

ARTICLE I Award of Professional Service Contracts (§ 9-1)

[Adopted 10-5-2006 by Ord. No. 2006-17]

§ 9-1 Award of public professional services and other no-bid contracts.

A.
Purpose and intent. Although professional services contracts and certain other contracts for goods and services are exempt from the competitive bidding requirements of the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., the governing body deems it appropriate and consistent with the provisions of recently enacted New Jersey Legislation, now codified at N.J.S.A. 19:44A-20.1 et seq., to henceforth award such contracts through a competitive, quality-based, fair and open process, unless a specific determination to the contrary is made by the governing body.

B.
Process for award of professional services and other no-bid contracts. The Borough of Berlin, or any agency or instrumentality thereof, shall not enter into a contract, including a professional services contract or such other contract which is exempt from public bidding requirements having an anticipated value in excess of \$17,500, as determined by the Borough of Berlin or any agency or instrumentality, with a business entity, except through a contract that is awarded pursuant to a fair and open process if during the preceding one-year period that business entity has made a contribution that is reportable by the recipient under N.J.S.A. 19:44A-1 et seq., to any municipal committee of a political party if a member of that political party is in office as a member of the governing body when the contract is awarded or to any candidate committee of any person serving in an elected public office of the Borough of Berlin when the contract is awarded. The fair and open process shall be quality-based and shall be as follows:

(1)
Professional services may be awarded by virtue of a publicly advertised request for proposals (RFP) which will be issued as one document for those appointments which are made on an annual basis, such as, but not limited to, the positions of: Borough Attorney, Borough Engineer, Borough Planner, Planning Board Attorney, Planning Board Engineer, Zoning Board Attorney, Zoning Board Engineer, and such other statutory and/or ordinance public positions.

(2)
For said positions, no contract shall be awarded unless and until the positions are:

(a)
Publicly advertised in newspapers or on the Internet Web site maintained by the Borough in sufficient time to give notice in advance of the solicitation for the contracts;

(b)
Awarded under a process that provides for public solicitation of proposals and qualifications including the following:

[1]
Experience and reputation in the field;

[2]
Knowledge of the subject matter of the services to be provided to the Borough;

[3]
Knowledge of the Borough, its affairs and operations;

[4]
Availability to accommodate any required meetings of the Borough;

[5]
Compensation proposal;

[6]
Compliance with the minimum qualifications established by the Borough for the position;

[7]

Other factors determined to be in the best interest of the Borough.

(c)

Awarded and disclosed under criteria established in writing by the Borough of Berlin prior to the solicitation of proposals or qualifications as set forth in this ordinance;

(d)

Publicly announced when awarded; and as to those RFPs which prove to be unsuccessful, the Borough Clerk shall retain a copy of same on file for a period of not less than 60 days.

(3)

For contracts which arise on an occasional basis, such as appraisals needed for the acquisition of land and/or open space, as well as title searches, surveying, and similar work associated with same; and comparable assignments, such as planning services needed for Master Plan updates, appraisals, special counsel, special project engineer contracts, etc., professional services contracts may be awarded without following the foregoing provisions, so long as:

(a)

The anticipated value does not exceed the \$17,500 threshold set forth above; and

(b)

The Borough Administrator makes every effort to solicit at least two proposals for said work.

C.

Review of RFPs by review committee. A review committee shall be established by the Mayor consisting of not less than two Council members to prepare, process and evaluate any RFP issued pursuant to the professional services contracting procedures set forth above. The review committee shall evaluate the respective qualifications and/or proposals, taking into consideration the designated qualifications and/or performance criteria, experience, reputation of vendor, quality of services, quoted fee and other relevant factors in making a recommendation of award to the governing body; and the Borough Administrator may, in his/her sole discretion, conduct negotiations with qualified vendors after receipt of proposals, in order to achieve the best possible contract terms and conditions for the Borough and its taxpayers. No contract shall be awarded, however, unless same is authorized by resolution duly adopted in public session by the governing body.

D.

Contribution statement by professional business entity.

(1)

Prior to awarding any contract or agreement to procure services, including banking or insurance coverage services, with any professional business entity, 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 made under penalty of perjury that the bidder or offeror has not made a contribution in violation of this article;

(2)

The professional business entity shall have a continuing duty to report any violations of this article 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.

E.

Contracts issued without use of the RFP process.

(1)

In circumstances where the governing body or Borough Administrator determines that the use of the RFP process is not appropriate, such as, but not limited to, contracts with other government agencies, and agreements with public utilities, the Administrator shall use his/her best efforts to obtain at least two quotations for the work and shall require the contractor to fully comply with the provisions of N.J.S.A. et seq., N.J.S.A. 19:44A-22, and related statutes.

(2)

No business entity which enters into negotiations for or agree to any contract or agreement with the Borough of Berlin or any department or agency thereof or of its independent authorities for the rendition of professional,

banking or insurance coverage services, or any other consulting services, shall solicit or make any contribution of money, or pledge of a contribution, including in-kind contributions, to any Borough of Berlin municipal candidate or holder of the public office having ultimate responsibility for the award of the contract, or campaign committee supporting such candidate or officeholder, or to any Berlin Borough party committee, between the time of first communications between that business entity and the Borough regarding a specific professional services agreement and the later of the termination of negotiations or the completion of the contract or agreement.

F.
Emergency exceptions. Notwithstanding the foregoing, the governing body recognizes that the New Jersey Legislature has provided for certain emergencies, and further recognizes that the procedure outlined above might not be capable of being achieved in the event of an emergency or other time constraints. Thus, should a situation arise and time does not permit resort to this procedure, and the immediate performance of services is necessary, then an award for same may be made in accordance with the provisions of the Local Public Contracts Law relating to emergency contracts, and such rules and regulations as may be promulgated, from time to time, by the governing body with regard to same. No such emergency contracts, however, may be awarded without a resolution establishing a basis for the deviation from the procedures outlined herein.

