



Los Angeles City Ethics Commission

December 19, 2018

The Honorable City Council
c/o Holly Wolcott, City Clerk
200 North Spring Street
City Hall – 3rd Floor
Los Angeles CA 90012

Re: Amendments to Bidder Disclosure Requirements
FOR COUNCIL CONSIDERATION

Dear Councilmembers:

On December 18, 2018, the Ethics Commission unanimously approved amendments to the bidder disclosure requirements in the Campaign Finance Ordinance (CFO) and the Municipal Lobbying Ordinance (MLO). The amendments clarify that the required disclosure forms may be submitted electronically, and the Ethics Commission urges you to adopt them.

A. Background

Both the CFO and the MLO require certain City bidders to submit forms with their bid proposals.

1. CFO

In 2011, the Los Angeles City Charter (Charter) was amended to prohibit campaign contributions from and limit the campaign fundraising activity of bidders on certain City contracts. Charter § 470(c)(12). The restrictions apply when the ultimate contract has an anticipated value of \$100,000 or more and requires approval by an elected official's office. Charter §§ 470(c)(12)(A)(i), (B)(i), (C)(i).

The restrictions extend to the bidder, the bidder's principals, the bidder's subcontractors of \$100,000 or more, and principals of those subcontractors. Charter §§ 470(c)(12)(A)(ii)–(iii), (B)(ii)–(iii), (C)(ii)–(iii). A bidder is required to identify all of these persons and certify that the bidder will comply with the restrictions and notify everyone else who is subject to the restrictions as a result of the bidder's bid. Charter § 470(c)(12)(H). A similar disclosure and certification form is required of persons seeking to become underwriters for the noncompetitive sale of revenue bonds. Charter § 609(e).

The CFO was amended to more fully implement Charter § 470(c)(12). Most City bidders are addressed in Los Angeles Municipal Code (LAMC) § 49.7.35, while underwriting bidders are addressed in LAMC § 49.7.36. The form requirements are specified in LAMC §§ 49.7.35(B)

and 49.7.36(B), and Forms 55 and 56 have been adopted as the forms that must be submitted in compliance with the Charter and the CFO. See ethics.lacity.org/forms.

2. MLO

Since 2007, the MLO has required certain City bidders to submit a certification with their bids, stating that they agree to comply with the lobbying laws if they qualify as a lobbying entity. LAMC § 48.09(H). The form is required for all construction contracts, public leases, and licenses; for financial assistance contracts valued at \$100,000 or more; and goods or services contracts valued at \$25,000 or more with a term of at least three months. *Id.*; Los Angeles Administrative Code 10.40.1. Form 50 has been adopted as the form that must be submitted to comply with the MLO's certification requirement. See ethics.lacity.org/forms.

B. Approved Amendments

In an effort to increase efficiency and decrease the consumption of paper resources, more City departments are turning to electronic procurement processes. Bidders are often required to submit their bid packets entirely electronically.

Some departments that require electronic bids have already begun to accept Forms 50, 55, and 56 electronically, including with electronic signatures. The City Attorney's office has advised that the CFO and MLO should be updated to specifically permit electronic submissions, while requiring that electronic signatures comply with state law and prohibiting alterations to the content of the forms.

1. CFO

The Ethics Commission approved the following amendments to LAMC § 49.7.35. In addition to addressing the City Attorney's advice, the amendments also clarify that bidders submit their forms to the departments and departments electronically submit the forms to us.

LAMC § 49.7.35.

BIDDER CONTRIBUTION AND FUNDRAISING RESTRICTIONS.

B. 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).

a. The awarding authority shall determine whether the form is complete for responsiveness purposes.

b. The awarding authority may permit bidders to submit the form electronically and to use electronic signatures that comply with California's electronic signature laws, but an awarding authority may not alter the content of the form.

bc. The awarding authority shall electronically submit the form to the Ethics Commission, in a Portable Document Format (PDF) or other electronic format pre-approved by the Ethics Commission, within ten business days of the bid due date. The awarding authority must also comply with the reporting requirements in Section 49.5.11(B).

ed. 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.

