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SEPTEMBER 8, 2015

Russell W. Welsh, Mayor and members of the
Westville Borough Council
165 Broadway
Westville, NJ (Via Fax only to 856-456-3195)

Dear Mayor Welsh and Council members:

In response to the invitation on the "Message from Mayor Welsh" page from Westville's website, I have a suggestion. In reviewing some of the Borough Council's on-line minutes, I found that resolutions were passed at the January 5, 2015 public meeting that caused the following public notice to appear in the January 10, 2015 South Jersey Times.

The Borough of Westville has awarded the following contracts without competitive bidding as professional services pursuant to N.J.S.A. 40A:11-1, (et seq.) and a fair and open process in accordance with N.J.S.A. 19:44A-20.4, (et. seq.) for the following professional or extraordinary unspecified services at its Reorganization Meeting held on January 5, 2015. The term for each appointment is January 1, 2015 to December 31, 2015.

The authorizing resolutions and contracts are available for public inspection in the office of the Municipal Clerk, 165 Broadway, Westville, NJ.

*Borough Solicitor Timothy D. Scaffidi, Esq.
Labor Counsel Louis Rosner, Esq.
Land Use Board Solicitor
Gary Thompson, Esq. Public Defender
Colleen Archer, Esq. Bond & Redevelopment Counsel
Health Insurance Broker Hardenbergh Insurance R
Risk Management Consultant Hardenbergh Insurance
Borough Auditor Petroni & Associates
Land Use Board Planner & Engineer Bach Associates
Borough Engineer Federici and Akin*

Christine A. Helder, CMC/Municipal Clerk

The part of the Local Public Contract Law that governs advertisement of no-bid contract awards, N.J.S.A. 40A:11-5(1)(a)(i), states:

*Professional services. The governing body shall in each instance state supporting reasons for its action in the resolution awarding each contract and shall forthwith cause to be printed once, in the official newspaper, a brief notice stating the nature, duration, service **and amount of** the contract, and that the resolution and contract are on file and available for public inspection in the office of the clerk of the county or municipality, or, in the case of a contracting unit created by more than one county or municipality, of the counties or municipalities creating such contracting unit; or (ii) Extraordinary unspecifiable services. The application of this exception shall be construed narrowly in favor of open competitive bidding, whenever possible, and the Division of Local Government Services is authorized to adopt and promulgate rules and regulations after consultation with the Commissioner of Education limiting the use of this exception in accordance with the intention herein expressed. The governing body shall in each instance state supporting reasons for its action in the resolution awarding each contract and shall forthwith cause to be printed, in the manner set forth in subsection (1) (a) (i) of this section, a brief notice of the award of such contract;*

(Emphasis supplied).

I note that the newspaper's public notice does not provide the public with "the amounts" of these contracts. I know that the Borough knew the maximum amount of these contracts at the time they were awarded because N.J.A.C. § 5:30-5.4 required the Borough's CFO to certify that the amounts of the contracts had been properly encumbered.

While a member of the public could determine the amounts of these contracts by submitting OPRA requests for the contracts themselves, why should they have to? The law requires the Borough to publish "the amount" of each no-bid contract awarded so that is what the Borough must do.

While it shouldn't be necessary to go into policy reasons, I believe that it is clear that the Legislature, when it passed N.J.S.A. 40A:11-5, intended to make it very easy for citizens to (anonymously) obtain information as to how much taxpayer money flows to the professional appointees (who are often appointed for partisan reasons rather than merit) by simply reading the local paper. Any additional burdens placed on the citizens, such as withholding information to which they're entitled from required newspaper publications, works against this policy and New Jersey's strong tradition of open and transparent government.

Would you please discuss this matter at the Council's September 21, 2015 meeting and direct Clerk Helder to republish amended public notices that comply with N.J.S.A. 40A:11-5?

Thank you for your attention to this matter.

Sincerely,

John Paff