

**COUNTY OF LEHIGH, PENNSYLVANIA
COMMISSIONERS BILL 2015-34
SPONSORED BY COMMISSIONER MAZZIOTTI
REQUESTED DATE: OCTOBER 7, 2015
ORDINANCE NO. 2015 -**

**ESTABLISHING AN ANTI-PAY-TO-PLAY POLICY FOR THE COUNTY OF
LEHIGH AND AMENDING THE ADMINISTRATIVE CODE TO INCLUDE
THESE PROVISIONS**

WHEREAS, good government is founded on the trust the public has for the integrity of the government's operations; and

WHEREAS, procurement of goods and services is a large portion of the daily activity of county government; and

WHEREAS, the Board of Commissioners has the utmost respect for the Lehigh County Procurement Office and its integrity; and

WHEREAS, it is the desire of the Board of Commissioners to establish regulations which will protect the procurement process from any outside political or financial influences, often referred to as "pay-to-play"; and

WHEREAS, this policy deems ineligible to contract with Lehigh County for non-bid contracts over \$10,000.00 those businesses which contribute \$250.00 or more in a calendar year to County Elected Officials or Candidates for those positions; and

WHEREAS, this policy will be prospective in application and only apply to donations made on or after January 1, 2016.

**NOW, THEREFORE, IT IS HEREBY ENACTED AND ORDAINED BY
THE BOARD OF COMMISSIONERS OF THE COUNTY OF LEHIGH,**

PENNSYLVANIA, THAT:

1. The foregoing Whereas clauses are incorporated herein as if set forth in their entirety.
2. Administrative Code is hereby amended by adding a new section 801.5, attached hereto as Exhibit A.
3. The Lehigh County Office of Elections and Registrations is hereby directed to inform all Candidates for Elective County Office of the contribution restrictions for Business Entities which wish to do business with Lehigh County, and to instruct such Candidates to inform their contributors of these restrictions.
4. Contributions to Candidates for Elective County Office or Incumbents made prior to January 1, 2016 shall not render a Business Entity ineligible for County contracts.
5. The proper officers and other personnel of Lehigh County are hereby authorized and empowered to take all such further action, including any necessary transfers of funds, and execute additional documents as they may deem appropriate to carry out the purpose of this Ordinance.
6. The County Executive shall distribute copies of this Ordinance to the proper officers and other personnel of Lehigh County whose further action is required to achieve the purpose of this Ordinance.
7. Any Ordinance or part of any Ordinance conflicting with the provisions of this Ordinance is hereby repealed insofar as the same affects this Ordinance.
8. This Ordinance shall become effective January 1, 2016.

ADOPTED this _____ day of _____, 2015 by the

following vote:

Commissioners

AYE

NAY

Geoff Brace
Thomas C. Creighton, III
Percy H. Dougherty
Amanda Holt
David S. Jones, Sr.
Vic Mazziotti
Brad Osborne
Lisa Scheller
Michael Schware

ATTEST: _____
CLERK TO THE BOARD OF COMMISSIONERS

APPROVED this _____ day of _____, 2015.

Thomas S. Muller
County Executive

ENACTED this _____ day of _____, 2015.

**NEW SECTION 801.5 –
OPEN AND PUBLIC PROCESS REQUIRED FOR NON-BID CONTRACTS**

This section shall apply to all contracts which are required to be approved by the Board of Commissioners pursuant to section 801.1 of this Administrative Code. The intent of this section is to preclude businesses from participating in non-bid County contracts if controlling individuals in the business or their immediate family members have contributed over Two-Hundred Fifty Dollars (\$250.00) to Candidates for County Elected Offices or Incumbents.

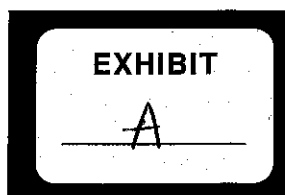
A. Definitions

1. Affiliate – a parent or subsidiary of a Business Entity
2. Business Entity – a domestic or foreign corporation for profit or not-for-profit, association, general or limited partnership, limited liability company or sole proprietorship.
3. Candidate – an individual as defined in the Pennsylvania Election Code, 25 P.S. §3241.
4. Consultant – any Person used by a Business Entity to assist in obtaining a Contract, through direct or indirect communication by such Person with a County Elected Official or employee, if the communication is undertaken by such Person with the expectation of receiving payment from the Business Entity for the assistance.
5. Contract – any professional services agreement which must be approved by the Board of Commissioners pursuant to section 801.1 of this Administrative Code.
6. Contractor – any Person or Business Entity who currently has entered into a Contract which is subject to approval by the Board of Commissioners.
7. Contribution – as defined in the Pennsylvania Election Code, 25 P.S. §3241 and subject to the Attribution Rules in section 801.5.D.
8. Controlling Shareholder - an individual who owns or controls greater than fifty percent (50%) of the shares of the Business Entity.
9. Elective County Office – the offices of County Executive, County Commissioner, District Attorney, Coroner, Controller, Clerk of Judicial Records and Sheriff.
10. Immediate Family – spouse or life partner and unemancipated children.
11. Incumbent – an individual who currently holds an Elective County Office.
12. Person – an individual, partnership, association, corporation, limited liability corporation, joint venture or other legal entity.
13. Political Action Committee (PAC) – as defined in the Pennsylvania Election Code, 25 P.S. §3241.
14. Political Committee – as defined in the Pennsylvania Election Code, 25 P.S. §3241.

