

## **11/30/07 Draft of Proposed Rule**

### **Enforcement of the Anti-Lobbying Ordinance by the Purchasing Office**

#### **1. DEFINITIONS**

Words in this rule have the meanings they have in Article 6 of Chapter 2-7 of the City Code.

#### **2. NOTICE OF A DISQUALIFICATION OR POSSIBLE DEBARMENT**

- a. If an authorized contact person disqualifies a respondent under Article 6 of Chapter 2-7 of the City Code, the authorized contact person shall provide written notice to the respondent that includes:
  - i. a statement that the respondent is disqualified and the identifying number of the solicitation from which the respondent is disqualified;
  - ii. a description of the prohibited representation that is the reason for the disqualification;
  - iii. a description of the respondent's opportunity to protest; and
  - iv. a copy of this rule.
- b. Before a respondent is debarred under Article 6 of Chapter 2-7 of the City Code, the Purchasing Officer shall provide written notice and an opportunity for a hearing to the respondent. The notice to the respondent shall include:
  - i. a statement that the respondent is disqualified and the identifying number of the solicitation from which the respondent is disqualified;
  - ii. a description of the facts that are the reason for debarment;
  - iii. a description of the respondent's opportunity to protest; and
  - iv. a copy of this rule.

#### **3. OPPORTUNITY TO PROTEST**

This section applies to notice procedures for a respondent to protest disqualification or possible debarment.

- a. The Purchasing Officer has the authority to settle or resolve a protest of a disqualification or possible debarment under Article 6 of Chapter 2-7 of the City Code. the Purchasing officer's decision is final.
- b. If a disqualified respondent fails to comply with this rule, the Purchasing Officer shall dismiss the respondent's protest.
- c. A respondent shall file a written notice of the respondent's protest with the Purchasing Officer. The notice must be actually received by the Purchasing Officer no later than the fourth business day after date that the respondent receives notice of the disqualification or possible debarment. If the respondent does not file a timely notice the protest, the respondent waives the right to protest the disqualification or debarment.
- d. A notice of a respondent's protest must be concise and presented logically and factually. The notice must include:
  - i. the respondent's name, address, telephone, and fax number;
  - ii. the identifying number of the solicitation number; and
  - iii. a detailed statement of the factual grounds for the protest, including copies of any relevant documents.

#### **4. HEARING**

This section applies to hearing procedures for a respondent to protest disqualification or possible debarment.

- a. When the Purchasing Officer receives a timely written protest, the Purchasing Officer shall determine whether the grounds for the protest are sufficient.
- b. If the Purchasing Officer decides that the grounds are sufficient, the Purchasing Office will schedule a protest hearing. If practicable the Purchasing Officer should scheduled the hearing within five (5) working days.

- c. If the Purchasing Officer determines that the grounds of a protest are insufficient, the Purchasing Officer shall notify the respondent of that decision in writing.
- d. A protest hearing is informal and is not subject to the Open Meetings Act.
- e. The purpose of the hearing is to give a disqualified respondent a chance to present the respondent's case; it is not an adversarial proceeding.
- f. The following individuals from the City may attend the hearing:
  - i. representatives from the department that requested the purchase;
  - ii. the Law department;
  - iii. the Purchasing Office; and
  - iv. other appropriate City staff as determined by the Purchasing Officer.
- g. The respondent may bring to the hearing a representative or anyone else that will present information to support the factual grounds for the respondent's protest.
- h. The Purchasing Officer shall make a decision no later than the 15th business day after the date of the hearing.
- i. The Purchasing Officer shall send a written notice of the decision to the respondent.
- j. When a protest is filed, the City usually will not make an award until a decision on the protest is made. However, the City will not delay an award if the City Manager or the Purchasing Officer determines that:
  - i. the City urgently requires the goods or supplies or services to be purchased; or
  - ii. failure to make an award promptly will unduly delay delivery or performance.
- k. In the instances described under item j, the Purchasing Officer shall notify the respondent and make every reasonable effort to resolve the protest before the award.