

GENERAL SERVICES AGENCY

OFFICE OF LABOR STANDARDS ENFORCEMENT

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List of Exemptions for the Health Care Accountability Ordinance

Exemption Procedures

If a Contracting Department determines that an agreement may be exempt from the HCAO requirements, it shall submit a request for exemption to OLSE using the HCAO Exemption and Waiver Request (Form P-365). The Contracting Department shall submit any required documentation it has received from the Contracting Party with the Exemption and Waiver Request. If OLSE agrees that an agreement is exempt, OLSE Director or his/her designee shall approve and process the Request. Such approval shall apply only to the specific agreement to which the Request is directed and shall not affect any other agreements. If OLSE denies the Request, OLSE shall notify the Contracting Department. Thereafter, the Contracting Department shall process the agreement as a Contract subject to the HCAO, or seek another Contracting Party. Where the determinations made by the Contracting Department and OLSE differ, OLSE's determination shall prevail.

Contractor May Suggest Exemption

The prospective Contractor may request that the Contracting Department consider whether an exemption may be appropriate. The Contracting Department shall then use the above procedure to obtain approval of the request.

Requirements for Exemption

The following categories of agreements shall be exempt from the HCAO, as stated below:

A. Employee Threshold

If, at the time an agreement is executed, the employer has 20 or fewer employees (or, in the case of a Nonprofit Corporation, 50 or fewer employees), including any employees the employer plans to hire to implement the agreement, the employer shall not be obligated to provide the Health Care Accountability Components in § 12Q.3 to its Covered Employees. In determining the number of employees an employer has, all Employees of all parent and subsidiaries that own or control the employer, plus any subsidiaries owned or controlled by the employer shall be included. In determining whether an employer has 21 or more Employees, the employees of any subcontractor(s) shall not be counted. Likewise, in determining whether the subcontractor has 21 or more Employees, the employees of the prime contractor shall not be counted. (See § 12Q.3(e).) If the employee threshold is not met, the employer shall not be obligated to provide the Health Care Accountability outlined in § 12Q.3 to its Covered Employees, but shall nonetheless be required to include the Health Care Accountability Components in any applicable Subcontracts.

The employer must provide written documentation of the number of employees it employs and the number of employees it plans to hire to implement the agreement in order to qualify for this exemption. A letter on the employer's letterhead, signed by an officer who is authorized to legally bind the entity, shall be sufficient. (§12Q.3(e))

B. Duration of Less Than One Year

Agreements for a duration of less than one (1) year shall be exempt from the requirements of the HCAO. Contracting Departments, Tenants, and Subtenants are prohibited from entering into multiple contracts of shorter duration with the proposed Contractor in order to evade the requirements of the HCAO. (§12Q.2.4(b)(1))

C. Purchase or Lease of Goods

Agreements for the purchase or lease of goods, or for guarantees, warranties, shipping, delivery, or installation or maintenance of such goods shall not be subject to the HCAO.

Where an agreement clearly differentiates the Contract's "service" and "products/goods" components in the budget, the agreement shall not be deemed a "Contract" if the preponderance, i.e., more than 50 percent of the total cost, is for goods.

Where an agreement does not differentiate between the "service" and "products/goods" components, the Contracting Department shall make a determination whether the agreement is primarily for goods or services. The Department shall consider the general nature of the agreement and apportion the total cost among "products/goods" and "services." If the services portion of the agreement accounts for more than 50% of the total cost, the agreement is a services Contract subject to the requirements of the HCAO. The HCAO shall apply to the service component only if the dollar amount of such component meets the HCAO's \$25,000 threshold (\$50,000 for Nonprofit Corporations). The Department's determination shall be subject to review by OLSE. (§12Q.2.4(b)(2))

D. Legal Proceedings

Agreements entered into pursuant to settlement of legal proceedings shall be exempt from the requirements of the HCAO. (§12Q.2.4(b)(3))

E. Specialized Litigation Advice

Agreements for urgent or specialized advice, consultation, or litigation services for the City Attorney's Office shall be exempt from the requirements of the HCAO. The City Attorney shall determine whether an agreement is for such services, and whether it would be in the best interests of the City to exempt such an agreement from the requirements of the HCAO. (§12Q.2.4(b)(4))

F. Aggregate Monetary Threshold

Agreements for which the amount is \$25,000 or less shall be exempt from the HCAO. For Nonprofit Corporations, this threshold amount is \$50,000. However, if a Contracting Party has multiple agreements with the City in a given fiscal year (which agreements would be considered "Contracts" under the HCAO except that the individual dollar amounts are below the thresholds set forth in the preceding sentence) and the cumulative amount of such agreements is \$75,000 or more, the requirements of the HCAO shall apply to each such agreement from the date on which the triggering Contract is executed. (§12Q.2.4(b)(5))

G. Trust Assets

Agreements for the investment, management, or use of trust assets shall be exempt from the requirements of the HCAO where compliance would violate the fiduciary duties of the trustee. (§12Q.2.4(b)(6))

