

**AN ORDINANCE REQUIRING COMPETITIVE
CONTRACTING FOR PROCUREMENT OF INSURANCE
AND INSURANCE CONSULTING SERVICES AND REQUIRING
INSURANCE CONSULTING SERVICES TO BE COMPENSATED
SOLELY BY THE TOWNSHIP AND NOT BY THIRD PARTIES**

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

WHEREAS, the Governing Body of the Township of West Orange, N.J., (“Township”) 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 authorizes local contracting units to require the use of competitive contracting practices to procure specified goods and services otherwise exempt from bidding by virtue of N.J.S.A. 40A:11-5; and

WHEREAS, the Governing Body of the Township of West Orange, N.J., finds that requiring its insurance consultants be compensated solely by the Township of West Orange, N.J., 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 Township of West Orange, N.J., will ensure the fidelity and loyalty of such consultants to the Township of West Orange, N.J., and eliminate or reduce conflicting loyalties such consultants might otherwise have to any third parties; and

WHEREAS, other New Jersey municipalities that have switched their insurance consultant compensation practices from indirect through insurance carriers to direct through fee for service have enjoyed significant reductions in the cost of these services;

NOW, THEREFORE, BE IT ORDAINED by the Governing Body of the Township of West Orange, N.J., that the Municipal Code be amended to provide:

1. 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. 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 Township shall secure full and open competition among insurers and insurance consulting service providers, for the Township’s business. The Township 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, fairness and transparency to all interested parties.
3. This open competition shall provide that at least 60, but not more than 120 days prior to the contract commencement date, the Township shall advertise in the newspapers authorized to print legal notices for the Municipality, and in a newspaper circulated in at least 5 counties in the State, and on the Township’s website, including a notice on the home page of the website that clearly and prominently describes the initiative and provides a link to a more detailed explanation of the initiative elsewhere in the website, a “Request for Proposals” to provide insurance and insurance consulting services. The notice shall advise the reader that details of the Township’s insurance requirement are available from the Municipal Clerk on request and shall include the phone number of the Clerk.

4. To ensure that the Township receives the maximum pricing benefit, the Township shall limit each of its “Request for Proposals” to a single line of insurance or insurance consulting services for a single line of insurance; except that if the Township seeks to include multiple lines of insurance or insurance consulting services for multiple lines of insurance, that the “Request for Proposals” allow responses on both a consolidated (one price) basis for all or multiple lines of insurance or insurance consulting services for multiple lines of insurance, as well as for each single line of insurance or single line of insurance consulting services. This process is for the purpose of demonstrating whether obtaining services from multiple providers can result in lower costs for the Township.
5. The request for proposals shall be designed and drafted by the Business Administrator, or his designee, and shall set forth such detailed information as may be required for all proposers to understand and possess equal information concerning the Township’s insurance or insurance consulting services needs, including the current terms of, and fees or premiums paid for, such coverages or services, current coverage, loss experience and anticipated or desirable needs with respect to the relevant coverage 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.
6. Responses to the request for proposal shall be submitted to the Township at least 30 days prior to the anticipated commencement of the contract.
7. At no time during the proposal solicitation process shall any official or employee of the Township, or any officer, employee or representative of any provider of insurance consulting services to the Township, convey information, including price, to any potential proposer which could confer an unfair advantage upon that proposer over any other potential proposer.
8. A provider of insurance consulting services to the Township shall be compensated for its services to or on behalf of the Township solely by the Township. 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.
9. No provider of insurance or of insurance consulting services to the Township shall pay to any insurance consulting service provider to the Township, 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 Township’s insurance or insurance consulting business.
10. No provider of insurance consulting services to the Township 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, or any other third party, in consideration of obtaining or servicing the Township’s insurance or insurance consulting business.
11. Any person or entity proposing to provide insurance or insurance consulting services to the Township 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 Township’s insurance or insurance consulting business from any party other than the Township.
12. Any person or entity selected to provide insurance or insurance consulting services to the Township shall certify at least annually and prior to any renewal of its contract, that it has not paid or 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 Township’s insurance or insurance consulting business from any party other than the Township.
13. Any provider of insurance consulting service that assists the Township in soliciting, evaluating, or selecting any provider of insurance or other insurance consulting services to the Township shall disclose to the Township 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 years from each provider of insurance or insurance consulting services solicited or evaluated by the Township. 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.

14. The request for proposals for any insurance or insurance consulting services for the Township shall clearly establish the compensation restrictions and the certification and disclosure requirements established by this Ordinance as mandatory, non-waivable terms, the violation of which shall be grounds for (i) terminating any contract resulting there from, and (ii) 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 a commensurate reduction in premiums to be paid by the public entity for the affected coverage(s) in the future.
15. Whenever soliciting quotations for insurance coverage, the Business Administrator or his designee shall obtain at least three quotations (soliciting from as many as six prospective vendors as necessary to obtain three quotations) and shall submit the request for proposals to at least one joint insurance fund, and with respect to health insurance, to the State Health Benefits Plan (“SHBP”), at the same time it is published, and shall determine if the SHBP and/or joint insurance fund can provide the same or similar coverages and at what cost. The evaluation report shall include an analysis and written narrative discussion of the availability, terms and price of comparable coverage from such joint insurance fund and the SHBP as part of its award recommendation. If spreadsheets are used, their column and row headings shall be clearly defined and explained with a legend/index. The evaluation report shall be made available to the public through the Municipal Clerk’s office and posted to the Township website, with a notice placed on the website homepage that clearly and prominently explains the nature of the report and linking to a fuller explanation, including the report itself, elsewhere on the website. This report shall be made available at least three weekdays before the scheduled meeting in which the report is considered by the Governing Body.
16. In all instances of the consideration of granting an extension to any multiple-year insurance contract, the Business Administrator shall prepare an evaluation report that shall include an analysis and written narrative discussion of the issues relating to significant aspects of the extension decision, including current market trends in pricing. The evaluation report shall be made available to the public through the Municipal Clerk’s office and posted to the Township website, with a notice placed on the website homepage that clearly and prominently explains the nature of the report and linking to a fuller explanation, including the report itself, elsewhere on the website. This report shall be made available at least three weekdays before the scheduled meeting in which the report is considered by the Governing Body.

Susan McCartney, Council President

Robert D. Parisi, Mayor

Approved as to form and legality on the basis of the facts provided.

Karen J. Carnevale, Municipal Clerk

Introduction: January 14, 2014

Adoption: January 28, 2014

Legislative History

This ordinance creates new requirements for the purchase of insurance and insurance services which exceed the requirements in the Local Public Contracts Law which accepts insurance from the normal bidding requirements, treating it as an extraordinary unspecifiable service. N.J.S.A. 40A:11-5(m).