GENERAL SERVICES AGENCY
OFFICE OF LABOR STANDARDS ENFORCEMENT
DONNA LEVITT, MANAGER

List of Exemptions for the Minimum Compensation Ordinance

If a Contracting Department determines that an Agreement is exempt from the MCO, it shall submit a request for exemption to OLSE using the MCO Exemption and Waiver Request (Form P-360). The Contracting Department shall submit any documentation it has received from the Contractor along with the exemption form. If OLSE agrees with the determination of exemption, it shall sign the exemption form and process the request. A ruling by OLSE that an agreement is exempt from the MCO shall apply only to the specific agreement to which the exemption request form is directed, and shall not affect any other agreements. If OLSE denies a Contracting Department's request for exemption, OLSE shall notify the Contracting Department. Thereafter, the Contracting Department shall process the agreement as an agreement subject to the MCO.

Contractor May Suggest Exemption

The prospective Contractor may suggest that the Contracting Department consider whether an exemption may be appropriate. The Contracting Department shall then use the above procedure to request approval of the request from the OLSE if the Department believes an exemption is appropriate.

The following sixteen categories of agreements are exempt from the MCO:

A. Excluded Subcontracts

Subcontracts that do not meet the definition of “Included Subcontract” in Rule 1.2(C). (§12P.2(e)(1))

B. Number of employees

If a Contractor has five (5) or fewer employees (whether working on the contract or not), then the contract is exempt from the MCO. (§12P.2(e)(2)). The number of employees includes:

- the Contractor's employees as of the date the contract is signed;
- the employees the Contractor hires during the course of the contract, whether those employees work on the City contract or not;
- the employees of the Contractor's parent and subsidiary entities, if any;
- the employees of any Subcontractors the Contractor uses to perform all or a portion of the service covered by the contract.

The Contractor must provide written documentation of the number of employees for this exemption. A letter on the Contractor's letterhead, and signed by an officer who is authorized to legally bind the entity, shall be sufficient. If at a later time the number of contractor increases to exceed five (5) persons, this exemption will cease to apply

A Contractor who is exempt under this section must still include the MCO provisions in any applicable subcontracts. (§12P.2(e)(2))

C. Purchase of Goods

The MCO does not apply to the purchase of goods, or for guarantees, warranties, shipping, delivery, or initial installation of such goods. If a contract is for the purchase of both goods and

services, then the Contracting Department shall make a determination whether the contract is primarily a goods contract not subject to the MCO or a service contract subject to the MCO. The Contracting Department's determination is subject to review by OLSE.

In determining what a contract is primarily for, the Contracting Department shall consider the general nature of the contract, as well as how much of its cost is for goods, and how much for services. If the services account for more than 50% of the total cost, that is an indication that the contract is primarily for services.

If a contract's service and product components are clearly differentiated in the budget for a contract that includes both goods and services, then the MCO applies to the service component only if the service component meets the MCO's $25,000 threshold. (§12P.2(e)(3))

D. Legal Proceedings

Contracts for the settlement of legal proceedings are exempt from the MCO. OLSE shall determine whether a contract is for the settlement of legal proceedings, and thus exempt. (§12P.2(e)(4))

E. Urgent or specialized litigation

Contracts for specialized litigation advice may be exempt from the MCO if it is in the best interests of the City to do so. The City Attorney shall determine whether a contract is for urgent or specialized litigation advice, and whether it would be in the best interests of the City not to include the MCO. The City Attorney shall submit these findings to OLSE in writing. (§12P.2(e)(5))

F. Fiscal Year Aggregate Monetary Threshold

If an entity has entered into multiple agreements with a Contracting Department, the aggregate amount of which equals $25,000 or less payable from that Contracting Department in any fiscal year, these agreements are exempt from the MCO. When prospective contracting reaches the appropriate threshold, all future contracts with that entity shall be covered by the MCO, and all existing contracts that previously were exempt from the MCO due to the threshold become subject to the MCO from that point forward.

