

ARTICLE VIII. CITY CONTRACTS; INDEBTEDNESS TO CITY

Sec. 15-121. Policy.

(a) Except as provided in section 15-12~~65~~ of this Code or subsection (b) of this section, no contract shall be let, nor any other business transaction entered into, by the city with any contracting entity that is indebted to the city ~~or a qualifying entity~~ or whose owner is indebted to the city ~~or a qualifying entity~~, if the contract or transaction comes within the provisions of section 15-1(c) of this Code. No city contract shall be amended or extended if the contracting entity or any owner thereof has become indebted to the city ~~or a qualifying entity~~ since the inception of the contract unless such indebtedness is fully paid prior to any council action to amend or extend such contract.

(b) *Exception.* Subsection (a) of this section shall not apply to any contract if prohibited by the provisions of Chapter 252, Texas Local Government Code (as the same may be amended from time to time), or by any other applicable state or federal law, rule or regulation restricting the power of the city to promulgate the policy set forth herein; provided however, that when a contract or other business matter that requires council action is placed before city council, regardless of the applicability of subsection (a), the city council shall be notified in writing whether a proposed contracting entity or owner thereof, if applicable, is indebted to the city ~~or a qualifying entity~~.

Sec. 15-122. Definitions.

The following terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~— *Affidavit* shall mean a sworn statement containing the full name of the proposed contracting entity, including the assumed name of a person or sole proprietor doing business under such assumed name, and the business and residence addresses of all persons who own five percent or more of a contracting entity, where applicable, or, where a contracting entity is a non-profit corporation, the full names and the business and residence addresses of all officers of the non-profit corporation.~~

Contracting entity shall ~~mean~~ s a person, whether acting as an individual or operating as a sole proprietorship, corporation, non-profit corporation, partnership, joint venture, limited liability company, or other entity, regardless of the form of its organization,

that seeks to enter into a contract that requires approval by the city council, but shall exclude governmental entities.

Controller ~~shall~~ means the city controller.

Debt ~~shall~~ means any delinquent sum of money in an amount greater than \$100.00 levied, imposed or assessed against any contracting entity, or owner thereof, by the city ~~or any qualifying entity~~ for ad valorem taxes on real or personal property located within the boundaries of the city.

Debtor ~~shall~~ means a contracting entity, or owner thereof if the contracting entity is other than a person doing business as an individual or sole proprietorship, that owes a debt to the city ~~or a qualifying entity~~, as shown by city or other governmental records.

Delinquent ~~shall~~ means past due, unpaid and no longer subject to challenge, protest or appeal, as those processes are described in the Texas Tax Code.

Indebted ~~shall~~ means owing a debt to the city ~~or a qualifying entity~~, without regard to ability or inability to pay the same, where the amount is delinquent, provided that a debtor who remains current on all obligations of an installment agreement executed by the debtor regarding a debt shall not be deemed indebted for purposes of this article.

Initiating director ~~shall~~ means the director of the department responsible for a matter that is intended to, or does, result in the making of a contract or entry into another business transaction between a contracting entity and the city.

Owner ~~shall~~ means, with respect to a contracting entity, an individual contractor in his or her own name or as a sole proprietorship, and as to a contracting entity other than an individual or person operating as a sole proprietorship, any person who owns five-ten percent or more thereof, or, in the case of a non-profit corporation, any officer of the non-profit corporation.

~~Sec. 15-123. — Qualifying entities.~~

~~— (a) For purposes of this article only, a qualifying entity shall include only the following governmental entities, but only if such entity has adopted and actively enforces a policy or administrative procedure that causes such entity to refuse to enter into any contract or business transaction with a contracting entity, or owner thereof, indebted to the city:~~

- ~~(1) Harris County and/or the Harris County Flood Control District;~~
- ~~(2) Harris County Hospital District;~~
- ~~(3) Fort Bend County;~~
- ~~(4) Montgomery County;~~
- ~~(5) Houston Independent School District; or~~
- ~~(6) Any school district or other local governmental unit that levies, imposes or assesses ad valorem taxes against any real or personal property located within the boundaries of the city.~~

~~(b) No entity named in subsection (a) of this section shall be deemed a qualifying entity until the director of administration and regulatory affairs has certified that such entity has implemented a policy or administrative procedure consistent with the purpose of this article.~~

Sec. 15-~~124~~123. Determination of indebtedness; procedure.

(a) All bids, proposals, or other information submitted to the city in connection with any proposed contract, transaction, project or matter shall include a commitment that the contracting entity shall comply with this article, an affidavit. Contracts ~~typically~~ awarded without the submission of a bid or proposal, including but not limited to, contracts for engineering and architectural services, shall be subject to this section and shall not be finally approved by the city council until a determination as to any indebtedness of the contracting entity or any owner thereof to the city ~~or a qualifying entity~~ has been made as provided in this section. The controller shall prescribe the information that shall be required from contracting entities.

(b) Any failure to submit the affidavit(s) information required by subsection (a) shall constitute grounds for rejection or non-consideration of such bid, proposal or other submission information. It shall be the duty of the initiating director to ascertain that the requisite ownership information has been submitted and signed. ~~affidavit has been properly prepared and submitted.~~

(c) Upon the initiating director's determination of the contracting entity to be recommended for the award of a contract, ~~copies of affidavit(s) information regarding ownership of the contracting entity~~ submitted by such entity shall be promptly forwarded by the initiating director to the controller.

