

CHAPTER 2014-11

No. 257 **AN ORDINANCE AMENDING SECTION 21-28.1 ENTITLED
"QUALIFICATIONS OF PARTIES DOING BUSINESS WITH THE CITY
AND ADDING SECTIONS 2-403 THROUGH 2-410, ENTITLED:
"PROHIBITION OF AWARDED PUBLIC CONTRACTS TO CERTAIN
CAMPAIGN CONTRIBUTORS" TO THE CODE OF ORDINANCES**

Approved June 12, 2014

Be it ordained by the City of Providence:

SECTION 1. The Providence City Council hereby makes the following legislative findings:

1. The City relies extensively upon outside vendors to support and provide City services, including but not limited to those obtained through the competitive bidding process, on a sole source basis, and by consideration of a broader range of factors applicable to professional services.
2. The City procures services in numerous different ways, including but not limited to competitive bidding, sole source awards, and contracts for professional services based on a broad range of factors.
3. Regardless of the manner in which a vendor is selected, it is important for the public and for other bidders to have confidence that the selection decision was based on the best interest of the City.
4. The City of Providence and its residents have a significant interest in preventing both actual and perceived corruption and/or improper influence in the awarding of contracts to vendors of services and goods.
5. The awarding of a contract to a company that has made significant campaign contributions to City officials or candidates for office may cause or raise a perception of corruption and/or improper influence in the City's awarding of the contract. The appearance of impropriety may be affected by the size of the campaign contributions and the value of the contract awarded.
6. In order to minimize any perception of corruption and/or improper influence in awarding contracts in the City, the City Council wishes to establish campaign contribution limits from contractors, while still affording candidates the ability to raise funds to seek election to public office. Mayoral campaigns typically cost hundreds of thousands of dollars. The cost of

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campaigns for election and/or re-election to the City Council can reach into the tens of thousands of dollars.

7. The annual contribution thresholds set forth below balance the goals of this legislation with the free speech interests of City vendors, their owners and key employees.

SECTION 2. Section 21-28.1 of the Code of Ordinances is hereby amended to add new Subsections (d) and (e) which read as follows:

Sec. 21-28.1. Qualifications of parties doing business with the city.

- (a) In awarding bids for purchase of materials or services by the City of Providence, the Board of Contract and Supply and the Purchasing Department of the City of Providence shall take into consideration, among other factors, the background and reputation for honesty and integrity of the parties who have bid on the particular materials or services.
- (b) No contract shall be awarded to any party who is not current with all taxes which have been levied against that party by the city, including, but not be limited to, property, excise and tangible taxes; provided, however, that this section shall not apply to any party who has disputed the taxes assessed pursuant to provisions of the State of Rhode Island, nor to any party who, while delinquent, has entered into an agreement with the city collector for the payment of its taxes and is current in that agreement. All bidders shall submit with each bid a certificate from the City Tax Collector certifying that there are no outstanding taxes due and owing to the City, or that any tax delinquency is subject to a properly filed tax dispute.
- (c) In order to assist the board of contract and supply and other departments of the City of Providence in considering the foregoing, the Mayor, the Finance Director of the City of Providence or the chairperson of the Finance Committee of the City Council of the City of Providence may request the Chief of the Providence Police Department to conduct a background check on any party bidding or submitting bids for sale of services or materials to the City of Providence and/or any owner, officer or director of any such party. Upon receipt of any such request, the chief of police shall conduct such an investigation including, without limitation, to determine whether any such bidding party or any officer, director or owner thereof has been convicted of any criminal offense and shall report his findings to

the party requesting such information and to the board of contract and supply.

The results of any such investigations shall be public records of the City of Providence.

(d) Any construction project subject to subsection (a) that is or is budgeted to be one hundred thousand dollars (\$100,000.00) or more shall:

(1) Contain a provision requiring all contractors and subcontractors have or be affiliated with a state registered apprenticeship program as defined in 29 C.F.R. § 29 et seq.

(2) Require that not less than fifteen (15) percent of the total hours worked by the contractors' and subcontractors' employees on any one (1) project are completed by apprentices registered in state registered apprenticeship programs as defined.

