

RESOLUTION No. 2013-06

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COATESVILLE, CHESTER COUNTY, PENNSYLVANIA, ADOPTING A PROFESSIONAL SERVICES CONTRACT POLICY FOR THE CITY OF COATESVILLE PENSION PLANS, AS REQUIRED BY ACT 44 OF 2009.

WHEREAS, the City of Coatesville has established pension plans for the eligible employee groups (Police, Fire & Non-Uniform Plans); and

WHEREAS, the Pennsylvania legislature enacted Act 44 on September 18, 2009; and

WHEREAS, the City is required by Act 44 of 2009 to establish policies and procedures for the procurement of professional services for municipal pension plans; and

WHEREAS, the City desires to establish policies and procedures for Act 44 of 2009 compliance; and

NOW THEREFORE, BE IT RESOLVED, that the City Council of the City of Coatesville hereby adopts the Professional Services Contract Policy for the Pension Plans, attached hereto as "Exhibit A".

FURTHER RESOLVED, that if any provision, sentence, clause, section, or part of this Resolution shall for any reason be found to be unconstitutional, illegal or invalid, such determination shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or parts of this Resolution, and it is hereby declared to be the intent of the City Council that this Resolution would have been adopted had such unconstitutional, illegal or invalid provision, sentence, clause, section or part not been included herein.

FURTHER RESOLVED, that all Resolutions or parts of Resolutions inconsistent with this Resolution are hereby superseded.

FURTHER RESOLVED, that this Resolution shall become effective immediately.

IN WITNESS WHEREOF, the City Council has caused this Resolution to be passed this 11th day of February 2013.

CITY OF COATESVILLE

BY:



David Collins
President, City Council

ATTEST:

BY: 
Kirby A. Hudson
City Manager

I hereby certify that the foregoing is a true and correct copy of the said Resolution duly adopted at a Meeting of City Council held on February 11, 2013 and recorded in the Minutes as such.

BY: 
Kirby A. Hudson
City Manager

EXHIBIT A

Professional Services Contract Policy for the City of Coatesville Pension Plans

The purpose of this policy is to assure compliance with Act 44 of 2009, 53 PS. §§ 895.701-A through 895.707-A, by setting forth policies and procedures applicable to any pension plan or system in which employees participate.

The Chief Administrative Officer shall be responsible for distributing and receiving information relating to or arising from this Policy in accordance with the following guidelines:

1. **DEFINITIONS**

Affiliated entity – Any of the following:

- (1) A subsidiary or holding company of a lobbying firm or other business entity owned in whole or in part by a lobbying firm.
- (2) An organization recognized by the Internal Revenue Service as a tax-exempt organization under section 501(c) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §501(c) established by a lobbyist or lobbying firm or an affiliated entity

City – refers to City of Coatesville, Chester County, Pennsylvania, and includes the City Council.

City Pension system – Any pension plan operated for the benefit of City of Coatesville employees.

Contributions – any payment, gift, subscription, assessment, contract, payment for services, dues, loan, forbearance, advance or deposit of money or any valuable thing, to a candidate or political committee made for the purpose of influencing any election in this Commonwealth or for paying debts incurred by or for a candidate or committee before or after any election. “Contribution” shall also include the purchase of tickets for events such as dinners, luncheons, rallies and all other fund-raising events; the granting of discounts or rebates not available to the general public; or the granting of discounts or rebates by television and radio stations and newspapers not extended on an equal basis to all candidates for the same office; and any payments provided for the benefit of any candidate, including any payments for the services of any person serving as an agent of a candidate or committee by a person other than the candidate or committee or a person whose expenditures the candidate or committee must report under this act. The word “contribution” includes any receipt or use of anything of value received by a political committee from another political committee and also includes any return on investments by a political committee. (section 1621 of the act of June 3, 1937 (P.L. 1333, No. 320), known as the Pennsylvania Election Code.

