

ORDINANCE NO. 20180614-056

**AN ORDINANCE REPEALING AND REPLACING CITY CODE
CHAPTER 2-7, ARTICLE 6 RELATING TO ANTI-LOBBYING AND
PROCUREMENT.**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1: City Code Chapter 2-7, Article 6 (Anti-Lobbying and Procurement), is repealed and replaced to read:

ARTICLE 6. – ANTI-LOBBYING AND PROCUREMENT.

§ 2-7-101 – FINDINGS; PURPOSE.

- (A) The council finds that persons who enter a competitive process for a city contract voluntarily agree to abide by the terms of the competitive process, including the provisions of this article.
- (B) The council finds that it is in the City's interest:
 - (1) to provide the most fair, equitable, and competitive process possible for selection among potential vendors in order to acquire the best and most competitive goods and services; and
 - (2) to further compliance with State law procurement requirements.
- (C) The council intends that:
 - (1) each response is considered on the same basis as all others; and
 - (2) respondents have equal access to information regarding a solicitation, and the same opportunity to present information regarding the solicitation for consideration by the City.

§ 2-7-102 - APPLICABILITY.

- (A) This article applies to all solicitations except:
 - (1) City social service funding;
 - (2) City cultural arts funding;
 - (3) federal, state or City block grant funding;
 - (4) the sale or rental of real property;
 - (5) interlocal contracts or agreements; and
 - (6) solicitations specifically exempted from this article by council.

- (B) Absent an affirmative determination by the council, the purchasing officer has the discretion to apply this article to any other competitive process.
- (C) City Code Section 1-1-99 (*Offenses; General Penalty*) does not apply to this article.

§ 2-7-103 - DEFINITIONS.

In this article:

- (1) AGENT means a person authorized by a respondent to act for or in place of the respondent in order to communicate on behalf of that respondent. Each of the following is presumed to be an agent:
 - (a) a current full-time or part-time employee, owner, director, officer, member, or manager of a respondent;
 - (b) a person related within the first degree of consanguinity or affinity to a current full-time or part-time employee, owner, director, officer, member, or manager of a respondent;
 - (c) a person related within the first degree of consanguinity or affinity to the respondent, if a respondent is an individual person; and
 - (d) a lobbyist, attorney, or other legal representative of the respondent that has been retained by the respondent with respect to the subject matter of either the solicitation or the respondent's response to the solicitation.
- (2) AUTHORIZED CONTACT PERSON means a City employee designated in a City solicitation as the point of contact for all purposes for that solicitation.
- (3) CITY EMPLOYEE is defined in Section 2-7-2 (*Definitions*), and further includes an independent contractor hired by the City with respect to the solicitation.
- (4) CITY OFFICIAL is defined in Section 2-7-2 (*Definitions*).
- (5) NO-LOBBYING PERIOD means the period of time beginning at the date and time a solicitation is published and continuing through the earliest of the following:
 - (a) the date the last contract resulting from the solicitation is signed;
 - (b) 60 days following council authorization of the last contract resulting from the solicitation; or
 - (c) cancellation of the solicitation by the City.

- (6) PURCHASING OFFICER means the City employee authorized to carry out the purchasing and procurement functions and authority of the City.
- (7) RESPONSE means a written offer or submission in reply to a solicitation.
- (8) RESPONDENT means a person or entity that has timely submitted or subsequently timely submits a response to a City solicitation, even if that person subsequently withdraws its response or has been disqualified by the City for any reason. Respondent includes:
 - (a) a subsidiary or parent of a respondent;
 - (b) a joint enterprise, joint venture, or partnership with an interest in a response and in which a respondent is a member or is otherwise involved, including any partner in such joint enterprise, joint venture, or partnership; and
 - (c) a subcontractor to a respondent in connection with that respondent's response.
- (9) SOLICITATION means an opportunity to compete to conduct business with the City that requires council approval under City Charter Article VII Section 15 (*Purchase Procedure*), and includes, without limitation:
 - (a) an invitation for bids;
 - (b) a request for proposals;
 - (c) a request for qualifications;
 - (d) a notice of funding availability; and
 - (e) any other competitive solicitation process for which the purchasing officer, in the purchasing officer's sole discretion, affirmatively determines this article should apply in accordance with Section 2-7-102(B).

