

ORDINANCE NO. 2011-05

AN ORDINANCE ADDRESSING LIMITATIONS OF POLITICAL CONTRIBUTIONS BY MUNICIPAL VENDORS AND ESTABLISHING A PROCEDURE FOR THE AWARD OF PROFESSIONAL SERVICE CONTRACTS

WHEREAS, the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., authorizes the award of certain contracts without resort to competitive bidding; and

WHEREAS, although that law authorizes certain contracts to be awarded without competitive bidding, the Mayor and Borough Council of the Borough of Audubon Park wishes to provide assurances to the public that decisions on hiring certain individuals or firms to provide professional services to the Borough, will be made by utilizing objective quality-based criteria by which the Borough Council can properly evaluate the qualifications and credentials of vendors to whom said contracts were awarded; and

WHEREAS, the Borough of Audubon Park intends to make every effort to ensure that the public has confidence in the honor and integrity of the individuals holding public office and positions, and that the elected and appointed officials maintain the highest ethical standards in the conduct of public business on behalf of the residents and taxpayers of the Borough of Audubon Park; and

WHEREAS, while the Borough has often advertised proposals for major professional services contracts as a prelude to awarding same, it has determined that a more comprehensive procedure to review such proposals better serves the public interest; and

WHEREAS, the Mayor and Borough Council are aware of the provisions enacted by N.J.S.A. 19:44A-20.5, which became effective January 1, 2006, and restricts the award of contracts where the vendor has made certain political contributions in the previous year.

NOW, THEREFORE, BE IT ORDAINED by the Borough Council of the Borough of Audubon Park, County of Camden and State of New Jersey, that the following standards and criteria are hereby adopted and shall be made applicable to all contracts awarded and/or confirmed by the Borough Council and all boards, authorities, and committees appointed, either through the authority of statute or ordinance, by the Borough Council unless a specific contrary intention is expressed in an individual case by the Mayor and Borough Council.

SECTION 1. Award of Public Professional Services and Other “No Bid” Contracts.

A. Purpose and Intent. Although professional services contracts and certain other contracts for goods and services are exempt from the competitive bidding requirements of the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., the Commissioners deems it appropriate, and consistent with the provisions of recently enacted New Jersey Legislation, now codified at N.J.S.A. 19:44A-20.1 et seq., to henceforth award such contracts through a competitive, quality-based, fair and open process, unless a specific determination to the contrary is made by the Borough Council.

B. Process for Award of Professional Service and Other “No Bid” Contracts. The Borough of Audubon Park, or any agency instrumentality thereof, shall not enter into a contract, including a professional services contract, or such other contract which is exempt from public bidding requirements, having a anticipated value in excess of Seventeen Thousand Five Hundred Dollars (\$17,500.00) as determined by the Borough of Audubon Park or an agency instrumentality, with a business entity, except through a contract that is awarded pursuant to a fair and open process if, during the preceding one-year period, that business entity has made a contribution that is reportable by the recipient under N.J.S.A 19:44A-1 et seq., to any municipal committee of a political party if a member of that political party is in office as a member of the Borough Council when the contract is awarded or to any public candidate committee of any person serving in an elected public office of the Borough of Audubon Park when the contract is awarded. The fair and open process shall be quality-based, and shall be as follows:

1. Professional services may be awarded by virtue of publicly advertised Request for Proposals (“RFP”) which will be issued as one document for those appointments which are made on an annual basis, such as, but not limited to, the positions of: Borough Attorney and Borough Engineer, and such other statutory and/or ordinance public positions.

2. For said positions, no contract shall be awarded unless and until the positions are:

(i) publicly advertized in the newspapers or on the internet website maintained by the Borough in sufficient time to give notice in advance of the solicitation for the contracts;

(ii) awarded under a process that provides for public solicitation of proposals and qualifications including the following:

- a) Experience and reputation in field;
- b) Knowledge of the subject matter of the services to be provided to the Borough;
- c) Knowledge of the Borough, its affairs and operations;
- d) Availability to accommodate any required meetings of the Borough;
- e) Compensation proposal;
- f) Compliance with the minimum qualifications established by the Borough for the position;
- g) Other factors determined to be in the best interest of the Borough.

(iii) awarded and disclosed under criteria established in writing by the Borough of Audubon Park prior to the solicitation or proposals or qualifications as set forth in this ordinance;

(iv) publicly announced when awarded; and as to those RFPs which prove to be unsuccessful, the Borough Clerk shall retain a copy of same on file for a period of not less than sixty (60) days.

3. For contracts which arise on an occasional basis, such as appraisals needed for the acquisition of land and/or open space, as well as title searches, surveying, and similar work associated with same; and comparable assignments, such as planning services needed for Master Plan updates, appraisals, special counsel, special project engineer contracts, etc., professional services contracts may be awarded without following the foregoing provisions, so long as:

- (i) the anticipated value does not exceed the \$17,500 threshold set forth above; and

(ii) the Borough Clerk makes every effort to solicit at least two (2) proposals for said work..

C. Contribution Statement by Professional Business Entity.

1. Prior to awarding any contract or agreement to procure services, including banking or insurance coverage services, with any professional business entity, the Borough or any of its purchasing agents or agencies, as the case may be, shall receive a sworn statement from the professional business entity made under penalty of perjury that the bidder or offer or has not made contribution in violation of this ordinance;

2. The professional business entity shall have a continuing duty to report any violations of this ordinance that may occur during the negotiations or duration of a contract. The certification required under this subsection shall be made prior to entry into the contract or agreement with the Borough and shall be in addition to any other certifications that may be required by any other provision of law.

