

#8-2006

ORDINANCE NO. O-06-8

AN ORDINANCE OF THE TOWNSHIP OF LOGAN
COUNTY OF GLOUCESTER, STATE OF NEW JERSEY

AN ORDINANCE ESTABLISHING A FAIR AND OPEN PROCESS
FOR THE AWARD OF PROFESSIONAL SERVICE AGREEMENTS
AND OTHER AGREEMENTS WITH BUSINESS ENTITIES

MINA MITCHELL WELLS
SECRETARY OF STATE

FILED
JUN 20 2006

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 New Jersey, including making and soliciting contributions to candidates, political parties and holders of public office; and

WHEREAS, P.L. 2005, Chapter 271 permits municipalities and their agencies and instrumentalities to adopt local pay-to-play restrictions and provides that P.L. 2004, Chapter 19 is not construed to supercede or preempt local pay-to-play policies adopted prior to and after the enactment of Chapter 19; and

WHEREAS, when a person or business interest makes or solicits major contributions to obtain a contract awarded by a government agency or independent authority in excess of the limits set in P.L. 2004 Chapter 19 for Non-Fair and Open per election cycle and/or P.L. 2005 Chapter 271 allowed under State ELEC laws, this constitutes a violation of the public's trust in government and raises legitimate public concerns about whether the contract has been awarded on the basis of merit; and

WHEREAS, the growing infusion of funds donated by business entities into the political process at all levels of government has generated widespread cynicism among the public that special interest groups are "buying" favors from elected officeholders; and

WHEREAS, professional services agreements, exemption as outlined in *N.J.S.A. 40A:11-5*, as well as "window contract" which constitutes the amount of a contract between \$17,500.00 and the township's bid threshold adopted by the governing body, are exempt from the State Public Bidding Laws; and

WHEREAS, the Township of Logan ("Township") has recognized that there is a need for a fair and open process for the awarding of professional service contracts and other contracts as contained in *N.J.S.A. 40A:11-5*, as well as "window contract", where other contracts and agreements are subject to public bidding, in order to address the concerns of taxpayers regarding political contributions and to engender trust in the process of local government and to insure that quality public services are received; and

WHEREAS, the State of New Jersey has enacted *N.J.S.A. 19:44A-20.5* which bars any municipality, agency, board, authority or instrumentality thereof from entering into a contract in excess of \$17,500.00 with a business entity that has made a political contribution reportable pursuant to *N.J.S.A. 19:44A-1 et. seq.* to any municipal committee of a political party in that municipality 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 unless said contract is awarded pursuant to a fair and open process; and

WHEREAS, this Ordinance shall apply to those services, contracts, etc. described above, that expire as of December 31 of that calendar year; and

WHEREAS, this Ordinance shall apply to all Municipal appointing authorities, to include the Office of the Mayor, Municipal Governing Body, Planning Board, and Zoning Board.

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and Council of the Township of Logan, County of Gloucester and State of New Jersey, that the Township of Logan enact an Ordinance to be known as an Ordinance Establishing a Fair and Open Process for the Award of Professional Service Agreements, exemptions as outlined in *N.J.S.A. 40A:11-5*, as well as "window contract", which constitutes the amount of a contract between \$17,500.00 and the Township's bid threshold adopted by the governing body which are exempt from the State Public Bidding Laws, and said Ordinance shall read as follows:

An Ordinance Establishing a Fair and Open Process for the Award of Professional Services, Agreements and Other Agreements with Business Entities.

I. Prohibition Awarding Certain Public Contracts

Any other provision of the law or ordinance to the contrary notwithstanding, the Township or any Board, Authority, Agency or Instrumentality thereof (hereinafter referred to as "Municipal Appointing Authority"), shall not enter into a contract having an anticipated value in excess of \$17,500.00 as determined in advance and certified in writing by the Municipal Appointing Authority, or its designee, 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 political contributions that are reportable by the recipient under *N.J.S.A. 19:44A-1 et seq.*, to any municipal committee of a political party in the Township if a member of that political party is serving in an elective public office of the Township when the contract is awarded, or to any candidate committee of any person serving in an elective public office of the Township when the contract is awarded; and

A business entity that has entered into a contract having an anticipated value in excess of \$17,500 with the Municipal Appointing Authority, except a contract that is awarded pursuant to a Fair and Open Process, shall not make such a contribution, reportable by the recipient under *N.J.S.A. 19:44A-1 et seq.*, during the term of the contract, to any municipal committee of a political party in the Township if a member of that political party is serving in an elective public office of the Township when the contract is awarded, or to any candidate committee of any person serving in an elective public office of the Township when the contract is awarded, during the term of the contract.

