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ORDINANCE NO.

AN ORDINANCE AMENDING CHAPTER 2-7 OF THE CITY CODE RELATED TO ANTI-LOBBYING AND PROCUREMENT.

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

PART 1. City Code Chapter 2-7, Article 6 (*Anti-Lobbying and Procurement*), is repealed and replaced to read:

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.

- 36 (E) Absent an affirmative determination by council, the purchasing officer has
37 the discretion to apply this article to any other competitive process.
- 38 (F) Section 1-1-99 does not apply to this article.
- 39

40 **§ 2-7-102 – DEFINITIONS.**

41 In this article:

- 42 (1) AGENT means a person authorized by a respondent to act for or in
43 place of respondent in order to make a representation, including but
44 not limited to:
- 45 (a) a person acting at the request of respondent;
 - 46 (b) a person acting with the knowledge and consent of a
47 respondent;
 - 48 (c) a person acting with any arrangement, coordination, or
49 direction between the person and the respondent;
 - 50 (d) a current full-time or part-time employee, owner, director,
51 officer, member, or manager of a respondent;
 - 52 (e) a person related within the first degree of consanguinity or
53 affinity to a current full-time or part-time employee, owner,
54 director, officer, member, or manager of a respondent; and
 - 55 (f) a person related within the first degree of consanguinity or
56 affinity to the respondent, if a respondent is an individual
57 person.
- 58 (2) AUTHORIZED CONTACT PERSON means a City employee
59 designated in a City solicitation as the point of contact for all
60 purposes for that solicitation.
- 61 (3) CITY EMPLOYEE is defined in Section 2-7-2 (*Definitions*).
- 62 (4) CITY OFFICIAL is defined in Section 2-7-2 (*Definitions*).
- 63 (5) NO-CONTACT PERIOD means the period of time beginning at the
64 date and time a response to a solicitation is due, as may be extended in
65 the purchasing officer's discretion, and continuing through the earliest
66 of the following:
- 67 (a) the date the last contract resulting from the solicitation is
68 signed;
 - 69 (b) 60 days following council authorization of the last contract
70 resulting from the solicitation; or

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- (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 subcontractor 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,

106 affirmatively determines this article should apply in accordance with
107 Section 2-7-101(E).

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109 **§ 2-7-103 – PROHIBITED REPRESENTATIONS.**

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

- 113 (1) provide substantive information about the response to which it relates;
- 114 (2) advance the interests of the respondent with respect to the solicitation
115 to which it relates;
- 116 (3) discredit the response of any other respondent to the solicitation to
117 which it relates;
- 118 (4) encourage the City to reject all of the responses to the solicitation to
119 which it relates;
- 120 (5) convey a complaint about the solicitation to which it relates; or
- 121 (6) directly or indirectly ask, influence, or persuade any City official, City
122 employee, or body to favor or oppose, recommend or not recommend,
123 vote for or against, consider or not consider, or take action or refrain
124 from taking action on any vote, decision, or agenda item regarding the
125 solicitation to which it relates.

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127 **§ 2-7-104 – PERMITTED REPRESENTATIONS AND OTHER**
128 **COMMUNICATIONS.**

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

- 131 (1) any representation or communication between a respondent or agent
132 and any authorized contact person;
- 133 (2) any communication between a respondent or agent and any person to
134 the extent the communication relates solely to an existing contract
135 between a respondent and the City, even when the scope, products, or
136 services of the current contract are the same or similar to those
137 contained in an active solicitation;
- 138 (3) any representation or communication between a respondent or an
139 agent and a City employee to the extent the representation or
140 communication relates solely to a non-substantive, procedural matter related
141 to a response or solicitation;

- 142 (4) any representation or communication required by or made during the
143 course of a formal protest hearing related to a solicitation;
- 144 (5) any representation or communication between a respondent or an
145 agent and the City's Small & Minority Business Resources
146 Department, to the extent the communication relates solely to
147 compliance with Chapters 2-9A through 2-9D (*Minority-Owned and*
148 *Women-Owned Business Enterprise Procurement Program*) of the
149 City Code;
- 150 (6) any representation or communication between an attorney
151 representing a respondent and an attorney authorized to represent the
152 City, to the extent the communication is permitted by the Texas
153 Disciplinary Rules of Professional Conduct;
- 154 (7) any representation or communication made by a respondent or an
155 agent to the applicable governing body during the course of a meeting
156 properly noticed and held under Texas Government Code Chapter 551
157 (*Open Meetings Act*);
- 158 (8) any representation or communication between a respondent or an
159 agent and a City employee whose official responsibility encompasses
160 the setting of minimum insurance requirements for the solicitation to
161 which the communication relates, to the extent the communication
162 relates solely to the insurance requirements established by the City in
163 the solicitation; and
- 164 (9) any communication occurring when making a contribution or
165 expenditure as defined in Chapter 2-2 (*Campaign Finance*).

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167 **§ 2-7-105 – MODIFICATION OF PROHIBITION.**

168 The purchasing officer may waive, modify, or reduce the prohibited representation
169 requirements in Section 2-7-103 in order to allow respondents to make representations to
170 persons identified in Section 2-7-102(10)(c) other than the authorized contact person
171 when the purchasing officer determines, in writing, that the solicitation must be
172 conducted in an expedited manner, including but not limited to a solicitation conducted
173 for reasons of health or safety under the shortest schedule possible with no extensions.

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175 **§ 2-7-106 – ENFORCEMENT.**

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

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

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

- 187 (1) written notice of the penalty imposed pursuant to Section 2-7-107;
- 188 (2) written notice of the right to protest the penalty imposed; and
- 189 (3) written notice of the right to request a an impartial hearing process.

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191 **§ 2-7-107 – DISQUALIFICATION; CONTRACT VOIDABLE.**

192 (A) If the purchasing officer finds that a respondent has violated Section 2-7-
193 103, the respondent is disqualified from participating in the solicitation to
194 which the representation related.

195 (B) The purchasing officer shall promptly provide written notice of
196 disqualification to a disqualified respondent.

197 (C) If a respondent is disqualified from participating in a solicitation as a result
198 of violating Section 2-7-103 and the solicitation is cancelled for any reason,
199 that respondent is disqualified from submitting a response to any reissue of
200 the same or similar solicitation for the same or similar project. For the
201 purposes of this section, the purchasing officer may determine whether any
202 particular solicitation constitutes a “same or similar solicitation for the same
203 or similar project”.

204 (D) If a contract resulting from a solicitation that is the subject of a prohibited
205 representation is awarded to a respondent who has violated Section 2-7-103
206 with respect to that solicitation, that contract is voidable by the City.

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208 **§ 2-7-108 – RECUSAL.**

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

212 (B) A person identified in Section 2-7-102(10)(c) that receives a representation
213 during the no-contact period for a solicitation, or otherwise becomes aware

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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.

PART 2. This ordinance takes effect on _____, 2017.

PASSED AND APPROVED

_____, 2017

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§
§

Steve Adler
Mayor

APPROVED: _____

Anne L. Morgan
City Attorney

ATTEST: _____

Jannette S. Goodall
City Clerk