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AN ORDINANCE AMENDING TITLE 1, CHAPTERS 16 (PROCUREMENT) OF THE ORLAND PARK VILLAGE CODE TO UPDATE THE VILLAGE MANAGER'S PURCHASING/CONTRACTING AUTHORITY

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WHEREAS, the Village President and Board of Trustees of the Village of Orland Park (the "Village") have the authority to adopt ordinances and to promulgate rules and regulations that pertain to its government and officers and to protect the public health, safety and welfare of its citizens; and

WHEREAS, the Village deems it necessary and appropriate to update its Code provisions setting forth the Village Manager's purchasing and contracting authority; and

WHEREAS, it is determined that the Village Code amendments set forth below are in the best interests of the Village and its residents.

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Orland Park, Cook and Will Counties, Illinois, as follows:

SECTION 1:

The above recitals are incorporated herein by reference as though fully set forth herein.

SECTION 2:

Title 1, Chapter 16 (Procurement), Subsections 1-16-2-F is hereby repealed and replaced with the following:

"F. Delegation to other Village officials. The Village Manager may delegate authority to purchase certain supplies, services, or construction items to Village department heads or other staff, if the Village Manager determines that the delegation is necessary for the effective procurement of those items.

SECTION 3:

Title 1, Chapter 16 (PROCUREMENT), Subsection 16-1-3 **Authorization and methods for procurements** is hereby repealed and replaced with the following:

"1-16-3: Authorization and Methods for Procurement.

The Village Manager and Director of Finance are authorized to enter into contracts on behalf of the Village as provided in this section as well as Chapter 1-7 (ADMINISTRATIVE OFFICERS OF THE VILLAGE)and Chapter 1-10 (VILLAGE FINANCES). Village Board approval is required for contracts that are not within the approval authority of the Village Manager or Director of Finance. Unless provided otherwise by this Code or specially authorized by law, the methods set forth in Subsections A (Competitive bidding), B (Competitive proposals), C (Small

purchases), D (Sole-source procurement), E (Emergency procurements) of this section shall apply to contracts.

- A. Competitive bidding. Contracts shall be awarded by competitive bidding except as otherwise provided in this chapter.
- (1) Invitation for bids. An invitation for bids shall be issued and shall include specifications and all contractual terms and conditions applicable to the procurement.
 - (2) Public notice. Public notice of the invitation for bids shall be given within a reasonable time, not less than 10 business days prior to the date set forth therein for the opening of bids. The Procurement Officer shall designate a means of distribution of information to interested parties using methods that are reasonably available. Such advertisement shall be posted on the Village's website, transmitted or communicated (electronically or otherwise) to appropriate trade organizations and bid management service providers or transmitted electronically to those known to the Procurement Officer as potential bidders, or published in a local paper of general circulation. The notice shall state the place, date, and time of bid opening.
 - (3) Sealed bids. Bids must be submitted in sealed envelopes, for opening only at the time and place designated in the invitation for bids.
 - (4) Bid opening. The sealed bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid, other information the Procurement Officer deems relevant and appropriate, and the name of each bidder shall be announced and recorded. The record shall be open to public inspection.
 - (5) Bid evaluation and acceptance. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as expertise, experience, management skills, staffing, references, inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs.
 - (6) Correction or withdrawal of bids.
 - (a) A bid may be withdrawn at any time before the bid opening by written or electronic notice received in the office designated in the invitation for bids prior to the time set for bid opening. Any modification prior to the bid opening must be submitted in a sealed envelope prior to the scheduled opening of the bid.
 - (b) The correction or withdrawal of inadvertent errors in a bid after the bid opening, or the cancellation of an award or contract based on an error in a bid, may be permitted only when the Village has determined that it is appropriate. After the bid opening, no change in a bid price or other provision of a bid will be permitted if the Village

determines that the change would be prejudicial to the interest of the Village or to fair competition. In lieu of a bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:

[1] The mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or

[2] The bidder submits evidence that clearly and convincingly demonstrates that a mistake was made.

(c) All decisions to permit the correction or withdrawal of bids, or to cancel awards of contracts based on bid mistakes, shall be supported by a written determination made by the Procurement Officer.

