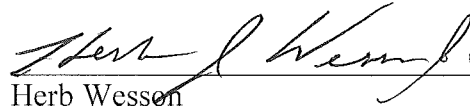


MOTION

I MOVE, that the Rules and Election Report relative to adopting an ordinance to clarify Contract Bidder Contribution and Fundraising Restrictions - Item 12 of today's Agenda (CF 11-1100-S8) - BE AMENDED to present and adopt the attached ordinance in lieu of any other ordinance.

PRESENTED BY:



Herb Wesson
Councilmember, 10th District

SECONDED BY:



ORIGINAL

DEC 15 2015

ORDINANCE NO. _____

An ordinance amending the City's Campaign Finance Ordinance, codified in Los Angeles Municipal Code Section 49.7.1, *et seq.*, to implement Charter Sections 470(c)(12) and 609(e) regarding restricting contributions and fundraising from contract bidders and proposers and related requirements and to make other technical changes to implement Measure H approved by the voters in March, 2011.

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. The following definition is added to Section 49.7.1.1 of the Los Angeles Municipal Code in alphabetical order to read as follows:

"City controlled committee" means a committee created for City purposes and controlled by an elected City official or a candidate for City office. The term includes City campaign committees, officeholder expense funds, legal defense funds relating to City office, and ballot measure committees involving City issues. The term does not include a committee created for election to or the holding of a non-City office.

Sec. 2. The title for Section 49.7.11 of the Los Angeles Municipal Code is amended to read as follows:

SEC. 49.7.11. CAMPAIGN DISCLOSURE AND REPORTING.

Sec. 3. Sections 49.7.26.1, 49.7.26.3, 49.7.26.4, 49.7.27, 49.7.28, 49.7.29 and 49.7.30 of the Los Angeles Municipal Code are renumbered as Sections 49.7.27, 49.7.28, 49.7.29, 49.7.33, 49.7.34, 49.7.35, 49.7.36, respectively.

Sec. 4. A new Section 49.7.30 is added to the Los Angeles Municipal Code to read as follows:

SEC. 49.7.30. BIDDER CONTRIBUTION AND FUNDRAISING RESTRICTIONS.

A. Definitions. The following definitions apply for purposes of Charter Section 470(c)(12):

1. **"Awarding Authority"** means the City Council, a City board, commission, authorized employee, or authorized officer, including those who have control of their own special funds but excluding the City Purchasing Agent when acting pursuant to Section 9.1 of the Los Angeles Administrative Code, who makes or enters into a contract for the provision of goods or services of any kind or nature whatsoever to, for, or on behalf of the City. References to the awarding authority shall include references to staff when working on a matter subject to this Article.

2. **"Approval by an elected City office"** means approval of a contract or selection of a pre-qualified list of persons to contract with the City in any of the following circumstances:

(a) The elected City official or the elected City official's office is the awarding authority;

(b) The contract involves services provided directly to or under the supervision of the elected City official; or

(c) The contract requires approval of the elected City official or the elected City official's office pursuant to City law, executive directive, or City Council action.

The term does not include approval by an elected City official that is required pursuant to Charter Section 262, 271(d), or 370 for non-proprietary departments, provided that City Council approval is not otherwise required and the elected City offices identified in those sections are neither the awarding authority nor supervising the services under the contract. The term does include approval by an elected City official that is required pursuant to Charter Section 262, 271(d), or 370 for contracts with the Harbor, Water and Power, and Airport Departments.

3. **"Bidder"** means a person who bids on or submits a proposal or other response to a City contract solicitation.

4. **"Contract solicitation"** means a request for proposals, request for bids, request for qualifications, or any other request, whether written or verbal, for purposes of entering into a contract. However, a solicitation does not include a request to enter into a contract that relies on another City agency's competitive process if the prior City contract was subject to the Charter Section 470(c)(12) restrictions and restrictions of this section.

5. **"Contract"** means any agreement, franchise, lease, non-regulatory permit, land use license or easement, or concession, including any agreement for occasional professional or technical personal services, for the performance of any work or service or construction, the provision of any materials, goods, equipment, or supplies, the sale or purchase of property, the making of grants, or the rendering of any service to the City, including any proprietary department, or to the public where all of the following apply:

(a) The contract is let, awarded, or entered into, with, or on behalf of the City or an awarding authority;

(b) The contract has an anticipated value of at least \$100,000, including exercising all anticipated options; and

- (c) The contract requires approval by an elected City office.

