

VILLAGE OF HOLLY

ORDINANCE NO. 470

An ordinance to amend various sections of chapter 33 to amend the Village's purchasing policy to include federal regulations.

THE VILLAGE OF HOLLY ORDAINS:

Section 1. Amendment of Chapter 33 of the Code of Ordinances.

The Village Council hereby amends Chapter 33 of the Code of Ordinances by adding thereto new provisions for federal regulations as follows:

33.066 Procurement Standards for Federal Awards

When procuring property and services under a Federal award, the Village of Holly ("Village") shall follow the procurement standards in CFR 200.318 through 200.327.

33.067 General Procurement Standards

The Village shall follow documented procurement procedures for the acquisition of property, materials, supplies or services required under a Federal award or sub-award. The Village shall maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. The Village shall verify that vendors and contractors are not on the list of parties excluded from federal procurement issued by the General Services Administration, or otherwise excluded from participating in a federally funded project.

A. No employee, officer, or agent of the Village may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

The officers, employees, and agents of the Village may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.

Violation of the conflict of interest or ethical standards provisions are subject to disciplinary action up to and including discharge.

All Village elected officials, officers and agents shall be solicited annually regarding certification of conflict of interest. Each employee participating in the evaluation and selection process for federally funded projects shall certify regarding conflict of interest.

B. The Village will take steps to avoid acquisition of unnecessary or duplicative items. Consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, leasing alternatives shall be compared to purchase alternatives to determine the most economical approach.

C. To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the Village shall enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

D. The Village shall use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

E. The Village shall consider the use of value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

F. The Village shall award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

G. The Village shall maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to, the following: Rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

H. The Village may use a time-and-materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Total cost to the Village for a time-and-materials type contract shall not exceed the sum of:

1. The actual cost of materials; and

2. Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

Any time-and-materials contract shall include a ceiling price that the contractor exceeds at its own risk. Further, the Village shall maintain a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

- I. The Village shall be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims.

33.068 Competition

All procurement transactions for the acquisition of property, materials, supplies or services required under a Federal award shall be conducted in a manner providing full and open competition.

- A. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, scopes of work, or invitations for bids or requests for proposals shall be excluded from competing for such procurements.

- B. The Village shall not engage in procurement practices that unduly restrict competition. Such restrictive practices include, but are not limited to:

1. Placing unreasonable requirements on firms in order for them to qualify to do business;
2. Requiring unnecessary experience and excessive bonding;
3. Noncompetitive pricing practices between firms or between affiliated companies;
4. Noncompetitive contracts to consultants that are on retainer contracts;
5. Organizational conflicts of interest;
6. Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement; and
7. Any arbitrary action in the procurement process.

- C. The Village shall conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference.

Exceptions:

1. The application of procurement procedures shall not preempt state licensing laws.
2. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

D. The Village shall incorporate written procedures for procurement transactions to ensure that all solicitations:

1. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equivalent" description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and
2. Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

E. The Village shall ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Potential bidders shall not be precluded from qualifying during the solicitation period.

33.069 Methods of procurement

The Village may use the following methods of procurement in the acquisition of property, materials, supplies or services under a Federal award or sub-award, provided that the methods are consistent with CFR 200.317 through CFR 200.320.

A. When the value of the procurement for property, material, supplies or services under a Federal award does not exceed \$250,000, formal procurement methods are not required. The Village shall use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property, materials, supplies or services at or below \$250,000 include:

1. Micro-purchases (\$50,000 or less)

- a. The acquisition of property, materials, supplies or services, the aggregate dollar amount of which does not exceed \$50,000, may be accomplished without soliciting competitive price or rate quotations, provided that the Village considers the price to be reasonable based on research, experience, purchase history or other relevant information. The justification for micro-purchases shall be documented and retained in the Township's files.
- b. To the extent practicable, the Village shall distribute micro-purchases equitably among qualified suppliers.

2. Small purchases (over \$50,000 up to \$250,000)

For the acquisition of property, materials, supplies or services, the aggregate dollar amount of which is higher than \$50,000 but does not exceed \$250,000, the Village shall obtain price or rate quotations from an adequate number of qualified sources as determined appropriate by the Village.

