MEMORANDUM

TO: **Mayor and Council**

FROM: **James Scarboro, Purchasing Officer**

DATE: **September 15, 2017**

SUBJECT: **Recommendations for Revisions to the Austin City Code, Ch. 2-7, Article 6, Anti-Lobbying and Procurement**

In accordance with Council Resolution no. 20170323-055 and subsequent recommendations made by Council's Waste Management Policy Work Group on July 21, 2017], staff from the Purchasing Office, Capital Contracting Office and the Law Department met throughout the summer to review and recommend revisions to Austin City Code, Ch. 2-7, Article 6, Anti-Lobbying and Procurement. In general, the recommended revisions clarify and consolidate the ordinance's contents, while addressing key areas discussed and recommended by the Work Group. Although the revision is broad, key elements of the changes include:

1) **No-Contact Period**. No-Contact Period is shortened; the starting point is delayed; the ending point is made more finite; and the ability to extend the period in the case of cancellation is removed. See Revised Section 2-7-102(6).

2) **Prohibited Representations.** The definition of Representation is clarified; and the descriptions of Prohibited Representations are also clarified. See Revised Section 2-7-102(10) and 2-7-103.

3) **Permitted Representations and Communications.** Representations and other Communications are consolidated and are clarified. See Revised Section 2-7-104.

4) **Mitigating Factors.** The ability to consider mitigating factors when determining a violation of the ordinance is added. E.g., Violation initiated by a City employee or official. See Revised Section 2-7-106(C).

5) **Debarment.** The debarment penalty, currently applicable to respondents with multiple violations, is removed. See Revised Section 2-7-107.

6) **Recusals.** City employees and officials that initiate a Prohibited Representation will be required to recuse themselves from any further involvement in the solicitation, recommending or authorizing any resulting contracts. See 2-7-108.

To assist Council in their review of these recommendations, attached are a number of documents to better illustrate the proposed changes. In addition to current, revised and mark-up versions of the ordinance, also included is a matrix depicting the major changes to the ordinance as listed above.

In anticipation of any change in the ordinance authorized by Council, staff have started working on a corresponding revision of the rules that further implement the ordinance. In general the revision of the rules will include a reorganization of contents such that each section of the ordinance has a corresponding section in the rules. Staff also intend to include standards for decision-making and examples to ensure consistent application and compliance with the ordinance. As soon as Council authorizes any revisions to the ordinance, staff will move to complete and publish these corresponding rules.

I welcome any questions in this regard, james.scarboro@austintexas.gov or (512) 974-2050.

cc: Elaine Hart, Interim City Manager
Robert Goode, Assistant City Manager
Greg Canally, Interim Chief Financial Officer
Anne Morgan, City Attorney
Rolando Fernandez, Interim Capital Contracting Officer
Chris Weema, Assistant City Attorney

Attachments:
Ch. 2-7, Article 6, Anti-Lobbying and Procurement (RECOMMENDATIONS, CLEAN)
Ch. 2-7, Article 6, Anti-Lobbying and Procurement (RECOMMENDATIONS, MARK-UP)
ALO REVISION – Comparison Matrix
Waste Management Policy Work Group – Recommendations (July 21, 2017)
Ch. 2-7, Article 6, Anti-Lobbying and Procurement (CURRENT)

RECOMMENDED REVISIONS, 9-28-2017

ARTICLE 6. – ANTI-LOBBYING AND PROCUREMENT.

§ 2-7-101 – FINDINGS; PURPOSE; APPLICABILITY.

(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.

(D) 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.

(E) Absent an affirmative determination by council, the purchasing officer has the discretion to apply this article to any other competitive process.

(F) Section 1-1-99 does not apply to this article.

Source: Ord. 20071206-045; Ord. 20111110-052.

§ 2-7-102 – DEFINITIONS.

In this article:

(1) AGENT means a person authorized by a respondent to act for or in place of respondent in order to make a representation, including but not limited to:

(a) a person acting at the request of respondent;

(b) a person acting with the knowledge and consent of a respondent;

(c) a person acting with any arrangement, coordination, or direction between the person and the respondent;

(d) a current full-time or part-time employee, owner, director, officer, member, or manager of a respondent;

(e) 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; and

(f) a person related within the first degree of consanguinity or affinity to the respondent, if a respondent is an individual person.

(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*).