(3) Subsequent to the City's award of the contract and prior to commencement of work, the prime contractor may petition the awarding agency to adjust the apprenticeship work hours requirements in subsection (2). The awarding agency may lower the fifteen (15) percent requirement only if it determines in writing that compliance is not feasible or that it would be unduly cost prohibitive to the project.

(4) Contain the following enforcement provisions:

a. All contractors and subcontractors shall submit written reports documenting compliance with their apprenticeship obligations prior to approval and issuance of any periodic and/or final payments being made by the contracting party.

b. Any contracting governmental subdivision or agency or its designee shall have the power to impose sanctions on any contractor or subcontractor found not to be in compliance with its obligations under this

Ordinance. Such sanctions shall include, but not be limited to:

1. Termination of contract.
2. Debarment from future city projects.
3. Recovery of any benefits which accrued to the business

during the period of violation.

4. Referral for civil sanctions and/or prosecution under the False Claims Act.

(5) Any and all bidders shall certify in writing, as a condition precedent for bidding on any City of Providence-sponsored project worth in excess of fifty-thousand dollars (\$50,000.00), that the bidder shall comply with the following: ("Bidder" shall include all construction managers, contractors, and subcontractors bidding on a construction, repair, or demolition contract).

a. All bidders shall adhere to air quality protocols outlined in the Green During Construction initiative. These refer specifically to: (1) the implementation of dust controls - especially silica control measures - during construction; (2) the substitution of all gasoline, propane, and diesel-powered construction equipment - either stationary and mobile - with equipment designed to reduce toxic emissions, either through engine modification, the use of alternative fuels, or the implementation of electric or hybrid power systems; and (3) the prohibition of idling motors on gasoline and diesel vehicles as published by the Rhode Island Committee on Occupational Safety and Health.

b. All bidders who are awarded or otherwise obtain contracts with the City of Providence shall comply with all obligations set forth in paragraph a. for the entire duration of the contract. Any bidder performing work pursuant to this initiative shall be obligated to immediately notify the City of Providence regarding any material changes relating to concurrence with this initiative. Failure to notify the city of any material change shall be considered a submission of false information and the city shall have the discretion to impose any and all sanctions authorized by this section.

c. Any bidder who negligently or willfully fails or refuses to comply with any of the obligations set forth in paragraph a., above, for any period of time, shall be subject to sanctions at the discretion of the City of Providence, which may or may not include one (1) or more of the following: 1) cessation of work on the project until compliance is obtained; 2) withholding of payment due under any contract or subcontract until compliance is obtained; 3) permanent removal from any further work on the project; 4) debarment from eligibility to contract with the

City of Providence; 5) declaration of any contract held by the bidder null and void.

d. Each bidder shall be responsible for, and shall ensure that any and all subcontractors to the bidder shall comply with all the requirements of the section, and each bidder shall certify the compliance of any and all subcontractors with the provisions of this section in the manner provided in paragraph b. above.

(e) As part of any bid to provide services or goods of \$100,000 or greater for any City of Providence-sponsored project, the bidder (referred to below as "the Business") shall submit a "Bidder's Affidavit" which shall contain "Reportable Contributions" (as defined below) for "Business Contributors" (as defined below) covering the twelve (12) month period immediately preceding the date on which the bid is submitted ("Reporting Period"):

(1) For the purpose of this subsection, the term "City Contribution" shall mean all campaign contributions to:

- a. Members of the Providence City Council
- b. Candidates for election or re-election to the Providence City Council
- c. The Mayor of Providence
- d. Candidates for election or re-election to the office of Mayor of Providence

(2) For the purposes of this subsection, the term "Executive Officer" means any person who is appointed or elected as an officer of a business entity by either the incorporators, stockholders, or directors of the business entity who is in charge of a principal business unit, division, or function of the business entity, or participates or has authority to participate other than in the capacity of a director in major policymaking functions of the business entity or who is actively engaged in soliciting business from the state or conducting, other than in a ministerial capacity, business with the City; provided, that officers of the business entity who are located outside the state of Rhode Island, are not residents of the State, and do not participate in the business of the business entity within this State shall be exempted from the requirements of this chapter;

