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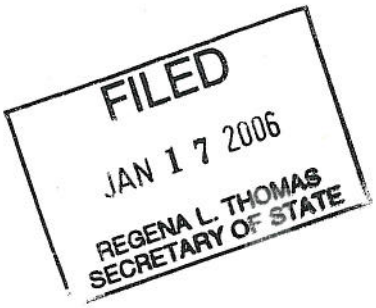
TOWNSHIP OF MONTGOMERY
ORDINANCE NO. 03-1084



AN ORDINANCE AMENDING AND SUPPLEMENTING THE CODE OF THE TOWNSHIP OF MONTGOMERY IN SOMERSET COUNTY, NEW JERSEY (1984) TO PROVIDE A NEW SUBSECTION 2-22.2 ENTITLED "AWARD OF CONTRACTS FOR GOODS AND SERVICES EXEMPT FROM PUBLIC BIDDING REQUIREMENTS WHOSE VALUE EXCEEDS $5,000."

BE IT ORDAINED by the Township Committee of the Township of Montgomery, in Somerset County as follows:

Section 1. Code Amended. The Code of the Township of Montgomery (1984) is amended and supplemented by the addition of a new subsection 2-22.2 entitled "Award of Contracts for Goods and Services Exempt from Public Bidding Requirements Whose Value Exceeds $5,000," to read as follows:

2-22.2 Award of Contracts for Goods and Services Exempt from Public Bidding Requirements Whose Value Exceeds $5,000.

a. *Purpose.* It shall be the purpose of this subsection to foster fair and open competition in the contracting process; to avoid the appearance of corruption and public cynicism that can arise when the timing between contributions and the issuance of public contracts for goods and services closely coincides; and to eliminate the appearance of buying contracts for goods and services through campaign contributions.

b. *Findings.* The Township Committee finds:

1. Certain individuals and business entities that provide goods and services to local

governments are exempt from the requirements of public bidding;

2. It is common for certain individuals and business entities that provide goods and services to local governments to make substantial political contributions to the election campaigns of the officials who ultimately determine the award of contracts for such goods or services, either directly to the candidate or through municipal or county political parties;

3. The practice of some local government officials to award discretionary contracts to individuals or business entities that have made substantial campaign contributions to those officials or to municipal and county political parties raises reasonable concerns on the part of taxpayers as to the quality and cost of the services received under such discretionary contracts and creates distrust of government processes;

4. Local governments are authorized, under the provisions of N.J.S.A.40:48-2 and of the Local Public Contracts Law, *N.J.S.A.* 40A:11-1 *et seq.*, to establish rules and procedures for contracting with the providers of goods and services when those contracts are exempt from the public bidding requirements set forth in said Law.

c. *Definitions.* As used herein,

1. *Business entity* shall mean 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 business entity includes all principals who own 10 percent or more of the equity in the corporation or business trust, partners, and offices in the aggregate employed by the entity as well

as any subsidiaries directly controlled by the business entity.

2. *Candidate* shall have the same meaning as set forth in *N.J.S.A.* 19:44A-3.

3. *Contribution* shall have the same meaning as set forth in *N.J.S.A.* 19:44A-3.

4. *Political party committee* shall have the same meaning as set forth in *N.J.S.A.* 19:44A-3.

5. *Professional business entity* shall mean any business entity as defined in subparagraph c. of this subsection that provides services by individuals who are required to be professionally licensed under the laws or regulations of this State.

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

d. *Prohibition on awarding contracts to certain contributors for goods and services exempt from public bidding requirements whose value exceeds $5,000.*

1. Any other provision of this Code to the contrary notwithstanding, the Township shall not enter into an agreement or otherwise contract to procure goods or services from any business entity or professional business entity, where the transaction is not required under the Local Public Contracts Law to be bid publicly and where the value of the transaction exceeds $5,000, if that entity has solicited or made any contribution of money, or pledge of a contribution, including in-kind contributions, to any candidate for the office of Montgomery Township Committee or to any municipal or county political party committee in excess of the thresholds specified in subparagraph 3 below within one calendar year immediately preceding

the commencement of negotiations for the contract or agreement.