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

(5) NO-CONTACT PERIOD means the period of time beginning at the date and time a response to a solicitation is due, as may be extended in the purchasing officer's discretion, 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 and, when applicable, the director of a City department to whom the purchasing officer has delegated procurement authority for that department.

(7) RESPONSE means a response to a solicitation.

(8) RESPONDENT means a person who makes a response to a City solicitation, even if that person subsequently withdraws its response or has been disqualified by the City, and includes:

(a) a contractor for a respondent;

(b) a subsidiary or parent of a respondent;

(c) 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

(d) a subcontactor to a respondent in connection with that respondent's response.

(9) REPRESENTATION means a communication, whether or not initiated by a respondent or agent, that is:

(a) related to a response;

(b) made by a respondent or agent; and

(c) made to a council member, City employee, City representative, or independent contractor hired by the City with respect to the solicitation.

(10) 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 2-7-101(E).

Source: Ord. 20071206-045; Ord. 20111110-052.

§ 2-7-103 – PROHIBITED REPRESENTATIONS.

Subject to the exclusions in Section 2-7-104, during a no-contact period, a respondent and an agent shall not make a representation that is intended to or reasonably likely to:

(1) provide substantive information about the response to which it relates;

(2) advance the interests of the respondent with respect to the solicitation to which it relates;

(3) discredit the response of any other respondent to the solicitation to which it relates;

(4) encourage the City to reject all of the responses to the solicitation to which it relates;

(5) convey a complaint about the solicitation to which it relates; or

(6) 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 to which it relates.

Source: Ord. 20071206-045; Ord. 20111110-052.

§ 2-7-104 – PERMITTED REPRESENTATIONS AND OTHER COMMUNICATIONS.

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

(1) any representation or communication between a respondent or agent and any authorized contact person;

(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 representation or communication between a respondent or an agent and a City employee to the extent the representation or communication relates solely to a non-substantive, procedural matter related to a response or solicitation;

(4) any representation or communication required by or made during the course of a formal protest hearing related to a solicitation;

(5) any representation or communication between a respondent or an agent and the City's Small & Minority Business Resources Department, to the extent the communication relates solely to compliance with Chapters 2-9A through 2-9D (*Minority-Owned and Women-Owned Business Enterprise Procurement Program*) of the City Code;

(6) any representation or 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 representation or 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 representation or 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 communication occurring when making a contribution or expenditure as defined in Chapter 2-2 (*Campaign Finance*).

Source: Ord. 20071206-045; Ord. 20111110-052.

§ 2-7-105 – MODIFICATION OF PROHIBITION.

The purchasing officer may waive, modify, or reduce the prohibited representation requirements in Section 2-7-103 in order to allow respondents to make representations to persons identified in Section 2-7-102(10)(c) 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.

Source: Ord. 20071206-045; Ord. 20111110-052.

§ 2-7-106 – ENFORCEMENT.

(A) This article is not subject to enforcement by the Ethics Review Commission established in Section 2-7-26.

(B) The purchasing officer may consider mitigating factors or circumstances beyond the control of a respondent, including but not limited to any action taken by a respondent in reliance on information provided by a person identified in Section 2-7-102(10)(c), when determining whether a respondent has violated Section 2-7-103.

(C) The purchasing officer has the authority to enforce this article through rules promulgated in accordance with Section 1-2-1, which at a minimum shall include a notice and protest process for respondents disqualified pursuant to Section 2-7-107, including:

(1) written notice of the penalty imposed pursuant to Section 2-7-107;

(2) written notice of the right to protest the penalty imposed; and

(3) written notice of the right to request a an impartial hearing process.

Source: Ord. 20071206-045; Ord. 20111110-052.

§ 2-7-107 – PENALTY.

(A) If the purchasing officer finds that a respondent has violated Section 2-7-103, the respondent is disqualified from participating in the solicitation to which the representation 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 2-7-103 and the solicitation is cancelled for any reason, that respondent is 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 contract resulting from a solicitation that is the subject of a prohibited representation is awarded to a respondent who has violated Section 2-7-103 with respect to that solicitation, that contract is voidable by the City.

Source: Ord. 20071206-045; Ord. 20111110-052.

§ 2-7-108 – RECUSAL.

(A) During a no-contact period, a person identified in Section 2-7-102(10)(c) shall not contact a respondent regarding a response or solicit a representation from a respondent.

