



City of San Antonio, Texas

Ethics Advisory Opinion No. 2015-03

February 19, 2015

Issued By: City Attorney's Office

I. Issue:

Is a campaign contribution from an individual made before he or she became part of a joint venture seeking a "high-profile" contract with the city a violation of the contribution "blackout" provision of the city's Municipal Campaign Finance Regulations?

II. Inquiry

The city's Municipal Campaign Finance Code prohibits individuals and entities associated with seeking "high-profile" contracts with the City from making campaign or officeholder contributions from the 10th business day after the solicitation is released until 30 calendar days after the contract is awarded. City staff inquires whether a contribution made by a member of the joint venture, made before that individual was affiliated with the joint venture, would violate this prohibition.

III. The Municipal Campaign Finance Code

Section 2-309 of the City's Municipal Campaign Finance Code prohibits contributions to City Council candidates or officeholders from the tenth business day after a "high-profile" discretionary contract solicitation is released, through the 30th day after the contract is awarded by the City Council. Violation of this provision renders the individual or entity ineligible to receive the contract. Section 2-309 states in relevant part:

Sec. 2-309 Contribution Prohibitions

(a) When an individual or entity seeks to obtain a "high-profile" discretionary contract as designated by the city, the following individuals shall not make a political contribution to any councilmember or candidate or political action committee that supports or opposes a city councilmember or candidate from the 10th business day after the Request for Proposal (RFP) or Request for Qualifications (RFQ) or other solicitation is released, or for a contract for which no competitive solicitation has been issued by the city from the time the city begins negotiations or discussions, and ending on the 30th calendar day following the contract award:

1. any individual seeking a high-profile contract;
2. any owner or officer of an entity seeking a high-profile contract;
3. the legal signatory of the high-profile contract;
4. any attorney, lobbyist or consultant hired or retained to assist the individual or entity in seeking a high-profile contract;
5. the spouses of any person listed in 1, 2 or 3 of this subsection.

(c) If any individual listed in subsection (a) has made a contribution in violation of this section, the city may not award the contract to that person, or to the entity. Any contract awarded in violation of this provision shall be voidable at the discretion of the City Council.

This prohibition is sometimes referred to as the contribution “blackout period.” Its application is limited to only “high-profile” city contracts. The high-profile status of a contact is designated by the city department issuing the contract solicitation. Criteria for “high-profile” status can include a value of \$1 million or more, technical complexity or high public interest.

City staff, in reviewing the responses to the solicitation, noted one of the individuals listed as a member of the joint venture had made contributions to candidates and officeholders within the prohibited period, and requested additional detail from the respondent to demonstrate the date the individual joined the joint venture. The City was provided emails dated during the “blackout period” in which initial contact was made with the individual regarding the contract, demonstrating the contributions were made before the individual joined the joint venture, and months before the execution date of the joint venture document provided in the response to the solicitation.

Whether or not an individual has joined in a joint venture to seek a “high-profile” contract at the time of the contribution depends on facts and circumstances of the employment. Contact with an individual during the “blackout period” and a tacit agreement for that individual to participate in seeking a “high-profile” contract with the formal agreement to be established after contributions are made could support a finding that the individual fell within the prohibited contributor category and render the contract seeker ineligible for the contract.

It is recommended that all individuals who fall within the specific narrow set of circumstances be prepared to attest that they were first contacted about participating in a joint venture in connection with a “high-profile” contract after they made the contribution.

IV. Conclusion

Individuals who are first contacted for participation in a joint venture seeking a “high-profile” city contract after the contribution “blackout period” has begun, do not fall within the category of a prohibited contributor so long as they were not seeking the contract at the time of the contribution.