

DELAWARE TOWNSHIP
ORDINANCE #2012-16A

AN ORDINANCE OF THE TOWNSHIP OF DELAWARE, COUNTY OF HUNTERDON AND STATE OF NEW JERSEY ADDING A NEW SECTION 2-24 TO BE ENTITLED “RESTRICTIONS ON AWARD OF CONTRACTS EXEMPT FROM PUBLIC BIDDING” TO THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF DELAWARE, 1985. #2012-16A

WHEREAS, certain contracts are exempt from public bidding under the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq.; and

WHEREAS, there is the potential for business entities whose contracts are exempt from public bidding to make substantial political contributions to the election campaigns of the local government elected officers who are ultimately responsible for awarding contracts to such business entities; and

WHEREAS, permitting substantial local political contributions from business entities receiving discretionary contracts from the elected officials who receive such contributions raises reasonable concerns on the part of taxpayers as to the influence of those contributions on the process of local government as well as the quality or cost of services received; and

WHEREAS, pursuant to *N.J.S.A. 40A:11-51* a municipality is authorized to adopt by ordinance, measures limiting the award of public contracts to business entities that have made contributions, and limiting the contributions that the recipient of such a contract can make during the term of a contract; and

WHEREAS, in the interest of good government, the Township Committee of the Township of Delaware desires to establish a policy that will avoid the perception of improper influence in public contracting and local elections.

NOW, THEREFORE, BE IT ORDAINED, by the Township Committee of the Township of Delaware, in the County of Hunterdon, and State of New Jersey, as follows

Section 1. Chapter II Administration Supplemented. The "Revised General Ordinances of the Township of Delaware, 1985" are hereby amended to add thereto new Section 2-24, RESTRICTIONS ON AWARD OF CONTRACTS EXEMPT FROM PUBLIC BIDDING, which shall read as follows:

2-24 RESTRICTIONS ON AWARD OF CONTRACTS EXEMPT FROM PUBLIC BIDDING.

2-24.1 Purpose. It shall be the purpose of this article to foster competition in the contracting process that is exempt from public bidding and thereby to avoid the appearance of improper influence in public contracting through unregulated contributions to public officials who award contracts by business entities who seek public contracts.

2-24.2 Definitions. As used in this article, the following terms shall have the meanings set forth below:

a. Business Entity. An individual person; firm; corporation; professional corporation; partnership; organization; or association. When a business entity is a natural person, a contribution by that person's spouse or any child living at home 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 entity or their spouses; any subsidiaries directly or indirectly controlled by the entity; or any political organization organized under § 527 of the Internal Revenue Code that is directly or indirectly controlled by the entity shall be deemed to be a contribution by the business entity.

b. Candidate. Candidate includes:

- 1) Every candidate for Township of Delaware elective municipal office;
- 2) Every candidate committee established by or for the benefit of a candidate for Township of Delaware elective municipal office;
- 3) Every joint candidate committee established in whole or in part by or for the benefit of a candidate for Township of Delaware elective municipal office; and
- 4) Every political party committee of the Township of Delaware.

The terms in the foregoing paragraph have the meaning set forth in N.J.A.C. 19:25-1.7.

c. Contract for Professional or Extraordinary Services. All contracts for professional services and/or extraordinary unspecifiable services as such terms are used in the Local Public Contracts Law at N.J.S.A. 40A:11-5.

d. Contribution. Has the meaning set forth in N.J.A.C. 19:25-1.7. By way of illustration, and not limitation, this definition includes gifts, pledges, loans, and in-kind contributions.

2-24.3 Awarding public contracts to certain business entities prohibited.

a. To the extent that it is not inconsistent with state or federal law, the Township of Delaware and any of its departments, instrumentalities, Chief Financial Officer, or purchasing

agents, shall not enter into any agreement or otherwise procure a contract for professional or extraordinary services from any business entity if such business entity has solicited or made any contribution in excess of \$250.00 to a candidate or a holder of public office in the Township of Delaware having ultimate responsibility for the award of a contract within one calendar year immediately preceding the date of the contract or agreement.

b. No business entity who submits a proposal for, enters into negotiations for, or agrees to any contract or agreement with the Township of Delaware or any of its departments or instrumentalities, for the rendition of professional services or extraordinary unspecified services shall knowingly solicit or make any contribution in excess of \$250.00 to a candidate or a holder of public office in the Township of Delaware having ultimate responsibility for the award of a contract between the time of first communication between that business entity and the municipality regarding a specific agreement for professional services or extraordinary unspecified services, and the later of the termination of negotiations or rejection of any proposal, or the completion of the performance or specified time period of that contract or agreement.

