

1
2 **ORDINANCE NO.**
3

4 **AN ORDINANCE REPEALING AND REPLACING CITY CODE**
5 **CHAPTER 2-7, ARTICLE 6 RELATING TO ANTI-LOBBYING AND**
6 **PROCUREMENT.**
7

8 **BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**
9

10 **PART 1:** City Code Chapter 2-7, Article 6 (Anti-Lobbying and Procurement), is
11 repealed and replaced to read:
12

13 *ARTICLE 6. – ANTI-LOBBYING AND PROCUREMENT.*
14

15 **§ 2-7-101 – FINDINGS; PURPOSE.**

16 (A) The council finds that persons who enter a competitive process for a city
17 contract voluntarily agree to abide by the terms of the competitive process,
18 including the provisions of this article.

19 (B) The council finds that it is in the City's interest:

20 (1) to provide the most fair, equitable, and competitive process possible
21 for selection among potential vendors in order to acquire the best and
22 most competitive goods and services; and

23 (2) to further compliance with State law procurement requirements.

24 (C) The council intends that:

25 (1) each response is considered on the same basis as all others; and

26 (2) respondents have equal access to information regarding a solicitation,
27 and the same opportunity to present information regarding the
28 solicitation for consideration by the City.
29

30 **§ 2-7-102 - APPLICABILITY.**

31 (A) This article applies to all solicitations except:

32 (1) City social service funding;

33 (2) City cultural arts funding;

34 (3) federal, state or City block grant funding;

35 (4) the sale or rental of real property;

- 36 (5) interlocal contracts or agreements; and
37 (6) solicitations specifically exempted from this article by council.
38

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

41 (C) City Code Section 1-1-99 (*Offenses; General Penalty*) does not apply to this
42 article.

43
44 **§ 2-7-103 - DEFINITIONS.**

45 In this article:

46 (1) AGENT means a person authorized by a respondent to act for or in place
47 of the respondent in order to communicate on behalf of that respondent.
48 Each of the following is presumed to be an agent:

- 49 (a) a current full-time or part-time employee, owner, director, officer,
50 member, or manager of a respondent;
- 51 (b) a person related within the first degree of consanguinity or affinity
52 to a current full-time or part-time employee, owner, director,
53 officer, member, or manager of a respondent;
- 54 (c) a person related within the first degree of consanguinity or affinity
55 to the respondent, if a respondent is an individual person; and
- 56 (d) a lobbyist, attorney, or other legal representative of the respondent
57 that has been retained by the respondent with respect to the subject
58 matter of either the solicitation or the respondent's response to the
59 solicitation.

60 (2) AUTHORIZED CONTACT PERSON means a City employee
61 designated in a City solicitation as the point of contact for all purposes
62 for that solicitation.

63 (3) CITY EMPLOYEE is defined in Section 2-7-2 (*Definitions*), and further
64 includes an independent contractor hired by the City with respect to the
65 solicitation.

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

67 (5) NO-LOBBYING PERIOD means the period of time beginning at the
68 date and time a solicitation is published and continuing through the
69 earliest of the following:

- 70 (a) the date the last contract resulting from the solicitation is signed;

71 (b) 60 days following council authorization of the last contract resulting
72 from the solicitation; or

73 (c) cancellation of the solicitation by the City

74 (6) PURCHASING OFFICER means the City employee authorized to carry
75 out the purchasing and procurement functions and authority of the City.

76 (7) RESPONSE means a written offer or submission in reply to a
77 solicitation.

78 (8) RESPONDENT means a person or entity that has timely submitted or
79 subsequently timely submits a response to a City solicitation, even if that
80 person subsequently withdraws its response or has been disqualified by
81 the City for any reason. Respondent includes:

82 (a) a subsidiary or parent of a respondent;

83 (b) a joint enterprise, joint venture, or partnership with an interest in a
84 response and in which a respondent is a member or is otherwise
85 involved, including any partner in such joint enterprise, joint
86 venture, or partnership; and

87 (c) a subcontractor to a respondent in connection with that respondent's
88 response.

89 (9) SOLICITATION means an opportunity to compete to conduct business
90 with the City that requires council approval under City Charter Article
91 VII Section 15 (*Purchase Procedure*), and includes, without limitation:

92 (a) an invitation for bids;

93 (b) a request for proposals;

94 (c) a request for qualifications;

95 (d) a notice of funding availability; and

96 (e) any other competitive solicitation process for which the purchasing
97 officer, in the purchasing officer's sole discretion, affirmatively
98 determines this article should apply in accordance with Section 2-7-
99 102(B).

100 **§ 2-7-104 - RESTRICTION ON LOBBYING.**

101 Subject to the exclusions in Section 2-7-105 (*Permitted Communications*),
102 during a no-lobbying period,

103 (1) a respondent or an agent shall not communicate directly with a City
104 official or a City employee, or both in order to:

- 105 (a) provide substantive information about any respondent or response
106 with respect to the solicitation to which the communication relates;
- 107 (b) encourage the City to reject one or more of the responses to the
108 solicitation to which the communication relates;
- 109 (c) convey a complaint about the solicitation to which the
110 communication relates; or
- 111 (d) ask any City official or City employee to favor or oppose,
112 recommend or not recommend, vote for or against, consider or not
113 consider, or take action or refrain from taking action on any vote,
114 decision, or agenda item regarding the solicitation to which the
115 communication relates.
- 116 (2) a City official shall not contact or communicate with a respondent
117 regarding a response or the solicitation to which the no-lobbying period
118 applies;
- 119 (3) a City employee, other than the authorized contact person, shall not
120 contact or communicate with a respondent regarding a response or the
121 solicitation to which the no-lobbying period applies.
- 122

