

RESOLUTION
of the
BOROUGH OF NEW PROVIDENCE
Resolution No. 2012-24

Council Meeting Date: 01-03-2012

Date Adopted: 01-03-2012

TITLE RESOLUTION APPOINTING BIRDSALL ENGINEERING, INC. AS
BOROUGH PLANNER FOR THE BOROUGH OF NEW PROVIDENCE
COUNTY OF UNION AND STATE OF NEW JERSEY

Councilperson Galluccio submitted the following resolution, which was duly seconded by Councilperson Munoz.

WHEREAS, the Borough of New Providence has deemed it is in the best interest of the Borough to appoint a Municipal Planner; and

WHEREAS, the Borough solicited proposals for professional planning services through a "fair and open" process in accordance with the provisions of N.J.S.A. 19-44A-20.5; and

WHEREAS, the anticipated term of this contract is one (1) year; and

WHEREAS, Birdsall Engineering has submitted a proposal, indicating they will provide professional planning services for an amount not to exceed \$75,000.00; and

WHEREAS Birdsall Engineering has completed and submitted a Business Entity Disclosure Certificate which certifies that Birdsall Engineering has not made any reportable contributions to a political or candidate committee in the Borough of New Providence in the previous one year, and that the contract will prohibit Birdsall Engineering from making any reportable contributions through the term of the contract, and

WHEREAS, funds are available and have been certified by the Chief Financial Officer; and

WHEREAS, the Local Public Contracts Law (N.J.S.A. 40A:11-5) requires that the resolution authorizing and awarding of contracts for "professional services" without competitive bids and the contract itself must be available for public inspection.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the

Borough of New Providence that they hereby agree as follows:

1. The Mayor and Borough Clerk are hereby authorized and directed to execute the attached agreement with Birdsall Engineering, for Professional Legal Services.
2. Such contract is awarded without competitive bids as a "professional service" in accordance with N.J.S.A. 40A:11-5(1) (a) of the Local Public Contracts Law, because the services to be rendered are professional in nature and are unspecifiable as to requirements for performance. Such services must be rendered by a person particularly trained and licensed in this area, which requires extensive specific education and long experience in both the Federal and State procedural requirements.
3. A notice of this action shall be published once in the Courier News.

APPROVED, this 3rd day of January, 2012.

RECORD OF VOTE

	AYE	NAY	ABSENT	NOT VOTING
CUCCO	X			
GALLUCCIO	X			
GENNARO	X			
LESNEWICH	X			
MUÑOZ	X			
ROBINSON	X			
HERN			TO BREAK COUNCIL TIE VOTE	

I hereby certify that the above resolution was adopted at a meeting of the Borough Council held on the 3rd day of January, 2012.

Wendi B. Barry, Borough Clerk

Prepared by
CARL R. WOODWARD, III, ESQ.
5 Becker Farm Road
Roseland, NJ 07068

AGREEMENT

This AGREEMENT, entered into this _____ day of _____ 2012, between the **BOROUGH OF NEW PROVIDENCE**, a municipal corporation of the State of New Jersey, hereinafter called the "BOROUGH," having municipal offices located at the Municipal Building, 360 Elkwood Avenue, in the Borough of New Providence, County of Union, State of New Jersey, and **BIRDSALL ENGINEERING, INC.**, having an office located at 611 Industrial Way West, Eatontown, New Jersey 07724-2213, hereinafter referred to as the "CONTRACTOR."

WITNESSETH:

WHEREAS, a need has arisen for the BOROUGH to retain a consultant for the provision of professional planning services for the 2012 calendar year; and

WHEREAS, the BOROUGH has selected CONTRACTOR to provide professional planning services to the BOROUGH for the 2012 calendar year, in accordance with its response to the BOROUGH's request for proposals.

NOW THEREFORE, in consideration of the premises and mutual promises herein contained, the parties agree as follows:

I. PARTS OF CONTRACT

The parties agree that the terms and conditions contained in the following documents which comprise and are hereinafter called the contract documents are made part of this agreement and are binding on all parties as if all conditions contained in the contract documents were set forth in this agreement:

- A. Request for Proposals
- B. Resolution
- C. This Agreement

II. CONTRACT PERIOD

This contract shall be effective for a term of twelve (12) months, commencing January 1, 2012 and ending December 31, 2012.

III. WORK

The CONTRACTOR agrees to provide all services necessary for the following:

All necessary and proper services related to the provision of general planning services to the Borough, including, without limitation:

- (a) attendance of municipal meetings with the Borough's governmental bodies, stakeholders and/or prospective developers on an as-needed basis throughout the course of the calendar year;
- (b) maintenance of regular business hours; and
- (c) the general review of ordinances, documents and/or reports, in accordance with the terms set forth in the CONTRACTOR's proposal.

The CONTRACTOR declares and agrees that it will be responsible for the full performance and completion of all work to be done under this Agreement and by the execution hereof acknowledges that it has carefully informed itself regarding conditions pertaining to the work to be done.

IV. PAYMENT

The BOROUGH shall pay and the CONTRACTOR shall accept in payment and in consideration for the performance of the CONTRACTOR's obligations hereunder, compensation for services rendered in an amount not to exceed \$15,000.

The BOROUGH will reimburse CONTRACTOR for costs associated with the preparation and reproduction of handouts, maps and/or reports in an amount not to exceed \$5,000.