- (3) For the purpose of this subsection, the term "Business" shall mean any Business as defined by R.I.G.L. §36-14-2.
- (4) For the purpose of this subsection, the term "Business Contributors" shall be defined to include contributions made by the following:
- a. The Business;
 - b. Any political action committee whose name includes the name of the Business;
 - c. All persons holding a ten percent (10%) or greater equity interest or five thousand dollars (\$5,000) or greater cash value interest in the Business at any time during the Reporting Period;
 - d. All Executive Officers of the Business;
 - e. Any spouse or dependent child of any individual identified in subsections (a) through (d) above.
- (5) For the purpose of this subsection, the term "Reportable Contributions" shall mean all City Contributions (as defined above) named by Business Contributors.
- (6) The Affidavit described shall identify each and all Reportable Contributions, including in the description of each contribution
- a. the date and amount of the contribution;
 - b. the recipient of the contribution; and
 - c. the name and address of the Business Contributor and the basis on which the contributor qualifies as a Business Contributor.
- (7) The Affidavit shall include a certification by the chief executive officer of the Business's or other individual authorized to act on the Business's behalf that all of the information in the Affidavit is substantially true and accurate, and a material failure to comply with this requirement provides grounds for termination of the contract.
- (8) The Affidavit shall be a public record.
- (9) Prior to executing any contract with the City of Providence to provide goods or services of a value of \$100,000 or greater, and as a condition for entering into such a contract, all prospective vendors will submit a "Vendor's

Affidavit” supplementing the information set forth in subsection (d) for the period between the time of the submission of the initial Certificate and the execution of the contract.

SECTION 3. Section 2 of the Code of Ordinances is hereby amended by adding Sections 403 through 410, as follows:

§2-403. Definitions.

As used in Sections 2-404 through 2-410, these terms shall be defined as follows:

- A. The term “business” have the same meaning as R.I.G.L. §36-14-2.
- B. For the purposes of this subsection, the term “Executive Officer” means any person who is appointed or elected as an officer of a business entity by either the incorporators, stockholders, or directors of the business entity who is in charge of a principal business unit, division, or function of the business entity, or participates or has authority to participate other than in the capacity of a director in major policymaking functions of the business entity or who is actively engaged in soliciting business from the state or conducting, other than in a ministerial capacity, business with the City; provided, that officers of the business entity who are located outside the state of Rhode Island, are not residents of the State, and do not participate in the business of the business entity within this State shall be exempted from the requirements of this chapter.
- C. With regard to a particular Business, the term “Key Person” or “Key People” shall include the following individuals:
 1. All persons holding an ownership interest in the Business either (a) 10% or greater, (b) \$5,000 or greater or both;
 2. All Executive Officers of the Business;
 3. Any spouse or dependent child of any individual identified in subsections (1) through (2) above.
- D. “Regulated Services” includes businesses and professions regulated under Title 5 of the Rhode Island General Laws, as well as legal services, media, public relations, lobbying, insurance coverage services or any other consulting and/or management service, or those which are original and creative in character in a recognized field of artistic endeavor.

- E. "Regulated Contract" means any contract which (a) is for the provision of a Regulated Service, (b) is not awarded to the low bidder by the Board of Contract and Supply; and (c) is for one hundred thousand dollars (\$100,000) or more.
- F. "Individual Threshold" means (a) \$200 for a member of the Providence City Council and/or a candidate for the Providence City Council, and (b) \$500 for the Mayor of Providence and/or a candidate for the position of Mayor of Providence.
- G. "Company Threshold" means (a) \$1,500 in contributions to a member of the Providence City Council and/or a candidate for the Providence City Council, and (b) \$4,000 in contributions to the Mayor of Providence and/or a candidate for the position of Mayor of Providence.

§2-404. Prohibition on awarding public contracts to certain contributors.

