

AN ORDINANCE

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BY: COUNCIL MEMBER YOLANDA ADREAN

AN ORDINANCE TO AMEND PART II, CHAPTER 2, ARTICLE X, DIVISION 2, SECTION 2-1139 AND TO ADD SECTION 2-1214 TO ARTICLE X, DIVISION 4 OF THE CITY OF ATLANTA CODE OF ORDINANCES TO INCLUDE THE ESTABLISHMENT OF POLICIES AND PROCEDURES REGARDING CONFLICTS OF INTEREST IN PROCUREMENT WITHIN THE SPECIFIC DUTIES OF THE CHIEF PROCUREMENT OFFICER AND PROCUREMENT DEPARTMENT STAFF; AND FOR OTHER PURPOSES.

WHEREAS, the Chief Procurement Officer's duties are set forth in Part II, Chapter 2, Article X, Division 2 of the City of Atlanta Code of Ordinances; and

WHEREAS, the Chief Procurement Officer's duties include "solicit[ing] and enter[ing] into contracts for the procurement of supplies, services, construction, professional or consultant services and real estate for all using agencies of the city"; and

WHEREAS, the centralization of procurement authority in the Chief Procurement Officer affords him the opportunity to assess the types of relationships which may conflict with the best interests of the city during the procurement process, as well as in the resulting contracts for supplies, services, construction, professional or consultant services and real estate; and

WHEREAS, businesses and individuals, as well as the employees and elected officials of the City of Atlanta, can benefit from policies that enhance transparency in procurement, avoid conflicts of interest and inform stakeholders as to how those conflicts will be identified and managed in the procurement process.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY ORDAINS as follows:

Section 1: That Part II, Chapter 2, Article X, Division 2, Section 2-1139 (e) of the Code of Ordinances, City of Atlanta, Georgia, which currently states:

(e) *Controls and procedures.* The chief procurement officer shall establish written procedures for the execution of contracts for the procurement of

supplies, services, construction, professional or consultant services and real estate for all using agencies of the city. Such procedures shall include explicit delegation of authority to only the specified deputy chief procurement officer to sign contracts to the extent the chief procurement officer has authority to sign said contracts. The chief procurement officer shall inform the municipal clerk and the mayor's office in writing of the name of the individual he designates to sign on his behalf. No person is authorized to enter into any contract on behalf of the city except as provided under the terms of this article and the written procedures. Authority granted to the deputy chief procurement officer is effective until rescinded or until termination of the person's employment by the city. The chief procurement officer shall be responsible for all transactions undertaken and shall establish a system of controls, to be reviewed by the city attorney, to regulate the activities of the subordinate official. Both the chief procurement officer and the deputy chief procurement officer shall possess sufficient working knowledge and shall possess a master's degree in business administration, public administration or marketing; five years prior experience as a deputy chief procurement officer or equivalent title in a contracting or procurement system of comparable size and scope. The requirement of a master's degree may be substituted by a bachelor's degree in the same field(s), plus ten year's managerial experience in public or corporate purchasing operations, marketing, or contract administration, economics and securities markets, as well as the supervisory experience and judgment necessary to carry out the responsibilities outlined in this policy.

Is hereby **amended** to read as follows:

- (e) *Controls and procedures.* The chief procurement officer shall establish written procedures for the execution of contracts for the procurement of supplies, services, construction, professional or consultant services and real estate for all using agencies of the city. Such procedures shall include explicit delegation of authority to only the specified deputy chief procurement officer to sign contracts to the extent the chief procurement officer has authority to sign said contracts. The chief procurement officer shall inform the municipal clerk and the mayor's office in writing of the name of the individual he designates to sign on his behalf. No person is authorized to enter into any contract on behalf of the city except as provided under the terms of this article and the written procedures. Authority granted to the deputy chief procurement officer is effective until

rescinded or until termination of the person's employment by the city. The chief procurement officer, in consultation with the ethics officer, shall also develop policies and procedures that describe conflicts of interest which may preclude an organization or an individual from competing for a particular contract, as well as establishing written procedures for identifying conflicts and enforcing those policies. The chief procurement officer shall be responsible for all transactions undertaken and shall establish a system of controls, to be reviewed by the city attorney, to regulate the activities of the subordinate official. Both the chief procurement officer and the deputy chief procurement officer shall possess sufficient working knowledge and shall possess a master's degree in business administration, public administration or marketing; five years prior experience as a deputy chief procurement officer or equivalent title in a contracting or procurement system of comparable size and scope. The requirement of a master's degree may be substituted by a bachelor's degree in the same field(s), plus ten year's managerial experience in public or corporate purchasing operations, marketing, or contract administration, economics and securities markets, as well as the supervisory experience and judgment necessary to carry out the responsibilities outlined in this policy. The new provisions may then be set out in full as desired.

Section 2: That Part II, Chapter 2, Article X, Division 4 of the Code of Ordinances, City of Atlanta, Georgia, is amended to include Section 2-1214 which shall read as follows:

2-1214 *Management of Conflicts in Source Selection.*

- (a) The Chief Procurement Officer shall require in all solicitations for competitive sealed bids or competitive sealed proposals that offerors disclose all organizational and personal relationships which may give rise to a conflict of interest if the offeror is awarded the contract. Disclosures must include the following categories:
 - (1) Personal relationships: executives, board members and partners in firms submitting offers must disclose familial relationships with employees, officers and elected officials of the City of Atlanta. Familial relationships shall include spouse, domestic partner registered under section 94-133, mother, father, sister, brother, and natural or adopted children of an official or employee.

- (2) Financial relationships: offerors must disclose any interest held with a City employee or official, or family members of a City employee or official, which may yield, directly or indirectly, a monetary or other material benefit to the offeror or the offeror's family members.

The Chief Procurement Officer may require disclosure of additional types of relationships or interests if, in his sole discretion, such disclosure is in the best interests of the City.

- (b) As early in the procurement process as possible and prior to award of a solicited contract, the Chief Procurement Officer shall review the disclosures of the top three (3) responsive and responsible offerors in a solicitation for competitive sealed proposals, or the three (3) lowest responsive and responsible offerors in a solicitation for competitive sealed bids, to determine if personal or organizational conflicts of interests exist. The Chief Procurement Officer shall make a written determination as to the existence of a conflict and the means by which such conflict may be mitigated or avoided. The written determination shall be maintained in the contract file.
- (c) The Chief Procurement Officer shall award the contract to the most responsible and responsive offeror in a solicitation for competitive sealed proposals, or the lowest responsive and responsible offeror in a solicitation for competitive sealed bids, unless a conflict of interest is determined to exist that cannot be avoided or mitigated.
- (d) Before determining to withhold award of a contract based on conflict of interest considerations, the Chief Procurement Officer shall notify the contractor, provide the reasons therefor, and allow the contractor a reasonable opportunity to respond. If the Chief Procurement Officer finds that it is in the best interest of the City to award the contract notwithstanding a conflict of interest, the offeror shall submit a request for waiver. The waiver request and decision shall be included in the contract file. Nothing in this Section is intended to waive any ethical obligations which are imposed upon employees and officials of the City in Article VII of the Atlanta City Code of Ordinances.
- (e) In recommending award of a solicited contract, the Chief Procurement Officer shall certify to the City Council that the successful offeror has disclosed its organizational and personal relationships and that award of the contract is appropriate under this Section.

Section 2. Any ordinances in conflict with this ordinance are hereby waived to the extent of the conflict.