

**BOROUGH OF DENVER**

Lancaster County, Pennsylvania

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RESOLUTION NO. 772

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**A RESOLUTION OF THE BOROUGH OF DENVER ESTABLISHING A POLICY  
FOR THE PROCUREMENT OF PROFESSIONAL SERVICES FOR THE  
BOROUGH NON-UNIFORMED EMPLOYEE PENSION PLAN.**

WHEREAS, the Municipal Pension Plan Funding Standard and Recovery Act, as amended by the Act of September 18, 2009 (P.L. 396, No. 44) ("Act 44") requires each Municipal Pension to develop procedures which will facilitate the selection of the most qualified firms and individuals for professional service contracts; and

WHEREAS, the Borough Council of Denver Borough (the "Borough") intends to comply with all provisions of Act 44 to insure that the Borough enters into professional service agreements with firms and individuals who adhere to the code of ethics set forth in this Resolution; and

WHEREAS, the Borough has determined that elected and appointed officials must be ever conscious that public office is a public trust and that all representatives of the Borough should refrain from engaging in activities or conduct which is inconsistent with the conscientious performance of their governmental duties.

NOW, THEREFORE, be it hereby RESOLVED, by the Borough Council of Denver Borough as follows:

1. **Definitions.** The following words and phrases, when used in this Resolution, shall have the meanings given to them in Act 44:
  - a. **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.

b. Contractor. A Person who has entered into a Professional Services Contract with the Borough.

c. Contributions. As defined in Section 1621 of the Act of June 3, 1937 (P.L. 1333, No. 320), known as the Pennsylvania Election Code.

d. Executive Level Employee. An employee of a Person or the Person's 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 Borough or its Municipal Pension; 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 Borough or its Municipal Pension.

e. Municipal Pension. The Borough non-uniformed employee pension plan.

f. Person. An individual, entity, firm, municipality, organization, partnership, association, corporation, legal representative, trustee, trustee in bankruptcy or receiver.

g. 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.

h. Professional Service Contract. A contract to which the Borough 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.

2. Procedures for Procurement of Professional Service Contracts. The following procedures shall be employed in the purchase or procurement of Professional Service Contracts for the Municipal Pension to assist in the selection of the most qualified person or entity:

a. Advertisement - The Borough shall advertise a request for proposal for the

services sought in connection with a Municipal Pension. The request for proposal shall set forth the following:

- i. The services that are the subject of the proposed contract;
  - ii. Specifications relating to the services sought by the Borough;
  - iii. Procedures to compete for the contract for services;
  - iv. Required disclosures pursuant to Section 2.c of this Resolution.
- b. Review - The Borough Council or its designee shall evaluate the qualifications of the Person submitting proposals for services sought and shall select the most qualified Person after a review of the Person's qualifications, experience, expertise and compensation to be charged.
- c. Disclosure and Personnel Information - Prior to submitting a proposal or entering into a Professional Service Contract for the Municipal Pension, the proposed Contractor shall disclose the names and titles of each individual who will be providing professional services to the Borough, including advisors or subcontractors of the proposed provider. The disclosure and personnel information shall include, but not be limited to, the following:
- i. Whether the Person providing services or any principal in the entity providing services is a current or former official or employee of the Borough;
  - ii. Whether the Person providing services or any principal in the entity providing services has been a registered Federal or State lobbyist;
  - iii. Whether the Person that intends to enter or enters a Professional Service Contract is or has been employed or compensated by a third-party intermediary, agent or lobbyist to directly or indirectly communicate with a Borough official or employee in connection with any transaction or investment involving the Contractor or the Municipal Pension. This disclosure requirement shall not apply to an officer or employee of the investment firm who is acting on behalf of the firm, including the actual provision of the legal, accounting, engineering, real estate or other professional advice, services or assistance pursuant to a Professional Service Contract with the Municipal Pension.
  - iv. A description of the responsibilities of each individual with regard to the contract;
  - v. Resumes of the Person and any individual employed by the Person who intends to provide or provides service to the Municipal Pension.
- d. All Persons entering into a Professional Service Contract or submitting a

proposal with the hope of entering into a Professional Service Contract or who in any other way solicits a Professional Service Contract shall annually disclose all Contributions to which all of the following apply:


- i. The Contribution was made in the last five years;
- ii. The Contribution was made or caused to be 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 Section 6.a.ii of this Resolution;
  - B. The aggregate of all contributions by all Persons listed in Section 6.a.ii of this Resolution;
- iv. The Contribution was made to:
  - A. A candidate for any public office in the Borough or to an individual who holds that office;
  - B. A political committee of a candidate for public office in the Borough or of an individual who holds that office.
- e. Conflict of Interest - In order to prevent conflicts of interest on the part of any person providing services to the Municipal Pension, there shall be a minimum one-year restriction on:
  - i. Participation by a former employee of a Contractor or potential Contractor in the review of a proposal or negotiation of a Professional Service Contract with the Contractor.
  - ii. Participation by a former employee of the Municipal Pension in the submission of a proposal or the performance of a Professional Service Contract.
- f. Public Information - Following the award of a Professional Service Contract, all applications and disclosure forms shall be public except for proprietary information or other information protected by law.
- g. Increase - A Professional Service Contract shall not be amended to increase the cost of the contract by more than ten percent (10%) or \$10,000, whichever is greater, unless the increase and a written justification for the increase are public.

