions)

- ▶ Effective June, 2023, in compliance with San Francisco Administrative Code, Chapter 21G, each City department must also provide to the Board of Supervisors a listing of each grant (aka contractual agreement) that the Granting Agency (DPH) awarded during the preceding calendar year without following an open and competitive process.
- ▶ The reason used for requesting a sole source agreement will determine if (a) approval of a sole source waiver is required, or (b) if a Department may enter into a sole source agreement without the requirement of a sole source waiver first.
- ▶ Sole source agreement requests that comply with one of the following categories are exempted from the sole source waiver requirement. As such, the Health Commission does not approve waivers for sole source grant agreements in these categories:
 - 21G.3(a)(1):** Grants to a governmental entity for programs, activities, or services that can be practically performed only by that particular entity
 - 21G.3(a)(2):** Grants to a specific entity as required to comply with applicable law or contract, or as a result of the requirements of the funding source
 - 21G.3(a)(3):** Grants made for improvement to property by a property owner
 - 21G.8(c):** Grants to any of the four City-owned community cultural center

San Francisco Administrative Code, Chapter 21G Sole Source Grant Agreements (and Explanation of Criteria Requiring Sole Source Waiver Approvals)

Sole source agreement requests that meet one of the following two definitions are not exempted from the requirement to obtain a sole source waiver before initiating a sole source grant agreement (aka contract). Therefore, these waivers are approved by the Health Commission:

- ▶ **21.G8 (a): Competitive solicitation infeasible or impracticable**
- ▶ **21.G8 (b): Public Purpose may reasonably be accomplished by one particular Grantee**
- ▶ On May 17, 2022, the Health Commission approved the Department's use of grant agreements, and the process and format that would be used for obtaining approval by the Health Commission for sole source waivers. (the next Slide is a summary of the process approved by the Health Commission for the sole source waiver approval process).
- ▶ The FY22-23 21G Sole Source Agreement Report identifies all sole source agreements. The report is separated into two categories to identify whether (1) the agreement was exempted from the need for sole source waiver approval, and (2) the agreement required approval of a sole source waiver by the Health Commission, via designee, prior to initiating the agreement.

DPH Grant Agreement Sole Source Waiver Approval Process

(Informational Slide from May 17, 2022 Presentation to the Health Commission)

DPH Grant Agreement Solicitation Waiver Approval Process

1. For each unique sole source grant agreement request, the Contracts Office will complete a Grant Solicitation Waiver Form (P-21G.8) and submit to Mark Morewitz, Health Commission Secretary for approval on behalf of the Health Commission. The Solicitation Waiver will provide:
 - ▶ an estimated timeline of when the service would otherwise go out to bid, as part of the justification
 - ▶ sufficient supporting documentation to explain and justify the need for a sole source grant agreement
 - ▶ specific and comprehensive information that explains why the waiver of competitive solicitation requirements should be approved
2. Once approved, the Contracts Office will record the approval by uploading the approved Grant Solicitation Waiver Form to PeopleSoft as required by OCA.
3. Approval of the waiver, will allow DPH to begin the development process for a new grant agreement. The grant agreement (aka contract) containing the services approved in the sole source waiver request will be brought to the Health Commission for approval, per the Health Commission's contract approval requirements. Approval of the waiver allows us to initiate the contracting process.
4. The Health Commission will receive a list of all 21-G sole source waivers approved by the Health Commission in the prior year annually.

Examples of Common Reasons that the Department will seek a Sole Source Waiver (Informational Slide from May 17, 2022 presentation to the Health Commission)

The following reasons for a grant agreement sole source waiver, are the same reasons that the Department currently utilizes for Chapter 21.42 sole source waivers. The primary difference is that subject sole source waiver approval for a potential grant agreement is unique to the vendor, and Health Commission approval will occur prior to the development of a specific grant agreement (aka contract) with that vendor:

- ▶ To bridge a timing gap between the expiration of solicited services, and completion of a replacement solicitation.
- ▶ To expedite the implementation of new services, e.g. the Board of Supervisors' or Mayor may allocate additional funding during the annual budget process with an expectation of an immediate implementation that may not allow for an initial full solicitation process;
- ▶ Receipt or restrictions on grant monies or funding (such as agencies included in collaborative grant applications, or agencies with specific legal or administrative authorization to provide services); or
- ▶ Initiatives related to specific public health issues, target populations, collaborations, or crisis situations (such as responses to community violence, disease outbreaks, or grassroots/community relationships essential to the provision of the services) where implementation timing is critical.