

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA,
AMENDING SECTIONS 4-603, 4-604, 4-605, 4-607, AND 4-
608 OF THE FRESNO MUNICIPAL CODE, RELATING TO
REGULATED COMMUNICATIONS IN THE CITY
PROCUREMENT PROCESS

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 4-603 of the Fresno Municipal Code is amended as follows:

SECTION 4-603. - DEFINITIONS.

[(e) "Competitive procurement" shall mean and include the processes for competitive bidding, notice of funding availability, request for expression of interest, request for proposals, and request for qualifications, as defined in this article.]

(j) "Initiation of competitive procurement" shall mean the issuance, publication, or announcement by the City of [a procurement, including but not limited to: Notice of Funding Availability (NOFA),] Request for Expression of Interest (RFEI), request for proposals (RFP), request for qualifications (RFQ), or Bid Invitation. The competitive procurement remains pending until it is completed upon either the award of a contract, or official City notice of cancellation of the process, or a determination by the Council not to award a contract, provided the determination is final in accordance with Sections 605 and 609 of the Charter and

1 of 5

Date Adopted:

Date Approved

Effective Date:

City Attorney Approval: CC

Ordinance No.

Council does not direct the re-initiation of the competitive procurement at the time it determines not to make an award.

[(s) “NOFA” shall mean a City-issued solicitation inviting eligible entities to apply for funding to provide services, programs, or activities consistent with City priorities or regulatory obligations. A NOFA includes criteria for eligibility, scope of work, available funding, evaluation factors, and application procedures, and may lead to the award of a contract, subrecipient agreement, or grant agreement.]

SECTION 2. Section 4-604 of the Fresno Municipal Code is amended as follows:

SECTION 4-604. – APPLICABILITY.

[Except as otherwise provided and subject to all state and federal laws affecting the City’s procurement procedures, ~~∓this~~] article applies to competitive procurement which may result in the award of a contract by the Council, including competitive bidding, [notice of funding availability,] request for proposals, request for expression of interest, and request for qualifications. It applies whether the procurement process is classified as legislative or otherwise. The requirements of this article apply upon the initiation of competitive procurement until the procurement process is completed, whether or not a contract is awarded. Any communication (even if unintended or inadvertent) covered by this article must be disclosed, as provided by this article or any other applicable local, state, or federal law or regulation.

SECTION 3. Section 4-605 of the Fresno Municipal Code is amended as follows:

SECTION 4-605. – REGULATION OF COMMUNICATIONS DURING COMPETITIVE PROCUREMENT; NOTICE OF REGULATED COMMUNICATION

RULE.

(d) The regulated communication rule established by this section and a reference to this article shall be set forth in each Bid Invitation, [NOFA,] RFEI, RFP, and RFQ, or in the respective specifications or other documents referred to therein.

SECTION 4. Section 4-607 of the Fresno Municipal Code is amended as follows:

SECTION 4-607. – SANCTIONS.

(a) In accordance with the applicable procedures for the respective competitive procurement as referenced or set forth in the specifications of the respective Bid Invitation, [NOFA,] RFEI, RFP, and RFQ, a Proposer [or applicant] violating this article may be sanctioned as follows:

- (1) Disqualification from the competitive procurement; and/or
- (2) A finding of non-responsibility under the procurement; and/or
- (3) Setting aside by Council of any award of contract prior to its execution by both parties.

SECTION 5. Section 4-608 of the Fresno Municipal Code is amended as follows:

SECTION 4-608. – EVALUATION OF DISCLOSED COMMUNICATIONS; CRITERIA FOR IMPOSITION OF SANCTIONS; APPEALS.

(c) Before sanctions may be imposed, it shall first be established that the subject Proposer did initiate, engage in or continue a regulated communication, and, if so, whether any of the following extenuating circumstances exist:

- (1) The regulated communication was inadvertent and did not affect the integrity or outcome of the procurement process.
- (2) The regulated communication was initiated by the Mayor or a

Councilmember, the subject Proposer advised the Mayor or Councilmember of the regulated communication rule, and the subject Proposer did not continue or engage in the regulated communication.

(3) The regulated communication was made under bona fide mistake of fact or law, other than a mistake or ignorance of the provisions of this article, and the regulated communication was not material to the procurement. A regulated communication may be deemed material if it relates to any provision of a Bid Invitation, [NOFA,] RFEI, RFP, RFQ, or specifications or other documents referenced therein, including documents responsive to a Bid Invitation, [NOFA,] RFEI, RFP, or RFQ, unless the regulated communication is so obviously insignificant and unimportant that it could be objectively found that no reasonable person would have been influenced by it, or attached any importance to it.

(e) The subject Proposer may appeal the determination of the City's Purchasing Manager that forms the basis of his or her recommendation for imposition of a sanction in accordance with the appeal procedures specifically applicable to the subject Bid Invitation, [NOFA,] RFEI, RFP, or RFQ. In the absence of such a specifically applicable appeal procedure, the subject Proposer may take an appeal in accordance with Chapter 1, Article 4 of this Code.

SECTION 6. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its final passage.

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STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, TODD STERMER, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____ 2025.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2025
Mayor Approval/No Return: _____, 2025
Mayor Veto: _____, 2025
Council Override Vote: _____, 2025

TODD STERMER, MMC
City Clerk

By: _____
Deputy Date

APPROVED AS TO FORM:
ANDREW JANZ
City Attorney

By: _____
Christine C. Charitar Date
Deputy City Attorney