- h. **Notice and Summary** - The relevant factors that resulted in the award of the Professional Service 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 Service Contract, the original application, a summary of the basis for the award, and all required disclosure forms must be transmitted to all unsuccessful applicants at least seven days prior to the execution of the Professional Service Contract.
  
- 3. **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 Service Contract with a Municipal Pension or an agent, officer, director or employee of that Person may not solicit a Contribution to any Borough official or candidate for Borough office or to the political party or political action committee of that official or candidate.
  
- 4. **Limitation on Communication** - Upon the advertisement for a Professional Service Contract by the Borough, the Contractor may not cause or agree to allow a third party to communicate with officials or employees of the Borough except to request technical clarification. Requests for technical clarification shall be made by a designated employee of the Borough. Nothing in this subsection shall preclude a potential Contractor from responding to requests for clarification or additional information from the Borough.
  
- 5. **Disqualifications and Prohibited Activities Not Listed Above**
  - a. **Contributors.** A Person or an affiliated entity that, within the past two years, has made a contribution to a Borough official or candidate for municipal office in the municipality which controls the Municipal Pension may not enter into a Professional Service Contract with the Borough, except that the two-year restriction shall not apply to any contribution made prior to December 17, 2009.
  
  - b. **Relationships.** A Person or an affiliated entity that enters into a Professional Service Contract with the Borough may not have a direct financial, commercial, or business relationship with any official of the Borough unless the Borough consents to the relationship following full disclosure.
  
  - c. **Gifts.** A Person who enters into or proposes to enter into a Professional Service Contract may not offer or confer a gift having more than a nominal value, including a gift of money, services, loans, travel, lodging, entertainment, discount or other thing of value, to any Borough official, employee or fiduciary.
  
- 6. **Disclosure During Term of Professional Service Contract.** A Person or Affiliated Entity that has a Professional Service Contract with the Borough shall disclose the following:


- a. All Contributors to which all of the following apply:
  - i. The Contribution was made in the last five years;
  - ii. The Contribution was made or caused to be 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 Section 6.a.ii of this Resolution;
    - B. The aggregate of all Contributions by all persons listed in Section 6.a.ii of this Resolution;
  - iv. The Contribution was made to:
    - A. A candidate for any public office in the Borough or to an individual who holds that office;
    - B. A political committee of a candidate for public office in the Borough or of an individual who holds that office.
  - v. The information provided under this subsection shall be updated annually, no later than February 15 of the following year.
- b. A Person or Affiliated Entity that has a Professional Service Contract with a Borough shall disclose all of the following with regard to persons making Contributions.
  - 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.
- c. A Person or Affiliated Entity that has a Professional Service Contract with a Borough shall disclose a gift to a Borough official or employee.
- d. A Person or Affiliated Entity that has a Professional Service Contract with a Borough shall disclose the employment or retention of any third-party intermediary, agent or lobbyist and the duties of that person.

- e. A Person or Affiliated Entity that has a Professional Service Contract with a Borough shall disclose the existence of any financial relationship under Section 5.b of this Resolution.
- 7. Forms. Disclosure required by this Resolution shall be made on forms prepared by the Borough. The form shall be attached to the Professional Service Contract. During the term of the contract, an updated form shall be filed annually in accordance with this Resolution.
- 8. Disqualification for Proposals in Violation of this Resolution. If a Contractor or Person has submitted a proposal or bid which knowingly includes a material misstatement or omission in a disclosure form more than two times in a thirty-six (36) month period, the Borough shall prohibit that Person or Contractor from entering into a contract for a period of three years.
- 9. Incorporation Into Requests for Proposals and Professional Service Contracts. This Resolution and the requirements of this Resolution shall be incorporated into and made part of each request for proposal and Professional Service Contract. Failure to comply with the provisions of this Resolution shall be grounds for rejection of a proposal for a Professional Service Contract. Failure to comply with the provisions of this Resolution by a Person or Contractor who has entered into a Professional Service Contract shall constitute a breach of the Professional Service Contract.

DULY ADOPTED this 29th day of July, 2013, by the Borough Council of the Borough of Denver, Lancaster County, Pennsylvania, in lawful session duly assembled.

Attest:   
 (~~Assistant~~) Secretary

BOROUGH OF DENVER  
 Lancaster County, Pennsylvania

By:   
 (~~Vice~~) President  
 Borough Council

[BOROUGH SEAL]