H. Agreements Prior to Effective Date

Agreements entered into prior to July 1, 2001 shall be exempt from the requirements of the HCAO, unless and until a Contract Amendment is executed. (§12Q.2.4(b)(7))

I. Agreements Executed After Effective Date

Agreements executed after July 1, 2001 pursuant to, and within the scope of, bid packages or requests for proposals advertised and made available to the public prior to July 1, 2001, unless the bid packages or requests for proposals are materially amended on or after July 1, 2001, shall be exempt from the requirements of the HCAO, unless and until a Contract Amendment is executed. (§12Q.2.4(b)(8))

J. Special Fund Expenditures

Agreements involving the expenditure by the City of special funds or other non-General Fund revenues shall be exempt from the requirements of the HCAO to the extent that the application of the HCAO would require the City to use General Fund monies to supplement the special funds or other non-General Fund revenues to maintain the current level of services. (§12Q.2.4(b)(9))

K. Grant Funds Awarded to the City

Agreements that require the expenditure of grant funds awarded to the City by another entity, whether public or private, shall be exempt from the requirements of the HCAO. If an agreement is funded both by grant funds and non-grant funds, the entire agreement shall be exempt, provided, however, that if use of the grant funds is severable from the non-grant funds, the Contract shall be exempt only with respect to the use of the grant funds. (§12Q.2.4(b)(10))

L. Grants to Nonprofit Corporations

Agreements pursuant to which the City awards a grant to a Nonprofit Corporation shall be exempt from the requirements of the HCAO if the agreement meets all of the following criteria (§12Q.2.4(b)(11)):

1. The grantee is a Nonprofit Corporation which serves the public interest;
2. The grantee is selected through a grant application and award process;
3. The agreement does not involve the acquisition of goods or services for the direct benefit or use of the City; and
4. The agreement does not involve the contracting out of, or delegation of the responsibility for, any services that have at any time been performed by City employees. If a Contracting Department believes that an agreement does not meet all of these criteria but nonetheless constitutes a grant, it may request a determination by OLSE. The request shall include information supporting the Department's position that the agreement is a grant.

M. Public Entities

Agreements with public entities shall not be subject to the HCAO, unless the public entity is the San Francisco Redevelopment Agency, the San Francisco Local Agency Formation Commission, the San Francisco Transportation Authority, the San Francisco Parking Authority, or the San Francisco Health Authority. (§12Q.2.4(b)(12))

N. Employee Benefits to be Provided to City Employees

Agreements for employee benefits to be provided to City employees shall be exempt from the requirements of the HCAO where the Director of Human Resources finds that no person or entity is willing to comply with the HCAO and is capable of providing the required employee benefits. (§12Q.2.4(b)(13))

O. Investment, Management, or Use of City Monies

Agreements for the investment, management, or use of City monies shall be exempt from the requirements of the HCAO where the Treasurer finds that requiring compliance with the HCAO will violate the Treasurer's fiduciary duties. Agreements for the investment of retirement, health, or other funds held in trust pursuant to Charter, statute, ordinance, or MOU shall also be exempt where the official or officials responsible for investing or managing such funds find that requiring compliance with the HCAO will violate their fiduciary duties. (§12Q.2.4(b)(14))

P. City Acting as Creditor or Grantor

Loan and grant agreements made in connection with loans or grants under which the City, as creditor or grantor, is providing funds to be used by a debtor or grantee to (§12Q.2.4(b)(15)):

1. acquire an interest in real property on which residential improvements for low- or moderate-income households will be constructed; or,
2. construct improvements owned or leased by the debtor or grantee, on condition that residents of the improvements qualify as low- or moderate income households; or,
3. rehabilitate improvements owned or leased by the debtor or grantee shall be exempt from the requirements of the HCAO.

Q. Tenant or Subtenant

Agreements between a Tenant or Subtenant and a Contractor to perform services on property covered by a Lease shall be exempt from the requirements of the HCAO if the Contractor does not provide such services on a regular and on-going basis. For purposes of this exemption, if Employees of the Contractor and any Subcontractor cumulatively work on the Lease property less than 130 days within a 12-month period, the agreement shall not be considered regular and on-going. (§12Q.2.4(b)(16))

R. Lease

The following categories of leases shall be exempt from the HCAO, as stated below (§12Q.2.13(b)):

1. Agreements granting a franchise or easement;
2. Agreements with a public entity, unless the public entity is the San Francisco Redevelopment Agency, the San Francisco Local Agency Formation Commission, the San Francisco Transportation Authority, the San Francisco Parking Authority or the San Francisco Health Authority;
3. Agreements entered into pursuant to the settlement of legal proceedings;
4. Revocable at-will use or encroachment permits for the use of or encroachment on City property, regardless of the ultimate duration of such permits;
5. Street excavation, street construction, or street use permits or other regulatory permits;
6. Agreements for the use of a City right-of-way, including circumstances where a contracting utility has the power of eminent domain;
7. Agreements governing the use of City property under the jurisdiction of the Recreation and Park Department primarily for recreational activities.