

RESOLUTION

PROVIDING FOR PUBLIC CONTRACTING REFORM

Preamble

Whereas, professional business and certain other entities doing business with the Borough are exempt from public bidding requirements, and

Whereas, it has become common for professional business entities and certain other entities doing business with the Borough without public bid to make substantial political contributions to the election campaigns of the local government elected officers who are ultimately responsible for awarding professional service contracts, and

Whereas, substantial local political contributions from professionals and certain other entities doing business with the Borough without public bid receiving discretionary contracts or business from the elected officials who receive such contributions raise reasonable concerns of the part of taxpayers as to their trust in the process of local government, if not the quality or cost of services received, and

Whereas, pursuant to NJSA 40A: 11-5 and NJSA 40:48-2, municipalities have the right to establish rules and procedures for contracting with professional business and certain other entities doing business with the Borough without public bid,

Now therefore, be it resolved, that the policy of the Borough of Spring Lake Heights will be to set maximum amounts professional business entities and certain other entities doing business with the Borough without public bid may contribute politically beyond which they become ineligible to receive a public professional service contract or other business from Spring Lake Heights.

SECTION 1

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 from any professional business entity or any entity whose business with the municipality was not initiated by public bid as identified in NJSA 40A:11-5(1)(a)(i); (m); (x); 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 candidate or holder of the public office having ultimate responsibility for the award of the contract, or to any Spring Lake Heights municipal party committee, in excess of the thresholds specified in subsection (d)

within one calendar year immediately preceding the date of the contract or agreement or other business.

- (b) No professional business entity which enters into negotiations for, or agrees to, any contract or agreement with the municipality or any department or agency thereof or of its independent authorities for the rendition of professional services, or any entity whose business with the municipality was not initiated by public bid as identified in NJSA 40A:11-5(1)(a)(i); (m); (x), shall knowingly solicit or make any contribution of money, or pledge of a contribution, including in-kind contributions, to any candidate or holder of the public office having ultimate responsibility for the award of the contract, or to any Spring Lake Heights municipal party committee, between the time of first communications between that business entity and the Borough regarding a specific professional services agreement or other business and the later of the termination of negotiations or the completion of the contract or agreement or other business.
- (c) For purposes of this ordinance, a "professional business entity" seeking a public contract or "any entity whose business with the municipality was not initiated by public bid as identified in NJSA 40A:11-5(1)(a)(i); (m); (x)" 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.
- (d) Any individual meeting the definition of "professional business entity" or "any entity whose business with the municipality was not initiated by public bid as identified in NJSA 40A:11-5(1)(a)(i); (m); (x)" under this section may annually contribute a maximum of \$100 each for any purpose to any candidate, for mayor or council, or \$100 to any Spring Lake Heights municipal party committee, without violating subsection (a) of this section. However, any group of individuals meeting the definition of "professional business entity" or "any entity whose business with the municipality was not initiated by public bid as identified in NJSA 40A:11-5(1)(a)(i); (m); (x)" 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 \$500 to all municipal candidates and officeholders with ultimate responsibility for the award of the contract, and all Spring Lake Heights municipal political parties 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 Spring Lake Heights Borough Council, if the contract requires approval or appropriation from the Council.

- (2) The Mayor of Spring Lake Heights, if the contract requires approval of the Mayor, or if a public officer who is responsible for the award of a contract is appointed by the Mayor.

SECTION 2

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 or "any entity whose business with the municipality was not initiated by public bid as identified in NJSA 40A:11-5(1)(a)(i); (m); (x)" to any municipal candidate for Mayor or Council, or Spring Lake Heights municipal party committee 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 or any entity whose business with the municipality was not initiated by public bid as identified in NJSA 40A:11-5(1)(a)(i); (m); (x), prior to the effective date of this section.

SECTION 3

Contribution Statement by Professional Business Entity

- (a) Prior to awarding any contract or agreement to procure services with any professional business entity or any entity whose business with the municipality was not initiated by public bid as identified in NJSA 40A:11-5(1)(a)(i); (m); (x), 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 or any entity whose business with the municipality was not initiated by public bid as identified in NJSA 40A:11-5(1)(a)(i); (m); (x) made under penalty of perjury that the bidder or offeror has not made a contribution in violation of Section 1 of this Act;
- (b) The professional business entity or any entity whose business with the municipality was not initiated by public bid as identified in NJSA 40A:11-5(1)(a)(i); (m); (x) 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 borough and shall be in addition to any other certifications that may be required by any other provision of law.

SECTION 4

Return of Excess Contributions

A professional business entity or any entity whose business with the municipality was not initiated by public bid or borough candidate or officeholder or Spring Lake Heights municipal party committee may cure a violation of Section 1 of this Act, if, within 30 days after the general election, the professional business entity or any entity whose business with the municipality was not initiated by public bid as identified in NJSA 40A:11-5(1)(a)(i); (m); (x) notifies the Borough Council in writing and seeks and receives reimbursement of a contribution from the borough candidate or municipal political party.

SECTION 5

Penalty

- (a) All Borough of Spring Lake Heights professional service agreements or any agreements with any entity whose business with the municipality was not initiated by public bid as identified in NJSA 40A:11-5(1)(a)(i); (m); (x) shall provide that it shall be a breach of the terms of the government contract or agreement for a professional business entity or any entity whose business with the municipality was not initiated by public bid as identified in NJSA 40A:11-5(1)(a)(i); (m); (x) as defined in Section 1 (c) to violate section 1 (b) 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 or any entity whose business with the municipality was not initiated by public bid as identified in NJSA 40A:11-5(1)(a)(i); (m); (x) as defined in Section 1(c) and (d) who knowingly fails to reveal a contribution made in violation of this Act, 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 borough contracts for a period of four calendar years from the date of the violation.

SECTION 6

Severability

If any provision of this law, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of this law to the extent it can be given effect, or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, and to this extent the provisions of this law are severable.

SECTION 7

Effective Date

This Act shall take effect on February 9, 2004.



Claire Barrett
Borough Clerk
Resolution: #31-2004
Date: FEBRUARY 9, 2004

