

ORDINANCE NO. 13-28-OA

AN ORDINANCE OF THE TOWNSHIP OF BERKELEY, COUNTY OF OCEAN, STATE OF NEW JERSEY, SO AS TO AMEND CHAPTER II ENTITLED "ADMINISTRATION" TO AMEND VARIOUS SECTIONS

June 24, 2013

BE IT ORDAINED by the Mayor and Township Council of the Township of Berkeley, County of Ocean, State of New Jersey, as follows:

SECTION 1. Chapter II of the Township Code of the Township of Berkeley, entitled "Administration," is hereby amended so as to amend §2-73.5, entitled "Public Bidding Procedure", which shall read as follows:

§2-73.5 Public Bidding Procedure

All purchases shall conform to the provisions of the Local Public Contracts Law and any regulation issued thereunder. All purchase contracts of thirty-six thousand (\$36,000.00) dollars or more shall conform to the requirements of public bidding in the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., and related Procurement Laws, P.L. #1999, c.440.

In those circumstances pursuant to N.J.S.A. 40A:11-4 exceeding thirty-six thousand (\$36,000.00) dollars, which requires public bidding only the Township Council shall award such a contract. Sealed bids shall be received by the Business Administrator or qualified purchasing agent, which shall be opened by the Administrator or purchasing agent at the Town Hall at a time to be determined by the Administrator or purchasing agent.

SECTION 2. Chapter II of the Township Code of the Township of Berkeley, entitled "Administration," is hereby amended so as to amend §2-92, entitled "Public Contracting Reform", which shall read as follows:

§2-92 PUBLIC CONTRACTS

The purpose of this chapter is to comply with and adopt the provisions of Chapter 19, P.L. 2004, as amended P.L. 2005, c. 51, and Chapter 271, P.L. 2005 (the "Pay to Play Acts").

§2-92.1 Definitions.

As used in this chapter, unless otherwise noted, the following terms shall have the

meanings indicated, as delineated within N.J.S.A. 19:44A-20.7:

BUSINESS ENTITY

Any natural or legal person, business corporation, professional services corporation, limited-liability company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of this state or of any other state or foreign jurisdiction.

INTEREST

The ownership or control of more than 10% of the profits or assets of a business entity or 10% of the stock in the case of a business entity that is a corporation for profit, as appropriate.

§2-92.2 Prohibition on awarding public contracts to certain contributors.

A. The Township of Berkeley, and any agency or instrumentality thereof, shall not enter into a contract having an anticipated value in excess of \$17,500, as determined in advance and certified in writing by the Township, with a business entity, except 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 P.L. 1973, c. 83 (N.J.S.A. 19:44A-1 et seq.), to any Berkeley Township committee of a political party, if a member of that political party is serving in an elective public office of Berkeley when the contract is awarded, or to any candidate committee of any person serving in an elective public office of that municipality when the contract is awarded; and

B. A business entity that has entered into a contract having an anticipated value in excess of \$17,500 with the Township of Berkeley, or any agency or instrumentality thereof, except a contract that is awarded pursuant to a fair and open process, shall not make such a contribution, reportable by the recipient under P.L. 1973, c. 83 (N.J.S.A. 19:44A-1 et seq.), to any Berkeley Township committee of a political party, if a member of that political party is serving in an elective public office of that municipality when the contract is awarded, or to any candidate committee of any person serving in an elective public office of that municipality when the contract is awarded during the term of that contract.

C. No such committee as referenced in Subsection A or B above shall accept such a contribution from a business entity during the term of the business entity's contract with the Township of Berkeley, unless it was awarded under a fair and open process.

§2-92.3 Certain contributions deemed as contributions by business entity.

When a business entity is a natural person, a contribution by that person's spouse or

child, residing therewith, shall be deemed to be a contribution by the business entity. When a business entity is other than a natural person, a contribution by any person or other business entity having an interest therein shall be deemed to be a contribution by the business entity. When a business entity is other than a natural person, a contribution by: all principals, partners, officers, or directors of the business entity or their spouses; any subsidiaries directly or indirectly controlled by the business entity; or any political organization organized under Section 527 of the Internal Revenue Code that is directly or indirectly controlled by the business entity, other than a candidate committee, election fund, or political party committee, shall be deemed to be a contribution by the business entity.

§2-92.4 Return of excess contributions.

If a business entity makes a contribution that would cause it to be ineligible to receive a public contract, or, in the case of a contribution made during the term of a public contract, that would constitute a violation of the Pay to Play Acts, the business entity may request, in writing, within 60 days of the date on which the contribution was made, that the recipient thereof repay the contribution and, if repayment is received within those 60 days, the business entity would again be eligible to receive a contract, or would no longer be in violation, as appropriate.

