

# Chapter 20A PROFESSIONAL SERVICES CONTRACTS

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**[HISTORY: Article I adopted by the Mayor and Council of the City of Hoboken 7-30-2004 as Ord. No. DR-154. Article II was approved by referendum by the voters of the City of Hoboken at the General Election of November 2, 2004. Amendments noted where applicable.]**

## **ARTICLE I Competitive Negotiations for Professional Services Contracts**

### **§ 20A-1. Short title.**

Competitive Negotiation Ordinance.

### **§ 20A-2. Purpose.**

This municipality has a strong commitment to open and fair competition. Qualification based, competitive, negotiation procedures help to ensure open and fair competition through published rules and decision-making criteria.

It is accordingly found and determined that the paramount public interest is served by requiring that the city award all contracts or agreements to outside consultants for the provision of professional services on the basis of competitive negotiation.

### **§ 20A-3. Definitions.**

**PROFESSIONAL SERVICES** — For purposes of this chapter means, as defined at N.J.S.A. § 40A:11-2(6), services rendered or performed by a person authorized by law to practice a recognized profession, whose practice is regulated by law, and the performance of which services requires knowledge of an advanced type in a field of learning acquired by a prolonged formal course of specialized instruction and study as distinguished from general academic instruction or apprenticeship and training. For purposes of this chapter, however, professional services shall not include professional artistic services as defined at N.J.S.A. § 40A:11-2(6). Professional services shall include financial services or insurance services.

#### **§ 20A-4. General provisions.**

- A. The municipality shall award all contracts or agreements for the provision of professional services on the basis of qualification based, competitive negotiation.
- B. Professional service contract requests for proposal shall be published by the posting of a public notice at least ten (10) days prior to the awarding of any contract for professional services.
- C. The public notice shall be:
- (1) Prominently posted in the public place reserved for Sunshine Law notices;
  - (2) Mailed, telephoned, telegraphed, e-mailed or hand delivered to at least two (2) newspapers designated to receive such notices because they have the greatest likelihood of informing the public within the municipality, one (1) of which shall be the official newspaper of the municipality; and
  - (3) Filed with the Clerk of the municipality.
- D. The public notice shall, at minimum, include:
- (1) A description of the professional 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 services and tasks involved.
  - (3) Notice that standardized submission requirements and selection criteria are on file and available at a stated location in the city.
  - (4) Deadline and place for all submissions.
- E. Standardized submission requirements shall include:
- (1) 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.
  - (2) References and record of success.
  - (3) Description of ability to provide the services in a timely fashion (including staffing, familiarity and location of key staff).
  - (4) Cost details, including the hourly rates of each of the individuals who will perform services and time estimates for each individual, all expenses, and, where appropriate, total cost of "not to exceed" amount.

F. The selection criteria to be used in awarding a contract or agreement for professional services shall include:

(1) Qualifications of the individuals who will perform the tasks and the amounts of their respective participation.

(2) Experience and references.

(3) Ability to perform the task in a timely fashion, including staffing and familiarity with subject matter.

(4) Cost competitiveness.

G. 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.

H. In the event that compliance with part of all of the requirements of this chapter is impracticable as regards a particular contract or agreement, the City Council may waive part or all of the requirements by a majority vote of the full Council together with publication of a resolution setting forth with specificity the reasons such waiver is required.

## **ARTICLE II Campaign Contributions by Professional Business Entities**

**[Approval by referendum by the voters of the**

**City of Hoboken at General Election of 11-2-04]**

### **§ 20A-5. Preamble.**

Professional business entities are exempt from public bidding requirements.

It has become common for professional business entities to make substantial political **contributions** to the election campaigns of the local government elected officers who are ultimately responsible for awarding professional service contracts or other contracts or agreements which are not subject to public bidding.

Substantial local political **contributions** from professional business entities receiving discretionary contracts from the elected officials who receive such

**contributions** raise reasonable concerns on the part of taxpayers as to their trust in the process of local government, if not the quality or cost of services received.

Pursuant to N.J.S.A. 40A:11-5 and N.J.S.A. 40:48-2, municipalities have the right to establish rules and procedures for contracting with professional business entities, now therefore, be it resolved, that the policy of the City of Hoboken will be to set maximum amounts professional business entities may contribute politically beyond which they become ineligible to receive a public professional service contract from the City of Hoboken.