Executive Level employee – An employee of a person or the affiliated entity who:

(1) can affect or influence the outcome of the person’s or affiliated entity’s actions, policies or decisions relating to pensions and the conduct of business with the City or City pension system; or

(2) is directly involved in the implementation or development of policies relating to pensions, investments, contracts or procurement or to the conduct of business with the City or City pension system.

Political committee – As defined in section 1621 of the act of June 3, 1937 (P.L. 1333, No. 320),

known as the Pennsylvania Election Code (“any committee, club, association or other group of persons which receives contributions or makes expenditures”)

Professional services contract – A contract to which the City pension system is a party that is (1) for the purchase or provision of professional services, including investment services, legal services, real estate services and other consulting services; and (2) not subject to a requirement that the lowest bid be accepted.

II. PROCUREMENT FOR PROFESSIONAL SERVICES CONTRACTS

A. Procedures – The procedures adopted by the City are intended to ensure selection of the most qualified contractor to enter into a professional services contract. Advertisement of the availability of a professional services contract will occur in a timely and efficient manner. Applications and disclosure forms are to be used to submit a proposal for review and to receive the award of a professional services contract.

B. Advertisement – An advertisement of the availability of a proposal for a professional services contract shall set forth:

- 1) The services that are the subject of the proposed contract,
- 2) Specifications relating to the services,
- 3) Procedures to compete for the contracts, and
- 4) Required disclosures

C. Review – Procedures to select the most qualified contractor shall include a review of the contractor’s qualifications, experience and expertise and the compensation to be charged.

D. Personnel –

- 1) Prior to entering into a professional services contract with the City pension system, the contractor shall disclose the names and titles of each individual who will be providing professional services to the City pension

system, including advisors or subcontractors of the contractor.

- 2) Disclosure under this subsection shall include all of the following:
 - (i) Whether the individual is a current or former official or employee of the City.
 - (ii) Whether the individual has been a registered Federal or State lobbyist
 - (iii) A description of the responsibilities of each individual with regard to the Contract
- 3) The resume' of an individual included in the disclosure shall be provided to the City upon request
- 4) The information required under this subsection shall be updated as changes occur

E. Conflict of interest – The City's policy relating to potential conflicts of interest includes a minimum one-year restriction on:

- 1) Participation by a former employee of a contractor or potential contractor in the review of a proposal or negotiation of a contract with that contractor.
- 2) Participation by a former employee of the municipal pension system in the submission of a proposal or the performance of a contract.

The City may determine whether any restriction imposed due to a conflict of interest should extend beyond one year.

F. Public information – Following the award of a professional services contract, all applications and disclosure forms shall be public except for proprietary information or other information protected by law.

G. Increase – A professional services contract shall not be amended to increase the cost of the contract by more than 10% or \$10,000, whichever is greater, unless the increase and a written justification for the increase are public and posted on the City's pension system Internet website, if an Internet website is maintained, at least (7) days prior to the effective date of the amendment.

H. Notice and summary – The relevant factors that resulted in the award of the professional services contract must be summarized in a written statement to be included in or attached to the documents awarding the contract. Within ten (10) days of the award of the professional services contract, the original application, a summary of the basis for the award and all required disclosure forms must be transmitted to all unsuccessful applicants. If an Internet website is maintained, such documents also must be posted on the municipal pension system's

Internet website at least seven (7) days prior to the execution of the professional services contract.

III. AGENTS/SOLICITATION

A. Disclosure – A person or an affiliated entity that intends to enter or that enters into a professional services contract shall disclose the employment or compensation of a third party intermediary, agent or lobbyist to directly or indirectly communicate with a City pension system official or employee or a City official or employee in connection with any transaction or investment involving the contractor and the City pension system. The disclosure shall not apply to an officer or employee of the investment firm who is acting within the scope of the firm’s standard professional duties on behalf of the firm, including the actual provision of legal, accounting, engineering, real estate or other professional advice, services or assistance pursuant to a professional services contract with the City pension system.