(B) A person identified in Section 2-7-102(10)(c) that receives a representation during the no-contact period for a solicitation, or otherwise becomes aware of a violation of Section 2-7-103, shall notify the authorized contact person in writing as soon as practicable.

(C) If a person identified in Section 2-7-102(10)(c) violates either Subsection (A) or Subsection (B), that person shall be recused from further participation in the solicitation to which the violation relates.

RECOMMENDED REVISIONS, 9-28-2017

(MARK-UP)

ARTICLE 6. -– ANTI-LOBBYING AND PROCUREMENT.

§ 2-7-1012 -– FINDINGS; PURPOSE; APPLICABILITY.

(A) —The Ccouncil 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 Chapterarticle.

(B) —The Ccouncil 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 Councilcouncil 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) Unless this Article is invoked by Council, tThis article does not apply to an opportunity to compete for City social service funding; City cultural arts funding; federal, state and City block grant funding; and the sale or rental of real property.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.

(EF) Absent an affirmative determination by council, the purchasing officer has the discretion to apply this article to any other competitive process.

(F) Section 1-1-99 does not apply to this article. A representation excludes communication between a City of Austin attorney and a respondent's attorney.

Source: Ord. 20071206-045; Ord. 20111110-052.

§ 2-7-1021 – D—DEFINITIONS.

In this article:

(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.~~ in order to make a representation, including but not limited to:

(a) a person acting at the request of respondent;

(b) a person acting with the knowledge and consent of a respondent;

(c) a person acting with any arrangement, coordination, or direction between the person and the respondent;

(d) a current full-time or part-time employee, owner, director, officer, member, or manager of a respondent;

(e) 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; and

(f) a person related within the first degree of consanguinity or affinity to the respondent, if a respondent is an individual person.

(2) AUTHORIZED CONTACT PERSON means a City employee designated in a City solicitation as the point of contact for all purposes for that solicitation. ~~means the person identified 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.~~

(3) CITY EMPLOYEE is defined in Section 2-7-2 (*Definitions*). ~~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.~~

(5~~6~~) NO-CONTACT PERIOD means the period of time beginning at the date and time a response to a solicitation is due, as may be extended in the purchasing officer's discretion, 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 and, when applicable, the director of a City department to whom the purchasing officer has delegated procurement authority for that department. ~~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) RESPONSE means a response to a solicitation.

(8) RESPONDENT means a person who makes a response to a City solicitation, even if that person subsequently withdraws its response or has been disqualified by the City, and includes:

(a) a contractor for a respondent;

(b) a subsidiary or parent of a respondent;

(c) 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

(d) a subcontactor to a respondent in connection with that respondent's response.

~~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, 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 subcontactor 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) REPRESENTATION means a communication, whether or not initiated by a respondent or agent, that is:

(a) related to a response;

(b) made by a respondent or agent; and

(c) made to a council member, City employee, City representative, or independent contractor hired by the City with respect to the solicitation.

~~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:~~

~~(a) provide information about the response;~~

~~(b) advance the interests of the respondent;~~

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

~~(d) encourage the City to withdraw the solicitation;~~

~~(e) encourage the City to reject all of the responses;~~

~~(f) convey 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) ~~_~~ 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 2-7-101(E).~~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*).~~

Source: Ord. 20071206-045; Ord. 20111110-052.

~~§ 2-7-102 - FINDINGS; PURPOSE; APPLICABILITY.~~

~~(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) 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.~~

~~(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) Unless this Article is invoked by Council, this article does not apply to an opportunity to compete for City social service funding; City cultural arts funding; federal, state and City block grant funding; and the sale or rental of real property.~~

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

~~Source: Ord. 20071206-045; Ord. 20111110-052.~~

§ 2-7-103 ~~–~~ PROHIBITED REPRESENTATIONS~~RESTRICTION ON CONTACTS~~.

Subject to the exclusions in Section 2-7-104, during a no-contact period, a respondent and an agent shall not make a representation that is intended to or reasonably likely to:

(1) provide substantive information about the response to which it relates;

(2) advance the interests of the respondent with respect to the solicitation to which it relates;

(3) discredit the response of any other respondent to the solicitation to which it relates;

(4) encourage the City to reject all of the responses to the solicitation to which it relates;

(5) convey a complaint about the solicitation to which it relates; or

(6) 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 to which it relates.~~(A) During a no-contact period, a respondent shall make a representation only through the authorized contact person.~~

~~(B) 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. 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 City official or a City employee 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 day after the date the solicitation is withdrawn or all responses are rejected if the solicitation has not been reissued during the ninety 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.~~

~~(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.~~

~~(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.~~

Source: Ord. 20071206-045; Ord. 20111110-052.