V. CONTRACT DOCUMENTS

The contract documents comprise the documents listed in Article I of this Agreement, entitled "Parts of Contract". In the event that any provisions of one document conflict with the provisions of another document, the provisions in the document first listed as follows shall govern, except as otherwise specifically stated:

1. Agreement (this instrument)
2. Resolution
3. Request for Proposals

VI. WAIVER

Neither the inspection by the BOROUGH nor any of its agents, nor any order, measurement, or certificate by the BOROUGH or its agent, nor any order by the BOROUGH for the payment of money nor payment for, nor acceptance of, the whole nor any part of the work by the BOROUGH, nor an extension of time, nor any possession taken by the BOROUGH or its employees, shall operate as a waiver of any provisions of this agreement or of any power herein reserved to the BOROUGH, or any right to damages herein provided, nor shall any waiver of any breach of this contract be held to be a waiver of any other or subsequent breach. Any remedy provided for in this agreement shall be taken and construed as cumulative; that is, in addition to each and every other remedy herein provided, and in addition to all other suits, actions, or legal proceedings, the BOROUGH shall also be entitled as of right to a writ of injunction against any breach of any of the provisions of this agreement.

VII. RESPONSIBILITY OF THE BOROUGH COUNCIL

The BOROUGH Council or its authorized agents or employees shall decide any and all questions which may arise as to the quality and acceptability of work furnished and all questions as to the acceptable fulfillment of the agreement on the part of the CONTRACTOR. Any and all directions, communications and/or inquiries from the BOROUGH shall be made by the BOROUGH Administrator.

VIII. AFFIRMATIVE ACTION

The CONTRACTOR shall comply in all respects with the provisions of N.J.S.A. 10:5-31, et seq., and the regulations promulgated thereunder, a copy of which is attached hereto and expressly made a part hereof as Exhibit A. The CONTRACTOR shall, within seven days after receipt of notification of intent to award this contract or receipt of the contract, whichever is sooner, provide the BOROUGH with a letter of Federal Affirmative Action Approval, a Certificate of Employee Information Report from the State of New Jersey, or a completed Form AA302.

IX. SUCCESSORS AND ASSIGNS

This agreement and all of the covenants hereof shall inure to the benefit of and be binding upon the BOROUGH and the CONTRACTOR and their respective successors, assigns and legal representatives. Neither the BOROUGH nor the CONTRACTOR shall have the right to assign, transfer, or sublet its interests or obligations hereunder without prior written consent of the other party.

X. WRITTEN NOTICE

All notices, requests or other communications pursuant to this agreement shall be in writing and shall be sent pursuant to this agreement by U.S. Mail, addressed as set forth above.

XI. ENTIRE AGREEMENT

This agreement contains the entire agreement between the parties and no amendment, modification or addendum to this agreement shall be effective unless in writing, dated subsequent to the date hereof, and executed by the duly authorized officers of the respective parties. The requirement for such a writing shall apply to any waiver of the requirement of a written modification pursuant to this Article and this shall be deemed an essential term of the agreement.

XII. VALIDITY

If any term or conditions of this agreement, or any application of this agreement shall be determined to be contrary to the laws of the State of New Jersey or the United States, then such term or condition or application shall not be deemed valid except to the extent permitted by law, but all other terms and conditions or applications shall continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed by their duly authorized officers and their seals to be affixed the day and year above written.

BOROUGH OF NEW PROVIDENCE

BIRDSALL ENGINEERING, INC.

J. Brooke Hern, Mayor

Attest:

Wendi B. Barry, Borough Clerk

STATE OF NEW JERSEY :
COUNTY OF _____ :

BE IT REMEMBERED that on this _____ day of _____ 2012, before me, the subscriber, personally appeared _____, on behalf of **BIRDSALL ENGINEERING, INC.**, who, being duly sworn on his oath, did depose and make proof to my satisfaction that he is the person named in and who executed the within instrument and thereupon he acknowledged that he signed, sealed and delivered the same as his act and deed, for the uses and purposes therein expressed.

Sworn and subscribed to before me the date aforesaid.

A Notary Public of New Jersey
My Commission Expires on _____

Seal

STATE OF NEW JERSEY :
COUNTY OF UNION :

BE IT REMEMBERED that on this _____ day of _____ 2012, before me, the subscriber, personally appeared **WENDI B. BARRY**, who, being duly sworn on her oath, did depose and make proof to my satisfaction that she is the Municipal Clerk of the Borough of New Providence, the municipal corporation named in the within instrument, that **JOHN A. THOMS** is the Mayor of the Borough of New Providence, that the execution as well as the making of this instrument has been duly authorized by the Township Committee; that the seal of said municipal corporation is well known to deponent and that the seal affixed to said instrument is such corporate seal and was thereto affixed to said instrument, signed and delivered by said Mayor as and for his voluntary act and deed and as and for the voluntary act and deed of said municipal corporation, in the presence of deponent, who, thereupon subscribed her name as attesting witness.

Wendi B. Barry, Borough Clerk

Sworn and subscribed to before me the date aforesaid.

A Notary Public of New Jersey
My Commission Expires on _____

Seal

EXHIBIT A

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE N.J.S.A. 10:5-31, et seq., N.J.A.C. 17:27

GOODS, PROFESSIONAL SERVICES AND GENERAL SERVICE CONTRACTS

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex. Except with respect to affectional or sexual orientation, the contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex.

The contractor or subcontractor, where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to make good faith efforts to employ minority and women workers consistent with the applicable county employment goals established in accordance with N.J.A.C. 17:27-5.2, or a binding determination of the applicable county employment goals determined by the Division, pursuant to N.J.A.C. 17:27-5.2,

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the applicable employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

Letter of Federal Affirmative Action Plan Approval
Certificate of Employee Information Report
Employee Information Report Form AA302

The contractor and its subcontractors shall furnish such reports or other documents to the Div. of Contract Compliance & EEO as may be requested by the Division from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Div. of Contract Compliance & EEO for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code at N.J.A.C. 17:27.