123 **§ 2-7-105 – PERMITTED COMMUNICATIONS.**

124 The following communications are permitted under this article at any time:

- 125 (1) any communication between a respondent or agent and any authorized
126 contact person, including, without limitation and in accordance with
127 regulation, any complaint concerning the solicitation;
- 128 (2) any communication between a respondent or agent and any person to the
129 extent the communication relates solely to an existing contract between a
130 respondent and the City, even when the scope, products, or services of
131 the current contract are the same or similar to those contained in an
132 active solicitation;
- 133 (3) any communication between a respondent or an agent and a City
134 employee to the extent the communication relates solely to a non-
135 substantive, procedural matter related to a response or solicitation;
- 136 (4) any communication required by or made during the course of a formal
137 protest hearing related to a solicitation;
- 138 (5) any communication between a respondent or an agent and the City's
139 Small & Minority Business Resources Department, that solely relates to
140 compliance with Chapters 2-9A through 2-9D (*Minority-Owned and*

141 *Women-Owned Business Enterprise Procurement Program*) of the City
142 Code;

- 143 (6) any communication between an attorney representing a respondent and
144 an attorney authorized to represent the City, to the extent the
145 communication is permitted by the Texas Disciplinary Rules of
146 Professional Conduct;
- 147 (7) any communication made by a respondent or an agent to the applicable
148 governing body during the course of a meeting properly noticed and held
149 under Texas Government Code Chapter 551 (*Open Meetings Act*);
- 150 (8) any communication between a respondent or an agent and a City
151 employee whose official responsibility encompasses the setting of
152 minimum insurance requirements for the solicitation to which the
153 communication relates, to the extent the communication relates solely to
154 the insurance requirements established by the City in the solicitation; and
- 155 (9) any contribution or expenditure as defined in Chapter 2-2 (*Campaign*
156 *Finance*).

157
158 **§ 2-7-106 – MODIFICATION OF RESTRICTION.**

159 The purchasing officer may waive, modify, or reduce the requirements in
160 Section 2-7-104 (*Restrictions on Lobbying*) in order to allow respondents to
161 communicate with a City employee or a City official other than the authorized
162 contact person when the purchasing officer determines, in writing, that the
163 solicitation must be conducted in an expedited manner, including but not limited
164 to a solicitation conducted for reasons of health or safety under the shortest
165 schedule possible with no extensions. Any such modification authorized by the
166 purchasing officer shall be stated in the solicitation.

167
168 **§ 2-7-107 – NOTICE.**

- 169 (A) Each solicitation shall include a notice advising respondents and prospective
170 respondents:
- 171 (1) of the requirements of this article;
- 172 (2) that any communication initiated by a City employee or City official,
173 other than the authorized contact person, during the no-lobbying period
174 regarding a response or the solicitation may result in a violation of
175 Section 2-7-104(1) if the respondent subsequently lobbies that City
176 employee or City official.

177 (B) The purchasing officer, or a City employee designated by the purchasing
178 officer, shall provide weekly written notice, accessible to all City employees
179 and City officials, of each solicitation for which the no-lobbying period is in
180 effect.

181
182 **§ 2-7-108 - DISCLOSURE OF VIOLATION.**

183 A City official or a City employee other than the authorized contact person
184 that becomes aware of a violation of Section 2-7-104 (*Restrictions on Lobbying*)
185 shall notify the authorized contact person in writing as soon as practicable.

186
187 **§ 2-7-109 - ENFORCEMENT.**

188 (A) This article is not subject to enforcement by the Ethics Review Commission
189 established in Chapter 2-7, Article 2 (*Ethics Review Commission*).

190 (B) The purchasing officer may waive a violation of Section 2-7-104(1) if the
191 violation was solely the result of communications initiated by a City official
192 or a City employee other than the authorized contact person.

193 (C) The purchasing officer has the authority to enforce this article through rules
194 promulgated in accordance with Chapter 1-2 (*Adoption of Rules*), which at a
195 minimum shall include a notice and protest process for respondents
196 disqualified pursuant to Section 2-7-110 (*Disqualification; Contract*
197 *Voidable*), including:

- 198 (1) written notice of the disqualification imposed pursuant to Section 2-7-
199 110 (*Disqualification; Contract Voidable*);
200 (2) written notice of the right to protest the disqualification imposed; and
201 (3) written notice of the right to request an impartial hearing process.
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203 **§ 2-7-110 - DISQUALIFICATION; CONTRACT VOIDABLE.**

204 (A) If the purchasing officer finds that a respondent has violated Section 2-7-
205 104(1), the respondent is disqualified from participating in the solicitation to
206 which the violation related.

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

209 (C) If a respondent is disqualified from participating in a solicitation as a result of
210 violating Section 2-7-104(1) and the solicitation is cancelled for any reason,
211 that respondent is also disqualified from submitting a response to any reissue

212 of the same or similar solicitation for the same or similar project. For the
213 purposes of this section, the purchasing officer may determine whether any
214 particular solicitation constitutes a “same or similar solicitation for the same or
215 similar project”.

216 (D) If a respondent violates Section 104(1) and is awarded a contract resulting
217 from the solicitation to which the violation relates, the City may void that
218 contract.

219 (E) Respondents that violate Section 2-7-104(1) three or more times during a five
220 year period may be subject to debarment from participating in any new
221 contracts with the City for a period of up to three years.

222
223 **PART 2.** This ordinance takes effect on _____, 2018.

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226 **PASSED AND APPROVED**

227 _____, 2018

§
§
§

230 Steve Adler
231 Mayor

232
233
234 **APPROVED:** _____
235 Anne L. Morgan
236 City Attorney

ATTEST: _____
Jannette S. Goodall
City Clerk