§ 2-7-104 - RESTRICTION ON LOBBYING.

Subject to the exclusions in Section 2-7-105 (*Permitted Communications*), during a no-lobbying period,

- (1) a respondent or an agent shall not communicate directly with a City official or a City employee, or both in order to:
 - (a) provide substantive information about any respondent or response with respect to the solicitation to which the communication relates;
 - (b) encourage the City to reject one or more of the responses to the solicitation to which the communication relates;

- (c) convey a complaint about the solicitation to which the communication relates; or
 - (d) ask any City official or City employee to favor or oppose, recommend or not recommend, vote for or against, consider or not consider, or take action or refrain from taking action on any vote, decision, or agenda item regarding the solicitation to which the communication relates.
- (2) a City official shall not contact or communicate with a respondent regarding a response or the solicitation to which the no-lobbying period applies;
 - (3) a City employee, other than the authorized contact person, shall not contact or communicate with a respondent regarding a response or the solicitation to which the no-lobbying period applies.

§ 2-7-105 – PERMITTED COMMUNICATIONS.

The following communications are permitted under this article at any time:

- (1) any communication between a respondent or agent and any authorized contact person, including, without limitation and in accordance with regulation, any complaint concerning the solicitation;
- (2) any communication between a respondent or agent and any person to the extent the communication relates solely to an existing contract between a respondent and the City, even when the scope, products, or services of the current contract are the same or similar to those contained in an active solicitation;
- (3) any communication between a respondent or an agent and a City employee to the extent the communication relates solely to a non-substantive, procedural matter related to a response or solicitation;
- (4) any communication required by or made during the course of a formal protest hearing related to a solicitation;
- (5) any communication between a respondent or an agent and the City's Small & Minority Business Resources Department, that solely relates to compliance with Chapters 2-9A through 2-9D (*Minority-Owned and Women-Owned Business Enterprise Procurement Program*) of the City Code;
- (6) any communication between an attorney representing a respondent and an attorney authorized to represent the City, to the extent the communication is permitted by the Texas Disciplinary Rules of Professional Conduct;

- (7) any communication made by a respondent or an agent to the applicable governing body during the course of a meeting properly noticed and held under Texas Government Code Chapter 551 (*Open Meetings Act*);
- (8) any communication between a respondent or an agent and a City employee whose official responsibility encompasses the setting of minimum insurance requirements for the solicitation to which the communication relates, to the extent the communication relates solely to the insurance requirements established by the City in the solicitation; and
- (9) any contribution or expenditure as defined in Chapter 2-2 (*Campaign Finance*).

§ 2-7-106 – MODIFICATION OF RESTRICTION.

The purchasing officer may waive, modify, or reduce the requirements in Section 2-7-104 (*Restrictions on Lobbying*) in order to allow respondents to communicate with a City employee or a City official other than the authorized contact person when the purchasing officer determines, in writing, that the solicitation must be conducted in an expedited manner, including but not limited to a solicitation conducted for reasons of health or safety under the shortest schedule possible with no extensions. Any such modification authorized by the purchasing officer shall be stated in the solicitation.

§ 2-7-107 – NOTICE.

- (A) Each solicitation shall include a notice advising respondents and prospective respondents:
 - (1) of the requirements of this article;
 - (2) that any communication initiated by a City employee or City official, other than the authorized contact person, during the no-lobbying period regarding a response or the solicitation may result in a violation of Section 2-7-104(1) if the respondent subsequently lobbies that City employee or City official.
- (B) The purchasing officer, or a City employee designated by the purchasing officer, shall provide weekly written notice, accessible to all City employees and City officials, of each solicitation for which the no-lobbying period is in effect.