§2-92.5 Public exigency.

Nothing contained in this chapter shall be construed as prohibiting the awarding of a contract when the public exigency requires the immediate delivery of goods or performance of emergency services as determined in accordance with N.J.S.A. 40A:11-6.

§2-92.6 Duty to report contributions.

Prior to awarding any contract, except a contract that is awarded pursuant to a fair and open process, the Township of Berkeley shall require the business entity to which the contract is to be awarded to provide a written certification that it has not made a contribution that would bar the award of a contract pursuant to this act. A business entity shall have a continuing duty to report to the Election Law Enforcement Commission any contributions that constitute a violation of this act that are made during the duration of a contract.

§2-92.7 Violations; civil penalties.

Violations of this chapter shall result in penalties as prescribed within N.J.S.A. 19:44A-20.10 and 19:44A-20.11.

§2-92.8 Fair and open process utilized to award contracts with anticipated value in excess of \$17,500..

A. The Township shall award all contracts with a business entity having an anticipated value in excess of \$17,500 on the basis of the fair and open process herein, in accordance with N.J.S.A. 19:44A-20.7. For purposes of this section, contracts awarded by public bidding pursuant to N.J.S.A. 40A:11-4, and competitive contracting pursuant to N.J.S.A. 40A:11-4.1 to 40A:11-4.5, shall be deemed to have satisfied the Township's "fair and open process." This section shall not apply to any contract for which the entity is regulated by the state so as to prohibit or restrict said entity from making political contributions.

B. Fair and open process defined.

(1) Requests for proposal shall be published by the posting of a public notice at least 10 days prior to the awarding of any contract herein.

(a) The public notice shall be:

[1] Prominently posted in the public place reserved for Sunshine Law notices; and
[2] Mailed, telephoned, telegraphed, faxed, or hand delivered to at least two newspapers designated to receive such notice because they have the greatest likelihood of informing the public within the municipality, one of which shall be the official newspaper of the municipality; and

[3] Filed with the Township Clerk.

(b) The public notice shall, at minimum, include:

[1] A description of the goods or services needed, including, where appropriate, a description of tasks involved.

[2] Threshold qualification requirements setting the highest possible minimum standards for qualifying to compete for the particular goods or services and tasks involved.

[3] Notice that the selection criteria are on file and available at a stated location in the Township.

[4] Deadline and place for all submissions.

(2) The selection criteria to be used in awarding a contract or agreement for goods or services shall include:

(a) Name and business address of proposed contractor. For service contracts, the names and roles of the individuals who will perform the task, and a description of their experience with projects similar to the matter being advertised.

(b) References which include evidence of successful transactions for provision of similar goods or services.

(c) Description of ability to provide the goods or services in a timely fashion (for service contracts, include staffing, familiarity, and location of key staff).

(d) Cost details. For service contracts, include the hourly rates of each of the individuals who will perform services, time estimates for each individual, all expenses, and, where appropriate, total cost of "not to exceed" amount.

- (e) Qualifications of the individuals who will perform the tasks and the amounts of their respective participation (services only).
 - (f) Other relevant experience.
 - (g) Ability to perform the task or provide goods in a timely fashion.
 - (h) Cost consideration, including, but not limited to, as applicable, historical costs for similar goods or services, expertise involved and comparable costs for comparable public entities.
- (3) All submissions shall be kept on file during the term of the related contract, and shall be public records after the deadline for the submission of proposals.
- (4) Contracts awarded under this section shall be publicly announced and awarded.

SECTION 3. All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

SECTION 4. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

SECTION 5. This ordinance shall take effect after second reading and publication as required by law.

CARMEN F. AMATO, JR., Mayor

JAMES J. BYRNES, Council President
JUDITH NOONAN, Council Vice President

NOTICE

NOTICE IS HEREBY GIVEN that the foregoing ordinance was introduced and passed on first reading at a regular meeting of the Township Council of the Township of Berkeley, in the County of Ocean, State of New Jersey, held on _____, **2013**, and will be considered for second reading and final passage at the regular meeting of said Governing Body to be held on the ____ day of _____, **2013**, at 7:00 p.m., or as soon thereafter as this matter can be reached, at the meeting room of the Municipal Building located at 627 Pinewald-Keswick Road, Bayville, New Jersey, at which time all persons interested shall be given an opportunity to be heard concerning this ordinance.

BEVERLY CARLE, RMC
Township Clerk, Township of Berkeley