### **§ 20A-6. Prohibition on awarding public contracts to certain contributors.**

A. Any other provision of law to the contrary notwithstanding, the municipality or any of its purchasing agents or agencies or those of its independent authorities, as the case may be, shall not enter into an agreement or otherwise contract to procure services, including banking services/relationships, legal or insurance coverage, or any other no-bid consulting services, from any professional business entity, if that entity has solicited or made any contribution of money; or pledge of a contribution, including in-kind **contributions**, to a campaign committee of any Hoboken candidate or holder of the public office having ultimate responsibility for the award of the contract, or to any Hoboken or Hudson County party committee, or to any political action committee (PAC) that is organized for the primary purpose of promoting or supporting Hoboken municipal candidates or municipal officeholders in excess of the thresholds specified in Subsection D. within two (2) calendar years immediately preceding the date of the contract or agreement.

B. No professional business entity which enters into negotiations for, or agrees to, any contract or agreement with the municipality of any department or agency thereof or of its independent authorities for the rendition of professional, banking or insurance coverage services or any other no-bid consultants shall knowingly solicit or make any contribution of money, or pledge of a contribution, including in-kind **contributions**, to any Hoboken candidate or holder of the public office having ultimate responsibility for the award of the contract, or to any Hoboken or Hudson County party committee, or to any PAC that is organized for the primary purpose of promoting or supporting Hoboken municipal candidates or municipal officeholders between the time of first communications between that business entity and the City of Hoboken regarding a specific professional services agreement and the later of the termination of negotiations or the completion of the contract or agreement.

C. For purposes of this Article, a "professional business entity" seeking a public contract means an individual including the individual's spouse, if any, and any children;

person; firm; corporation; professional corporation; partnership; organization; or association. The definition of a business entity includes all principals who own ten percent (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.

D. Any individual meeting the definition of "professional business entity" under this section may annually contribute a maximum of four hundred dollars (\$400.) each for any purpose to any candidate, for Mayor or Council, or five hundred dollars (\$500.) to the Hoboken or Hudson County party committee, or to a PAC referenced in this Article, without violating Subsection A. of this section. However, any group of individuals meeting the definition of "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 two thousand five hundred dollars (\$2,500.) to all Hoboken candidates and officeholders with ultimate responsibility for the award of the contract, and all Hoboken or Hudson County political parties and PACs referenced in this Article combined, without violating Subsection A. of this section.

E. For purposes of this section, the office that is considered to have ultimate responsibility for the award of the contract shall be:

(1) The Hoboken City Council, if the contract requires approval or appropriation from the Council.

(2) The Mayor of Hoboken, if the contract requires approval of the Mayor, or if a public officer or board member who is responsible for the award of a contract is appointed by the Mayor.

#### **§ 20A-7. Contributions made prior to the 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 Mayor or Council, or municipal or County party committee or PAC referenced in this Article shall be deemed a violation of this Article, 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 Article.<sup>1</sup>

#### **§ 20A-8. Contribution statement by professional business entity.**

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A. Prior to awarding any contract or agreement to procure services, including banking services/relationships and legal or insurance coverage services or any other no-bid consulting service, with any professional business entity, the City of Hoboken 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 offeror has not made a contribution in violation of Section 20A-6 of this Article.

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

### **§ 20A-9. Return of excess contributions.**

A professional business entity or municipal candidate or officeholder or municipal or county party committee or PAC referenced in this ordinance may cure a violation of Section 20A-6 of this Article, if, within thirty (30) days after the general election, the professional business entity notifies the Hoboken City Council in writing and seeks and receives reimbursement of a contribution from the City of Hoboken candidate or municipal or county political party or PAC referenced in this Article.

### **§ 20A-10. Penalty.**

A. All City of Hoboken professional service agreements shall provide that it shall be a material breach of the terms of the government contract for a professional business entity as defined in Section 20A-6C to violate, or to aid or abet a violation of Section 20A-6 B or D or to knowingly conceal or misrepresent **contributions** given or received, or to make or solicit **contributions** through intermediaries for the purpose of concealing or misrepresenting the source of the contribution.

B. Any professional business entity as defined in Section 20A-6C who knowingly fails to reveal a contribution made in violation of this Article, or who knowingly makes or solicits **contributions** through intermediaries for the purpose of concealing or misrepresenting the source of the contribution, shall be disqualified from eligibility for future City contracts for a period of four (4) calendar years from the date of the violation.

Editor's Note: This Article was approved by the voters at the General Election of November 2, 2004.