

ORDINANCE NO. 20071206-045

AN ORDINANCE ADDING A NEW ARTICLE 6 TO CHAPTER 2-7 OF THE CITY CODE RELATING TO ANTI-LOBBYING AND PROCUREMENT.

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

PART 1. Chapter 2-7 is amended to add a new article 6 to read:

ARTICLE 6. ANTI-LOBBYING AND PROCUREMENT.

§ 2-7-101 DEFINITIONS.

In this article:

- (1) **AUTHORIZED CONTACT PERSON** means the person designated in a City solicitation as the contact for questions and comments regarding the solicitation.
- (2) **NO-CONTACT PERIOD** means the period of time from the date of issuance of the solicitation until a contract is executed. If the City withdraws the solicitation or rejects all responses with the stated intention to reissue the same or similar solicitation for the same or similar project, the no-contact period continues during the time period between the withdrawal and reissue.
- (3) **RESPONSE** means a response to a solicitation and includes a bid, a quote, a request for proposal response or a statement of qualifications.
- (4) **RESPONDENT** means a person responding to a City solicitation including a bidder, a quoter, responder, or a proposer. The term "respondent" also includes:
 - (a) an owner, officer, employee, contractor, lobbyist, subsidiary, joint enterprise, partnership, or other representative of a respondent;
 - (b) a person or representative of a person that is involved in a joint venture with the respondent, or a subcontractor in connection with the respondent's response; and
 - (c) a respondent who has withdrawn a response or who has had a response rejected or disqualified by the City.
- (5) **REPRESENTATION** means a communication related to a response to a council member, official, employee, or agent of the City which:

- (a) provides information about the response;
 - (b) advances the interests of the respondent;
 - (c) discredits the response of any other respondent;
 - (d) encourages the City to withdraw the solicitation;
 - (e) encourages the City to reject all of the responses; or
 - (f) conveys a complaint about a particular solicitation.
- (6) SOLICITATION includes an invitation for bids, a request for proposals, a request for quotations, and a request for qualifications.

§2-7-102 FINDINGS; PURPOSE.

- (A) 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.
- (B) 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.

§2-7-103 RESTRICTION ON CONTACTS.

- (A) During a no-contact period, a respondent shall make a representation only through the authorized contact person.
- (B) If during the no-contact period, a respondent makes a representation to a member of the City Council, a member of a City board, or any other official, employee, or agent of the City, other than to the authorized contact person for the solicitation, the respondent's response is disqualified from further consideration except as permitted in this article. This prohibition also applies to a vendor that makes a representation and then becomes a respondent.

- (C) The prohibition of a representation during the no-contact period applies to a representation initiated by a respondent, and to a representation made in response to a communication initiated by a member of the City Council, member of a City board, or any other official, employee, or agent of the City other than the authorized contact person.
- (D) If the City withdraws a solicitation or rejects all responses with a stated intention to reissue the same or similar solicitation for the same or similar project, the no-contact period shall expire after the sixtieth day after the date the solicitation is withdrawn or all responses are rejected if the solicitation has not been reissued during the sixty day period.
- (E) This section does not apply to a representation:
 - (1) made at a meeting convened by the authorized contact person to evaluate responses;
 - (2) required by Financial Services Department protest procedures for vendors;
 - (3) made at a Financial Services Department protest hearing;
 - (4) provided to the Small & Minority Business Resources Department in order to obtain compliance with Chapter 2-9 (Minority-Owned and Female Owned Business Enterprise Procurement Program);
 - (5) made to the City Risk Management coordinator about insurance requirements for a solicitation; and
 - (6) made in public at a meeting held under the Texas Open Meetings Act.

§2-7-104 PERMITTED REPRESENTATIONS.

- (A) If a respondent seeks to make a representation to a City official, employee, or agent during the no-contact period, the respondent shall submit the representation in writing only to the authorized contact person. The authorized contact person shall distribute the written representation in accordance with the terms of the particular solicitation. This subsection does not permit a respondent to amend or add information to a response after the response deadline.
- (B) If a respondent seeks to make a complaint about a particular solicitation to a member of the City Council or a member of a City board, the respondent should include the complaint in his written representation to the authorized contact person. The authorized contact person shall

distribute the complaint to members of the City Council or members of the City board, to the Director of the Department that issued the solicitation, and to all respondents of the particular solicitation.

- (C) If a respondent makes a written inquiry regarding a solicitation, the authorized contact person shall provide a written answer to the inquiry and distribute the inquiry and answer to all respondents of the particular solicitation.
- (D) If a respondent is unable to obtain a response from the authorized contact person, the respondent may contact the Director of the Public Works Department or Purchasing Officer as appropriate.

§2-7-105 NOTICE.

- (A) An employee preparing a solicitation shall include a notice in the solicitation that advises respondents of the requirements of this article, including a notice that if any official, employee or agent of the City, other than the authorized contact person, approaches a respondent for response or solicitation information during the no-contact period, the respondent is at jeopardy if he or she makes any representation in response.
- (B) When a solicitation is issued that requires Council action, the authorized contact person for that solicitation shall notify in writing each City Council member that the no-contact period for that solicitation is in effect.
- (C) When a solicitation is issued that will be reviewed by a City board, the authorized contact person for that solicitation shall notify in writing each member of the board that the no-contact period for that solicitation is in effect.

§2-7-106 DISCLOSURE OF PROHIBITED REPRESENTATION.

- (A) If a City official or employee receives a representation during the no-contact period for a solicitation, the City official or employee shall notify in writing the authorized contact person for that solicitation as soon as practicable. Notification to the authorized contact person must be made using a form prescribed by the City and include any supporting documentation.
- (B) During the no-contact period, a City employee, except for the authorized contact person, shall not solicit a representation from a respondent.

§2-7-107 ENFORCEMENT.

- (A) If the authorized contact person for a solicitation finds that a respondent has made a prohibited representation during the no-contact period, the authorized contact person shall document his findings in a report and disqualify the respondent.
- (B) The Financial Services Department and Public Works Department shall adopt rules to administer and enforce this article. The rules must include the provision of written notice of disqualification to the respondent, and a process to protest a disqualification.

§ 2-7-108 CONTRACT VOIDABLE.

If a contract is awarded to a respondent who has violated this article, the contract is voidable by the City.

§2-7-109 DEBARMENT.

- (A) If a respondent violates this article more than once in a three year period, the Purchasing Officer shall debar a respondent from the sale of goods or services to the City for a period not to exceed three years, provided the respondent is given written notice and a hearing in advance of the debarment.
- (B) The Financial Services Department shall adopt rules to administer and enforce this section. The rules must include a hearing process with written notice to the respondent.

§2-7-110 NO CRIMINAL PENALTY.

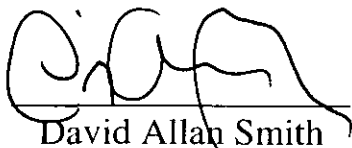
Section 1-1-99 does not apply to this article.

PART 2. This ordinance takes effect on December 17, 2007.

PASSED AND APPROVED

_____, December 6, 2007

APPROVED:

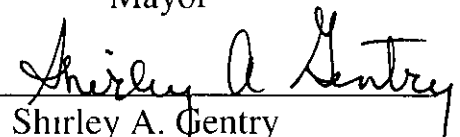

David Allan Smith
City Attorney

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Will Wynn
Mayor

ATTEST:


Shirley A. Gentry
City Clerk