The term includes any subsequent amendment that, by itself or in combination with the original contract and any other amendments, has an anticipated value of at least \$100,000 and requires approval by an elected City office. The term also includes the selection of a pre-qualified list of persons to contract with the City where the request for qualifications includes a not-to-exceed amount of at least \$100,000 and the list selection requires approval by an elected City office. The term does not include any contract with another government agency or a contract with an underwriting firm pursuant to Charter Section 609(e) for proprietary noncompetitive sales of revenue bonds.

6. **“Elected City official”** means an elective City officer, as that term is defined in Section 49.7.1.1.

7. **“Fundraising event”** means an event designed for political fundraising, at which contributions for an elected City official, a candidate for elected City office, or a City controlled committee are solicited, delivered, or made.

8. **“Principal”** means the following with regard to persons who are bidders and subcontractors:

- (a) The person’s board chair, president, chief executive officer, chief operating officer, and an individual who serves in the functional equivalent of one or more of those positions;

- (b) An individual who holds an ownership interest in the person of 20 percent or more; and

- (c) An individual employee of the bidder or subcontractor authorized by the bid or proposal to represent the person before the City.

9. **“Prohibited fundraising”** means the following activities:

- (a) Asking the bidder, subcontractor, or an employee, officer, or principal of the bidder or subcontractor to make a contribution;

- (b) Inviting the bidder, subcontractor, or an employee, officer or principal of the bidder or subcontractor to a fundraising event;

- (c) Supplying the name of the bidder, subcontractor, or an employee, officer or principal of the bidder or subcontractor to be used for an invitation to a fundraising event;

(d) Permitting one's name to appear on a solicitation for contributions or an invitation to a fundraising event sent to the bidder, subcontractor, or an employee, officer, or principal of the bidder or subcontractor;

(e) Providing the use of one's home or business to hold a fundraising event if the bidder, subcontractor, or an employee, officer, or principal of the bidder or subcontractor attends the event;

(f) Paying for at least 20 percent of the costs of a fundraising event if the bidder, subcontractor, or an employee, officer, or principal of the bidder or subcontractor attends the event;

(g) Hiring another person to conduct a fundraising event if the bidder, a subcontractor, or an employee, officer, or principal of the bidder or subcontractor attends the event;

(h) Delivering a contribution, either in person or by mail, of the bidder, a subcontractor, or an employee, officer, or principal of the bidder or subcontractor to the elected City official, candidate for elected City office, or an agent of the official or candidate; or

(i) Acting as an agent or intermediary in connection with the making of a contribution of the bidder, a subcontractor, or an employee, officer, or principal of the bidder or subcontractor to an elected City official, a candidate for elected City office, or a City controlled committee.

10. **"Subcontractor"** means a person who is expected to receive at least \$100,000 as a result of performing some or all of a bidder's contract obligations and includes a subtenant where the subtenant is expected to receive at least \$100,000 as result of performing a portion of the contract obligations of the contractor and is required to pay the contractor at least \$100,000.

B. For purposes of Charter Section 470(c)(12), the following apply:

1. **Timing of Fundraising and Contribution Restrictions.** In addition to the restrictions provided in Charter Section 470(c)(12), except as otherwise provided in Subsection B.5, bidders, subcontractors, and principals may not make contributions to or engage in prohibited fundraising for elected City officials, candidates for elected City office, or City controlled committees from the date a bid is submitted until one of the following dates:

(a) For unsuccessful bidders, the date the contract is signed or the solicitation is withdrawn or canceled.

- (b) For successful bidders, 12 months after the contract is signed.

2. **Contract Solicitations and Notifications.** Each awarding authority shall include in each contract solicitation the form identified in Subsection B.3 and a description of the prohibitions and requirements of Charter Section 470(c)(12). The awarding authority shall determine whether the form is complete for responsiveness purposes and electronically submit the form to the City Ethics Commission, in a Portable Document Format (PDF) or other electronic format pre-approved by the Commission, within ten business days of the bid due date. The awarding authority shall either notify bidders who are not awarded a contract of the date that the contract was signed or the contract solicitation was terminated or withdrawn or notify the bidders how they may obtain or request the date that the contract was signed or the contract solicitation was terminated or withdrawn, unless that information is available on a City website.

3. **Disclosure Form.** As provided in Subsection B.2, every bidder shall file with the awarding authority, at the time the bid or other response is submitted, the following information under oath in a form and format approved by the City Ethics Commission:

- (a) A description of the contract, including any City reference number associated with it, or if selection is of a pre-qualified list, a short description of the services to be provided, including any City reference number associated with it;
- (b) The name of the awarding authority;
- (c) The date the bid or other response was submitted to the awarding authority;
- (d) The name of the bidder;
- (e) The address of the bidder;
- (f) The phone number of the bidder;
- (g) The names and titles of the bidder's principals;
- (h) The names of the bidder's subcontractors;
- (i) The names and titles of each subcontractor's principals; and

(j) A certification that the bidder understands, will comply with, and will notify its principals and subcontractors of the prohibitions and restrictions in this section and Charter Section 470(c)(12).