§ 2-7-108 - DISCLOSURE OF VIOLATION.

A City official or a City employee other than the authorized contact person that becomes aware of a violation of Section 2-7-104 (*Restrictions on Lobbying*) shall notify the authorized contact person in writing as soon as practicable.

§ 2-7-109 - ENFORCEMENT.

- (A) A respondent that has been disqualified pursuant to Section 2-7-110(A) may appeal such disqualification to a subcommittee that is less than a quorum of the Ethics Review Commission established in Chapter 2-7, Article 2 (*Ethics Review Commission*), whose decision on appeal shall be final and binding. Any appeal must be filed in the manner prescribed by the Ethics Review Commission within 5 calendar days of the notice given by the purchasing officer pursuant to Section 2-7-110(B).
- (B) The purchasing officer shall waive a violation of Section 2-7-104(1) if the violation was solely the result of communications initiated by a City official or a City employee other than the authorized contact person.
- (C) The purchasing officer has the authority to enforce this article through rules promulgated in accordance with Chapter 1-2 (*Adoption of Rules*), which at a minimum shall include a notice and protest process for respondents disqualified pursuant to Section 2-7-110 (*Disqualification; Contract Voidable*), including:
 - (1) written notice of the disqualification imposed pursuant to Section 2-7-110 (*Disqualification; Contract Voidable*);
 - (2) written notice of the right to protest the disqualification imposed; and
 - (3) written notice of the right to request an impartial hearing process.

§ 2-7-110 - DISQUALIFICATION; CONTRACT VOIDABLE.

- (A) If the purchasing officer finds that a respondent has violated Section 2-7-104(1), the respondent is disqualified from participating in the solicitation to which the violation related.
- (B) The purchasing officer shall promptly provide written notice of disqualification to a disqualified respondent.
- (C) If a respondent is disqualified from participating in a solicitation as a result of violating Section 2-7-104(1) and the solicitation is cancelled for any reason, that respondent is also disqualified from submitting a response to any reissue of the same or similar solicitation for the same or similar project. For the purposes of this section, the purchasing officer may determine whether any particular solicitation constitutes a "same or similar solicitation for the same or similar project".
- (D) If a respondent violates Section 104(1) and is awarded a contract resulting from the solicitation to which the violation relates, the City may void that contract.

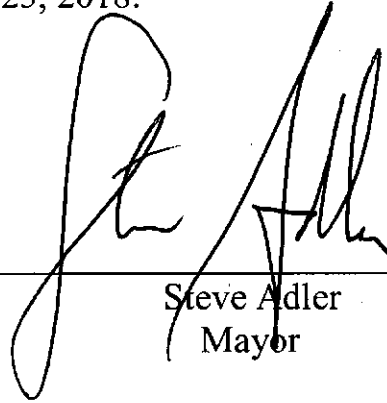
(E) Respondents that violate Section 2-7-104(1) three or more times during a five year period may be subject to debarment from participating in any new contracts with the City for a period of up to three years.

PART 2. This ordinance takes effect on June 25, 2018.

PASSED AND APPROVED

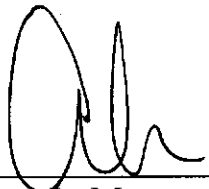
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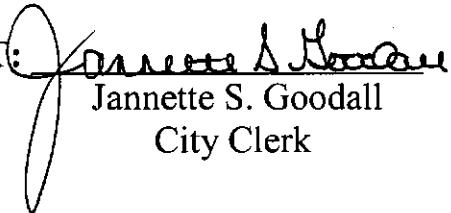
Steve Adler
Mayor

APPROVED:



Anne L. Morgan
City Attorney

ATTEST:



Jannette S. Goodall
City Clerk