§ 2-7-104 ~~–~~ PERMITTED REPRESENTATIONS AND OTHER COMMUNICATIONS.

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

(1) any representation or communication between a respondent or agent and any authorized contact person;

(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 representation or communication between a respondent or an agent and a City employee to the extent the representation or communication relates solely to a non-substantive, procedural matter related to a response or solicitation;

(4) any representation or communication required by or made during the course of a formal protest hearing related to a solicitation;

(5) any representation or communication between a respondent or an agent and the City's Small & Minority Business Resources Department, to the extent the communication relates solely to compliance with Chapters 2-9A through 2-9D (*Minority-Owned and Women-Owned Business Enterprise Procurement Program*) of the City Code;

(6) any representation or 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 representation or 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 representation or 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 communication occurring when making a contribution or expenditure as defined in Chapter 2-2 (*Campaign Finance*).

~~*(A) If City seeks additional information from respondent, 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. The authorized contact person shall distribute a complaint regarding the process 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. 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 or purchasing officer as appropriate.*~~

~~*(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).*~~

~~*(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.*~~

Source: Ord. 20071206-045; Ord. 20111110-052.

§ 2-7-105 ~~—~~ ~~NOTICE~~MODIFICATION OF PROHIBITION.

The purchasing officer may waive, modify, or reduce the prohibited representation requirements in Section 2-7-103 in order to allow respondents to make representations to persons identified in Section 2-7-102(10)(c) 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. ~~(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 City official or City employee, 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) The authorized contact person for that solicitation shall notify council members in writing 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.~~

Source: Ord. 20071206-045; Ord. 20111110-052.

§ 2-7-106 ~~—~~ ~~DISCLOSURE OF PROHIBITED REPRESENTATION~~ENFORCEMENT.

(A) This article is not subject to enforcement by the Ethics Review Commission established in Section 2-7-26.

(B) The purchasing officer may consider mitigating factors or circumstances beyond the control of a respondent, including but not limited to any action taken by a respondent in reliance on information provided by a person identified in Section 2-7-102(10)(c), when determining whether a respondent has violated Section 2-7-103.

(C) The purchasing officer has the authority to enforce this article through rules promulgated in accordance with Section 1-2-1, which at a minimum shall include a notice and protest process for respondents disqualified pursuant to Section 2-7-107, including:

(1) written notice of the penalty imposed pursuant to Section 2-7-107;

(2) written notice of the right to protest the penalty imposed; and

(3) written notice of the right to request a an impartial hearing process.

~~*(A) If a City official or City employee receives a representation during the no-contact period for a solicitation, the official or employee shall notify in writing the authorized contact person for that solicitation as soon as practicable.*~~

~~*(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.*~~

Source: Ord. 20071206-045; Ord. 20111110-052.

§ 2-7-107 ~~—~~ ~~ENFORCEMENT~~PENALTY.

(A) If the purchasing officer finds that a respondent has violated Section 2-7-103, the respondent is disqualified from participating in the solicitation to which the representation 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 2-7-103 and the solicitation is cancelled for any reason, that respondent is 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 contract resulting from a solicitation that is the subject of a prohibited representation is awarded to a respondent who has violated Section 2-7-103 with respect to that solicitation, that contract is voidable by the City. ~~(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.~~

~~(B) If the director or purchasing officer finds that a respondent has violated this article, the respondent is disqualified.~~

~~(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.~~

Source: Ord. 20071206-045; Ord. 20111110-052.

§ 2-7-108 ~~–~~ ~~CONTRACT VOIDABLE~~RECUSAL.

(A) During a no-contact period, a person identified in Section 2-7-102(10)(c) shall not contact a respondent regarding a response or solicit a representation from a respondent.

(B) A person identified in Section 2-7-102(10)(c) that receives a representation during the no-contact period for a solicitation, or otherwise becomes aware of a violation of Section 2-7-103, shall notify the authorized contact person in writing as soon as practicable.

(C) If a person identified in Section 2-7-102(10)(c) violates either Subsection (A) or Subsection (B), that person shall be recused from further participation in the solicitation to which the violation relates.