4. **Requirement to Amend Form.** If the information submitted pursuant to Subsection B.3 changes after the bid is submitted, the bidder shall amend the form and submit it to the awarding authority within ten business days of the change. The requirement to amend the form applies whenever the prohibitions and restrictions in Charter Section 470(c)(12) apply to the bidder, including after contract approval for successful bidders. The awarding authority shall electronically submit the form to the City Ethics Commission, in a Portable Document Format (PDF) or other electronic format pre-approved by the Commission, within 10 business days of receipt.

5. **Contract Amendments.** If a contract amendment requires approval by an elected City official and makes the total value of the contract \$100,000, or more for the first time, the prohibitions and restrictions in Charter Section 470(c)(12) apply from the date the awarding authority first discusses the amendment and terminates 12 months after the date the amendment is approved, disapproved, or withdrawn. However, the Charter 470(c)(12) restrictions do not apply to any subsequent amendments if the contract was previously subject to the restrictions and the contractor fulfilled its obligations under the Charter and this section.

(a) The awarding authority shall notify bidders who were not previously required to submit the form identified in Subsection B.3 of the requirements in this section and Charter Section 470(c)(12) at the time the awarding authority first discusses the amendment with the bidder.

(b) Bidders who were not previously required to submit the form identified in Subsection B.3 shall submit the form within ten business days of the date the awarding authority first discusses the amendment with the bidder. The awarding authority shall electronically submit the form to the City Ethics Commission in a Portable Document Format (PDF) or other electronic format pre-approved by the Commission within 10 business days of receipt.

(c) This provision does not apply to the exercise of an option that has been previously approved in a written contract.

6. **Business Assistance Virtual Network.** In the event that the City's Business Assistance Virtual Network or similar electronic system is used by a bidder to submit the forms required by this Section to the awarding authority and the Business Assistance Virtual Network or similar electronic system sends the submitted data to the City Ethics Commission, the awarding authority shall not be required to submit the form(s) to the City Ethics Commission.

C. Violations and Debarment.

1. In addition to any other penalties or remedies established by this Article, a person who is found to have violated this section or Charter Section 470(c)(12) shall not be eligible to bid on or be considered for a contract, extension, or amendment unless the Ethics Commission, as a body, determines that mitigating circumstances exist concerning such violation.

2. The Ethics Commission, as a body, shall determine whether mitigating circumstances apply whenever a violation of this section or Charter Section 470(c)(12) is determined to have occurred. If the Ethics Commission determines that mitigating circumstances do not exist, the person found to be in violation shall be debarred for the following periods of time after the Ethics Commission's determination:

- (a) One year for the first violation;
- (b) Two years for the second violation;
- (c) Three years for the third violation; and
- (d) Four years for the fourth and subsequent violations.

3. The Ethics Commission may adopt regulations regarding mitigating circumstances, including what constitutes mitigating circumstances and any other information determined to be necessary.

4. The Ethics Commission staff shall notify all agencies, departments, boards and offices of a determination of debarment within 10 business days of the determination. The Ethics Commission's determination regarding debarment is final as to all offices, departments, boards, and agencies and may not be waived.

5. If an awarding authority has an existing contract with a person who is identified in a debarment notice from the Ethics Commission, the awarding authority shall determine in writing and, if the awarding authority is a City board, commission, or City Council, at a public meeting whether it is in the best interests of the City to terminate the contract.

6. An awarding authority shall not determine whether a violation of this Article or any other City law regarding campaign financing, lobbying, or governmental ethics has occurred.

7. A person who fails to submit a complete disclosure form as required by this section shall be deemed nonresponsive. However, an awarding

authority may award the contract to a bidder who did not submit a complete disclosure form under the following circumstances:

(a) The contract is a sole source contract for work (as defined in U.S. copyright law) that is protected under an exclusive copyright interest or a subject matter (as defined in U.S. patent law) that is protected by a U.S. patent or a foreign patent that is enforceable in the United States; and

(b) Before awarding the contract, the awarding authority does the following:

i. Makes a written finding that entering into the contract is in the best interests of the City; and

ii. Notifies the contractor that the contractor, subcontractor, and principals that, notwithstanding the failure to complete the disclosure form, they are not relieved of their obligations to comply with the requirements of the Charter and this section or of the penalties that may result from failing to comply with those requirements.

