



City of Austin

RULE NO.: R2008-PO-1

NOTICE OF RULE ADOPTION

ADOPTION DATE: 4/10/2008

By: Byron E. Johnson, CPM, Purchasing Officer
Purchasing Office

The Purchasing Officer of the Purchasing Office has adopted the following rule. Notice of the proposed rule was posted on 2/15/2008. Public comment on the proposed rule was solicited in the 2/15/2008 notice. This notice is issued under Chapter 1-2 of the City Code. The adoption of a rule may be appealed to the City Manager in accordance with Section 1-2-10 of the City Code as explained below.

AUSTIN CITY CLERK
POSTING: DATE/TIME
2008 APR 10 PM 2 24

EFFECTIVE DATE OF ADOPTED RULE

A rule adopted by this notice is effective on 4/10/2008.

BRIEF EXPLANATION OF ADOPTED RULE

The proposed rule adopts procedures required to administer and enforce City Code Chapter 2-7, Article 6 Anti-lobbying and Procurement. The proposed rule sets forth the Purchasing Office's procedures to provide notice of disqualification or possible debarment and provide respondents with an opportunity to protest the disqualification or possible debarment at a hearing.

TEXT OF ADOPTED RULE

The adopted rule contains no changes from the proposed rule. A copy of the complete text of the adopted rule is available for public inspection and copying at the following locations. Copies may be purchased at the locations at a cost of ten cents per page:

Purchasing Office located at 124 W. 8th Street, 3rd Floor, Austin, Texas 78701

Office of the City Clerk, City Hall, located at 124 West 8th Street, Austin, Texas.

SUMMARY OF COMMENTS

The Purchasing Office did not receive comments regarding the rule adopted in this notice.

AUTHORITY FOR ADOPTION OF RULE

The authority and procedure for adoption of a rule to assist in the implementation, administration, or enforcement of a provision of the City Code is provided in Chapter 1-2 of the City Code.

APPEAL OF ADOPTED RULE TO CITY MANAGER

A person may appeal the adoption of a rule to the City Manager. **AN APPEAL MUST BE FILED WITH THE CITY CLERK NOT LATER THAN THE 30TH DAY AFTER THE DATE THIS NOTICE OF RULE ADOPTION IS POSTED. THE POSTING DATE IS NOTED AT THE END OF THIS NOTICE.** If the 30th day is a Saturday, Sunday, or official city holiday, an appeal may be filed on the next day which is not a Saturday, Sunday, or official city holiday.

An adopted rule may be appealed by filing a written statement with the City Clerk. A person who appeals a rule must (1) provide the person's name, mailing address, and telephone number; (2) identify the rule being appealed; and (3) include a statement of specific reasons why the rule should be modified or withdrawn.

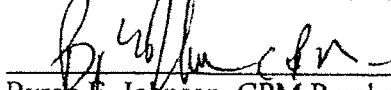
Notice that an appeal was filed will be posted by the city clerk. A copy of the appeal will be provided to the City Council. An adopted rule will not be enforced pending the City Manager's decision. The City Manager may affirm, modify, or withdraw an adopted rule. If the City Manager does not act on an appeal on or before the 60th day after the date the notice of rule adoption is posted, the rule is withdrawn. Notice of the City Manager's decision on an appeal will be posted by the city clerk and provided to the City Council.

On or before the 16th day after the City Clerk posts notice of the City Manager's decision, the City Manager may reconsider the decision on an appeal. Not later than the 31st day after giving written notice of an intent to reconsider, the City Manager shall make a decision.

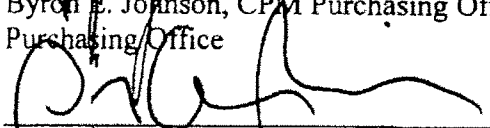
CERTIFICATION BY CITY ATTORNEY

By signing this Notice of Rule Adoption (R2008-PO-1), the City Attorney certifies that the City Attorney has reviewed the rule and finds that adoption of the rule is a valid exercise of the Director's administrative authority.

REVIEWED AND APPROVED


Byron E. Johnson, CPM Purchasing Officer
Purchasing Office

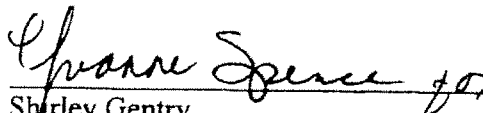
Date: 04/18/08


David Allen Smith
City Attorney

Date: 04/10/08

This NOTICE OF ADOPTION was posted on a central bulletin board at City Hall on the following date and time:

Date: 2:24 pm
Time: 4/10/08


Shirley Gentry
City Clerk

**Enforcement of the Anti-Lobbying Ordinance
by the Purchasing Office**

This rule is adopted under the authority of City Code Chapter 2-7, Article 6 and the Purchasing Officer.

