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City Attorney

BEN ROSENFELD
Controller

MEMORANDUM

TO: Honorable Members, Board of Supervisors
FROM: Deputy City Attorney Anne Pearson
Controller Ben Rosenfield
DATE: June 15, 2023
RE: Budget Addbacks

As the deadline for approving the annual budget approaches, we write to remind you of both our offices' longstanding advice concerning the Board of Supervisors' ("Board") authority over the portion of the budget commonly known as "addbacks." As set forth in more detail below, while the Board may support and fund particular programs through addbacks, it may not earmark addbacks for specific contractors or grantees. And after the enactment of the budget, neither individual Supervisors nor the Board acting as a body or through committees may attempt to influence departments' decisions about which grantees or contractors will receive addback funds.

Since we last issued this memorandum in 2021, the Board enacted Chapter 21G of the Administrative Code, which requires that City departments award grants through an open and competitive process much like the process used to award City contracts. In light of the requirements of Chapter 21G, departments that receive funding through the addback process will lack the legal authority in most circumstances to award those funds without engaging in a competitive procurement process.

ANALYSIS

The Charter authorizes the Board to amend the Mayor's proposed budget by increasing or decreasing the Mayor's proposed expenditures so long as the aggregate changes do not cause the expenditures from each fund to exceed the amount proposed by the Mayor. (Charter § 9.103(2).) The Board may cut expenditures in the Mayor's proposed budget and reallocate that money to "add back" increased funding for existing programs or funding for new programs. The Board may increase line items in the budget or add new line items, even where the Mayor did not include the funding in the proposed budget.

The Board's authority over the budget does not allow the Board to specify who should be awarded a contract or grant funded in that budget; in fact, the Charter expressly prohibits it. Under the Charter, the Board exercises its budgetary authority by amending and adopting ordinances – in particular, the budget ordinance and supplemental appropriations ordinances. (Charter §§ 9.101, 9.103; Admin. Code § 3.15.) Charter Section 2.114, entitled "Non-Interference in Administration," limits the Board's authority with respect to adopting ordinances, and specifically states that the Board may not adopt legislation on specific contract matters or "dictate, suggest or interfere with" departments' contracting decisions.

The Board may not direct or compel a City department to enter a contract or grant with a particular person or organization as a part or condition of an addback. Nor may a Supervisor

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suggest that the department enter a contract or grant with a particular person or organization. Any such action would violate Charter Section 2.114. And Section 2.114 prohibits interference even if the department has no objection to – or even supports – awarding a grant or contract to the specified grantee or contractor.

In light of these constraints, the Board’s addback list may indicate the amount of each addback, the department to which it will be directed, and the purposes for which it may be used, but may not identify, either directly or indirectly, specific non-City entities or organizations to be funded.

When the Board approves an addback to expand funding for existing projects or services performed by entities other than City departments, the Board should not assume that the department will award addback funds to current contractors or grantees to continue their existing work. Rather, the City department to which the Board appropriates addback funds must comply with legal requirements relating to the procurement of services, which generally require competitive bidding, except under limited circumstances. (*See, e.g.*, Admin. Code Chapters 21 and 21G.)

After the Board approves the budget ordinance, departments have discretion to spend addback funds in any manner consistent with the appropriation and other applicable laws. In some circumstances, departments may choose not to spend appropriated addback funds. In others, departments may decide to enter a contract or grant, following a solicitation process, with a contractor or grantee whom the Board did not anticipate receiving the funding. Supervisors may not attempt to influence these decisions. For example, a Supervisor who proposed addback funding to a particular department during the budget process may not contact the department during the fiscal year to suggest that the department should provide funding to a specific grantee or with specific terms. Such a suggestion would violate Charter Section 2.114.

CONCLUSION

The Board may support and fund particular programs through addbacks, without specifying individual contractors or grantees. But the Board may not use an addback to tell a City department whom to contract with, and Supervisors may not make suggestions intended to influence departments’ award of addback funds. Violations of these non-interference rules may constitute official misconduct. (Charter § 2.114.)