

Project
Update

Anti-Lobbying Ordinance: *ALO Version 3 and Next Steps*



AUSTIN FINANCE ONLINE

Audit and Finance Committee
Austin City Hall
Boards and Commission Room
April 25, 2018
9:30 – 11:30 AM CDT

Purchasing Office

Anti-Lobbying Ordinance: Agenda

Background: *ALO Revision Efforts to-Date*

V3: *Recommended Changes*

Next Steps: *Further Changes or Proceed to Council*



Anti-Lobbying Ordinance: Agenda

Background: *ALO Revision Efforts to-Date*

V3: Recommended Changes

Next Steps: *Further Changes or Proceed to Council*



ALO = Anti-Lobbying Ordinance

Anti-Lobbying Ordinance:

Background: *ALO Revision Efforts to-Date*

- 4/2017
 - Council lifted the ALO for waste management solicitations
 - Established the Waste Management Policy Work Group
 - Asked the Work Group to make recommendations concerning the ALO
- 7/2017
 - Waste Management Policy Work Group recommended the ALO be revised
- 9/2017
 - Staff presented a revised version of the ALO to Council
 - Council referred the revised ALO to the Ethics Review Commission (ERC)
- 9/2017
 - Staff presented a revised version of the ALO to Council (Version 1)
 - Council referred the ALO Version 1 to the ERC



Anti-Lobbying Ordinance:

Background: *ALO Revision Efforts to-Date*

- 11/2017 - ERC recommended further revisions be made
 - Staff requested time to gather more vendor input and to revise the ALO further
- 1/2018 - Staff published a further revision of the ALO (Version 2) and associated docs.
 - Notices were sent to thousands of vendors requesting comments
 - Additional outreach made to target vendor segments and associations
- 2/2018 - Staff returned to Audit and Finance Committee to review ALO Version 2 (V2)



Anti-Lobbying Ordinance:

Background: *ALO Revision Efforts to-Date*

- 3/2018
 - Staff met with Committee Members and/or their staff to receive their feedback on ALO V2
 - Staff made final revisions to the ALO Version 3 (V3) based on prior public comments and subsequent feedback from Committee Members
- Today
 - Review ALO V3 and seek direction from the Committee, regarding any further revisions or approval to take ALO V3 to Council



ALO = Anti-Lobbying Ordinance

Anti-Lobbying Ordinance: Agenda

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ALO = Anti-Lobbying Ordinance

Anti-Lobbying Ordinance:

V3: Recommended Changes

IN GENERAL.

- Majority of feedback was positive, general desire to maintain most aspects of ALO
- Constructive feedback from parties in or associated with waste management



ALO = Anti-Lobbying Ordinance

Anti-Lobbying Ordinance:

V3: *Recommended Changes*

§ 2-7-101 – FINDINGS; PURPOSE.

Section is reorganized but unchanged

- Establishes Council's purpose and intentions for the ALO

ARTICLE 6. - ANTI-LOBBYING AND PROCUREMENT.

§ 2-7-101 – FINDINGS; PURPOSE.

- (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.

§ 2-7-102 – APPLICABILITY.

- (A) This article applies to all solicitations except:
 - (1) City social service funding;
 - (2) City cultural arts funding;



Anti-Lobbying Ordinance:

V3: *Recommended Changes*

§ 2-7-102 – APPLICABILITY.

Section is reorganized but unchanged

- Makes ALO applicable to defined solicitations
- Exempts certain solicitations
- Authorizes staff to apply ALO to other competitive processes
- Waives criminal penalties

- (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.

§ 2-7-102 – APPLICABILITY.

(A) 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.

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

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

§ 2-7-103 – DEFINITIONS.

In this article:

- (1) AGENT means a person authorized by a respondent to act for or in place of respondent in order to communicate on behalf of that respondent. Each of the following is presumed to be agent
 - (a) a current full-time or part-time employee, owner, director, officer, member, or manager of a respondent;



Anti-Lobbying Ordinance:

V3: *Recommended Changes*

§ 2-7-103 – DEFINITIONS.

Section includes several clarified definitions, most discussed included

- AGENT
- NO-LOBBYING PERIOD
- RESPONDENT

- (B) Absent an affirmative determination by the council, the purchasing officer has the discretion to apply this article to any other competitive process.
- (C) Section 1-1-99 does not apply to this article.

§ 2-7-103 – DEFINITIONS.

In this article:

- (1) **AGENT** means a person authorized by a respondent to act for or in place of respondent in order to communicate on behalf of that respondent. Each of the following is presumed to be agent
 - (a) a current full-time or part-time employee, owner, director, officer, member, or manager of a respondent;
 - (b) 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;
 - (c) a person related within the first degree of consanguinity or affinity to the respondent, if a respondent is an individual person; and
 - (d) a lobbyist, attorney, or other legal representative of the respondent that has been retained by the respondent with respect to the subject matter of either the solicitation or the respondent's response to the solicitation.
- (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), and further includes an independent contractor hired by the City with respect to the solicitation.



