EXPLANATION: This Ordinance amends Chapter II entitled "Administration" by adding and creating a new section setting for restrictions and regulations as to the awarding of public contracts to certain contributors, and limiting the award of public contracts to entities that have made political contributions.

FILED
MAY 14 2007
NINA MITCHELL WELLS
SECRETARY OF STATE

BEDMINSTER TOWNSHIP

ORDINANCE No. 07-005

AN ORDINANCE SUPPLEMENTING AND AMENDING CHAPTER II ENTITLED "ADMINISTRATION" OF THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF BEDMINSTER, 1984, AS HERETOFORE SUPPLEMENTED AND AMENDED, BY ADDING AND CREATING SECTION 2-23 ENTITLED "AWARDING OF PUBLIC CONTRACTS."

WHEREAS, certain individuals and business and professional business entities that provide goods and services to local governments are exempt from public bidding requirements under the New Jersey Local Public Contracts Law, N.J.S.A. 40A:11-1, *et seq.*;

WHEREAS, it is common for such individuals and business and professional business entities to make contributions, whether directly or through intermediaries, to the election campaigns of the local government elected officials who are ultimately responsible for awarding professional services contracts or other contracts or agreements which are not subject to public bidding; and

WHEREAS, pursuant to N.J.S.A. 40:48-2 and N.J.S.A. 40A:11-51, municipalities have the right to establish rules and procedures for contracting with professional business entities, and are authorized, by ordinance, to adopt measures limiting the awarding of public contracts to business entities that have made political contributions and limiting the contributions that the holders of a contract can make during the terms of a contract;

NOW, THEREFORE, BE IT ORDAINED by the Township Committee of the Township of Bedminster, in the County of Somerset and State of New Jersey, as follows:

Section 1. Chapter II entitled "Administration" is hereby supplemented and amended by adding and creating Section 2-23 entitled "Awarding of Public Contracts" to read as follows:

2-23 AWARDING OF PUBLIC CONTRACTS.

2-23.1 Purpose. It shall be the purpose of this section to foster fair and open competition in the contracting process, and to eliminate the appearance of buying contracts for goods and services through campaign contributions.

2-23.2 Definitions.

a. *Business entity* shall mean any natural or legal person, business corporation, professional services corporation, limited liability corporation, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of the State of New Jersey or of any other state or foreign jurisdiction.

b. *Candidate* shall have the same meaning as set forth in N.J.S.A. 19:44A-3, as applied to those persons who seek election to public office within the Township of Bedminstner.

c. *Contribution* shall have the same meaning as set forth in N.J.S.A. 19:44A-3(d), as applied to those persons who seek election to public office within the Township of Bedminster.

d. *Political committee* shall have the same meaning as set forth in N.J.S.A. 19:44A-3(i), as applied to those persons who seek election to public office within the Township of Bedminster.

e. *Professional business entity* shall mean any business entity as defined in this section that provides services by individuals who are required to be professionally licensed under the laws or regulations of the State of New Jersey.

f. *Township* shall mean the Township of Bedminster in the County of Somerset, State of New Jersey, its officers, employees, officials, boards, commissions, committees and subcommittees.

2-23.3 Prohibition on Awarding Public Contracts to Certain Contributors.

a. Any other provision of law to the contrary notwithstanding, the Township or any of its purchasing agents or agencies, or those of the Township's independent authorities, as the case may be, shall not enter into an agreement or otherwise contract to procure goods or services, including professional, banking, insurance coverage services or any other consulting services, from any business or professional business entity, when the transaction is not required to be bid publicly and when the value of the goods or service exceeds $17,500.00, if that entity has made any contribution of money, or pledge of a contribution, including in-kind contributions and/or loans, to any candidate for or holder of a public office within the Township having ultimate responsibility for the award of the contract; or to any campaign committee supporting such candidate or officeholder; or Township party committee supporting such candidate; or to any Township political committee that regularly engages in the support of Township municipal elections; or to any fund financially supporting such candidate or officeholder, which is in excess of the monetary thresholds specified in subsection (d) herein, within one calendar year immediately preceding the date of the contract or agreement.

b. No business or professional business entity which enters into negotiations for, or agrees to, any contract or agreement with the Township, or any department or agency thereof, or of its independent authorities for the provision of goods or the rendition of professional services, or any other service when not required to be bid publicly and the value exceeds $17,500.00, shall solicit or make any contribution of money, or pledge of a contribution, including in-kind contributions and/or loans, to any candidate for or holder of a public office within the Township having ultimate responsibility for the award of the contract; or to any campaign committee supporting such candidate or officeholder; or Township party committee supporting such candidate; or to any Township political committee that regularly engages in the support of Township municipal elections; or to any fund financially supporting such candidate or officeholder, between the time of first communications between that business or professional business entity and the Township regarding a specific contractual agreement or professional services agreement and the later of the termination of negotiations or the completion of the contract or agreement.

c. For the purposes of this ordinance, when a business or professional business entity is a natural person, a contribution by that person's spouse or child residing therewith shall be deemed to be a contribution by the business or professional business entity. When a business or professional business entity is other than a natural person, a contribution by: all principals, partners, officers, or directors of the business or professional business entity, who owns ten (10%) percent or more of the equity in the business or professional business entity, or their spouses; any subsidiaries directly or indirectly controlled by the business or professional business entity; or any political organization organized under Section 527 of the Internal Revenue Code that is directly or indirectly controlled by the business entity, shall be deemed to be a contribution by the business or professional business entity.

d. An individual or group of individuals meeting the definition of a "business entity" or "professional business entity" under this section shall not annually contribute, during the twelve (12) month period prior to local government contract negotiations, for any purpose, more than Three Hundred ($300.00) Dollars to any candidate for or holder of a public office within the Township having ultimate responsibility for the award of the contract; or to any campaign committee supporting such candidate or officeholder; or Township party committee supporting such candidate; or to any Township political committee that regularly engages in the support of Township municipal elections; or to any fund financially supporting such candidate or officeholder.

e. The limitations set forth in this section shall not apply in the event the subject contract is offered to the lowest responsible bidder after public advertising for bids and quotes, pursuant to the competitive contracting requirements of the Local Public Contracts Act, N.J.S.A. 40A: 11-1, *et seq.*; the subject contract is awarded through a "fair and open" process pursuant to N.J.S.A. 19:44A-20.4, *et seq.*; or when a public emergency requires the immediate delivery of goods or services.