(7) Award. The contract shall be awarded with reasonable promptness by appropriate written notice to the lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in the invitation for bids, and is determined to be in the best interests of the Village (the "most responsible bid"). In the event the most responsible bid exceeds available funds, the Procurement Officer is authorized, when time, economic considerations, or other exigencies preclude re-solicitation of work of a reduced scope, to negotiate an adjustment of the most responsible bid in order to bring the bid within the amount of available funds.

(8) 65 ILCS 5/8-9-1 provides a mechanism for the waiver of public bidding. Notwithstanding the foregoing requirements of this chapter, any such contract may be entered into by the proper officers without advertising for bids, if authorized by a vote of two-thirds of all Board Trustees then holding office.

B. Competitive proposals. Solicitation of competitive proposals is a procurement option allowing the award to be based on an evaluation process using stated criteria to arrive at a contract that will be the most advantageous to the Village.

(1) Competitive proposals, typically solicited through a request for qualifications (RFQ) or request for proposals (RFP), or a combination of the two, may be practical when the Procurement Officer determines that the use of a competitive bidding process either is not practicable or otherwise is not advantageous to the Village, and one or more of the following conditions, or similar conditions, exist:

(a) The contract needs to be other than a fixed-price type.

(b) Oral or written discussions may need to be conducted with proposers concerning technical and price aspects of their proposals.

(c) The work is highly specialized or otherwise requires extraordinary, defined skills or experience in a particular area not generally available.

(d) Proposers may need to be afforded the opportunity to revise their proposals, including prices.

- (e) Award may need to be based upon a comparative evaluation, as stated in the RFP, of differing price, quality, and contractual factors in order for the Village to determine the most advantageous proposal. Quality factors may include technical and performance capability and the content of the technical proposal.
 - (f) Important criteria other than price will be considered in determining an award.
 - (g) Adequate specifications are not available.
- (2) General RFQ or RFP process. Proposals generally shall be solicited through an RFQ or RFP as follows:
- (a) Public notice of the request for proposals/qualifications shall be given within a reasonable time, not less than 10 calendar business days prior to the date set forth therein for the opening of the proposals. The Procurement Officer shall designate a means of distribution of information to interested parties using methods that are reasonably available. Such advertisement shall be posted on the Village's website, transmitted or communicated (electronically or otherwise) to appropriate trade organizations and bid management service providers or transmitted electronically to those known to the Procurement Officer as potential proposers, or published in a local paper of general circulation. The notice shall state the place, date, and time proposals are due.
 - (b) Submission of proposals. Proposals must be submitted in sealed envelopes. All proposals shall be handled so that the identity of the proposers and the contents of the proposals remain confidential during the process of negotiation. A register of proposals shall be prepared containing the name of each proposer, the number of modifications to a proposal received, if any, and a description sufficient to identify the item offered. The register of proposals shall be open for public inspection only after the conclusion of negotiations and award of a contract.
 - (c) Evaluation factors. The request for proposals shall state the relative importance of price and other evaluation factors, such as expertise, experience, management skills, staffing, references, inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose.
 - (d) Discussion with responsible proposers and revisions to proposals. As provided in the request for proposals, discussions may be conducted with responsible proposers who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and conformance to, the solicitation requirements. Proposers shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of the identity of competing proposers or of any information derived from proposals submitted by competing proposers.
 - (e) Award. Award shall be made to the responsible proposer whose proposal is

determined to be the most advantageous to the Village, taking into consideration price and the evaluation factors set forth in the request for proposals. The contract file shall contain the basis on which the award is made.

