



MEMORANDUM

TO: Mayor and Council

FROM: Byron E. Johnson, C.P.M., Purchasing Officer

DATE: November 8, 2011

SUBJECT: Anti-Lobbying Ordinance and Ethics Review Commission

On Monday, October 24, 2011, the Ethics Review Commission (ERC) held a special called meeting to address the proposed Anti-Lobbying Ordinance. The ERC made three (3) recommendations for change. Staff has reviewed the recommendations. Subject to the approval of the Council, staff proposes to address these three topics as follows.

The **first recommendation** is clarify who has the power to void a contract awarded to a respondent who has violated this article, as noted in Section 2-7-108 of the Ordinance. Staff recommends that this issue be addressed in the rules that are adopted to enforce the Ordinance, and that the Purchasing Officer, and by delegation, the Director of the Contract Management Department, be authorized to void these contracts. Staff proposes adding new Item 9 to the rules:

9. CONTRACT VOIDABLE

The director or purchasing officer may void a contract awarded as a result of a solicitation in which the respondent violated the article. The director or purchasing officer shall take into account the needs of the municipality, including the time required to resolicit the requirement and the availability of suitable alternate products before voiding the contract. Voiding a contract under the terms of this section is not subject to an appeal.

The ERC's **second recommendation** is to more clearly define who IS NOT a respondent to a solicitation, including who is NOT an "other representative acting on behalf of respondent." Since a negative definition is problematic, staff examined other common legal definitions currently applicable to staff, vendors and the public with which to clarify who IS a respondent. Texas Local Government Code, Chapter 176, Disclosure of Certain Relationships with Local Government Officers includes language that defines a family member; this was not previously addressed in the Ordinance, and would be a worthwhile clarification. Additionally, verbal comments have been received regarding the definition of a respondent's representative and how the public most easily accesses these definitions. Ordinance Section 2-7-103 addresses restrictions on contacts, so staff proposes adding new sections (I) and (J) to Section 2-7-103, reading:

2.7.103 (I). A current employee, director, officer, or member of a respondent, or a person related within the first degree of consanguinity or affinity to a current employee, director, officer or member of a respondent, is presumed to be an agent of the respondent for purposes of making a representation. This presumption is rebuttable by a preponderance of the evidence as determined by the purchasing officer or director.

2.7.103 (J). A respondent's representative is a person or entity acting on a respondent's behalf with the respondent's request and consent. For example, a respondent may email their membership list and ask members to contact council members on the respondent's behalf; the members are then acting per respondent's request and with their consent, and the members have become respondent representatives.

The **third recommendation** is to clarify the scope of complaints made about the solicitation process. Staff proposes to modify Section 2-7-104, (E) by adding language (bolded) to the second sentence so that it reads as follows:

2-7-104 (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 **about the contract process that constitute a representation** 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).

Some examples of complaints that are not representations, and thus not violations, and which would be forwarded on to Council might include the following:

"The City left the solicitation open for an inadequate amount of time to allow a cost effective and efficient response to the solicitation by the vendor community."

"The City allowed the solicitation to remain open for an excessively long period of time; the needs of the municipality argue for a two-week advertising period, and then proceeding on the basis of whatever responses have been received."

"The City has already solicited this item once and received adequate competitive responses; a re-solicitation is a waste of taxpayer dollars."

The proposed rules were posted for public comment on Monday, October 24, 2011. To be considered, comments must be submitted before the 32nd day after posting, which would be Friday, November 25, 2011. Since that is not a City work day, and to allow an adequate period for response, comments should be received before the end of the City business day on Monday, November 28, 2011 in order to be considered. Staff anticipates that comments on the rules will be received and will be addressed in the rules as appropriate.

Please contact me at (512) 974-2050 if I can provide any additional information.

XC: Marc A. Ott, City Manager
 Sue Edwards, Assistant City Manager
 Rudy Garza, Assistant City Manager
 Robert Goode, Assistant City Manager
 Bert Lumbreras, Assistant City Manager
 Michael McDonald, Assistant City Manager
 Leslie Browder, Chief Financial Officer