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FILED
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NINA MITCHELL WELLS
SECRETARY OF STATE

ORDINANCE NO. O-06-08

AN ORDINANCE OF THE BOROUGH OF WENONAH, 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

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, when a person or business interest makes or solicits major contributions to obtain a contract awarded by a government agency or independent authority, 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 entities and other business entities are exempt from established New Jersey Public bidding laws, specifically said exception being set forth under N.J.S.A. 40A:11-5; and

WHEREAS, the Borough of Wenonah ("Borough") 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, 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 Borough Council of the Borough of Wenonah, County of Gloucester and State of New Jersey, that the Borough of Wenonah enact an Ordinance to be known as an Ordinance Establishing a Fair and Open Process for the Award of Professional Service Agreements and Other Agreements with Business Entities as consistent with the provisions of *N.J.S.A.* 19:44A-20.5, *et seq.*, and said Ordinance shall read as follows:

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

Section 1.

I. Prohibition Awarding Certain Public Contracts

Any other provision of the law or ordinance to the contrary notwithstanding, the Borough 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 Borough if a member of that political party is serving in an elective public office of the Borough when the contract is awarded, or to any candidate committee of any person serving in an elective public office of the Borough 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 Borough if a member of that political party is serving in an elective public office of the Borough when the contract is awarded, or to any candidate committee of any person serving in an elective public office of the Borough when the contact is awarded, during the term of the contract. In the alternative to proceeding with the fair and open process described herein, the Municipal Appointing Authority thereof may award a contract to a business entity for an amount in excess of $17,500, pursuant to procedures prescribed by the New Jersey Local Public Contracts Law and without competitive bidding or competitive proposals. However, such award may be made only if the recipient of the contract provides a written certification that it has not made a political contribution which would bar the award of the contract to it.

Section 2.

II. Fair and Open Process

A. Any professional service entity or other business entity providing services to the Borough 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: accessibility; understanding of the assignment; methodology/plan for accomplishing the assignment; general experience; experience specific to the assignment; sufficiency of resources to perform the task.

B. The fair and open process established by the Borough shall require the following:

(1) The solicitation of proposals or qualifications for any professional position, service contract, or other contract not subject to bidding pursuant to *N.J.S.A.* 40A:11-5, that shall expire as of 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 Borough for publication of notices, or on the Borough's website in sufficient time to give notice in advance of the contract solicitation. The published notice shall set forth the name of the position or contract which is to become open, set forth the criteria to be considered and materials required to be submitted by the applicant/proposer and a date, time and place when the proposals or qualifications shall be publicly opened.

(2) Should the applicant/proposer be a professional acquiring licensure in the State of New Jersey, said applicant/proposer shall be licensed for a period not less than five (5) years.

(3) If the applicant/proposer is not a professional and/or the contract to be awarded

is not a professional services contract, the applicant/proposer shall provide a "Certificate of Good Standing" or other similar document evidencing that it is authorized to do business in the State of New Jersey.

(4) The applicant/proposer shall submit a resume which shall set forth information including, but not limited to the following (as applicable to a business entity or individual professional):

(a) Full name and business address;
(b) A listing of all post high school education of the applicant/proposer;
(c) Dates 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 as to any offices held therein;
(e) The number of licensed professionals employed by/affiliated with the business entity or the 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 business entity or licensed professional, indicating the dates of services and position held; and

C. Criteria for Award: Proposals or qualifications of each applicant will be evaluated by the Borough of Wenonah considering the following: general experience, experience specific to the assignment, reputation in the field, knowledge of the subject matter to be addressed under the contract, accessibility, availability to accommodate any required meeting of the Borough, sufficiency of resources to perform the task and other factors demonstrated to be in the best interests and the most advantageous to the Borough of Wenonah considering all factors.

D. 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.

E. Publication. The awarded contract shall be publicized in the official newspaper of the Borough for publication of notices in accordance with *N.J.S.A.* 40A:11-5.

F. Consistent with the provisions of *N.J.S.A.* 19:44A-20.7, the Borough's determination of what constitutes a fair and open process shall be final. Fair and open may necessarily 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, but in every instance, the principles of fair and open shall be maintained.

G. 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 not affect, impair, or void the remainder of any of the provisions of this Ordinance.

H. The purpose of this Ordinance is to comply with the provisions of *N.J.S.A.* 19:44A-20.5, *et seq.* The definitions as set forth in that statute are referred to and incorporated into this Ordinance.

Section 3.

Severability.

Should any section, clause, sentence, phrase or provision of this Ordinance be declared unconstitutional or invalid by a Court of competent jurisdiction, such decision shall not affect the remaining portions of this Ordinance.

Section 4.

Repealer.

All prior Ordinances or parts of Ordinances inconsistent with this Ordinance be and the same are hereby repealed to the extent of such inconsistencies.

Section 5.

When effective.

This Ordinance shall take effect immediately upon final passage and publication in accordance with law.

BOROUGH OF WENONAH

BY: _____

THOMAS J. CAPALDI, MAYOR

ATTEST:

_____

DAWNMARIE HUMAN, CLERK/ADMINISTRATOR

Revised:1/23/06

PUBLIC NOTICE

ORDINANCE NO. O-06-08

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The Ordinance published herein was introduced and passed upon the first reading at a meeting of the Mayor and Borough Council of the Borough of Wenonah, in the County of Gloucester and State of New Jersey, held on February 23, 2006. It will further be considered for final passage after publication and public hearing hereon, at a meeting of said Mayor and Borough Council to be held in the Borough Municipal Building on March 23, 2006 at 7:30 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 at the Municipal Building, 1 South West Avenue in the Borough, to the members of the general public who shall request same.

DawnMarie Human, Municipal Clerk