Anti-Lobbying Ordinance: V3: *Recommended Changes*

§ 2-7-103 – DEFINITIONS. (cont.)

Section includes several clarified definitions, most discussed included

- AGENT
- NO-LOBBYING PERIOD
- RESPONDENT

- an independent contractor hired by the City with respect to the solicitation.
- (4) CITY OFFICIAL is defined in Section 2-7-2 (*Definitions*).
- (5) **NO-LOBBYING PERIOD** means the period of time beginning at the date and time a solicitation is published 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.
- (7) RESPONSE means a written offer or submission in reply to a solicitation.
- (8) **RESPONDENT** means a person or entity who has timely submitted or subsequently timely submits a response to a City solicitation, even if that person subsequently withdraws its response or has been disqualified by the City for any reason. Respondent includes:
- (a) a subsidiary or parent of a respondent;
 - (b) 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
 - (c) a subcontractor to a respondent in connection with that respondent's response.



Anti-Lobbying Ordinance:

V3: Recommended Changes

§ 2-7-104 – RESTRICTION ON LOBBYING.

Section is reorganized, several changes, largely clarifications

- Limits communications between respondents and City officials and employees

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

§ 2-7-104 – RESTRICTION ON LOBBYING.

Subject to the exclusions in Section 2-7-105, during a no-lobbying period,

- (1) a respondent or an agent shall not communicate directly with a City official or a City employee, or both in order to:
 - (a) provide substantive information about any respondent or response with respect to the solicitation to which the communication relates;
 - (b) encourage the City to reject one or more of the responses to the solicitation to which the communication relates;
 - (c) convey a complaint about the solicitation to which the communication relates; or
 - (d) ask any City official or City employee 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 the communication relates.
- (2) a City official shall not contact or communicate with a respondent regarding a response or the solicitation to which the no-lobbying period applies;
- (3) a City employee, other than the authorized contact person, shall not contact or communicate with a respondent regarding a response or the solicitation to which the no-lobbying period applies.



Anti-Lobbying Ordinance: V3: *Recommended Changes*

§ 2-7-105 – PERMITTED COMMUNICATIONS.

Section is reorganized, several changes,
largely clarifications

- Lists specific communications allowed
 - Authorized Contact Person
 - Existing contract
 - Non-substantive procedures
 - Protest or Hearing
 - Small and Minority Business Resources Department
 - ...

- (3) a City employee, other than the authorized contact person, shall not contact or communicate with a respondent regarding a response or the solicitation to which the no-lobbying period applies.

§ 2-7-105 – PERMITTED COMMUNICATIONS.

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

- (1) any communication between a respondent or agent and any authorized contact person, including, without limitation and in accordance with regulation, any complaint concerning the solicitation;
- (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 communication between a respondent or an agent and a City employee to the extent the communication relates solely to a non-substantive, procedural matter related to a response or solicitation;
- (4) any communication required by or made during the course of a formal protest hearing related to a solicitation;
- (5) any communication between a respondent or an agent and the City's Small & Minority Business Resources Department, that solely relates to compliance with Chapters 2-9A through 2-9D (*Minority-Owned and Women-Owned Business Enterprise Procurement Program*) of the City Code;
- (6) any communication between an attorney representing a respondent



Anti-Lobbying Ordinance: V3: Recommended Changes

§ 2-7-105 – PERMITTED COMM. (cont.)

- ...
- Attorneys
- Public Called Meetings
- HR Risk Management re: Insurance
- Contributions

compliance with Chapters 2-9A through 2-9D (*Minority-Owned and Women-Owned Business Enterprise Procurement Program*) of the City Code;

- (6) any 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 communication made by a respondent or an agent to the applicable governing body at a meeting properly noticed and held under Texas Government Code Chapter 551 (*Open Meetings Act*);
- (8) any 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 contribution or expenditure as defined in Chapter 2-2 (*Campaign Finance*).

§ 2-7-106 – MODIFICATION OF RESTRICTION.

The purchasing officer may waive, modify, or reduce the requirements in Section 2-7-104 in order to allow respondents to communicate with a City employee or a City official 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. Any such modification authorized by the purchasing officer shall be stated in the solicitation.



Anti-Lobbying Ordinance:

V3: Recommended Changes

§ 2-7-106 – MODIFICATION OF RESTRICTION.

Section is reorganized and clarified

- Authorizes staff to waive or modify ALO during emergencies

(9) any contribution or expenditure as defined in Chapter 2-2 (*Campaign Finance*).