- C. Small purchases. A "small purchase" is defined as a single, complete purchase, the price of which is less than \$25,000. Any purchase or contract for purchase for which the total price is \$25,000 or more is not a small purchase and may not be classified as a small purchase merely by making the purchase in installments or by otherwise dividing the purchase. A small purchase may be made in accordance with the small purchase procedures authorized in this subsection.
- (1) Purchases greater than \$15,000 but less than \$25,000. Insofar as it is practical, the Village shall allow three business days at minimum for the submission of written quotations by vendors for purchases greater than \$15,000 but less than \$25,000. The Village Manager, or designee shall approve the purchase from the vendor with the lowest responsive, responsible quotation that is in the best interest of the Village. Quotations shall be in writing and authenticated by an appropriate officer of the vendor. A quotation shall include, at a minimum, the name of the vendor, the date, the description of the items offered, and the total amount of the quotation. The quotation shall be made part of the purchase record.
 - (2) Purchases greater than \$5,000 but not more than \$15,000. Insofar as it is practical, the Village shall allow three business days at minimum for the submission of written quotations by vendors for purchases greater than \$5,000 but not more than \$15,000. The Village Manager, Director of Finance, or designee shall approve the purchase from the vendor with the lowest responsive, responsible quotation that is in the best interest of the Village. Quotations shall be in writing. A quotation shall include, at a minimum, the name of the vendor, the date, the description of the items offered, and the total amount of the quotation. The quotation shall be made part of the purchase record.
 - (3) Purchases not more than \$5,000. The Village Manager, with the advice of the Procurement Officer, shall adopt operational procedures for making purchases of \$5,000 or less. Those operational procedures shall provide for obtaining adequate and reasonable competition for the supply, service, or construction being purchased.
- D. Sole-source procurement. A contract which would otherwise require competitive bidding under this chapter or this Code may be awarded without competitive bidding when the Procurement Officer determines in writing submitted to the Village Manager, after conducting a good faith review of available sources, that one source for the required supply, service, or construction item is in the best interest of the Village. The Procurement Officer, or his/her designee, shall conduct negotiations as appropriate as to price, delivery, and terms.. If a contract exceeds the established expenditure limit, then the Village Board must authorize the contract.
- E. Emergency procurements. Notwithstanding any other provisions of this chapter or this Code, the Village Manager may make, or authorize the Procurement Officer and others to make, emergency procurements of supplies, services, or construction items when there

exists an immediate threat to public health, welfare, or safety. An emergency procurement must be made with as much competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. As soon as practicable, a record of each emergency procurement shall be made, including the contractor's name, the amount and type of the contract, a listing of the items procured under the contract, and the identification number of the contract file.

- F. Pass-Through Contracts are contracts that are entered into by the Village, where Village obligations for payment pursuant to such contracts are paid entirely by other entities or persons. Except as may be required pursuant to the provisions of 65 ILCS 5/8-9-1, the Village Manager, or his/her designee, may award and execute all Pass-Through contracts, regardless of price, for supplies, equipment, services or construction which are funded entirely by non-Village entities or persons without the expenditure of Village funds or commitment to future Village funds, provided that prior to the execution of the a commitment for payment from the funding source is obtained through a funding agreement or a deposit and reimbursement agreement.
- G. Responsibility of bidders and proposers. If a bidder or proposer that otherwise would have been awarded a contract is found unresponsive or irresponsible (collectively "unqualified"), then the determination of "unqualified" shall be made in writing by the Procurement Officer, setting forth the basis for the finding. The failure of a bidder or proposer to supply information promptly in connection with an inquiry from the Village with respect to responsibility may be grounds for a determination of unqualified. The determination shall be made part of the contract file and be made a public record.
- H. Bid and performance bonds on supply or service contracts. Bid bonds, labor and materials payment bonds, and performance bonds or other security may be requested for supply contracts or service contracts as the Procurement Officer, in consultation with the appropriate department head or Village Manager, deems advisable to protect the Village's interests. All bonding requirements should be established in the bid or solicitation documents. Bid bonds, labor and materials payment bonds, and performance bonds or other security may not be used as a substitute for a determination of a bidder or proposer's responsibility.
- I. Cancellation of invitations for bids or requests for proposals. The Village may cancel an invitation for bids, a request for proposals, or any other solicitation and may reject any or all bids or proposals in whole or in part, when that cancellation or rejection is in the best interests of the Village. The reasons for cancellation or rejection shall be made part of the contract file. Each bid issued or solicitation made by the Village should state that the bid or solicitation may be cancelled and that any bid or proposal may be rejected in whole or in part. The Village shall attempt to send notice of cancellation to all potential bidders or proposers. The Village shall provide the reason or reasons for cancellation or rejection at the request of an unsuccessful bidder or proposer.