B. Solicitation – A person that enters into or has applied for, submitted an offer or bid for, responded to a request for proposal on or otherwise solicited a professional services contract with a City pension system or an agent, officer, director or employee of that person may not solicit a contribution to any City official or candidate for City office or to the political party or political action committee of that official or candidate.

C. Limitation on communication – Upon the advertisement for professional services contract by the City pension system, the contractor may not cause or agree to allow a third party to communicate with officials or employees of the city pension system except for requests for technical clarification. Requests for technical clarification shall be made by a designated employee of the City pension system. Nothing in this subsection shall preclude a potential contractor from responding to requests for clarification or additional information from the City pension system.

IV. DISQUALIFICATION

A. Contributors - A person or an affiliated entity that, within the past two (2) years, has made a contribution to a City official or candidate for City office may not enter into a professional services contract with the City pension system, except that the two-year restriction shall not apply to any contribution made prior to the effective date of this subsection

B. Relationships –A person or an affiliated entity that enters into a professional services contract with the City pension system may not have a direct financial, commercial or business relationship with any official of the City pension system or the City unless the City pension system consents in writing to the relationship following full disclosure

C. Gifts – A person with a professional services contract may not offer or confer a gift

having more than a nominal value, including money, services, loans, travel, lodging, entertainment discount or other thing of value, to any official, employee or fiduciary of the City pension system.

V. DISCLOSURES

A. Contractors –

1) A person or an affiliated entity that has a professional services contract with the City pension system shall disclose all contributions to which all of the following apply:

(i) the contribution was made within the last five years

(ii) the contribution was made by an officer, director, executive-level employee or owner of at least 5% of the person or affiliated entity

(iii) the amount of the contribution was at least \$500 in the form of:

(A) a single contribution by a person included in subparagraph (ii), or

(B) the aggregate of contributions by all persons listed in subparagraph (ii)

(iv) the contribution was made to:

(A) A candidate for any public office in the Commonwealth or to an individual who holds that office, or

(B) A political committee of a candidate for public office in the Commonwealth or of an individual who holds that office

2) The information provided under this subsection shall be updated annually

B. Additional disclosure – A person or an affiliated entity that has a professional services contract with the City pension system shall disclose all of the following:

1) Information relating to individuals making contributions, including:

(i) the name and address of the contributor.

(ii) the contributor's relationship to the contractor.

(iii) the name and office or position of each person receiving a contribution.

(iv) the amount of the contribution.

(v) the date of the contribution.

- 2) Gifts to an official or employee of the City pension system or the City
- 3) The employment or retention of any third-party intermediary, agent or lobbyist and the duties of that person.
- 4) The existence of any financial relationship under section IV(B) above

C. Applicability – The provisions of section IV(A) above shall apply to a person and an affiliated entity that has applied for, submitted an offer or bid for, responded to a request for proposal or otherwise solicited a professional services contract with the City pension system.

D. Forms – Required disclosure shall be made on a form prepared by the City pension system. The form will be attached to the contract and posted on the system’s Internet website. during the term of the contract, an updated form shall be filed annually in accordance with procedures adopted by the plan.

E. Penalties – The following shall apply:

- 1) The City pension system shall void the professional services contract of a person that knowingly makes a material misstatement of omission in a disclosure form under this chapter and shall prohibit the person from entering into a contract for a period of up to three (3) years.
- 2) If a contractor or person that has submitted a proposal or bid in violation of paragraph (1) more than two times in a 36-month period, all contracts between that contractor and the City pension system shall be void and the person shall be debarred for a period of at least (3) years from the date of the last violation.

VI. DUTY TO ACT

If a person that enters into or has applied for, submitted an offer or bid for, responded to a request for proposal on or otherwise solicited a contract with the City system or an officer, director or employee of the City pension system is aware or reasonably should be aware of an apparent, potential or actual conflict of interest, the person shall disclose the conflict and promptly eliminate the conflict.

VII. NO PREEMPTION OF STRICTER RULES OR LAWS

This Policy shall not be construed to preempt or limit the application of any provision, regulation or law imposing a stricter code of ethics.