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

1. The Township of Delaware governing body (including the Mayor), if the contract requires approval or appropriation from the Mayor or governing body; or
2. The Mayor of the Township of Delaware 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.

d. No person may be awarded a subcontract to perform under a contract subject to this article if the subcontractor would be disqualified by Section 2-24.3a from receiving the contract at the time that the subcontract is awarded. Nor may any person who would be disqualified by Section 2-24.3a from receiving the contract perform substantially all of the obligations described in a contract for professional or extraordinary services that is subject to this article.

2.24.4 Contributions made prior to effective date. No contribution or solicitation of a contribution made prior to the effective date of this article shall be deemed to give rise to a violation of this article.

2-24.5 Contract renewal. No contract subject to this article may be renewed, extended, or materially modified unless the resulting renewal, extension, or modification would be allowable under the provisions of this article if it were an initial contract.

2-24.6 Contribution statement by business entity required.

a. Prior to awarding any contract for professional or extraordinary services to any business entity, the Township of Delaware or its Chief Financial Officer, purchasing agents and departments, as the case may be, shall receive a sworn statement from said business entity which

is the intended recipient of said contract that he/she/it has not made a contribution in violation of this article. The Township of Delaware, its Chief Financial Officer, purchasing agents and departments shall be responsible for informing the Township Committee that the aforementioned sworn statement has been received and that the business entity is not in violation of this article, prior to awarding the contract or agreement.

b. A business entity shall have a continuing duty to report to the Township of Delaware any contribution that constitutes a violation of this article made during the negotiation, proposal process or the duration of a contract. The Township of Delaware, its purchasing agents and departments shall be responsible for informing the governing body within 10 business days after receipt of said report from the business entity, or at the next Township Committee meeting following receipt of said report from the business entity, whichever comes first.

c. The certification required under this subsection shall be made prior to entry into the contract or agreement with the Township of Delaware, or prior to the provision of services or goods, as the case may be, and shall be in addition to any other certifications that may be required by any other provision of law.

2-24.7 Return of contributions.

A business entity that is a party to a contract for professional or extraordinary services may cure a violation of Section 2-24.3 of this article, if, within 30 days after the date on which the applicable ELEC report is published, said business entity notifies the municipality in writing and seeks and receives reimbursement of the contribution from the recipient of such contribution.

2-24.8 Exemption; fair and open contracts not exempt. The contribution prohibition prior to entering into a contract contained in this article does not apply to contracts which are awarded to the lowest responsible bidder after public advertising for bids and bidding therefore within the meaning of N.J.S.A. 40A:11-4, or are awarded in the case of emergency under N.J.S.A. 40A:11-6. There is no exemption for contracts awarded pursuant to a "fair and open process" under N.J.S.A. 19:44A-20 et seq.

2-24.9 Violations and penalties.

a. It shall be material breach of the terms of a Township of Delaware contract for professional or extraordinary services if a business entity that is a party to such agreement or contract has:

1. Made or solicited a contribution in violation of this article;
2. Knowingly concealed or misrepresented a contribution given or received;
3. Made or solicited contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
4. Made or solicited any contribution on the condition or with the agreement that it will be recontributed to a candidate or holder of public office having ultimate responsibility for the award of a contract;

5. Engaged or employed a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject the business entity to the restrictions of this article;
6. Funded contributions made by third parties, including consultants, attorneys, family members, and employees;
7. Engaged in any exchange of contributions to circumvent the intent of this article; or
8. Directly or indirectly, through or by any other person or means, done any act which if done directly would subject the business entity to the restrictions of this article.

b. Any business entity that violates this article shall be disqualified from eligibility for future Township of Delaware contracts for a period of four calendar years from the date of violation.

c. Notwithstanding the foregoing, any business entity who violates any provision of this article shall, upon conviction, be liable to the penalties set forth in the Revised General Ordinances of the Township of Delaware.

Section 2. Severability. If the provision of any article, subsection, paragraph, subdivision or clause of this Ordinance shall be judged invalid by any Court or competent jurisdiction, such Order or Judgment shall not effect or invalidate the remainder of any such article, section, subsection, paragraph or clause, and, to this end, the provisions of this Ordinance are hereby declared to be severable.

Section 3. Effective Date. This Ordinance shall take effect immediately upon passage and publication according to the laws of the State of New Jersey.

ATTEST:

Judith A. Allen, RMC
Township Clerk
September 10, 2012
Published 9/13/12

Roger Locandro, Mayor

PLEASE TAKE NOTICE that the Delaware Township Committee approved the above Ordinance on first reading at its Regular Meeting held on September 10, 2012. It will be considered on second reading for final adoption at a public hearing at a Regular Meeting beginning at 8:00 p.m. on September 24, 2012 at the Delaware Township Hall, 570 Rosemont Ringoes Rd. (Rt. 604), Sergeantsville, NJ. At that time an opportunity will be given for all interested citizens to be heard.