



Municipality of Princeton
Department of Community Development
Office of Planning

Princeton Municipal Building
400 Witherspoon Street
Princeton, NJ 08540

609-924-5366
609-688-2032 (fax)

MEMORANDUM

TO: Robert Bruschi, Administrator

FROM: Lee Solow, Director of Planning 

DATE: 3/12/13

SUBJECT: AVALONBAY, COMMUNITIES – LITIGATION FUND
Miller, Porter & Muller, PC – Gerald Muller, Esq.

In December 2012, the Regional Planning Board denied AvalonBay's site plan application. AvalonBay has filed a suit against the Planning Board and Princeton Council in February 2013. On March 7, 2013 at its regular meeting, the Planning Board adopted a resolution asking the Council to enter into a Professional Service Agreement with Miller, Porter & Muller, PC for this litigation.

Mr. Muller estimates the cost for this to be \$50,000 (as detailed in the email made part of the attached Professional Service Agreement). Also included is the March 7 Planning Board resolution. Please place this amendment on the next available Council agenda.

Should you have any questions, please contact me. Thanking you in advance for assistance

cc: Kathryn Monzo, Assistant Administrator & Director of Finance
Sandra Webb, Chief Financial Officer
Robert Kiser, PE; Director of Engineering
Edwin Schmierer, Esq.
Gerald Muller, Esq.

MUNICIPALITY OF PRINCETON
COUNTY OF MERCER, STATE OF NEW JERSEY

RESOLUTION

WHEREAS, there exists a need for legal services to assist the Princeton Planning Board in connection with litigation entitled AvalonBay Properties vs. Planning Board of Princeton, Docket No. MER-L-374-13; and

WHEREAS, the New Jersey Local Public Contracts Law, *N.J.S.A. 40A:11-1 et seq.* requires that a Resolution authorizing the award of a Contract for "Professional Services" without competitive bidding must be publically advertised.

NOW, THEREFORE, BE IT RESOLVED by the Council of Princeton as follows:

1. The Mayor and Clerk of Princeton are hereby authorized and directed to enter into an agreement for a sum not-to-exceed \$50,000 with Miller, Porter & Muller, P.C., One Palmer Square, Princeton, NJ 08542 to provide for the defense of the Princeton Planning Board in the above-captioned litigation. The Professional Services Agreement authorized by this Resolution is on file in the Office of the Municipal Clerk and may be inspected during regular office hours.
2. This Agreement is being awarded without competitive bidding as a "Professional Services" Contract under the provisions of the New Jersey Local Public Contracts Law because a service will be rendered or performed by a person or persons authorized by law to practice a recognized professional and whose practice is regulated by law.
3. A notice of this action shall be published in the Princeton Packet as required by law within ten (10) days of its passage.

CERTIFICATION

I, Linda S. McDermott, Clerk of the Municipality of Princeton, do hereby certify that the foregoing Resolution was adopted by the Princeton Council at its regular meeting held on the 1st day of April, 2013.

Linda S. McDermott, Clerk
Municipality of Princeton

RESOLUTION

LEGAL COUNSEL

Miller, Porter, & Muller, PC

AVALONBAY PROPERTIES, LLC

vs PRINCETON PLANNING BOARD, et. al

**PLANNING BOARD OF PRINCETON
MERCER COUNTY, NEW JERSEY**

RESOLUTION

WHEREAS, there exists need for services of counsel to the Planning Board of Princeton for representation in matters of litigation by an attorney-at-law in the State of New Jersey, and;

WHEREAS, the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) requires that the resolution authorizing the award of contracts for "Professional Services" without competitive bids and the contract itself must be available for public inspection, and;

NOW THEREFORE, BE IT RESOLVED, by the Planning Board of Princeton, Mercer County as follows:

1. The Regional Planning Board of Princeton requests that Princeton Council execute an agreement with Miller, Porter, & Muller, PC by Allen D. Porter, Esq. as counsel to the Board and in connection to sign a contract for professional services.

2. This contract is to be awarded without competitive bidding as a "professional service" under the provisions of the Local Public Contracts Law because the services are performed by a person authorized by law to practice a recognized profession and it is not possible to obtain competitive bids.

3. Payment under this contract shall be charged to the municipal budget in a preliminary amount of \$ 50,000, at a rate of \$205 per hour. Payment shall be contingent upon certification of available funds.

4. A notice of this action shall be published as required by law.

This 7th day of
March, 2013



Ilene Cutroneo, Secretary

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, entered into on this 1st day of April, 2013, by and between **PRINCETON**, a municipal corporation of the State of New Jersey, 400 Witherspoon Street, Princeton, New Jersey 08540 (hereinafter referred to as "**PRINCETON**") and **MILLER, PORTER & MULLER, PC** , (hereinafter referred to as "**ATTORNEY**").

