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Title: AN ORDINANCE REQUIRING THE PROCUREMENT OF INSURANCE BROKERAGE SERVICES THROUGH COMPETITIVE CONTRACTING PROCESSES
Sponsors: Payne
Deferred 6F-i 090612

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10/17/2012	2	Municipal Council	Close on Public Hearing and Adopt	Pass
10/3/2012	2	Municipal Council	Adopt on First Reading	Pass
9/19/2012	2	Municipal Council	Defer to a Special Meeting	Pass
9/6/2012	1	Municipal Council	Defer on First Reading	Pass
8/1/2012	1	Municipal Council	Advance to First Reading	Pass

AN ORDINANCE REQUIRING THE PROCUREMENT OF INSURANCE BROKERAGE SERVICES THROUGH COMPETITIVE CONTRACTING PROCESSES

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WHEREAS, the Local Public Contracts Law, *N.J.S.A. 40A:11-1 et seq.* provides that the purchase of insurance coverage, including health, property and casualty, and workers compensation insurance, and insurance consulting services, are not subject to the public advertising and bidding requirements of that law, *N.J.S.A. 40A:11-5(1)(m)*; and

WHEREAS, the governing body of The City of Newark finds that open competition for its insurance and insurance consulting business will assure that the lowest available pricing for its insurance needs can be obtained; and

WHEREAS, the Local Public Contracts Law, *N.J.S.A. 40A:11-4.1(i)*, authorizes local contracting units to utilize the competitive contracting process to procure specified goods and services, which are otherwise exempt from the public bidding process by virtue of *N.J.S.A. 40A:11-5*; and

WHEREAS, the Governing Body of The City of Newark finds that requiring its insurance consultants be compensated solely by The City of Newark and not by commissions or fees, direct or indirect, paid by insurance carriers or other organizations providing insurance alternatives, and prohibiting any third party from paying any commission or fee to such consultants for securing business with The City of Newark, will ensure the fidelity and loyalty of such consultants to the City of Newark, and eliminate or reduce conflicting loyalties such consultants might otherwise have to any

third parties.

NOW, THEREFORE, BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, NEW JERSEY THAT:

Section 1. The Revised Ordinance of the City of Newark are hereby amended and supplemented to provide as follows:

1. Definitions.

a. For purposes of this Ordinance, the term “insurance” shall include the purchase of insurance coverage, alternatives to insurance such as self-insurance programs, as well as, participation in a joint self-insurance fund, risk management program or related services provided by a contracting unit insurance group, or participation in an insurance fund established by a local unit pursuant to *N.J.S.A. 40A:10-6*, or a joint insurance fund established pursuant to *N.J.S.A. 40A:10-36 et seq.*

b. The term “insurance consulting services” shall include all services associated with procuring, evaluating and administering insurance, including, but not limited to brokerage, risk management or administrative services, and claims processing or administration services, including such services provided by a contracting unit insurance group, or an insurance fund established by a local unit pursuant to *N.J.S.A. 40A:10-6*, or a joint insurance fund established pursuant to *N.J.S.A. 40A:10-36 et seq.*

2. Prior to entering into any contract to obtain insurance or insurance consulting services, the City of Newark, through the Department of Administration, in a process administered by the Purchasing Agent, legal counsel or another administrator of the Department of Administration, pursuant to *N.J.S.A. 40:11-4.3(b)*, shall secure full and open competition among insurers, and insurance consulting service providers. The City of Newark is hereby authorized, and directed, to use the competitive contracting process set forth in *N.J.S.A. 40A:11-4.3, -4.4 and -4.5*, to secure such competition, except to the extent this Ordinance requires additional measures to better ensure maximum competition and fairness to all interested parties. Notwithstanding anything to the contrary herein, in accordance with *N.J.S.A. 40A:11-4.3(a)*, each time such services are desired to be contracted, the Municipal Council shall pass a resolution authorizing the use of the competitive contracting process.

3. This open competition shall provide that at least sixty (60), but not more than one hundred twenty (120) days prior to the contract commencement date, the City of Newark shall advertise in the newspapers authorized to print legal notices for the Municipality, and in a newspaper circulated in at least five (5) counties in the State, and on The City of Newark’s website, a “Request for Proposals” to provide insurance and insurance consulting services. The notice shall advise the reader that details of The City of Newark’s insurance requirement are available from the Director of Personnel on request and shall include the phone number of Director of Personnel.

4. The request for proposals shall be designed and drafted by the appropriate Administrator or Manager, or his or her designee, and shall include all of the requirements deemed appropriate and necessary to allow for full and free competition between Vendors; information necessary for

potential Vendors to submit a Proposal; and a methodology by which the contracting unit will evaluate and rank proposals received from Vendors; and shall set forth such detailed information as may be required for all Proposers to understand and possess equal information concerning the City of Newark's insurance or insurance consulting services needs, including the current terms of, and fees or premiums paid for, such coverage's or services, current coverage's, loss experience and anticipated or desirable needs with respect to the relevant coverage's or services sought. All request for proposal information, including claims, expense and loss data, shall be made available to all proposers in both written and electronic format.

