ORDINANCE NO.

AN ORDINANCE AMENDING CHAPTER 2-7, ARTICLE 6 OF THE CITY CODE RELATING TO ANTI-LOBBYING AND PROCUREMENT; AND RENUMBERING SUBSECTION 2-7-999.

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

PART 1. Chapter 2-7 Article 6 (*Anti-Lobbying and Procurement*) of the City Code is amended to read:

2-7-101 Definitions.

(1) AGENT means a person authorized by a respondent to act for or in place of respondent, including a person acting at the request of respondent, a person acting with the knowledge and consent of a respondent, or a person acting with any arrangement, coordination, or direction between the person and the respondent.

(2)[~~(1)~~] AUTHORIZED CONTACT PERSON means the person identified[~~designated~~] in a City solicitation as the contact regarding the solicitation, or the authorized contact person's designee during the course of the no-contact period.[~~for questions and comments regarding the solicitation.~~]

(3) CITY EMPLOYEE in this article means a person employed by the City.

(4) CITY OFFICIAL is defined in Section 2-7-2 (*Definitions*).

(5) DIRECTOR means the director of a department to which the purchasing officer has delegated authority for enforcing this Chapter.

(6)[~~(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.

(7)[~~(3)~~] RESPONSE means a response to a solicitation[~~ and includes a bid, a quote, a request for proposal response or a statement of qualifications~~].

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(8)[~~(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, board member, officer, employee, contractor, [~~lobbyist~~,] subsidiary, joint enterprise, partnership, agent, lobbyist, 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(c) a respondent who has withdrawn a response or who has had a response rejected or disqualified by the City.

(9)[~~(5)~~] REPRESENTATION means a communication related to a response to a council member, official, employee, or City representative that is intended to or that is reasonably likely to[~~agent of the City which~~]:

(a) provide[~~s~~] information about the response;

(b) advance[~~s~~] the interests of the respondent;

(c) discredit[~~s~~] the response of any other respondent;

(d) encourage[~~s~~] the City to withdraw the solicitation;

(e) encourage[~~s~~] the City to reject all of the responses; [~~or~~]

(f) convey[~~s~~] a complaint about a particular solicitation; or[~~.~~]

(g) directly or indirectly ask, influence, or persuade any City official, City employee, or body 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.

(10)[~~(6)~~] SOLICITATION means an opportunity to compete to conduct business with the City that requires City Council approval under City Charter Article VII Section 15 (*Purchase Procedure*).[~~includes an invitation for bids, a request for proposals, a request for quotations, and a request for qualifications.~~]

2-7-102 Findings; Purpose; Applicability.

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(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 Chapter.

(B)[~~(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.

(C)[~~(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.

(D) A solicitation includes, without limitation, an invitation for bids, a request for proposals, a request for quotations, a request for qualifications, and a notice of funding availability.

(E) A solicitation excludes an opportunity to compete for City social service funding, City cultural arts funding, City block grant funding, and the sale or rental of real property, unless this Article is voluntarily invoked by Council.

(F) A representation excludes communication between a City of Austin attorney and a respondent's attorney.

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 d~~]During the no-contact period, a respondent may not make a representation to a City official or to a City employee other than to the authorized contact person. [~~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

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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 City official or a City employee [~~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 ninetieth[~~sixtieth~~] day after the date the solicitation is withdrawn or all responses are rejected if the solicitation has not been reissued during the ninety[~~sixty~~]day period.

(E) For a single vendor award, the no-contact period shall expire when the first of the following occurs: contract is executed or solicitation is cancelled.

(F) For a multiple vendor award, the no-contact period shall expire when the last of the following occurs: all contracts are executed, negotiations have been fully terminated, or the ninetieth day after the solicitation is cancelled.

(G) The purchasing officer or the director may allow respondents to make representations to city employees or city representatives in addition to the authorized contact person for a solicitation that the purchasing officer or the director finds must be conducted in an expedited manner; an expedited solicitation is one conducted for reasons of health or safety under the shortest schedule possible with no extensions. The purchasing officer's or director's finding and additional city employees or city representatives who may be contacted must be included in the solicitation documents.

