

FILED

JUN 15 2007

NINA MITCHELL WELLS
SECRETARY OF STATE

CITY OF NEWARK
EXECUTIVE ORDER

NO.: MEO-07-0001

DATE: 2/8/07

WHEREAS, in our representative form of government, it is essential that individuals who are elected to public office have the trust, respect and confidence of the citizenry; and

WHEREAS, all individuals, businesses, associations, and other persons have a right to participate fully in the political process of the State of New Jersey, the County of Essex and the City of Newark, including making and soliciting contributions to candidates, political parties and holders of public office; and

WHEREAS, professional business entities are exempt from public bidding requirements, and

WHEREAS, local government officials are responsible for awarding and deciding the terms of professional services agreements and other contracts or agreements not subject to public bidding; and

WHEREAS, professional business entities may from time to time make 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; and

WHEREAS, political contributions from professionals receiving contracts from the elected officials who receive such contributions raise concerns on the part of taxpayers as to their trust in the process of local government, and

WHEREAS, although the right of individuals and businesses to make campaign contributions is unequivocal, that right may be limited, even abrogated, when such contributions promote the actuality or appearance of public corruption; and

WHEREAS, the Mayor bears the sole responsibility for initiating, negotiating and signing contracts on behalf of the City; and

WHEREAS, the restrictions on political contributions contained herein do not impair in any way the remaining opportunities for professional business entities to speak, write and publish their sentiments about local elections and candidates or to volunteer or associate with campaigns of their own choosing; and

WHEREAS, in light of the aforementioned, as Mayor, I believe it is in the best interests of the citizens of Newark to impose certain restrictions on political contributions by professional business entities;

NOW THEREFORE, I, Cory A. Booker, Mayor of the City of Newark, by virtue of the authority vested in me, do hereby issue the following Executive Order:

BE IT ORDERED as follows:

CONTRACT PAY-TO-PLAY REFORM

Section 1: Definitions

For purposes of this Executive Order, the following terms shall be defined as follows:

- (a) **“Contribution”** means any contribution or pledge of a contribution, whether a monetary or an in-kind contribution, of any amount, which is made on or after the effective date of this Executive Order and is not limited to a contribution reportable by the recipient under “The New Jersey Campaign Contributions and Expenditures Reporting Act,” P. L. 1973, c. 83 (C.19:44A-1 et seq.).
- (b) **“Newark Candidate For Public Office”** means and includes
 - (i) the candidate committee of any holder of or candidate for municipal public office in the City of Newark (also referred to as “candidate committees” and “joint candidate committees”); which has filed a Certificate of Organization with the New Jersey Election Law Enforcement Commission (ELEC) pursuant to NJSA 14:44A-3;
 - (ii) any City of Newark municipal party committee;
 - (iii) any Essex County party committee; and
 - (iv) any political action committee which regularly engages in or is formed for the purpose of engaging in the support of candidates or political parties in municipal elections in the City of Newark (also referred to as “continuing political committees”).
- (c) **“No-Bid Contract”** means any agreement, contract, or any amendments thereto, awarded without public bidding, including those contracts for amounts not to exceed \$17,500 and those contracts awarded through the “fair and open” process pursuant to N.J.S.A. 19:44A-20.5, and except for Redevelopment Contracts as that term is defined in Section 2.2-23.1(c) of the Municipal Code.
- (d) **“Business Entity”** means 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 any other State or foreign jurisdiction. The definition of a Business Entity includes:

- (i) all partners and officers of the Business Entity;
 - (ii) all principals who own or control more than ten percent (10%) of the profits or assets of a Business Entity or ten percent (10%) of the stock in the case of a Business Entity that is a corporation for profit, as appropriate;
 - (iii) any subsidiaries directly or indirectly controlled by the Business Entity;
 - (iv) 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; and
 - (v) if a Business Entity is a natural person, that person's spouse or child, residing therewith.
- (c) **"City of Newark"** means the contracting or purchasing agents for the administration of the City of Newark, including all municipal agencies, offices, boards, commissions or independent authorities, responsible for arranging and entering into agreements or contracts governed by this Executive Order, which shall include:
- (i) The Municipal Council if the agreement or contract requires the approval of or an appropriation by the Municipal Council or the approval of a public officer who is appointed by the Municipal Council; and
 - (ii) The Mayor, if the agreement or contract requires the approval of the Mayor or of a public officer who is appointed or employed by the Mayor.
- (f) **"Effective Date"** means the effective date of this Executive Order as set forth in Section 11 herein.
- (g) **Other Undefined Terms.** To the extent any term contained in this Executive Order and not defined herein requires interpretation or definition resort shall be made to the relevant definition of said term contained in the "New Jersey Campaign Contributions and Expenditures Reporting Act." PL 1973, c.83 (C:19:44A-1, et seq.) which definition shall be dispositive.

Section 2: Restrictions

(a) The restrictions herein shall apply only to those contracts defined herein as No-Bid Contracts.

(b) Notwithstanding any other provision of the law to the contrary, the City of Newark shall not enter into a No-Bid Contract with any Business Entity if that Business Entity has solicited or made any Contribution to a Newark Candidate For Public Office

which exceeds the thresholds set forth in subsection (d), below within **one (1) year** prior to the date of the award of the No-Bid Contract for such services.

(c) From the Effective Date of this Executive Order, all No-Bid Contracts shall contain a provision prohibiting the Business Entity entering into the No-Bid Contract from soliciting or making any Contribution to a Newark Candidate For Public Office during the duration of the No-Bid Contract.