1. DEFINITIONS

Words in this rule have the meanings they have in Article 6 of Chapter 2-7 of the City Code.

**2. NOTICE OF A DISQUALIFICATION OR POSSIBLE
DEBARMENT**

- a. If an authorized contact person disqualifies a respondent under Article 6 of Chapter 2-7 of the City Code, the authorized contact person shall provide written notice to the respondent that includes:
 - i. a statement that the respondent is disqualified and the identifying number of the solicitation from which the respondent is disqualified;
 - ii. a description of the prohibited representation that is the reason for the disqualification;
 - iii. a description of the respondent's opportunity to protest; and
 - iv. a copy of this rule.

- b. Before a respondent is debarred under Article 6 of Chapter 2-7 of the City Code, the Purchasing Officer shall provide written notice and an opportunity for a hearing to the respondent. The notice to the respondent shall include:
 - i. a statement that the respondent is disqualified and the identifying number of the solicitation from which the respondent is disqualified;
 - ii. a description of the facts that are the reason for debarment;
 - iii. a description of the respondent's opportunity to protest; and
 - iv. a copy of this rule.

3. OPPORTUNITY TO PROTEST

This section applies to notice procedures for a respondent to protest disqualification or possible debarment.

- a. The Purchasing Officer has the authority to settle or resolve a protest of a disqualification or possible debarment under Article 6 of Chapter 2-7 of the City Code. The Purchasing Officer's decision is final.
- b. If a disqualified respondent fails to comply with this rule, the Purchasing Officer shall dismiss the respondent's protest.
- c. A respondent shall file a written notice of the respondent's protest with the Purchasing Officer. The notice must be actually received by the Purchasing Officer no later than the fourth business day after the date that the respondent receives notice of the disqualification or possible debarment. If the respondent does not file a timely notice of the protest, the respondent waives the right to protest the disqualification or debarment.
- d. A notice of a respondent's protest must be concise and presented logically and factually. The notice must include:
 - i. the respondent's name, address, telephone, and fax number;
 - ii. the identifying number of the solicitation number; and
 - iii. a detailed statement of the factual grounds for the protest, including copies of any relevant documents.

4. HEARING

This section applies to hearing procedures for a respondent to protest disqualification or possible debarment.

- a. When the Purchasing Officer receives a timely written protest, the Purchasing Officer shall determine whether the grounds for the protest are sufficient.
- b. If the Purchasing Officer decides that the grounds are sufficient, the Purchasing Office will schedule a protest hearing. If practicable the Purchasing Officer should schedule the hearing within five (5) business days.

- c. If the Purchasing Officer determines that the grounds of a protest are insufficient, the Purchasing Officer shall notify the respondent of that decision in writing.
- d. A protest hearing is informal and is not subject to the Open Meetings Act.
- e. The purpose of the hearing is to give a disqualified respondent a chance to present the respondent's case; it is not an adversarial proceeding.
- f. The following individuals from the City may attend the hearing:
 - i. representatives from the department that requested the solicitation or purchase;
 - ii. the Law Department;
 - iii. the Purchasing Office; and
 - iv. other appropriate City staff as determined by the Purchasing Officer.
- g. The respondent may bring to the hearing a representative or anyone else that will present information to support the factual grounds for the respondent's protest.
- h. The Purchasing Officer may appoint an independent hearing examiner to conduct the hearing and to provide a written decision on the protest.
- i. If the Purchasing Officer appoints an independent hearing examiner to conduct the hearing,
 - i. the independent hearing examiner shall provide a written hearing decision to the Purchasing Officer and respondent no later than five business days after the date of the hearing;
 - ii. the Purchasing Officer shall determine on the basis of the written hearing decision whether to maintain or deny the decision no later than the 15th business day after the date of the hearing; and

- iii. the Purchasing Officer shall send a written notice of his decision to the respondent no later than five business days after the date of the decision.
- j. If the Purchasing Officer conducts the hearing, the Purchasing Officer shall:
 - i. make a decision no later than the 15th business day after the date of the hearing; and
 - ii. shall send a written notice of the Purchasing Officer's decision to the respondent no later than five business days after the date of the decision.
- k. The Purchasing Officer's decision on a hearing or a written hearing decision is final.
- l. When a protest is filed, the City usually will not make an award until a decision on the protest is made. However, the City will not delay an award if the City Manager or the Purchasing Officer determines that:
 - i. the City urgently requires the goods, supplies, or services to be purchased; or
 - ii. failure to make an award promptly will unduly delay delivery or performance.
- m. In the instances described under item l, the Purchasing Officer shall notify the respondent and make every reasonable effort to resolve the protest before the award.