2-23.4 Contributions made prior to the effective date. No contribution of money or any other thing of value, including in-kind contributions or loans, made by a business or professional business entity to any Township candidate or holder of the public office having ultimate responsibility for the award of the contract; or to any campaign committee supporting such candidate or officeholder; or to any Township party committee supporting such candidate or officeholder; or to any Township political committee that regularly engages in the support of Township municipal elections; or to any fund financially supporting such candidate or officeholder, 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 business or professional business entity prior to the effective date of this section.

2-23.5 Contribution and disclosure statement by professional business entity.

a. Prior to awarding any contract or agreement to procure goods or services with any business or professional business entity, when the transaction is not required to be publicly bid, or awarded through a "fair and open process," and when the value of the goods or service exceeds $17,500.00, the Township or any of its purchasing agents or agencies, as the case may be, shall receive a sworn statement from the business or professional business entity made under penalty of perjury that the business or professional business entity has not made a contribution in excess of the limits contained in Section 2-23.3(d). The certification required under this subsection shall be made prior to entry into the contract with the Township and shall be in addition to any other certifications that may be required by any other provision of law.

b. The business or professional business entity shall append a "Contribution Disclosure Statement" to its sworn certification, which Statement shall consist of a list specifying the amount, date, and the recipient of any and all contributions reportable under N.J.S.A. 19:44A-1, *et seq.*, made by the entity and/or its principles to any Township candidate or holder of the public office having ultimate responsibility for the award of the contract; or to any campaign committee supporting such candidate or officeholder; or to any Township party committee supporting such candidate or officeholder; or to any Township political committee that regularly engages in the support of Township municipal elections; or to any fund financially supporting such candidate or officeholder, within twelve (12) months prior to the commencement of negotiations for such contract. The business or professional business entity shall have a continuing duty to update said statement during the course of negotiations and/or contract performance,

as the case may be. No contract shall issue if the entity has failed to submit a Contribution Disclosure Statement.

c. The business or professional business entity shall have a continuing duty to report any violations of this section that may occur during the negotiation or duration of the contract.

2-23.6 Return of excess contributions. A business or professional business entity; or any Township candidate or holder of a public office having ultimate responsibility for the award of the contract; or any campaign committee supporting such candidate or officeholder; or Township party committee supporting such candidate; or any Township political committee that regularly engages in the support of Township municipal elections; or any fund financially supporting such candidate or officeholder, may cure a violation of this Section 2-23, if within 30 days after a contribution is made, the business or professional business entity notifies the Township Committee in writing and seeks and receives reimbursement of the excess contribution from the Township candidate or holder of the public office having ultimate responsibility for the award of the contract; or the campaign committee supporting such candidate or officeholder; or the Township party committee supporting such candidate or officeholder; or the Township political committee that regularly engages in the support of Township municipal elections; or the fund financially supporting such candidate or officeholder, as the case may be.

2-23.7 Violation and Penalty.

a. It shall be a breach of the terms of a Bedminster Township contract or professional services agreement for a business or professional business entity to:
   1. make or solicit a contribution in violation of this Section;
   2. knowingly conceal or misrepresent a contribution given or received;
   3. make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
   4. make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee of any candidate or holder of public office of the Township;
   5. engage or employ 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 or professional business entity itself, would subject that entity to the restrictions of this Section;
   6. fund contributions made by third parties, including consultants, attorneys, family members, and employees; or
   7. directly or indirectly, through or by any other person or mean, of any act which would subject that entity to the restriction of this Section.

b. Any business or professional business entity who knowingly and intentionally violates this Section 2-23, whether directly or through intermediaries shall be disqualified from eligibility for future Bedminster Township contracts and professional services agreements for a period of two (2) calendar years from the date of the violation.

c. It shall be a rebuttable presumption that failure to disclose a contribution made in violation of this article is a knowing and intentional act.

Section 2. If any article, section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance and they shall remain in full force and effect.

Section 3. In the event of any inconsistencies between the provisions of this Ordinance and any prior ordinance of the Township of Bedminster, the provisions hereof shall be determined to govern. All other parts, portions and provisions of The Revised General Ordinances of the Township of Bedminster, 1984, are hereby ratified and confirmed, except where inconsistent with the terms hereof.

Section 4. This Ordinance shall take effect upon its adoption and publication according to law.

Section 5. The Township Clerk is hereby authorized and directed to forward a copy of this ordinance as adopted to be filed with the Secretary of State pursuant to N.J.S.A. 40A:11-51.

Introduced by:
Passed: March 19, 2007
Published: March 29, 2007
Adopted: April 23, 2007

ATTEST:

BEDMINSTER TOWNSHIP COMMITTEE

By: Judith A. Sullivan
Judith Sullivan, Township Clerk

By:
Robert Holtaway, Mayor

FILED
MAY 14 2007
NINA MITCHELL WELLS
SECRETARY OF STATE