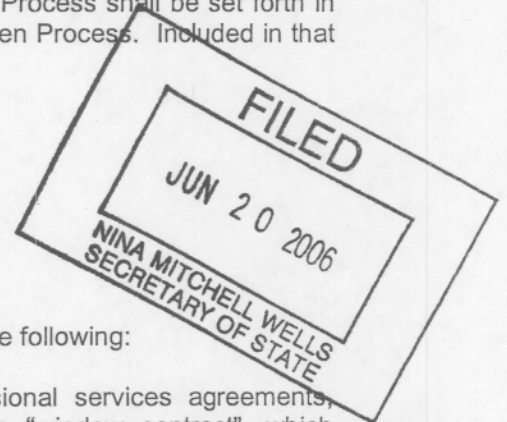
II. Fair and Open Process

A. Any professional service entity or other business entity providing services to the Township shall be subject to a Fair and Open Process for selection. That Fair and Open Process shall be set forth in Subsection B below which shall establish a criteria for the Fair and Open Process. Included in that criteria and made a part hereof, shall be some or all of the following:

1. Accessibility
2. Understanding of the assignment
3. Methodology/plan for accomplishing the assignment
4. General experience
5. Experience specific to the assignment
6. Sufficiency of resources to perform the task.

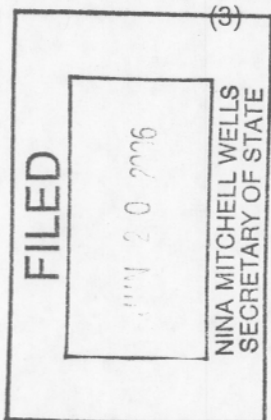
B. The Fair and Open Process established by the Township shall require the following:

- (1) The solicitation of proposals or qualifications for professional services agreements, exemptions as outlined in *N.J.S.A. 40A:11-5*, as well as "window contract", which constitutes the amount of a contract between \$17,500.00 and the Township's bid threshold adopted by the governing body which are exempt from the State Public Bidding Laws, that shall expire on December 31 of that calendar year shall be published and advertised by the Municipal Appointing Authority or its designee either in the official newspaper of the Township for publication of notices, or on the Township's website not less than ten (10) days prior to the date and time when the proposals or qualifications shall be publicly opened to give notice in advance of the contract solicitation.



- (2) Should the applicant/proposer be a professional requiring licensure in the State of New Jersey, said applicant/proposer shall be licensed for a period of not less than five (5) years, shall submit a "Certificate of Good Standing" from the New Jersey State Certified Board and shall submit a resume which shall include, but not limited to the following:

- a. Full name, business address and telephone number;
- b. A list of all post high school education of the applicant/proposer;
- c. Date of licensure in the State of New Jersey and any other State;
- d. A listing of any professional affiliations or memberships in any professional societies or organizations, with an indication of the offices held therein;
- e. The number of licensed professionals employed by/affiliated with the professional and/or business entity which employs the applicant/proposer;
- f. A listing of all special accreditations held by the individual licensed professional or business entity;
- g. A listing of all previous public entities served by the licensed professional or business entity, indicating the dates of services and position held;
- h. A Business Registration Certificate issued by the New Jersey Secretary of State evidencing that the professional/business entity is authorized to do business in the State of New Jersey.



If the applicant/proposer is not a professional and/or the contract to be awarded is not for professional services, the applicant/proposer shall submit the following:

- a. Full name, business address and telephone number;
- b. A listing of any business affiliations or memberships in any business societies or organizations, with an indication of the offices held therein;
- c. The number of employees employed by/affiliated with the business entity;
- d. A listing of all special accreditations held by the business entity;
- e. A listing of all previous public entities served by the business entity, indicating the dates of services and position held;
- f. A Business Registration Certificate issued by the New Jersey Secretary of State evidencing that the business entity is authorized to do business in the State of New Jersey.