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

~~*Source: Ord. 20071206-045.*~~

~~§ 2-7-109 DEBARMENT.~~

~~(A) If a respondent has been disqualified under this article more than two times in a sixty month 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 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.~~

~~*Source: Ord. 20071206-045; Ord. 20111110-052.*~~

~~§ 2-7-110 NO CRIMINAL PENALTY.~~

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

~~*Source: Ord. 20071206-045.*~~

~~§ 2-7-111 DIRECTOR DISCRETION.~~

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

~~*Source: Ord. 20111110-052.*~~

ALO REVISION – Comparison Matrix

Ch. 2-7, Article 6 – Anti-Lobbying and Procurement

Element	Current Language	Recommended Language	Discussion
No Contact Period	Start: Date solicitation is issued End: - Date contract is signed, or - Date solicitation is cancelled Extendable: Yes Condition: If the solicitation is canceled with the stated intention to reissue, the no-contact period continues during the time period between the withdrawal and reissue for up to 90 days.	Start: Date and time a response to a solicitation is due End: - Date the contract is signed; - Date solicitation is cancelled; or - 60-days following Council authorization Extendable: No	• Starting the No-Contact period at the solicitation's due date allows staff to know which respondents are subject to the ordinance. • Eliminating the ability to extend and setting a finite expiration eliminates confusion as to the ending of the No-Contact Period. • Shortening this period and adding certainty, regarding those subject to the ordinance and when the period ends, will make the No-Contact List more meaningful to staff, Council and the public.
Prohibited Representations	Prohibits representations that: • provide substantive information about a response • advance the interests of the respondent with respect to the solicitation • discredit the response of any other respondent to the solicitation • encourage the City to reject all of the responses to the solicitation to which it relates; • convey a complaint about the solicitation • asks, influences, or persuades the solicitation process • Permits representations only through the authorized contact person. • Prohibits representations to a City officials or to a City employees • Representations made before a Response is submitted are also prohibited • Prohibition also applies to representations initiated by City officials or City employees • If the solicitation is cancelled with the intention of re-soliciting, the No-Contact Period continues for 90-days after cancellation • In the event of multiple awards, the No-Contact Period continues until the last contract is signed • Provision for allowing representations under emergency circumstances	Prohibits representations that: • provide substantive information about a response • advance the interests of the respondent with respect to the solicitation • discredit the response of any other respondent to the solicitation • encourage the City to reject all of the responses to the solicitation to which it relates; • convey a complaint about the solicitation • asks, influences, or persuades the solicitation process	• Abbreviates and makes more concise the definition and prohibitions associated with representations • Some elements were actually clarifications of the No-Contact Period and Permitted Representations, and were moved

	• Prohibits representations made to a contractor hired by the City to assist with a solicitation • Representations made by agents of a respondent are prohibited • Clarifies definition of respondent's agent		
Permitted Representations and Communications	Allow Representations: • Made to the authorized contact person. • Describing what the authorized contact person does with the respondent's communications • Disallowing a respondent from changing their offer through a communication with the authorized contact person. • Permitting complaints submitted through the authorized contact person • Limiting the Purchasing Officer from distributing complaints that are derogatory to other offerors • Excluding protests from the complaint distribution process • Allowing a respondent to contact the purchasing officer of the authorized contact person does not respond • Ask procedural questions to other City employees • Prohibiting procedural questions to City officials or their staff • Made at a public meeting • Made during negotiations • Made during protest hearings • Made to the Small & Minority Business Resources Department regarding subcontract goals • Made to the City Risk Management coordinator about insurance requirements • Made from the respondent's attorney to the City's Law Department • Allows City employees and officials to discuss the solicitation • Establishes that campaign contributions are not representations	Allow Representations: • Made to the authorize contact person • Made at a public meeting • Made during protest hearings • Made to the Small & Minority Business Resources Department regarding subcontract goals • Made to the City Risk Management coordinator about insurance requirements • Made from the respondent's attorney to the City's Law Department • Establishes that campaign contributions not a representations • Clarifies that communications about an existing contract is not a representation, even if the scope of the current contract is the same or similar to the solicitation's scope	• Some permitted representations were repetitive and were consolidated • Other permitted representations were not applicable to this section and were removed • Clarifications regarding existing contracts and campaign contributions were left in
Mitigating Factors	The Purchasing Officer was not allowed to consider mitigating factors when determining a violation	The Purchasing Officer may consider mitigating factors when determining a violation, e.g., a representation initiated by a City employee or official	Allows the enforce the ordinance, taking into consideration factors that may have been outside the offeror's control
Debarment	Respondents found to have committed multiple violations within a five year period are to be debarred from doing business with the City for up to three years.	There are no references to debarment	As the City has no record of debarring any vendor for violating the ordinance, this penalty is largely a deterrent only
Recusals	There are no prohibitions against City employees or officials who initiate a prohibited representations from vendors that result in violations of the ordinance.	City employees or officials that initiate a prohibited representation shall recuse themselves from further participation in the solicitation, recommending or authorizing any resulting contract	This element was in response to feedback from the Work Group seeking to share more of the responsibility of compliance with the ordnance with City staff and officials.