D. Contracts Issued Without the Use of the RFP Process

1. In circumstances where the Borough Council determines that the use of the RFP is not appropriate, such as, but not limited to, contracts with other government agencies, and agreements with public utilities, the Borough Clerk shall use his/her best efforts to obtain two (2) quotations for the work and shall require the contractor to fully comply with the provisions of N.J.S.A. et seq., N.J.S.A. 19:44A-22, and related statutes.

2. No business entity which enters into negotiations for, or agrees to, any contract or agreement with the Borough of Audubon Park or any department or agency thereof, or of its independent authorities for the rendition of professional, banking or insurance coverage services, or any other consulting services, shall solicit or make any other contributions of money, or pledge a contribution, including in-kind contributions, to any Borough of Audubon Park municipal candidate or holder of the public office having ultimate responsibility for the award of the contract, or campaign committee supporting such candidate of officeholder, or to any Borough of Audubon Park party committee between the time of first communications between that business entity and the Borough regarding a specific professional services agreement and the later of the termination of negotiations or the completion of the contract or agreement.

E. Emergency Exceptions. Notwithstanding the foregoing, the Borough Council recognizes that the New Jersey Legislature has provided for certain emergencies, and further recognizes that the procedure outlined above, might not be capable of being achieved in the event of an emergency or other time constraints. Thus, should a situation arise, and time does not permit resort to this procedure, and the immediate performance of services is necessary, then an award for same made be made in accordance with the provisions of the Local Public Contracts Law relating to emergency contracts, and such rules and regulations as may be promulgated, from time to time, by the Borough Council with regard to same. No such emergency contracts, however, may be awarded without a resolution establishing a basis for the deviation from the procedures outlines herein.

SECTION 2: Prohibition on Awarding Public Contracts to Certain Contributors.

- A. Definitions. For purposes of this ordinance, a professional business entity seeking a public contract means an individual including the individual's spouse, if any, and any child living at home; person; firm; corporation; professional corporation; partnership; organization; or association. The definition of a business entity includes all principals who own 10% or more of the equity in the corporation or business trust, partners, and officers in the aggregate employed by the entity as well as any subsidiaries directly controlled by the business entity.
- B. Maximum Contributions. Any individual meeting the definition of a professional business entity under this section may annually contribute a maximum of \$300 each for any purpose to any candidate for office, or \$300.00 to the Borough of Audubon Park party, or \$300.00 to the Camden County party committee, or to a PAC referenced in this ordinance, without violating subsection (a) of this section. However, any group of individuals meeting the definition of a professional business entity under this section, including such principals, partners, and officers of the entity in the aggregate, may not annually contribute for any purpose in excess of \$2,500.00 to all Borough of Audubon Park candidates and officeholders with ultimate responsibility for the award of the contract, and all Borough of Audubon Park or Camden County political parties and PACs referenced in this ordinance combined, without violating subsection (a) of this section. For purposes of this section, the office that is considered to have ultimate responsibility for the award of the contract shall be the Borough of Audubon Park Commissioners.

SECTION 3: Contributions Made Prior to the Effective Date.

- A. Effective Date. No contribution of money or any other thing of value, including in-kind contributions, made by a professional business entity to any municipal candidate for office, or municipal or county party committee or PAC referenced in this ordinance shall be deemed a violation of this section, nor shall an agreement for property, goods, or services, of any kind whatsoever, be disqualified thereby, if that contribution was made by the professional business entity prior to the effective date of this section.

SECTION 4: Return of Excess Contributions.

- A. Cure Period. A professional business entity or Borough candidate or officeholder or municipal or county party committee or PAC referenced in this ordinance may cure a violation of Section 1 of this ordinance, if, within 30 days after the date on which the applicable ELEC Report is published, the professional business entity notifies the Borough Council in writing and seeks and receives reimbursement of a contribution from the Borough candidate or municipal or county political party or PAC referenced in this ordinance.

SECTION 5: Penalty.

Scope. It shall be a breach of the terms of the Borough of Audubon Park professional service agreement for a business entity to: (i) make or solicit a contribution in violation of this ordinance; (ii) knowingly conceal or misrepresent a contribution given or received; (iii) make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution; (iv) make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee of any candidate or holder of the public office of the Borough of Audubon Park; (v) engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of this ordinance; or (vi) fund contributions made by third parties, including consultants, attorneys, family members, and employees; (vii) engage in any exchange of contributions to circumvent the intent of this ordinance; or (viii) directly or indirectly, through or by any other person or means, do any act which would subject that entity to the restrictions of this ordinance.

- B. Disqualification. Furthermore, any professional business entity who violates (a) ii-viii shall be disqualified from eligibility for future Borough of Audubon Park contracts for a period of four (4) calendar years from the date of the violation.

SECTION 6: Severability and Effectiveness Clause.

- A. Consistency. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, invalid, or unenforceable by a court of competent jurisdiction, such decision shall not affect the remaining portions of this ordinance. Any ordinance or parts of ordinances which are inconsistent with the provisions hereof, are, to the extent of such inconsistencies hereby repealed

SECTION 7: Effective Date.

This ordinance shall take effect upon final passage, adoption, and publication in the manner prescribed by law.

INTRODUCED: September 6, 2011

ADOPTED: October 3, 2011