(d) ~~Upon receipt of an affidavit, Before a contract is submitted to city council for approval,~~ the controller shall immediately investigate whether the recommended contracting entity or any owner thereof is indebted to the city ~~or a qualifying entity~~ and, if so, determine insofar as possible with the information provided, whether such indebtedness is then under active protest, challenge or appeal by such debtor. The controller shall maintain a log of all received ~~information forms-affidavits~~ and, at least weekly, forward a copy of such log to the city's delinquent tax collection firm or other third party of the controller's choosing, to assist the controller in identifying debts owed the city ~~or qualifying entities~~ and determine the amount of any debt due the city ~~or any qualifying entity~~.

(e) Promptly after receipt of the report of the delinquent tax collection firm, or other third party, the controller shall certify in writing to each initiating director whether, based on the best information available, a recommended contracting entity is indebted to the city ~~or a qualifying entity~~ and, if so, the amount of such debt. The initiating director shall immediately forward a copy of the controller's certificate or report to each affected contracting entity, together with the telephone number of the delinquent tax collection firm, a contact in the controller's office, or the alternate third party source of information, by which a debtor may confirm the information in such record ~~as well as or file the address to which an appeal is to be filed~~ under section 15-1254 of this Code. The controller's certificate will be deemed to have been received by the contracting entity within three business days after its deposit in the U.S. mail by the initiating director.

(f) Should the controller fail to produce the certificate required by subsection (e) within ten business days from receipt of ~~an ownership information form-an affidavit~~, the affected contracting entity and all owners thereof will be deemed not to be indebted to the city ~~or a qualifying entity~~ for purposes of this article only.

(g) The controller's certificate or report shall be valid only until the first of March next following its date of issue. A subsequent award to the same contracting entity during the time that the controller's certificate or report remains valid may be based on the controller's certificate or report. A subsequent award to the same contracting entity after the first of March of each calendar year is subject to all of the requirements of this section.

(h) If the debt shown in the controller's certificate or report is paid, the receipt or other written proof of payment shall be delivered to the controller who shall immediately issue a new certificate or report to the initiating director confirming such payment.

(i) When an award or other transaction is ready to be submitted to ~~the~~ city council for action, the initiating director shall forward to the city secretary the controller's certificate or report, ~~or the report of the three-member panel sustaining a debtor's protest, challenge or the resolution of any appeal and related information~~ as provided in sections ~~15-123 and 15-124~~15-123 and 15-125(e) of this Code, ~~and all related affidavit(s).~~

(j) The certificates or reports of the controller provided for in this section shall be made available to council members who request them.

Sec. 15-~~125~~124. Appeal.

~~(a) Any debtor shall have the right to appeal the controller's certificate or report under section 15-123~~4~~(e) of this Code by filing a written statement with the delinquent tax collection firm, requesting a hearing. The debtor's written statement must set forth fully the basis for any appeal and be accompanied by all documentation relied upon in support thereof. Delivery of such request for hearing may be effected by personal delivery to the office of the initiating director or by mail, postage prepaid, to the initiating director but must be received by the initiating director within five business days after the debtor's receipt of the controller's certificate or report.~~

~~(b) A hearing under subsection (a) shall be conducted by a three-member panel consisting of the director of finance, administration and regulatory affairs, the city secretary and the initiating director, or their designees, within five business days following the initiating director's receipt of a written request for such hearing. Notice of the three-member panel's decision in an appeal shall be given to the initiating director and affected contracting entity in writing by deposit in the U.S. mail within five business days after such decision.~~

~~(c) Any final decision by the three-member panel that a contracting entity, or an owner thereof, is indebted may be appealed to the city council pursuant to compliance with the terms and provisions of rule 12 of the city council rules of procedure, set forth in section 2-2 of this Code, by the filing of a notice of appeal in the city secretary's office within 15 days after the date the three-member panel's decision is deposited in the U.S. mail. The determination of the city council in such matter shall be final.~~

Sec. 15-~~126~~125. Exceptions.

(a) The policy and procedures set forth in this article do not apply in the following instances:

- (1) Public emergency or calamity.

- (2) Purchase of goods or services available only from a single source, including the lease of any personal property or equipment by the city.
- (3) Circumstances in which the amount of the indebtedness is insignificant in relation to the economic or other benefit or harm that may result from the application of the policy, ~~as determined by the three-member panel described in section 15-125(b) of this Code.~~
- (4) Pending bankruptcy of an indebted owner or contracting entity.
- (5) Concluded bankruptcy of an indebted owner or contracting entity in which the debt was legally discharged.
- (6) Memberships purchased by the city.
- (7) Condemnation awards.
- (8) Property acquisitions, including the lease of any real property to or by the city, excluding any lease of city-owned property below fair market rental.
- (9) Purchase of property, casualty or other insurance by the city.
- (10) Banking or other depository contracts.

(b) This policy may also be waived as to other matters where city council deems it to be in the city's interest.

Secs. 15-~~126~~125—15-140. Reserved.