Recommendations of the Waste Management Policy Working Group

During the fall of 2016 and spring of 2017, the City Council rejected a number of staff-recommended contracts in response to objections from the Zero Waste Advisory Commission and other stakeholders. In March, Council approved Resolution No. 20170323-055 to form a Working Group to surface concerns voiced by industry representatives, commissioners and citizen advocates.

More specifically, the Working Group – Council Members Pool (chair), Alison Alter, Delia Garza, and Ann Kitchen – was charged with providing policy guidance necessary to facilitate city action related to the solicitations that stalled when they came before Council, including 1) Citywide refuse, recycling, organics, and special waste collections from City facilities; 2) Organics processing services, and 3) Management of biosolids reuse. Each issue was carefully considered with the City's 2040 Zero Waste goals in mind.

Efforts to transform the City of Austin's waste management services to a zero-waste reduce/reuse/recycle philosophy began decades ago. Over time, the City developed a wide range of services designed to transform waste into resources, making the most of their continued utility, while keeping our community clean and minimizing the amount of material hauled to area landfills. The City's Community Climate Plan includes a resource recovery goal to achieve Zero Waste by 2040, which means reducing the amount of trash sent to landfills by 90 percent.

The Working Group appreciates the opportunity to examine these issues that are so valuable to our environment, our economy, and public health and safety. We are thankful to staff from Austin Resource Recovery, Austin Water, and the Purchasing Office for providing the necessary resources and support to the Working Group. We are especially thankful to the range of stakeholders – vendors, representatives of the Zero Waste Advisory Commission and Water and Wastewater Commission, and nonprofit advocacy groups – who joined us at the table for a series of robust discussions, artfully moderated by Larry Schooler. (See Appendix for stakeholder participants.)

To ensure all stakeholders, including vendors who had recently bid on contracts, played an active role in the conversation, City Council voted to temporarily suspend the Anti-Lobbying Ordinance. The Working Group recommends continuing the suspension until Council considers draft amendments to the ALO in late September.

This report summarizes the policy questions addressed in the four public meetings and provides recommendations to Council, along with policy justifications for improvements or continuation of existing ordinances or practices and provides recommendations to Council, along with policy justifications for improvements or continuation of existing ordinances or practices.

1. **Should the city continue to competitively solicit waste management contracts? Yes, with some procedural revisions.**

Justification:

- A competitive process provides an opportunity for small businesses to flourish in this industry and for the local economy to grow; it nurtures diversity of providers and prevents monopolies. Such capacity growth is key for achieving our Zero Waste goals.
- The City Charter requires competitive bidding except in case of an emergency involving public health and safety (City Charter Article 7, Section 15).
- Clauses in existing contracts which some argue allow for a non-competitive approach are designed to address emergency situations only.
- There are cost considerations if solicitations are not competitively bid.

Recommendations to Staff:

- Within waste management matrices, revise the definition of "local" to more accurately represent local business presence. The current point allowance favors businesses with offices within the city limits regardless of the type, nature, or history of their presence in the local community. At the same time it penalizes businesses with headquarters just outside the city limits but with substantial business presence in the Austin Area.
- Staff should strictly apply the health and public safety exemption in accordance with state statute. Using this exemption in non-urgent or non-emergency situations could have a chilling effect on potential vendor participation.
- Check all draft solicitations for alignment with policy goals such as zero waste and create a process for the ZWAC and WWC to provide input on policy alignment of the draft prior to issuing the solicitation.

2. Should materials be directed to or away from certain landfills in future solicitations? Yes, materials should be directed to or away from certain landfills through the use of a landfill criteria matrix that reflects Council's environmental priorities.