- A. The City may not enter into a Regulated Contract with any Business Entity if any Key Person for the Business: (a) has made a contribution or pledge of money in an amount over the Contribution Threshold within one calendar year immediately preceding the date of the execution of Regulated Contract, including in-kind contributions (as that term is defined in R.I.G.L. §17-25-3), to any City municipal candidate or holder of the public office having ultimate responsibility for the award of the contract under subsection D; or (b) has contributed more than the "Contribution Threshold" within one calendar year immediately preceding the date the Business executes the Regulated Contract to a campaign committee supporting such candidate or officeholder, to any City party committee, or to any political action committee (PAC) that regularly engages in the support of municipal elections and/or municipal parties.
- B. The City may not enter into a Regulated Contract with any Business Entity if the Key People of the Business, as an aggregate group: (a) has made a contribution or pledge of money in an amount over the Company Threshold within one calendar year immediately preceding the date the Business executes the Regulated Contract, including in-kind contributions (as that term is defined in R.I.G.L. §17-25-3), to any City municipal candidate or holder of the public office having ultimate responsibility for the award of the contract under subsection D; or (b) has contributed more than the "Company Threshold" within one calendar year.

immediately preceding the date of the Regulated Contract to a campaign committee supporting such candidate or officeholder, to any City party committee, or to any political action committee (PAC) that regularly engages in the support of municipal elections and/or municipal parties.

- C. The office(s) considered to have ultimate responsibility for the award of a Regulated Contract shall be:
- (1) The City Council and the Mayor, if the Regulated Contract requires approval by the City Council.
 - (2) The Mayor, if the contract requires approval of the Mayor, or if a public officer who is responsible for the award of a contract is appointed by the Mayor.
- D. No person may be awarded a subcontract to perform under a Regulated Contract, if the subcontractor would otherwise be disqualified by Subsection A at the time that the subcontract is awarded, nor may any such person perform substantially all of obligations described in a Regulated Contract.

§ 2-405. Contributions made prior to effective date.

No contribution of money or any other thing of value, including in-kind contributions (as that term is defined in R.I.G.L. §17-25-3), made prior to the effective date of this ordinance by a Business Entity to any municipal candidate, or municipal party committee or PAC shall be deemed a violation of this section, nor shall a Regulated Contract be disqualified thereby.

§ 2-406. Contribution statement; duty to report violations.

- A. Prior to awarding any Regulated Contract, the City shall receive a sworn statement from the Business Entity made under penalty of perjury that it has not made a contribution in violation of §2-404.
- B. The Business Entity shall have a continuing duty to report any contributions made during the negotiation or duration of a Regulated Contract.

§ 2-407. Reimbursement of contributions.

A Business Entity may cure a violation of § 2-404 if, within 30 days after contribution, the Business Entity notifies the City Clerk in writing and seeks and receives reimbursement of the contribution from the municipal candidate or municipal political party or PAC.

§ 2-408. Breach of Regulated Contract.

- A. It shall be a material breach of the terms of Regulated Contract, and thus grounds for its termination, for a Business Entity to:
- (1) Make or solicit a contribution in violation of this chapter;
 - (2) Knowingly conceal or misrepresent a contribution given or received;
 - (3) Make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
 - (4) Make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee of any candidate or holder of the public office of the City;
 - (5) Engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which, if made or solicited by the Business Entity itself, would subject that entity to the restrictions of this chapter;
 - (6) Fund contributions made by third parties, including consultants, attorneys, family members, and employees;
 - (7) Engage in any exchange of contributions to circumvent the intent of this chapter; or
 - (8) Directly or indirectly, through or by any other person or means, do any act which would subject that entity to the restrictions of this chapter.
- B. Any Business Entity that violates Subsection A(1) through (8) shall be disqualified from eligibility for future City contracts for a period of four calendar years from the date of violation.
- C. The determination of whether a City contract has been violated under this Section will be made by the City Treasurer. A Business Entity may appeal the decision of the City Treasurer to the Director of Administration.

§ 2-409. Conflicting Ordinances.

This Ordinance takes precedence over any conflicting provision to the extent of such conflict.

§ 2-410. Severability.

If any section, subsection, paragraph, sentence, clause, phrase, or word contained in this chapter shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this chapter, which shall remain in full force and effect, and, to this end, the provisions of this chapter are hereby declared to be severable.

SECTION 4. Section 2 will take effect with regard to all bids received and contracts awarded on or after January 1, 2015. Section 3 will take effect with regard to all contracts executed on or after January 1, 2016.

IN CITY COUNCIL
MAY 15 2014
FIRST READING
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IN CITY
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JUN 05 2014
FINAL READING
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PRESIDENT
[Signature] CLERK
ACTING

I HEREBY APPROVE.

[Signature]
Mayor
Date: 6/12/14