B. When the value of the procurement for property, materials, supplies or services under a Federal financial assistance award exceeds \$250,000, formal procurement methods are required, including public advertising, unless a non-competitive procurement method is used in accordance with subsection 3 of this section. The following formal methods of procurement shall be used for procurement of property, materials, supplies or services above \$250,000. (The Village may choose to use formal methods for procurement of property, materials, supplies or services below \$250,000 if the Village determines it appropriate to do so.):

1. Sealed bids - Bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. Sealed bidding shall be used under the following conditions:
 - a. A complete, adequate, and realistic specification or purchase description is available;
 - b. Two or more responsible bidders are willing and able to compete effectively for the business; and
 - c. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.
2. If sealed bids are used, the following requirements shall apply:

- a. Bids shall be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids;
 - b. The invitation for bids shall be publicly advertised;
 - c. The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;
 - d. All bids shall be opened publicly at the time and place prescribed in the invitation for bids;
 - e. A firm fixed price contract award shall be made in writing to the lowest responsive and responsible bidder. If specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest; and
 - f. Any or all bids may be rejected if there is a sound documented reason.
3. Proposals - The Village may solicit proposals when it determines that conditions are not appropriate for the use of sealed bids, which shall be documented in the procurement documents. Using the proposals procurement method will result in the award of a fixed price or cost-reimbursement type contract. Solicitation of proposals and the resulting awarding of contracts shall comply with the following requirements:
- a. Requests for proposals shall be published in a local newspaper, on the Village's website, and any other resource determined to be suitable by the Village.
 - b. The Village shall identify all evaluation factors for the proposals and their relative importance.
 - c. Proposals shall be solicited from an adequate number of qualified offerors. Any response to published requests for proposals shall be considered to the maximum extent practical;
 - d. The Village have written standards for conducting technical evaluations of the proposals received and making selections;
 - e. Contracts shall be awarded to the responsible offeror whose proposal is most advantageous to the Village, with price and other factors considered; and
 - f. The Village may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services, whereby offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of

fair and reasonable compensation. This method, where price is not used as a selection factor, may only be used in procurement of A/E professional services. It shall not be used to purchase other types of services through A/E firms that are a potential source to perform the proposed effort.

4. Noncompetitive procurement - The Village may use non-competitive procurement methods under certain circumstances. A non-competitive procurement contract may only be awarded if one or more of the following circumstances apply:
 - a. The aggregate dollar amount for the acquisition of property, materials, supplies or services does not exceed \$50,000;
 - b. The item is available only from a single source;
 - c. The public exigency or emergency for the requirement will not permit a delay resulting from publishing a competitive solicitation;
 - d. The Federal awarding agency or pass-through entity expressly authorizes a non-competitive procurement in response to a written request from the Township; or
 - e. After solicitation of a number of sources, competition is determined to be inadequate.

33.070 Contracting with small, minority or women-owned business enterprises, and labor surplus area firms.

The Village shall take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

Affirmative steps shall include:

- A. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- B. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- C. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- D. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

- E. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- F. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraph (A)(1) through (5) of this section.

33.071 Domestic preferences for procurements

As appropriate and to the extent consistent with law, the Village shall, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section shall be included in all sub-awards including all contracts and purchase orders for work or products under this award.

A. Definitions for purposes of this section:

1. "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
2. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

33.072 Procurement of recovered materials

The Village shall comply with CFR 200.323, pertaining to procurement of items containing recovered materials, to the extent practicable.

33.073 Contract cost and price

A. The Village shall perform a cost or price analysis in connection with every procurement action in excess of \$250,000, including contract modifications. The method and degree of analysis shall be determined by the Township based on the particular procurement situation. At a minimum, the Township shall make independent cost estimates before receiving bids or proposals.

B. The Village shall negotiate profit as a separate element of the price for each contract in which there is no price competition. To establish a fair and reasonable profit, consideration shall be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

33.074 Federal awarding agency or pass-through entity review.

A. The Village shall make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition.

B. The Village shall make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

1. The Village's procurement procedures or operation fails to comply with the procurement standards in CFR 200.325;
2. The procurement is expected to exceed \$250,000 and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
3. The procurement, which is expected to exceed \$250,000, specifies a "brand name" product;
4. The proposed contract is more than \$250,000 and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
5. A proposed contract modification changes the scope of a contract or increases the contract amount by more than \$250,000.

33.075 Bonding requirements

A. For construction or facility improvement contracts or subcontracts exceeding \$250,000, bonding requirements for bidders shall be as follows:

1. A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
2. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.
3. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

3.076 Contract provisions

The Village shall ensure that all contracts contain the applicable provisions described in *Appendix II to Part 200-Contract Provisions for Non-Federal Entity Contracts Under Federal Awards*.

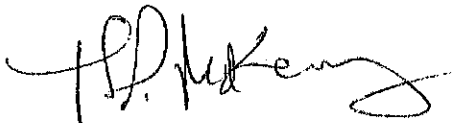
Section 2. Effective Date.

This ordinance shall take effect immediately upon publication.


At a regular meeting of the Village of Holly Council held on June 28, 2022, adoption of the foregoing ordinance was moved by _____ and supported by _____.

Voting for:
Voting against:
Absent:

The Village President declared the ordinance adopted.




Thomas P. McKenney, President



Deborah J. Bigger, Clerk/Treasurer

Certification

The foregoing is a true copy of Ordinance No. 465 which was enacted by the Village Council of the Village of Holly at a regular meeting held on June 28, 2022.



Deborah J. Bigger, Clerk/Treasurer