Justification: Prior Council has established environmental priorities relative to landfills. The City is in a unique position to be a culture maker around environmental practices. Although the City cannot single handedly affect the closure of any one landfill, the City can uphold and apply best positive practices relative to area sustainability, adhering to (Council) policy with contract

requirements and designations. A matrix reflecting these best positive practices would provide a transparent scoring mechanism to determine the use of any particular landfill.
Recommendation to Staff: Direct waste diversion by criteria not by landfill. Per previous Council priorities and issues enumerated during the Waste Working Group's meetings with stakeholders, staff should develop criteria for waste diversion to include considerations such as: community impact and social equity, carbon footprint, amount and type of waste, existing levels of hazardous materials at landfill. Staff should prepare this matrix and it should come before the Council for approval before implementation.

3. Should some contract services be consolidated? A cost analysis is necessary to decide this question.
Justification: Consolidation may create economies of scale and better reporting capacity; however, it also may have undesired effects on the ability of small vendors to compete. More information is needed. Austin Energy, the Convention Center and Aviation have tailored non-consolidated contracts because of their specialized waste; other departments may have like services.
Recommendations to Staff:

- Perform a cost analysis on the impact of consolidating "like" services which includes potential impacts on local business.
- A policy based on the cost analysis should be developed with input from ZWAC.

3. Should the City set diversion requirements for waste management contracts? No.
Justification: Diversion responsibility should stay with the generator because of cost and need for culture change with the generator. The generators in this instance are City Departments. Risk in this instance is most appropriately borne by the waste generator. During emergencies diversion is not required (though diversion is desirable where feasible).
Recommendation: Staff should examine options to build point incentives into contracts for vendor-based generation. Vendors should not be required to bear responsibility, but can be scored accordingly if they are willing to do so. Increased vigilance on generator diversion rates needs to occur.

5. Is there a preferred way to manage utility poles? Reuse, store until further beneficial reuses are found. Seek alternative source for new poles to the extent possible.
Justification: New reuse possibilities were not determined during the working group tenure and will need to continue to be explored. Both the input and the exit process present an opportunity for improvement.
Recommendations to Staff: Staff should continue research on possible reuses for utility poles. Departments should implement a storage plan until beneficial reuses are found. A less contaminated type of pole should also be solicited if it exists and is cost feasible.

6. Should Austin Resource Recovery provide special events services? Leave as is for now; conduct cost of service study to determine changes.

Justification:

- The City maintains a list of vendors and acts only as the service provider of last resort for special events held in the city. Vendor of last resort is an appropriate role for the City. In this role, the City would provide service (using a vendor) only if a special event could not secure a vendor from the list. In this case the City would be paid for the service at Council adopted rates.
- When the City sponsors or co-sponsors a special event, it provides special events services, allowing fees to be waived. Even in these cases, the City contracts with private service providers.
- Waived fees have an impact on ARR rates and city budgets though ARR is an enterprise fund.

Recommendation to Staff: Conduct a service study to determine appropriate reimbursement rates for the City's role as vendor of last resort and whether fee waivers regarding waste services for special events are sustainable by relevant departments. This cost of service study can inform budget considerations.

7. Is there a preferred policy for bio-solids management? The Working Group agrees the Dillo Dirt program is important. We recommend retaining it, and adopting the October 2016 policy recommendations of the WWW/ZWAC Joint Working Group (Exhibit A), with some additional recommendations noted below.

Justification: Although current procedures generally conform to our Zero Waste goals, the Working Group wants to ensure there is a clear policy in place to provide direction that remains consistent with our goals.

Recommendations to Staff:

- Representative samples of compost will be collected and tested by city staff or an independent third party for stability and maturity;
- Austin Water should develop plans to return to normal operations at the termination of "emergency condition," and
- Per the joint working group recommendation, the working group recommends 100% of biosolids will be converted to compost, while allowing for a diverse range of composts in order to appeal to the widest range of potential markets.

8. Should the City waive the anti-lobbying ordinance (ALO)? No, but revisions are required per recommendations below.

Justification: During working group discussions, both city staff and stakeholders identified a number of ways in which we could clarify and improve the ALO to strengthen working

relationships with waste management vendors and the City. Since the ALO applies to all vendors regardless of industry, any changes to the ALO would apply to the City's interactions with all vendors. In order to reach a healthier and more transparent working climate with all City vendors, the working group recommends the following.