2. No business entity or professional business entity which enters into negotiations for, or agrees to, any contract or agreement with the Township for the provision of goods or services where the transaction is not required under the Local Public Contracts Law to be bid publicly and where the value of the transaction exceeds $5,000, shall knowingly solicit or make any contribution of money, or pledge of a contribution, including in-kind contributions, to any candidate for the office of Montgomery Township Committee, or to any municipal or county political party committee, between the time of first communications between that entity and the Township regarding a specific contract or agreement and the later of the termination of negotiations or the completion of the contract or agreement.

3. Any individual meeting the definition of "business entity" or "professional business entity" under subparagraph c. of this subsection may annually contribute a maximum of $250 each for any purpose to any candidate for the office of Township Committee, or $500 to any municipal or county political party committee, without violating subparagraphs d.1 or d.2 of this subsection. In addition, any group of individuals meeting the definition of "business entity" or "professional business entity" under subparagraph c. of this subsection, including such principals, partners, and officers of the entity in the aggregate, may not annually contribute for any purpose in excess of $1,000 to all candidates for the office of Township Committee and all municipal or county political party committees combined, without violating subparagraphs d.1 or d.2 of this

subsection.

e. *Contributions made prior to the effective date.* No contribution of money or any other thing of value, including in-kind contributions, made by a business entity or professional business entity to any candidate for the office of Township Committee or municipal or county political party committee, shall be deemed a violation of this Ordinance, nor shall an agreement for property, goods, or services, of any kind whatsoever, be disqualified thereby, if that contribution was made prior to the effective date of this Ordinance.

f. *Contribution statement required.*

1. Prior to awarding any contract or agreement subject to the requirements of this subsection, the Township shall receive a sworn statement from the business entity or professional business entity made under penalty of perjury that the entity has not made a contribution in violation of subparagraph d. of this subsection.

2. The business entity or professional business entity shall have a continuing duty to report any violations of this subsection that may occur during the negotiation or duration of the contract. The certification required under this subsection shall be made prior to entry into the contract or agreement with the Township and shall be in addition to any other certifications that may be required by any other provision of law.

g. *Return of excess contributions.* A business entity or professional business entity, candidate for the office of Township Committee, or municipal or county political party committee may cure a violation of subparagraph d. of this subsection if, within 30 days after the pertinent election, the entity notifies the Township Committee in writing, and seeks and receives

reimbursement of a contribution from the candidate or municipal or county political party committee.

h. *Breach of Contract and Disqualification of Contractor.*

1. All Township contracts for goods or services that are exempt from the public bidding requirements of the Local Public Contracts Law and that exceed $5,000 shall provide that it shall be a breach of the terms of the contract for a business entity or professional business entity to violate this subsection 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.

2. Any business entity or professional business entity that knowingly fails to reveal a contribution made in violation of this subsection, or that 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 Township contracts for a period of four calendar years from the date of the determination of the violation and shall have any contract with the Township then in effect immediately terminated.

Section 2. Repealer. All ordinances and resolutions or parts thereof inconsistent with this Ordinance are hereby repealed.

Section 3. Severability. If any section, paragraph, subsection, clause or provision of this Ordinance shall be adjudged by the Courts to be invalid, such adjudication shall apply only to the section, paragraph, subsection, clause or provision so adjudged and the remainder of this

Ordinance shall be deemed valid and effective.

Section 4. Effective Date. This Ordinance shall take effect upon passage and publication as required by law.

CERTIFICATION

I HEREBY CERTIFY THE ABOVE TO BE A TRUE COPY OF AN ORDINANCE AS

Adopted BY THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF MONTGOMERY AT A MEETING HELD

March 20, 2003

TOWNSHIP CLERK