4. Requirement to Amend Form. If the information submitted pursuant to Subsection B(3) or B(5) changes after the bid-form is submitted, the bidder shall amend the form and submit it to the awarding authority within ten business days of the change.

a. The requirement to amend the form applies whenever the prohibitions and restrictions in Charter Section 470(c)(12) apply to the bidder, including after the contract approval for successful bidders.

b. The awarding authority shall electronically submit the form to the Ethics Commission, in a Portable Document Format (PDF) or other electronic format pre-approved by the Ethics Commission, within ten business days of receipt.

5. Contract Amendments. If a contract amendment requires approval by an elected City officer and, by itself or in combination with the original contract and any other amendments, makes the total anticipated value of the contract \$100,000, or more for the first time, the 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 restrictions in Charter Section 470(c)(12) do not apply to any subsequent amendments if the contract was previously subject to the restrictions and the contractor fulfilled its obligations under this Section and Charter Section 470(c)(12).

a. The awarding authority shall notify contractors of the requirements in this Section and Charter Section 470(c)(12) at the time the awarding authority first discusses the amendment with the contractor.

b. Contractors shall submit the form identified in Subsection B(3) to the awarding authority within ten business days of the date the awarding authority first discusses the amendment with the contractor. The awarding authority shall determine whether the form is complete.

c. The awarding authority shall electronically submit the form as required by Subsection B(2) to the Ethics Commission, in a Portable Document Format (PDF) or other electronic format pre-approved by the Ethics

Commission, within ten business days of receiving the form from the contractor. The awarding authority must also comply with the reporting requirements in Section 49.5.11(B).

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

For LAMC § 49.7.36, the Ethics Commission approved the following companion amendments.

LAMC § 49.7.36.

UNDERWRITER CONTRIBUTION AND FUNDRAISING RESTRICTIONS.

B. 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 the City Charter Section 609(e) and this Section.

a. The awarding authority shall determine whether the form is complete for responsiveness purposes.

b. The awarding authority may permit bidders to submit the form electronically and to use electronic signatures that comply with California's electronic signature laws, but an awarding authority may not alter the content of the form.

bc. The awarding authority shall electronically submit the form to the Ethics Commission, in a Portable Document Format (PDF) or other electronic format pre-approved by the Ethics Commission, within 10 business days of the due date of the proposals. The awarding authority must also comply with the reporting requirements in Section 49.5.11(B).

ed. 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.

4. Requirement to Amend Form. If the information submitted pursuant to Subsection B(3) changes after the response form is submitted, the underwriting firm shall amend the form and submit it to the awarding authority within ten business days of the change.

2. MLO

The Ethics Commission approved the following amendments to LAMC § 48.09(H). As with the amendments recommended above for the CFO, these amendments address the City Attorney's advice and make other technical modifications.

LAMC § 48.09

H. Contract Bidder Certification of Compliance With Lobbying Laws.

1. Any bidder for a contract, as those terms are defined in Los Angeles Administrative Code Section 10.40.1, shall submit with its bid a certification, ~~on~~through a form prescribed by the City Ethics Commission, that the bidder acknowledges and agrees to comply with the disclosure requirements and prohibitions established in the Los Angeles Municipal Lobbying Ordinance if the bidder qualifies as a lobbying entity under Section 48.02 of this article. An agency may permit the electronic submission of the form and the use of electronic signatures that comply with California's electronic signature laws, but an agency may not alter the content of the form. The exemptions contained in Section 48.03 of this article and Los Angeles Administrative Code Section 10.40.4 shall not apply to this subsection.

C. Conclusion

The growing practice among City departments is to require the electronic submission of bids. The Ethics Commission urges you to adopt the amendments to the CFO and the MLO specified above in Section B, to facilitate the efficiency and resourcefulness of electronic procurement processes throughout the City.

We would be happy to discuss these recommendations with you at any time. If you have questions, please do not hesitate to contact me or Tyler Joseph, our Policy Director.

Sincerely,



Heather Holt
Executive Director