Sec. 5. Charter Amendment H regarding Charter Section 470(c)(12) applies to contract solicitations issued or released on or after May 8, 2011. Charter Section 470(c)(12) applies to amendments when contract discussions with the awarding authority began on or after the effective date of this ordinance.

Sec. 6. Section 49.7.31 of the Los Angeles Municipal Code is amended to read as follows:

SEC. 49.7.31. UNDERWRITER CONTRIBUTION AND FUNDRAISING RESTRICTIONS.

A. Definitions. For purposes of Charter Section 609(e), the definitions of awarding authority, elected City official, and fundraising event as provided in Section 49.7.30(A) apply. The following definitions also apply:

1. **"Prohibited fundraising"** means the following activities:

(a) Asking the underwriting firm, subcontractor, or an employee, officer, or principal of the underwriting firm or subcontractor to make a contribution;

(b) Inviting the underwriting firm, subcontractor, or an employee, officer, or principal of the underwriting firm or subcontractor to a fundraising event;

(c) Supplying the name of the underwriting firm, subcontractor, or an employee, officer, or principal of the underwriting firm or subcontractor to be used for an invitation to a fundraising event;

(d) Permitting one's name to appear on a solicitation for contributions or an invitation to a fundraising event sent to the underwriting firm, subcontractor, or an employee or officer of one of those persons;

(e) Providing the use of one's home or business to hold a fundraising event if the underwriting firm, subcontractor, or an employee, officer, or principal of the underwriting firm or subcontractor attends the event;

(f) Paying for at least 20 percent of the costs of a fundraising event if the underwriting firm, subcontractor, or an employee, officer, or principal of the underwriting firm or subcontractor attends the event;

(g) Hiring another person to conduct a fundraising event if the underwriting firm, subcontractor, or an employee, officer, or principal of the underwriting firm or subcontractor attends the event;

(h) Delivering a contribution, either in person or by mail, of the underwriting firm, subcontractor, or to an employee, officer, or principal of the underwriting firm or subcontractor to an elected City official to the elected City official, candidate for elected City office, or an agent of the official or candidate; or

(i) Acting as an agent or intermediary in connection with the making of a contribution by the underwriting firm, subcontractor, or to an employee, officer, or principal of the underwriting firm or subcontractor to an elected City official, a candidate for elected City office, or a City controlled committee.

2. **"Subcontractor"** means a person who is expected to receive at least \$100,000 as a result of performing some or all of the underwriting firm's contract obligations but does not include an underwriting firm member of the syndicate in the applicable revenue bond sale.

3. **"Underwriting firm"** means any firm that seeks to provide underwriting services for noncompetitive sales of revenue bonds for the Airport, Harbor, or Water and Power Departments as provided in Charter Section 609 in response to a solicitation from an awarding authority.

B. For purposes of Charter Section 609(e), the following apply:

1. **Timing of Fundraising and Contribution Restrictions.** In addition to the restrictions provided in Charter Section 609(e), underwriting firms, subcontractors, and principals may not make any contributions to or engage in prohibited fundraising for elected City officials, candidates for elected City office, or City controlled committees from the date a response is submitted to a solicitation to be included on a pre-qualified list of underwriters or any subsequent solicitation for selection of an underwriter until one of the following dates:

(a) For underwriting firms that are not selected to be on the pre-qualified list, the date the list selection is made.

(b) For underwriting firms that are on the pre-qualified list, but not selected to contract after a subsequent solicitation, and are not members of the syndicate providing underwriting services on the sale of the revenue bonds, 12 months following the date of the list selection, and following the solicitation, on the date of the selection of the underwriting firm for a noncompetitive bond sale, or the date the solicitation is withdrawn or canceled.

(c) For underwriting firms that are on the pre-qualified list, and are selected to contract after a subsequent solicitation, or are members of the syndicate providing underwriting services on the sale of the revenue bonds, 12 months following the date of the list selection, and 12 months after the underwriter selection is made.

2. **Contract Solicitations and Notifications.** Each awarding authority shall include in each contract solicitation for underwriting firm services regarding a noncompetitive sale for revenue bonds, including selection of a pre-qualified list of underwriters, the form identified in Subsection B.3 and a description of the prohibitions and requirements in City Charter Section 609(e) and this section. The awarding authority shall determine whether the form is complete for responsiveness purposes and shall electronically submit the form to the City Ethics Commission, in a Portable Document Format (PDF) or other electronic format pre-approved by the Commission, within 10 business days of the due date of the proposals. The awarding authority shall notify each underwriting firm that is not selected as pre-qualified underwriter or not selected as the underwriter on a particular noncompetitive sale of revenue bonds, the date the selection was made, terminated, or withdrawn, unless that information is available on a City website.