WITNESSETH:

WHEREAS, the Princeton Planning Board has been named as a Defendant in litigation captioned AvalonBay Properties, vs. Planning Board of Princeton, Docket No. MER-L-374-13; and

WHEREAS, Princeton Planning Board adopted a resolution on March 7, 2013 requesting that **PRINCETON** enter into a professional services agreement with its **ATTORNEY**; and

WHEREAS, **PRINCETON** pursuant to the New Jersey Local Public Contracts Law, *N.J.S.A. 40A:11-3 et seq.*, authorizing the award of a Contract for Professional Services, in an amount not to exceed \$10,000 without competitive bidding to **ATTORNEY** as permitted by law.

WHEREAS, the **ATTORNEY** has advised the Princeton Planning Board that additional funds are needed to continue to defend this litigation; and

WHEREAS, **ATTORNEY** has agreed to provide said services; and

WHEREAS, **PRINCETON** has adopted a resolution pursuant to the New Jersey Local Public Contracts Law, *N.J.S.A. 40A:11-3 et seq.*, amending the authorized award of a Contract for Professional Services without competitive bidding to **ATTORNEY** as permitted by law.

NOW, THEREFORE, IT IS AGREED by and between **PRINCETON** and **ATTORNEY**, as follows:

1. **PRINCETON** hereby retains **ATTORNEY** to continue its representation of the Princeton Planning Board in the matter of AvalonBay Properties, vs. Planning Board of Princeton, Docket No. MER-L-374-13. The nature, scope of services and fees are set forth in the a copy of which is attached hereto and made a part hereof as Exhibit A.

2. **Total amount not to exceed, as \$50,000, at an hourly rate of \$205.**

3. All of the work to be undertaken and completed by **ATTORNEY** shall be performed under the direct supervision of the **DIRECTOR OF PLANNING AND**

4. **PRINCETON** and **ATTORNEY** hereby incorporate by reference into this Agreement the affirmative action/non-discrimination requirements as set forth on Exhibit B attached hereto.

5. **ATTORNEY** agrees to comply with the requirements of the New Jersey Business Registration Act in accordance with Exhibit C attached hereto.

6. **ATTORNEY** further agrees to adhere to the requirements of the New Jersey Local Unit Pay-to-Play Act, *N.J.S.A. 19:44A-20.7 et seq.*, as well as the Princeton Pay-to-Play Ordinance No. 2007-11 as set forth on Exhibit D attached hereto.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and date first written above.

ATTEST:
of

Linda S. McDermott, Clerk

WITNESS:

**PRINCETON, a municipal Corporation
the State of New Jersey**

By: _____
_____, Mayor

MILLER, PORTER & MULLER, PC

By: _____

EXHIBIT A

Tuesday, March 12, 2013 1:56:19 PM
Page 1 of 1

From:  Gerald Muller <gmuller@mpmglaw.com> 03/12/2013 1:32:04 ... 

Subject: Fwd: Arts and Transit and AvalonBay Litigation Budgets

To:  Ilene Cutroneo

[View in Browser](#)

----- Forwarded message -----

From: **Gerald Muller** <gmuller@mpmglaw.com>
Date: Wed, Feb 27, 2013 at 3:41 PM
Subject: Arts and Transit and AvalonBay Litigation Budgets
To: Lee Solow <Lsolow@princetonnj.gov>, Ilene Cutroneo <icutroneo@princetonnj.gov>

Lee and Ilene –

I propose the following budgets for the above-referenced litigation:

Arts and Transit, no docket number assigned yet: \$27,000.00 – This assumes litigation through the trial court and the briefing and argument of several motions that may arise in the matter.

AvalonBay, docket number MER-L-374-13: \$50,000.00 – This assumes litigation through the trial court, multiple motions, a hearing based on the record on the Planning Board denial and plenary trial on the ordinance issues, with discovery and identification and preparation of experts. As postured by AvalonBay, the case involves an array of issues both substantive and procedural and will involve the Fair Share Housing Center, which has filed a motion to appeal *amici*, which we will oppose, and Princeton Citizens for Sustainable Neighborhoods.

EXHIBIT B

AFFIRMATIVE ACTION/ EQUAL EMPLOYMENT GOAL COMPLIANCE
ATTACHMENT

for

PROCUREMENT AND SERVICE CONTRACTS, INCLUDING
PROFESSIONAL SERVICES AGREEMENTS

Pursuant to N.J.A.C. 17:27-3.5(a)1 and 4.3(a)1, each vendor (also referred to herein as “contractor”) shall submit to Princeton (also referred to as “public agency” or “agency”), after notification of award but prior to execution of a goods and services contract with the Princeton, one of the following three documents:

- (1) Appropriate evidence that the contractor is operating under an existing Federally approved or sanctioned affirmative action program; or
- (2) A certificate of employee information report approval, issued in accordance with N.J.A.C. 17:27-4; or
- (3) An employee information report (Form AA302) provided by the Division and distributed to Princeton to be completed by the contractor, in accordance with N.J.A.C. 17:27-4. A contractor shall not be eligible to submit nor shall Princeton accept an employee information report unless the contractor certifies and agrees to the following: The contractor, where appropriate, certifies that he or she has never before applied for a certificate of employee information report in accordance with rules promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time; and agrees to submit immediately to the Division a copy of the employee information report.

A contractor shall not enter into a binding subcontract with a subcontractor unless the subcontractor has submitted to said contractor one of the three documents listed above.

