

Bringing open contracting to Providence

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Over the past three years, Providence has become a national leader in open and transparent government. In 2011, the Open Government Commission developed a reform plan that led to the city's open-meetings and open-documents portals. In 2012, the City Council enacted a lobbyist-registration ordinance, and the voters approved a city charter revision to make the decennial redistricting process more transparent and fair. Last month, the council approved and the mayor signed an ordinance to add transparency and regulation to the contractor-procurement process. This ordinance provides a model for other Rhode Island municipalities and for the state as a whole.

A June 2012 memorandum prepared by the watchdog group Public Citizen offers a national perspective on the problem of campaign contributions by government contractors. In addition to documenting scandals at the federal, state and municipal levels, the authors note that "surveys of business have shown that many contractors believe they must pay to play and that the public frequently perceives such a corrupt culture in government contracting."

At the national level, the "Democratic Campaign Book" scandal involving federal contractors led Congress to enact the 1940 amendments to the Hatch Act, banning political contributions by government vendors. These regulations were continued and modified in the Federal Election Campaign Act of 1971 as amended.

At the state level, the Public Citizen memorandum identifies 15 states across the country that require disclosure of campaign contributions by government contractors, including many states that also limit campaign contributions by those contractors. At the local level, in 1994, the Municipal Securities Rulemaking

Board approved Rule G-37, which places an annual limit of \$250 on political contributions by brokers and fund managers doing business with municipal governments. Some states also regulate municipal contractors, and leading cities have enacted their own programs beyond what their states require. Such laws typically are enacted in the wake of a major scandal.

In the wake of the DiPrete administration scandals, Rhode Island enacted in 1993 a "vendor affidavit" law, requiring companies with state contracts in excess of \$5,000 to disclose campaign contributions to state officials in excess of \$250. The state program is strictly a disclosure regime, but in recent years the attorney general has proposed legislation to incorporate a contribution ban by state contractors.

To date, however, that legislation has not been enacted. Neither the current state disclosure program nor the attorney general's proposed legislation extend to municipal contractors, despite the millions of dollars at stake, and the need for reform presented by the Plunderdome investigation in 2000-02. Thankfully, the capital city's administrations since Plunderdome have avoided the practices highlighted in that court case; however, our current absence of regulation of campaign contributions from government contractors creates the opportunity for at least the appearance of impropriety.

With this in mind, the Providence City Council enacted, and the mayor signed, an ordinance that will bring open contracting to Providence in two stages. In the first stage (taking effect in January 2015) all major city contractors (with contracts exceeding \$100,000) will submit "vendor affidavits" to the clerk's office to permit the public to track campaign contributions from the year before the contract was awarded, through the term of the contract.

The clerk's office developed a robust transparency platform when implementing recent re-

forms and a new vendor-affidavit portal will fit within that infrastructure.

In the second stage (taking effect in January 2016) the city will regulate these contributions, imposing contribution thresholds that will protect the integrity of the procurement process. The ordinance places limits of \$200 on contributions to city council members or candidates and \$400 to the mayor (or candidates for mayor) by any company executive, owner or family member, with company-wide aggregate limits of \$1,500 and \$4,000 respectively. These thresholds, which fall within the range of those enacted by other cities and states, will permit companies to participate in the political process without creating the risk (or the appearance) of undue influence.

When a government hires a company to do the people's business, citizens have a right to the services of the company offering the best product for the price it charges. Companies doing business with the government have a right to know that contracts will be awarded entirely on the merits, with no expectation of campaign contributions to get the work. The broader community has a right to know that their government's commitment to fairness and transparency extends to the procurement process.

One can imagine an ideal political system in which all decisions are based entirely on the public interest, and the role and influence of money is completely eliminated. Given our country's legal traditions (particularly surrounding the Supreme Court's interpretation of the First Amendment), this ideal is out of reach, at least for now. With that said, Providence has taken major vendor money out of its political system to bring us closer to that ideal, providing a model for other Rhode Island cities and towns, as well as the Ocean State as a whole.

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