In determining whether an agreement exceeds the $25,000 threshold, the Contracting Department shall calculate the total amount of the agreement by adding together the amount provided for in the original agreement and all amendments, modifications, renewals, or extensions. An agreement previously exempt because it did not meet the monetary threshold of the MCO may become subject because an amendment, modification, renewal, or extension increases the total amount of the agreement beyond the threshold. In that case, the Contracting Department shall incorporate the standard MCO contract language in the Model Contract Amendment (Form P-550).

If an agreement specifies a maximum amount to be expended, then the Contracting Department shall use the maximum amount stated in the agreement to determine whether the agreement meets the MCO monetary threshold. (§12P.2(e)(6))

G. Trust Assets

Any agreement for the investment, management, or other use of trust assets is exempt if the application of the MCO would violate the fiduciary duties of the trustee. (§12P.2(e)(7))

H. Agreements Prior to Effective Date

Agreements entered into prior to October 8, 2000, or pursuant to and in accordance with solicitations advertised prior to October 8, 2000 and not amended thereafter, are exempt from the MCO. (§12P.2(e)(8))

I. Agreements Executed After Effective Date

Agreements entered into after October 8, 2000 (unless and until a Contract Amendment is entered into) pursuant to, and within the scope of, bid packages or requests for proposals advertised and made available to the public prior to October 8, 2000, which bid packages or requests for proposals were not amended on or after October 8, 2000, are exempt from the MCO. (§12P.2(e)(9))

J. Grant or Special Fund Expenditures

Agreements involving the expenditure of grant or special funds by the City are exempt if the application of the MCO would violate the terms of the grant or any rule of the grantor agency that require compensation lower than the Minimum Compensation, subject to certain exceptions; and/or, if the City would be required to use general fund monies to supplement the grant or special funds in order to maintain the current level of services, such agreement shall also be exempt, subject to review by OLSE. (§12P.2(e)(10))

K. Public Entities

Agreements with public entities are not subject to the MCO unless the public entity's jurisdictional boundaries are coterminous with the City's boundaries. Public entities whose boundaries are coterminous with the City, thereby making them subject to the MCO, include but may not be limited to: Local Agency Formation Commission; San Francisco Community College District; San Francisco Housing Authority; San Francisco Redevelopment Agency; San Francisco Transportation Authority; and San Francisco Unified School District. (§12P.2(e)(11).

L. City Employee Benefits

Agreements to provide benefits to City employees are exempt from the MCO if the Director of Human Resources makes a determination that no entity is willing to comply with the MCO and is capable of providing the required benefits. The Director shall make such determination in writing and submit it to OLSE. (§12P.2(e)(12))

M. Prevailing Rate of Wage

Section A7.204 of the San Francisco Charter and Chapter 6 of the San Francisco Administrative Code set forth agreements to which the prevailing rate of wage law applies. Such agreements shall be exempt from the MCO only if each Covered Employee receives the prevailing rate, and if the prevailing rate is higher than the wage required by the MCO. (§12P.2(e)(13))

N. Violation of Fiduciary Duties

Agreements for the investment of City monies where the Treasurer finds that requiring compliance with the MCO will violate the Treasurer's fiduciary duties and for the investment of retirement, health or other funds held in trust pursuant to Charter, statute, ordinance or MOU where the official or officials responsible for investing or managing such funds finds that requiring compliance with the MCO will violate their fiduciary duties, is exempt from the MCO. To effect this exemption, the fiduciary must make its finding in writing and submit it to OLSE. (§12P.2(e)(14))

O. City acting as Creditor or Grantor

If the City is providing funds in the form of loans or grants to entities for the purpose of: (1) acquiring an interest in real property on which residential improvements for low or moderate income households will be constructed, (2) constructing improvements on real property owned by grantee or debtor, if residents of the improvements qualify as low or moderate income households, or (3) rehabilitating improvements owned or leased by a grantee or debtor, then any agreement to provide such funds is exempt from the MCO. (§12P.2(e)(15))

P. Non-Airport Leases

An agreement for the exclusive use of property owned by, or under the exclusive control of the City, and not under the jurisdiction of the Airport Commission, is exempt from the MCO. (§12P.2(e)(16))