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

A. 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, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that all employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or

sex. Such equal employment opportunity 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.

B. 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, gender identity or expression, disability, nationality or sex.

C. 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.

D. 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.

E. The contractor or subcontractor agrees to make good faith efforts to afford equal employment opportunities to minority and women workers consistent with:

(1) Good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2; or

(2) Good faith efforts to meet targeted county employment goals determined by the Division, pursuant to N.J.A.C. 17:27-5.2.

F. 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, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

G. 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;

H. In conforming with the targeted 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, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

I. The contractor and its subcontractors shall furnish such reports or other documents to the Division of Contract Compliance and 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 Division of Contract Compliance and EEO for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (N.J.A.C. 17:27).

As required by N.J.S.A. 10:2-1 ("Discrimination in employment on public works; contract provisions; set-aside programs"), the contractor agrees as follows:

A. In the hiring of persons for the performance of work under this contract or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under this contract, no contractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates;

B. No contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under this contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex;

C. There may be deducted from the amount payable to the contractor by Princeton, under this contract, a penalty of \$50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the contract; and

D. This contract may be canceled or terminated by Princeton, and all money due or to become due hereunder may be forfeited, for any violation of this section of the contract occurring after notice to the contractor from Princeton of any prior violation of this section of the contract.

EXHIBIT C

BUSINESS REGISTRATION & SALES & USE TAX ADDENDUM

P.L. 2004, c.57 (N.J.S.A. 52:32-44) imposes the following requirements on contractors and subcontractors that knowingly provide goods or perform services for a contractor fulfilling this contract:

A. Proof of Contractor's Business Registration

The contractor must provide a copy of its business registration certificate issued by the Department of the Treasury or such other form or verification that the contractor is registered with the Department of the Treasury. Proof of business registration must be submitted no later than at the time of execution of this contract.

B. Proof of Subcontractors' Business Registration

The contractor shall not enter into any contract with a subcontractor under this contract unless the subcontractor first provides proof of valid business registration to the contractor. Also, if the contractor subcontracts any of the work:

1. The contractor shall provide written notice to its subcontractors of the responsibility to submit proof of business registration to the contractor. Subcontractors through all tiers of the project must provide written notice to their subcontractors to submit proof of business registration, and subcontractors shall collect such proofs of business registration.

2. The contractor shall forward copies of proof of the subcontractors' business registrations to the contracting agency.

3. The contractor shall maintain and submit to the contracting agency a list of subcontractors and their addresses that may be updated from time to time during the course of the contract performance.

4. Before final payment is made by the contracting agency under this contract, the contractor shall submit to the contracting agency a complete and an accurate list of all subcontractors, along with their proof of business registration (if not previously provided), used in fulfillment of the contract. If no subcontractors were used, the contractor shall attest to same prior to final payment.

A contractor or subcontractor who fails to provide proof of business registration or provides false information of business registration shall be liable for a penalty of \$25 for each day of violation, not to exceed \$50,000 for each proof of business registration not properly provided under a contract with a contracting agency.

C. Sales and Use Tax

For the term of this contract, the contractor and each of its affiliates shall collect and remit to the Director of the Division of Taxation in the Department of the Treasury the use tax due pursuant to the "Sales and Use Tax Act," P.L. 1966, c.30 (C.54:32B-1 et seq.) on all their sales of tangible personal property delivered into this State.

In the event the contractor subcontracts any of its work, the contractor shall include within its subcontracts the requirement that, for the term of this contract, the subcontractor and each of its affiliates shall collect and remit to the Director of the Division of Taxation in the Department of the Treasury the use tax due pursuant to the "Sales and Use Tax Act," P.L. 1966, c.30 (C.54:32B-1 et seq.) on all their sales of tangible personal property delivered into this State.

Information on the law and its requirements is available by calling (609) 292-9292.

EXHIBIT D

NEW JERSEY "LOCAL UNIT PAY-TO-PLAY LAW" COMPLIANCE

Political Contribution Disclosure

This Agreement has been awarded to CONTRACTOR/CONSULTANT based on the merits and abilities of CONTRACTOR/CONSULTANT to provide the goods or services as described herein. This Agreement was not awarded through a "fair and open process" as that phrase is defined in N.J.S.A. 19:44A-20.7. As such, CONTRACTOR/CONSULTANT hereby certifies that CONTRACTOR/CONSULTANT (including persons and other business entities having an interest in CONTRACT/CONSULTANT as defined by N.J.S.A. 19:44A-20.7) has neither made a contribution, that is reportable pursuant to the Election Law Enforcement Commission pursuant to N.J.S.A. 19:44A-1 et seq. (i.e., in excess of \$300.00), in the one (1) year period preceding the award of this Agreement that would, pursuant to P.L. 2004, c.19 affect its eligibility to perform this Agreement, nor will it make a reportable contribution during the term of this Agreement to any municipal committee of a political party if a member of that political party is serving in an elective public office of the Township of Princeton when the Agreement is awarded, or to any candidate committee of any person serving in an elective public office of the Township of Princeton when the Agreement is awarded.