(H) Representations to an independent contractor hired by the City to conduct or assist with a solicitation will be treated as representations to a City employee.

[~~(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;~~

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~~(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 City seeks additional information from respondent, [~~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 respondent wishes to send a complaint to the City, the respondent shall submit the complaint in writing only to the authorized contact person. [~~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 a[~~the~~] complaint regarding the process to members of the c[~~C~~]ity c[~~C~~]ouncil or members of the City board, to the d[~~D~~]irector of the d[~~D~~]epartment that issued the solicitation, and to all respondents of the particular solicitation. However, the director or purchasing officer shall not permit distribution of any complaint that promotes or disparages the qualifications of a respondent, or that amends or adds information to a response. A determination of what constitutes promoting or disparaging the qualifications of a respondent or constitutes amending or adding information is at the director's or purchasing officer's sole discretion Bid protests are not subject to this subsection. Documents related to a bid protest may not be forwarded to council under this subsection.

(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[~~Director of the Public Works Department~~]or p[~~P~~]urchasing o[~~O~~]fficer as appropriate.

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(E) A respondent may ask a purely procedural question, for example a question regarding the time or location of an event, or where information may be obtained, of a City employee other than the authorized contact person. This section does not permit a respondent to make suggestions or complaints to a City employee other than the authorized contact person. Notwithstanding this subsection, a respondent may not ask a procedural question of a councilmember, a councilmember's aide, or of a City board member except in a meeting held under the Texas Government Code, Chapter 551 (*Open Meetings Act*).

(F) This Article allows representations:

(1) made at a meeting convened by the authorized contact person, including meetings to evaluate responses or negotiate a contract;

(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 2-9A-D (the *Minority-Owned and Women-Owned Business Enterprise Procurement Program*);

(5) made to the City Risk Management coordinator about insurance requirements for a solicitation;

(6) made in public at a meeting held under Texas Government Code, Chapter 551 (*Open Meetings Act*); or

(7) made from a respondent's attorney to an attorney in the Law Department in compliance with Texas Disciplinary Rules of Professional Conduct.

(G) Nothing in this article prohibits communication regarding the solicitation between or among City officials or City employees acting in their official capacity.

(H) A contribution or expenditure as defined in Chapter 2-2 (*Campaign Finance*) is not a representation.

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

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notice that if any City official or City employee[~~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, t~~]The authorized contact person for that solicitation shall notify council members 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 City 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 official or City employee, except for the authorized contact person, shall not solicit a representation from a respondent.

2-7-107 Enforcement.

(A) A respondent that makes a prohibited representation violates this article. If the authorized contact person for a solicitation is informed, or receives information, that a respondent has made a prohibited representation during the no-contact period, the authorized contact person shall document the representation and notify the director or purchasing officer immediately.[~~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) If the director or purchasing officer finds that a respondent has violated this article, the respondent is disqualified.[~~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.~~]

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(C) If a respondent is disqualified for a solicitation and the solicitation is withdrawn or if all responses are rejected, the respondent is disqualified for a reissue of the same or similar solicitation for the same or similar project. Section 2-7-103(D) does not limit the duration of the disqualification. The director or purchasing officer may determine what constitutes a "same or similar" project for purposes of this subsection.

(D) The Financial Services Department and a department to which the purchasing officer has delegated purchasing authority 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.

(E) This article is not subject to enforcement by the Ethics Review Commission.

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 has been disqualified under[~~violates~~] this article more than two times in a sixty month period[~~once in a three year period~~], the p[~~P~~]urchasing o[~~O~~]fficer 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 and any department to which the purchasing officer has delegated authority for enforcing this article 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.

2-7-111 Director Discretion.

A director has the discretion to apply this Article to any other competitive process not covered by this Article.

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PART 2. Section 2-7-999 is renumbered 2-7-99 and moved to the end of Article 5.

PART 3. This ordinance takes effect on December 1, 2011.

PASSED AND APPROVED

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_____, 2011 § _____
Lee Leffingwell
Mayor

APPROVED: _____ **ATTEST:** _____
Karen M. Kennard
City Attorney

Shirley A. Gentry
City Clerk

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