B. Required Disclosures

Any Business Entity which wishes to be eligible to enter into a Contract with Lehigh County must comply with the following conditions in addition to those contained elsewhere in this Administrative Code.

1. The Business Entity must disclose:



- a) the names, business addresses and phone numbers of all subcontractors which will be used on the contract;
 - b) the names, business addresses and phone numbers of any Consultants used to assist in securing the contract, or a certification that no Consultants were used;
 - c) any Contributions made to County Elected Officials or Candidates for Elective County Office by the proposed Contractor, the subcontractors to be used or the Consultants in the previous two (2) years or a certification that no such Contributions were made;
 - d) the name and title of each County officer or employee who, within two (2) years prior to the application or proposal for a Contract, asked the Business Entity or any officer, director or management employee of the Business Entity to make a Contribution to any Person, and any Contribution made to any Person in response to any such request, including the amount of the Contribution and the date made.
2. Provide copies of the forms required to be filed with the Pennsylvania Department of State regarding campaign contributions, as set forth in 25 P.S. §3260a for the previous two (2) years, or a certification that no forms were filed.
 3. These disclosures must be made in writing and provided to the County at the time any proposal or quote for a Contract is made. Copies will be maintained with the Contract proposal, and also provided to the Lehigh County Controller. These disclosures will be available for review by the public when the proposal is available. Failure to provide these disclosures will disqualify a Business Entity from consideration for a Contract.

C. Contract Requirements

1. Eligibility – If a Business Entity has made Contributions in excess of Two-Hundred Fifty Dollars (\$250.00) in the aggregate during a calendar year to a Candidate for nomination or election to any Elective County Office or to an Incumbent, then the Business Entity shall not be eligible to enter into any Contract nor shall the Business Entity be eligible to be a sub-contractor of any such Contract for a period of two (2) years following the year of the Contribution(s).
2. During the term of the Contract, and as a specific provision of the Contract, the Contractor shall agree that Contributions will not be made which would render the Contractor ineligible to be considered for a Contract.
3. Ongoing Disclosures – The Contract shall require that the Contractor disclose any Contribution made by the Contractor, sub-contractor or Consultant to any Candidate for Elective County Office or to an Incumbent during the term of the Contract and for one (1) year thereafter. Such disclosures shall be made in writing on a form provided by the County, and shall be delivered to the County, within (5) business days of the Contribution. This County disclosure form shall be delivered by the Contractor to the County contact person identified in the Contract, who shall forward copies to the Clerk to the Board of Commissioners, the Controller and the County Fiscal Officer.
4. Breach of any of these Contract provisions will make the Contract voidable at the County's option, and shall make the Contractor liable for liquidated damages to the

- County in the amount of ten percent (10%) of the maximum payments to the Contractor permitted under the Contract, regardless of whether actually paid.
5. The Lehigh County Controller shall be responsible for reviewing campaign finance reports for all County Candidates and County Elected Officials for compliance with this section, except those of the Controller and Candidates for the Office of Controller. The Board of Commissioners shall be responsible for reviewing campaign finance reports for the Controller and Candidates for the Office of Controller. Any violations of these provisions shall be documented and reported to the County Executive and the Board of Commissioners.

D. Attribution Rules

The following shall be considered Contributions made by a Business Entity for purposes of this section:

1. A Contribution made by an officer, director, controlling partner or shareholder of a Business Entity and members of their immediate family, excluding unpaid Board members of a not-for-profit corporation.
2. A Contribution made by any parent, subsidiary or otherwise affiliated entity of the Business Entity.
3. A Contribution made by a PAC controlled by the Business Entity or its affiliates.
4. A Contribution by a PAC controlled by an officer, director, controlling shareholder or partner of the Business Entity.
5. A Contribution to any political committee or PAC which, during the calendar year in which the contribution is made, itself makes contributions or gives financial support to a particular candidate or group of candidates for nomination or election to any Elective County Office or to a particular incumbent, shall be considered a Contribution to such candidate or incumbent.
6. Any other Contribution made not directly to a candidate for nomination or election to any Elective County Office or Incumbent, but with the purpose and intent that the entity will, directly or indirectly, make such contribution such candidate or Incumbent, shall be considered a Contribution to such candidate or incumbent.
7. Any Contribution solicited by a Person shall be considered a Contribution by such Person, and if a Person sponsors or hosts a fundraising event, then any contributions raised at such event shall be considered to be contributions by such Person. Any Contribution solicited by an officer, director, controlling shareholder or partner of a Business or affiliate shall be considered a Contribution by such Business, and if any officer, director, controlling shareholder or partner of a Business or affiliate sponsors or hosts a fund-raising event, then any contributions raised at such event shall be considered to be contributions by such Business.
8. Any Contribution for which a Person is an intermediary shall be considered as a contribution by such Person, and any contribution for which an officer, director, controlling shareholder or partner of a Business or affiliate (other than a not-for-

profit Business or affiliate) is an intermediary shall be considered a contribution by such Business.

E. Notice

These requirements shall be posted on the County's website and shall be included in all Requests for Proposals as part of the County's standard terms and conditions.

F. Waiver

Any provisions of this section may be waived by motion of the Board of Commissioners if:

1. Compliance with this section may lead to the loss of federal, state or similar grant funds or would violate state or federal law;
2. No eligible Business Entities are available to perform the work after soliciting proposals through the Request for Proposals process in Section 804(c); or
3. Delay in the award of the contract would cause a material threat to public health or safety or material damage to the legal interests of the County. All other provisions of this section shall apply to such contracts except that the disclosures required need not be filed until fourteen (14) days after a contract is executed.