(d) Any Business Entity may annually contribute a maximum of \$300 each for any purpose to the candidate committee of any holder of or candidate for public office in the City of Newark or to any City of Newark municipal party committee, and a maximum of \$300 each to any Essex County party committees, or to any political action committee which regularly engages in or is formed for the purpose of engaging in the support of candidates or political parties in municipal elections in the City of Newark without violating subsection (b), above. However, no Business Entity may annually contribute for any purpose to all Newark Candidates For Public Office an aggregate in excess of \$3,000.

(e) From the Effective Date of this Executive Order, all No-Bid Contracts shall further provide that it shall be a breach of the terms of the No-Bid Contract for a Business Entity to:

- (i) make or solicit a Contribution in violation of this Section;
- (iii) conceal or misrepresent a Contribution given or received;
- (iv) make or solicit a Contribution through intermediaries for the purpose of concealing or misrepresenting the source of the Contribution;
- (v) make or solicit any Contribution on the condition or with the agreement that it will be contributed to a recipient enumerated in this Executive Order;
- (vi) fund a Contribution made by third parties, including for example consultants, attorneys, family members, and employees which, if made or solicited by the business entity itself, would subject that entity to the restrictions of, or would violate the terms of, this Executive Order;
- (vii) engage in any exchange of a Contribution to circumvent the intent of this Executive Order; or
- (viii) directly or indirectly, through or by any other person or means, do any act which would violate the terms of, or otherwise circumvent or attempt to circumvent the restrictions of this Executive Order.

Section 3: Certification By Business Entity Prior to Award of No-Bid Contract

Prior to awarding any No-Bid Contract, the Business Entity shall provide a written certification that it has not made a Contribution that would bar the award of the No-Bid Contract pursuant to this Executive Order.

Section 4: Inadvertent Contribution

If a Business Entity inadvertently makes a Contribution that would otherwise bar it from entering into a No-Bid Contract under the terms of this Executive Order, or makes a Contribution during the duration of a No-Bid Contract in violation of this Executive Order, the Business Entity may notify the Business Administrator in writing of the Contribution and request a full reimbursement from the Newark Candidate For Public Office of the Contribution and, if such reimbursement is received by the Business Entity within sixty (60) days after the applicable ELEC report is published, the Business Entity would again be eligible to receive a No-Bid Contract or would no longer be in violation of this Executive Order and/or the terms of the No-Bid Contract, as appropriate.

Section 5: Contributions Prior to the Effective Date of this Section

No Contribution shall be deemed a violation of this Executive Order if made prior to the Effective Date of this Executive Order, nor shall any Business Entity be prohibited from entering into a No-Bid Contract or subject to violation of the terms of this Executive Order as a result of any Contribution made prior to the Effective Date of this Executive Order.

Section 6: Notice to Business Entity

Every No-Bid Contract, and all requests for proposals and/or specifications promulgated in connection with a No-Bid Contract, covered by this Executive Order, shall contain a provision describing the requirements of this Executive Order and a statement that compliance with this Executive Order shall be a material term and condition of said No-Bid Contract and/or proposal and shall be binding upon the parties thereto upon submission of the proposal or the execution of the No-Bid Contract.

Section 7: Public Exigency Exception

Nothing contained in this Executive Order shall be construed as prohibiting the award of a contract when the public exigency requires the immediate delivery of goods or performance of emergency services as determined by the State Treasurer, or in the event that the contract does not exceed \$17,500.00., the Business Administrator.

Section 8: Penalty

(a) Any Business Entity which violates this Executive Order shall be deemed to have materially breached the No-Bid Contract.

(b) Any Business Entity which violates this Executive Order may be disqualified from eligibility for any future No-Bid Contract with the City of Newark for a period of one (1) year from the date of the violation for the first offense and for a period of two (2) years from the date of any and all subsequent offenses.

(c) In the event that a Business Entity engages in a knowing or intentional violation of 2:4-23A.2(d) herein, this subsection (c) shall apply. Whether a Business Entity has intentionally circumvented this Executive Order shall be determined by the Mayor or his designee following a hearing conducted by the Mayor's designee. At such hearing the Business Entity accused of violating the provisions of this Executive Order shall have the right to be represented by an attorney and to call witnesses and introduce evidence on its behalf. Intentional circumvention shall result in the Business Entity being disqualified from eligibility for any future No-Bid Contract with the City of Newark for a period of four (4) years from the date of the violation.

Section 9: Severability and Effectiveness

If any sentence, paragraph or section of this Executive Order, or the application thereof to any persons or circumstance shall be adjudged by a court of competent jurisdiction to be invalid, or if by legislative action any sentence, paragraph or section of this Executive Order shall lose its force and effect, such judgment or action shall not affect, impair or void the remainder of this Executive Order and are declared to be severable.

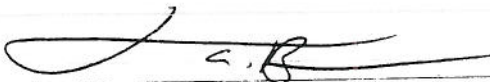
Section 10: Inconsistency

All Executive Orders or parts of Executive Orders inconsistent with any of the terms of this Executive Order, including Executive Order No. MEO-06-0004, dated November 1, 2006, are hereby superceded to the extent of such inconsistency or inconsistencies.

Section 11: Effective Date


This Executive Order shall take effect on March 31, 2007.

APPROVED:


CORY A. BOOKER
MAYOR

2/8/07
DATE

AS TO FORM AND LEGALITY:


ANEY K. CHANDY
CORPORATION COUNSEL

DATE

ATTESTED TO AND RECORDED BY:


ROBERT MARASCO
CITY CLERK

February 9, 2007
DATE

This Executive Order shall remain in the custody of the City Clerk. Certified copies are available upon request.