5. At no time during the Proposal solicitation process shall any official or employee of the City of Newark's, or any officer, employee or representative of any provider of insurance consulting services to the City of Newark's convey information, including price, to any potential Proposer, which could confer an unfair advantage upon that proposer over any other potential proposer.

6. A provider of insurance consulting services to the City of Newark shall be compensated for its services to or on behalf of the City of Newark solely by the City of Newark. Compensation shall be set on a fixed fee or hourly basis, or on such other common and readily comparable basis applicable to all proposers and set forth in the request for proposal documents, provided that compensation shall not be determined as a percentage of premium costs.

7. No provider of insurance or of insurance consulting services to the City of Newark shall pay to any insurance consulting service provider to the City of Newark, or to any other third party, any form of compensation, including, but not limited to commissions, fees, incentives, bonuses, rebates or any other thing of value, in consideration of obtaining the City of Newark's insurance or insurance consulting business.

8. No provider of insurance consulting services to the City of Newark shall accept any form of compensation, including, but not limited to commissions, fees, incentives, bonuses, rebates or any other thing of value, from any provider of insurance other insurance service provider, or any other third party, in consideration of obtaining or servicing the City of Newark's insurance or insurance consulting business.

9. Any person or entity proposing to provide insurance or insurance consulting services to the City of Newark shall certify in its Proposal that it shall neither pay nor accept any form of compensation, including, but not limited to commissions, fees, incentives, bonuses, rebates or any other thing of value, in consideration of obtaining or servicing the City of Newark's insurance or insurance consulting business from any party other than the City of Newark.

10. Any person or entity selected to provide insurance or insurance consulting services to the City of Newark shall certify at least annually and prior to any renewal of its contract, that it has not paid nor accepted any form of compensation, including, but not limited to commissions, fees, incentives, bonuses, rebates or any other thing of value, in consideration of obtaining or servicing the City of Newark's insurance or insurance consulting business from any party other than the City of Newark.

11. Any provider of insurance consulting service that assists the City of Newark in soliciting, evaluating, or selecting any provider of insurance or other insurance consulting services to the City of Newark shall disclose to the City of Newark the aggregate compensation, including, but not limited to commissions, fees, incentives, bonuses, rebates or any other thing of

value, it has received in each of the prior three (3) years from each provider of insurance or insurance consulting services solicited or evaluated by the City of Newark. Such disclosure shall be made as soon as practicable, but in no event later than the date of the evaluation report recommending an award by the governing body.

12. The request for Proposals for any insurance or insurance consulting services for the City of Newark shall clearly establish the compensation restrictions and the certification and disclosure requirements established by this Ordinance as mandatory, material terms, and thus non-waivable, the violation of which shall be grounds for (i) rejecting a response to a request for proposal as not a response at all and therefore disqualifying it from award of a contract; (ii) terminating any contract resulting therefrom, and (iii) requiring the insurer or insurance service provider to disgorge to the public entity any compensation, including, but not limited to commissions, fees, incentives, bonuses, rebates or any other thing of value, paid or received in violation of this Ordinance, and/or a commensurate reduction in premiums to be paid by the public entity for the affected coverage(s) in the future.

13. In the event that the City of Newark shall deem it appropriate to place insurance coverage with an insurance coverage provider, without need of a broker and/or insurance consultant through a solicitation of quotations for insurance coverage, the Administrator or Manager or his designee shall obtain at least three (3) quotations, one of which shall be form a joint insurance fund, and with respect to health insurance, to the State Health Benefits Plan (SHBP) shall not determine if the SHBP and/or joint insurance fund can provide the same or similar coverage and at what cost.

14. Whenever soliciting proposals for insurance coverage through the competitive contracting process, the Business Administrator or his designee, shall submit the request for proposal to at least one (1) joint insurance fund, and with respect to health insurance, to the State Health Benefits Plan (SHBP).

Section 2. Any Ordinances inconsistent herewith are hereby repealed to the extent of their inconsistency only.

Section 3. If any part of this Ordinance shall be declared to be invalid or inoperative by a court of competent jurisdiction, such part shall be deemed severable and the invalidity thereof shall not affect the remaining parts of this Ordinance.

Section 4. This Ordinance shall take effect upon adoption and following publication, in accordance with law.

STATEMENT

This Ordinance requires that the City of Newark use a competitive contracting process to purchase insurance and select insurance brokerage services. It further requires that the compensation of the insurance brokerage services be paid by the City of Newark only and not by third parties.