

City of Boston

Municipal Lobbying Compliance Commission

ADVISORY OPINION 19-01

Pursuant to the authority vested in the Municipal Lobbying Compliance Commission (the “Commission”) by the Lobbyist Registration and Regulation Ordinance (the “Lobbying Ordinance”), the Commission hereby provides the following guidance concerning a question received by the Commission that is likely to affect similarly situated individuals and entities.

QUESTION

An engineering and construction management firm has a contract with the City of Boston to perform engineering and/or construction management services for the City. The firm was selected by the City through a competitive procurement process. The procurement process included meetings with City officials to discuss the firm’s qualifications. The firm does not use a lobbyist to pursue contracts through the City’s procurement process. Does the Lobbying Ordinance require the firm to register as a lobbyist or lobbying entity for its communications, including meetings, with City officials during the procurement process that are required or encouraged by the City’s prescribed procurement process?

BRIEF ANSWER

No. The firm is not required to register as a lobbyist or lobbying entity because its communications with the City are part of the firm’s response to the City’s public invitation.

REASONING

Chapter 9 of the City of Boston Ordinances of 2018, also known as the “Lobbyist Registration and Regulation Ordinance,” requires every lobbying entity that engages in lobbying activity to file annual registration statements and quarterly disclosures concerning its lobbying activity. The Ordinance defines a “Lobbying Entity” as “an organization, including not-for-profits and political action committees, consisting of at least one lobbyist, including foreign or domestic corporation, association, sole proprietor, partnership, limited liability partnership or company, joint stock company, joint venture or any other similar business formation.”

“Lobbying” or “Lobbying Activities” includes activities that influence or attempt to influence “any decision or administrative action made by an employee of the city with respect to the procurement of goods, services or construction, including the preparation of contract specifications, or the solicitation, award or administration of a contract, or with respect to the solicitation, award or administration of a grant, loan, or agreement involving the disbursement of public monies.” The Ordinance, however, exempts responses to requests for proposals, qualifications, or information and invitations for bids from the definition of the term “lobbying

activities,” provided, however, that any communications encouraging the City to procure a particular type of item or service, or to consider a particular vendor, is a communication constituting “lobbying activity.”

It is not unusual for the City and its various departments to require as part of a potential vendor’s response to a request for proposals, qualifications, or information or similar public invitation, participation in meetings or interviews with the City to discuss the vendor’s qualifications and proposed services. Where the City has included in its requests for proposals, qualifications, and information, or its invitations for bids, a requirement or recommendation that a potential vendor interview or meet with the City, the awarding department, or its representatives, said interviews or meetings are not “lobbying activity” under the Ordinance.

Any communication, including during meetings, that is made outside of any procurement process prescribed by a City request for proposals, qualifications, and information, invitation for bids, or other similar public invitation that is intended to encourage the City to procure a particular good or service or to consider a particular vendor is a lobbying activity under the Ordinance. For example, a communication, either written or orally, may constitute lobbying activity if the individual or entity is attempting to influence the City to enter into a contract, agreement, covenant, memorandum of understanding, or other instrument with the individual or entity, or a client of the individual or entity, and said business relationship is not subject to a process prescribed by a written request for proposal or invitation for bid because the amount of the contract does not exceed minimum threshold requirements established by procurement laws, including Mass. Gen. Laws Chapter 30B.

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