- C. The Municipal Appointing Authority shall thereafter publicly select the professional or business entity for the position so advertised which shall thereafter be confirmed or approved as required by law or Ordinance.
- D. Consistent with the provisions of *N.J.S.A. 19:44A-20.7*, the Township's determination of what constitutes a Fair and Open process shall be final. Fair and Open may be implemented differently for different categories of procurement depending on the subject matter of the procurement and the nature and nuances of the industry providing the services or product.

III. Non-Fair and Open Process

A. In the alternative to proceeding with the Fair and Open Process described herein above the Municipal Appointing Authority may award a contract in excess of \$17,500.00 for professional services agreements, exemptions as outlined in *N.J.S.A. 40A:11-5*, as well as "window contracts", which constitutes the amount of a contract between \$17,500.00 and the township's bid threshold adopted by the governing body which are exempt from the State Public Bidding Laws, without competitive bidding or competitive proposals through a Non-Fair and open Process provided that:

1/ Such contributions do not exceed the limits set forth as established under P.L. 2004, Chapter

19 @ \$300.00 per elections cycle; or

2/ Such contributions do not exceed the limits set forth via Resolution by the governing body in accordance with P.L. 2005 Chapter 271, wherein it permits local units to adopt measures limiting the awarding of public contracts to business entities that have made contributions allowed under State ELEC laws; and

3/ Provided that the business entities receiving Non-Fair and Open contracts submit a Business Entity Disclosure Certification pursuant to Chapter 19, as well as a Political Contribution Disclosure pursuant to Chapter 271 to the Municipal Appointing Authority no later than ten (10) days prior to the contract being awarded; and

4/ Businesses awarded contracts in excess of \$50,000.00 a year must file an Annual Disclosure on Political Contributions with the Election Law Enforcement Commission (ELEC).

IV Public Emergency

The disclosure provisions do not apply in those cases where there is a "public emergency" that requires the immediate delivery of goods or services for the public's health, safety and welfare.

V Severability

If any sentence, paragraph or section of this Ordinance or the application thereof to any persons or circumstances shall be adjudged by a Court of competent jurisdiction to be invalid, or if by legislative action, any sentence, paragraph or section of this Ordinance shall lose its force and effect, such judgment or action shall affect, impair or void the remainder of any of the provision of this Ordinance.

The purpose of this Ordinance is to comply with the provisions of N.J.S.A. 19:44A-20.5 *et seq* and N.J.S.A. 40A:11-51. The definitions as set forth in these Statutes are referred to and incorporated into this Ordinance.

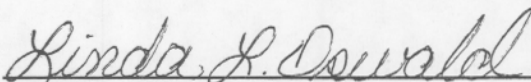
BE IT FURTHER ORDAINED, that this Ordinance must be filed with the New Jersey Secretary of State and will take effect after adoption and publication according to law.

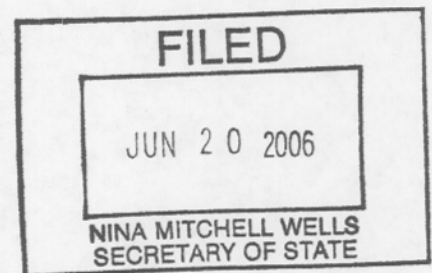
TOWNSHIP OF LOGAN

BY: 

FRANK W. MINOR, Mayor

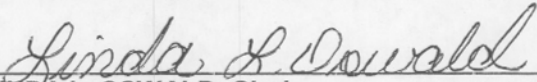
ATTEST:


LINDA L. OSWALD, Township Clerk



NOTICE

The Ordinance published herein was introduced and passed upon first reading at a meeting of the Mayor and Council of the Township of Logan, in the County of Gloucester and State of New Jersey, held on the 16th day of May, 2006. It will be further considered for final passage, after public hearing hereon, at a meeting of said Mayor and Council to be held at the Township Building of Logan, 125 Main Street, Bridgeport, New Jersey on the 5th day of June 2006, at 7:00 P.M. During the week prior and up to and including the date of such meeting, copies of said Ordinance will be made available at the Clerk's office, 125 Main Street, Bridgeport, New Jersey to the members of the general public who shall request same between the hours of 8:30 AM and 4:30 PM.


LINDA L. OSWALD, Clerk