SECTION 4:

Title 1, Chapter 16 (PROCUREMENT), Subsection 1-16-7-C Bid Security is hereby repealed and replaced with the following:

- C. Bid security. A bid security shall be required for all competitively bid construction contracts, in accordance with applicable state law. The bid security shall be a bond provided by a surety company authorized to do business in the state, or the equivalent in cash, or otherwise supplied in a form satisfactory to the Village. The bid bond must meet the following standards:
- (1) Amount. The bid bond shall be in an amount adequate to provide guarantee, that the winning bidder will undertake the contract under the terms at which they bid.
 - (2) Payment on bond. The bidding documents must provide the circumstances under which the Village may take action against the bond due to material noncompliance of the bidder with the bid requirements.
 - (3) Withdrawal of bid. When a bidder withdraws its bid before award as provided in this Code, no action will be taken against the bidder or the bid bond.
 - (4) Performance and labor and materials payment bonds. . In connection with any work or public improvement bid or proposal, the Village Manager, or his/her designee, shall fix the amount of any performance bond or any labor and material payment bond and in circumstances deemed appropriate by the Village Manager he/she may waive the requirement of a performance bond and/or labor and material payment bond. The following bonds or security shall be delivered to the Village and shall become binding on the parties upon the execution of the contract:
 - (a) A performance bond in a form provided by or otherwise satisfactory to the Village, executed by a surety company authorized to do business in the state or otherwise secured in a manner satisfactory to the Village, in an amount equal to 100% of the price specified in the contract; and
 - (b) A labor and materials payment bond in a form provided by or otherwise satisfactory to the Village, executed by a surety company authorized to do business in the state or otherwise secured in manner satisfactory to the Village, for the protection of all persons supplying labor and materials to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to 100% of the price specified in the contract.
 - (5) Authority to require additional bonds. Nothing in this section shall be construed to limit the authority of the Procurement Officer to require a performance bond or other security in addition to the bonds stated in this subsection, or in circumstances other than those specified in this section.

SECTION 5:

Title 1, Chapter 16 (PROCUREMENT), Subsection 1-16-8-A Public Notice is hereby repealed and replaced with the following:

- A. Public notice of the request for proposals/qualifications shall be given within a reasonable time, not less than 10 calendar business days prior to the date set forth therein for the opening of the proposals. The Procurement Officer shall designate a means of distribution of information to interested parties using methods that are reasonably available. Such advertisement shall be posted on the Village's website, transmitted or communicated (electronically or otherwise) to appropriate trade organizations and bid management service providers or transmitted electronically to those known to the Procurement Officer as potential proposers, or published in a local paper of general circulation. The notice shall state the place, date, and time proposals are due.

SECTION 6:

Title 1, Chapter 16 (PROCUREMENT), Subsection 1-16-9-A is hereby repealed and replaced with the following:

- A. Only the Village Manager, or his/her designee, is authorized to secure legal services. Any department head that desires such legal services shall submit a request to the Procurement Officer for those legal services.

SECTION 7:

Title 1, Chapter 16 (PROCUREMENT), Subsection 1-16-10-A is hereby repealed and replaced with the following:

- A. Authorization. The Village shall endeavor to use joint or cooperative purchasing whenever favorable prices can be obtained for required goods and services. The Village Manager, Director of Finance, or designee are authorized to issue a purchase order or contract when the funds for that purchase order or contract have been previously budgeted and appropriated by the Village Board, using the applicable process and standards set forth in this chapter.

SECTION 8:

Title 1, Chapter 16 (PROCUREMENT), Subsection 1-16-14-C and D are hereby repealed and replaced with the following:

- C. Procurement officer report and recommendation. If no meeting is requested or if the claim is not resolved during the requested meeting between the claimant and Procurement Officer, then within 10 business days after the filing of the claim or after the conclusion of the requested meeting, whichever is later, the Procurement Officer shall prepare a written report and recommendation regarding the claim for review and decision of the Village Manager.
- D. Decision by Village Manager. The Village Manager shall issue a written decision on a claim within 10 business days after receipt of the Procurement Officer's report and recommendation. The Village Manager may accept the Procurement Officer's recommendation or make any other decision on the claim as the Village Manager determines is proper. The decision of the Village Manager will be final.

SECTION 9:

All ordinances or parts of ordinances in conflict herewith are, to the extent of such conflict, hereby repealed.

SECTION 10:

This ordinance shall be in full force and effect from and after its adoption and publication in pamphlet form as provided by law.