

Q & A Guidance

Mercer County Pay-to-Play Ordinances Nos. 2004-13 (Redevelopment Contracts) and 2004-14 (Professional Services Contracts)

1. Are contracts awarded through a bid or competitive contracting subject to the Mercer County Pay-to-Play Ordinances?

No.

2. Does Mercer County Pay-to-Play Ordinance No. 2004-14 apply to Shared Services Agreements with other public entities?

No.

3. Are contracts with non-profits organized under section 501 (c)(3) of the Internal Revenue Code covered by Mercer County Pay-to-Play Ordinance No. 2004-14?

No.

4. May a business entity that has made a reportable contribution re-establish eligibility for a contract by seeking a return of the contribution?

Yes. But under the Mercer County Pay-to-Play Ordinances it must be returned within 30 days. In addition, you cannot just ask for it back within the time frame, you must receive the contribution back within 30 days.

5. Who is included within the definition of “professional business entity” set forth in Section 1(c) of Mercer County Ordinance No.2004-14?

Ordinance No. 2004-14 prohibits the award of professional service contracts to a “professional business entity” that has made or solicited contributions in excess of the limits set forth in the Ordinance. If a “professional business entity” is an individual, the individual, the individual’s spouse, and the individual’s dependent children living at home are included within the definition of “professional business entity.” Consistent with State pay-to-play legislation that became effective after Mercer County Ordinance No. 2004-14 (N.J.S.A. 19:44A-20.6 and 7), and with the manner in which the County has long interpreted its Ordinance, if the “professional business entity” is a legal entity, such as a firm, corporation, professional corporation, partnership, organization, joint venture, limited liability company, or business trust, then the definition of “professional business entity” includes the entity as well as any individual holding more than a 10% interest in the business entity, be that person a principal, partner or officer. Any subsidiary directly controlled by the “professional business entity” is also included within the definition. A “professional business entity” is deemed to directly control a subsidiary if it holds more than 50% of the equity of that subsidiary.

6. Sections 1(a) and 1(b) of Mercer County Ordinance No. 2004-14 appear contradictory in that Section 1(a) prohibits the award of a contract by the County and its independent authorities if a business entity has made a contribution in excess of the thresholds in Section 1(d) “within one calendar year immediately preceding the date of the contract or agreement,” while Section 1(b) appears to prohibit all contributions by a business entity that may occur during that same period, i.e., from “first communications between that business entity and the County regarding a specific contract.” Are the thresholds in Section 1(d) intended to apply to both Sections 1(a) and (b)?

Yes. Sections 1(a) and 1(b) are intended to impose parallel obligations on the County/County independent authorities, and on the business entities with whom they do business. The restriction is only applicable if you exceed the threshold. You may make a contribution up to the threshold even if you have an existing contract with the County.

7. Whose contributions are subject to the aggregate limit set forth in Section 1(d) if Mercer County Ordinance No. 2004-14?

Section 1(d) of Mercer County Ordinance No. 2004-14 provides that “any group of individuals meeting the definition of ‘professional business entity’ under this section, including such principals, partners, and officers of the entity in the aggregate, may not annually contribute for any purpose in excess of \$2,500 to all Mercer County candidates and officeholders having substantial influence or responsibility for the award of contracts, and to all Municipal or County party committees and PACs referenced in the Ordinance combined.” As mentioned in the above Q &A, only principals partners, and officers holding more than a 10% interest in the legal entity is included within the definition of “professional business entity.” Therefore, contributions of such 10% interest holders in the business entity may not, collectively, annually contribute more than \$2,500 to all Municipal or County party committees and PACs referenced in the Ordinance.

8. May a covered person (e.g., principals, partners and officers with a 10% interest in the business entity) solicit contributions from multiple individuals under Mercer County Ordinance No. 2004-14?

Yes, provided that such contributions are in the amount of \$400 or less from each individual solicited. This interpretation is consistent with guidance provided by the State Treasurer with regard to solicitation under Executive Orders in effect for State contracts.

Questions relating to the Mercer County Pay-to-Play Ordinances should be made in writing to the Deputy County Counsel Paul R. Adezio at padezio@mercercounty.org.