Recommendations to Staff:

Recommendations on the application of the ordinance, duration and allowable communications:

- Apply the anti-lobbying ordinance only to the solicitation. Vendors may communicate on all other matters without violating the ALO.
- Apply the ALO from the time a Request for Proposals (RFP) is released through Council's vote on executing the contract. Should an RFP be pulled down, then the ordinance does not apply during the timeframe the RFP is pulled down
- Narrow the definition of "Representations" to target lobbying. For instance, if staff tells a vendor that the ALO does not apply and a communication is allowable - then the vendor cannot later be disqualified as violating the ordinance by the communication.
- Add communications regarding existing contracts to "Permitted Communications."

Recommendations on enforcement, appeals and complaints:

- Develop a body of rules in a companion regulatory document to the ALO that defines enforcement, appeal, complaint and debarment procedures.
- The companion document should:
    1. Clarify the current definition of "Representation" and what triggers debarment
    2. Clarify procedures for determining violations, judgment, and penalty enforcement and incorporate an option to engage a third-party reviewer such as the Ethics Review Commission to determine violations, judgment, and penalty enforcement.
    3. Clarify the process for submitting and facilitating complaints.
    4. City Purchasing and City Legal should develop this companion document for approval by Council and prepare any language updates to the ALO that might be required to allow for adopted rules in the companion document.

Other recommendations:

- The existing ALO should remain suspended until Council approves proposed revisions. Staff from Law and Purchasing are working on draft language to address issues identified in discussions with stakeholders. Estimated date for Council approval is the end of September.
- Revisions to the ALO may require continued participation from stakeholders. The Purchasing Office should receive and compile further stakeholder input for Council and will work with adopted input as determined by Council.

CURRENT ORDINANCE

ARTICLE 6. - ANTI-LOBBYING AND PROCUREMENT.

§ 2-7-101 - DEFINITIONS.

In this article:

(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) AUTHORIZED CONTACT PERSON means the person identified 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.

(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) 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) RESPONSE means a response to a solicitation.

(8) 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, 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 subcontactor 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) 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:

(a) provide information about the response;

(b) advance the interests of the respondent;

(c) discredit the response of any other respondent;

(d) encourage the City to withdraw the solicitation;

(e) encourage the City to reject all of the responses;

(f) convey 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) 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*).

Source: Ord. 20071206-045; Ord. 20111110-052.

§ 2-7-102 - FINDINGS; PURPOSE; APPLICABILITY.

(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) 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.

(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) Unless this Article is invoked by Council, this article does not apply to an opportunity to compete for City social service funding; City cultural arts funding; federal, state and City block grant funding; and the sale or rental of real property.

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

Source: Ord. 20071206-045; Ord. 20111110-052.

§ 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) 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. 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 City official or a City employee 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 day after the date the solicitation is withdrawn or all responses are rejected if the solicitation has not been reissued during the ninety 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.

(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.

(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.

Source: Ord. 20071206-045; Ord. 20111110-052.

§ 2-7-104 - PERMITTED REPRESENTATIONS.

(A) If City seeks additional information from respondent, 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. The authorized contact person shall distribute a complaint regarding the process 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. 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 or purchasing officer as appropriate.

(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*).

(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.

Source: Ord. 20071206-045; Ord. 20111110-052.

§ 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 City official or City employee, 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) The authorized contact person for that solicitation shall notify council members in writing 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.

Source: Ord. 20071206-045; Ord. 20111110-052.

§ 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 official or employee shall notify in writing the authorized contact person for that solicitation as soon as practicable.

(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.

Source: Ord. 20071206-045; Ord. 20111110-052.

§ 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.

(B) If the director or purchasing officer finds that a respondent has violated this article, the respondent is disqualified.

(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.

Source: Ord. 20071206-045; Ord. 20111110-052.

§ 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.

Source: Ord. 20071206-045.

§ 2-7-109 - DEBARMENT.

(A) If a respondent has been disqualified under this article more than two times in a sixty month 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 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.

Source: Ord. 20071206-045; Ord. 20111110-052.

§ 2-7-110 - NO CRIMINAL PENALTY.

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

Source: Ord. 20071206-045.

§ 2-7-111 - DIRECTOR DISCRETION.

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

Source: Ord. 20111110-052.