3. **Disclosure Form.** Every underwriting firm seeking to provide services regarding noncompetitive sales of revenue bonds under Charter Section 609(e) shall file with the awarding authority, at the time the response is submitted, the following information under oath in a form and format approved by the City Ethics Commission:

(a) A description of the contract, including any City reference number associated with it, or if selection is of a pre-qualified list, a short description of the services to be provided, including any City reference number associated with it;

(b) The name of the awarding authority;

(c) The date the bid or other response was submitted to the awarding authority;

(d) The name of the underwriting firm;

(e) The address of the underwriting firm;

(f) The phone number of the underwriting firm;

(g) The names and titles of the underwriting firm's principals;

(h) The names of the underwriting firm's subcontractors;

(i) The names and titles of each subcontractor's principals; and

(j) A certification that the underwriting firm understands, will comply with, and will notify its principals and subcontractors of the prohibitions and restrictions in this section and Charter Section 609(e).

(k) A certification that the underwriting firm and its principals have not made prohibited gifts or contributions during the 12 months prior to selection for a contract, unless the matter is only a selection of a pre-qualified list of underwriters.

4. **Requirement to Amend Form.** If the information submitted pursuant to Subsection B.3 changes after the response is submitted, the underwriting firm shall amend the form and submit it to the awarding authority within ten business days of the change. The requirement to amend the form applies whenever the prohibitions and restrictions in Charter Section 609(e) apply to the underwriting firm, including after contract approval for underwriting firms that are selected or are performing underwriting services as a member of a syndicate on the revenue bond sale. The awarding authority shall electronically submit the form to the City Ethics Commission, in a Portable Document Format (PDF) or other electronic format pre-approved by the Commission, within 10 business days of receipt.

5. **Business Assistance Virtual Network.** In the event that the City's Business Assistance Virtual Network or similar electronic system is used by a bidder to submit the forms required by this Section to the awarding authority and

the Business Assistance Virtual Network or similar electronic system sends the submitted data to the City Ethics Commission, the awarding authority shall not be required to submit the form(s) to the City Ethics Commission.

6. **Violations and Debarment.** The provisions of Section 49.7.30(C) shall also apply to violations of this section and Charter Section 609(e).

Sec. 7. Section 49.7.32 of the Los Angeles Municipal Code is added to read as follows:

SEC. 49.7.32. RECORDKEEPING.

All persons subject to this Article shall keep records that demonstrate compliance with this Article and related Charter provisions for four years.

Sec. 8. Sections 49.5.15 and 49.5.16 of the Los Angeles Municipal Code are repealed in their entirety.

Sec. 9. Subsection (t) of Section 24.5 of the Los Angeles Administrative Code is amended to read as follows:

(t) **Failure to Comply.** The failure of a participant, controlled committee of a participant or campaign treasurer to comply with the provisions of this section, and the failure of such person to provide full and accurate information required by this section, is unlawful, constitutes a violation of this section and is subject to the penalties and remedies set forth in Charter Section 706 and Los Angeles Municipal Code Section 49.7.34.

Sec. 10. Subsection (h) of Section 24.10 of the Los Angeles Administrative Code is amended to read as follows:

h. The failure of any elected City officer, controlled committee of an elected City officer, or committee treasurer to comply with the provisions of this section, and the failure of such person to provide full and accurate information required by this section, is unlawful, constitutes a violation of this section and is subject to the penalties and remedies set forth in Charter Section 706 and Los Angeles Municipal Code Section 49.7.34.

Sec. 11. Subsections (b) and (c) of Section 5.406 of the Los Angeles Administrative Code are amended to read as follows:

(b) There shall be placed in the Fund all proceeds from appropriations for public matching funds to partially finance campaigns for elective City offices.

(c) All interest or other earnings attributable to money in the Funds shall be credited to the Fund and shall be devoted to the purposes set forth in this chapter.

Sec. 12. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, at its meeting of _____.

JUNE LAGMAY, City Clerk

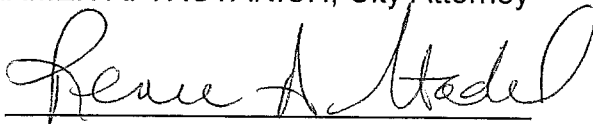
By _____ Deputy

Approved _____

Mayor

Approved as to Form and Legality

CARMEN A. TRUTANICH, City Attorney

By 
RENEE A. STADEL
Deputy City Attorney

Date 12/16/2011

File No. 11-1100-58