§ 2-7-106 – MODIFICATION OF RESTRICTION.

The purchasing officer may waive, modify, or reduce the requirements in Section 2-7-104 in order to allow respondents to communicate with a City employee or a City official 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. Any such modification authorized by the purchasing officer shall be stated in the solicitation.

§ 2-7-107 – NOTICE.

- (A) Each solicitation shall include a notice advising respondents and prospective respondents:
- (1) of the requirements of this article;
 - (2) that any communication initiated by a City employee or City official, other than the authorized contact person, during the no-lobbying period regarding a response or the solicitation may result in a violation of Section 2-7-104(1) if the respondent subsequently lobbies that City employee or City official.
- (B) The purchasing officer, or a City employee designated by the purchasing officer, shall provide weekly written notice, accessible to all City employees and City officials, of each solicitation for which the no-lobbying period is in effect.



Anti-Lobbying Ordinance:

V3: *Recommended Changes*

§ 2-7-107 – NOTICE.

Section clarified only

§ 2-7-108 – DISCLOSURE OF VIOLATION.

Section clarified only

with no extensions. Any such modification authorized by the purchasing officer shall be stated in the solicitation.

§ 2-7-107 – NOTICE.

- (A) Each solicitation shall include a notice advising respondents and prospective respondents:
- (1) of the requirements of this article;
 - (2) that any communication initiated by a City employee or City official, other than the authorized contact person, during the no-lobbying period regarding a response or the solicitation may result in a violation of Section 2-7-104(1) if the respondent subsequently lobbies that City employee or City official.
- (B) The purchasing officer, or a City employee designated by the purchasing officer, shall provide weekly written notice, accessible to all City employees and City officials, of each solicitation for which the no-lobbying period is in effect.

§ 2-7-108 – DISCLOSURE OF VIOLATION.

A City official or a City employee other than the authorized contact person that becomes aware of a violation of Section 2-7-104 shall notify the authorized contact person in writing as soon as practicable.

§ 2-7-109 – 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 waive a violation of Section 2-7-104(1) if the



Anti-Lobbying Ordinance:

V3: *Recommended Changes*

§ 2-7-109 – ENFORCEMENT.

Section is reorganized and clarified

- Authorizes staff to enforce ALO
- Authorizes staff to waive violations initiated by City officials and employees
- Exempts enforcement by Ethics Review Committee

A City official or a City employee other than the authorized contact person that becomes aware of a violation of Section 2-7-104 shall notify the authorized contact person in writing as soon as practicable.

§ 2-7-109 – 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 waive a violation of Section 2-7-104(1) if the violation was solely the result of communications initiated by a City official or a City employee other than the authorized contact person.
- (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 2-7-110, including:
 - (1) written notice of the disqualification imposed pursuant to Section 2-7-110;
 - (2) written notice of the right to protest the disqualification imposed; and
 - (3) written notice of the right to request an impartial hearing process.

§ 2-7-110 – DISQUALIFICATION; CONTRACT VOIDABLE.

- (A) If the purchasing officer finds that a respondent has violated Section 2-7-104(1), the respondent is disqualified from participating in the solicitation to which the violation related.
- (B) The purchasing officer shall promptly provide written notice of



Anti-Lobbying Ordinance: V3: *Recommended Changes*

§ 2-7-110 – DISQUALIFICATION; CONTRACT VOIDABLE.

Section is reorganized and clarified

- Disqualifies respondents that violate ALO
- Prescribes violation notices
- Extends disqualification under certain circumstances
- Authorizes debarment under certain circumstances

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

§ 2-7-110 – DISQUALIFICATION; CONTRACT VOIDABLE.

- (A) If the purchasing officer finds that a respondent has violated Section 2-7-104(1), the respondent is disqualified from participating in the solicitation to which the violation 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 2-7-104(1) 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 respondent violates Section 104(1) and is awarded a contract resulting from the solicitation to which the violation relates, the City may void that contract.
- (E) Respondents that violate Section 2-7-104(1) three or more times during a five year period may be subject to debarment from participating in any new contracts with the City for a period of up to three years.

END OF ARTICLE

ALO = Anti-Lobbying Ordinance



Anti-Lobbying Ordinance: Agenda

Background: *ALO Revision Efforts to-Date*

V3: *Recommended Changes*

Next Steps: *Further Changes or Proceed to Council*



ALO = Anti-Lobbying Ordinance

Anti-Lobbying Ordinance:

Next Steps: *Further Revisions or Proceed to Council*

- Request feedback on any further changes and approval to proceed to Council with ALO V3
- May 21, 2018 – If the Revised ALO is not completed, the current ALO will reestablish and will be applied to all new solicitations for Waste Management Services



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