Village of Johnstown
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VILLAGE OF JOHNSTOWN

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ORDINANCE 11-13

AN ORDINANCE ADOPTING CHAPTER 107 ACQUISITION OF SERVICES AND MATERIALS AND CHAPTER 109 DIVISION OF PURCHASE, CONSTRUCTION & REPAIR TO ESTABLISH BIDDING PROCESS AND THRESHOLDS FOR THE VILLAGE OF JOHNSTOWN AND DECLARING AN EMERGENCY

WHEREAS, Section 8.04 of the Charter of the Village of Johnstown provides that "Council, by ordinance, shall establish a threshold amount, notice provisions and other procedures for competitive bidding;" and

WHEREAS, this Council desires to enact new Chapter 107 and Chapter 109 of the Codified Ordinances to provide standards and procedures for awarding contracts for the Village of Johnstown; and

NOW THEREFORE, be it ordained by the Council of the VILLAGE OF JOHNSTOWN, Licking County, Ohio, as follows:

Section 1. That a new Chapter 107, Acquisition of Services and Materials, of the Codified Ordinances of the Village of Johnstown, be and the same hereby is enacted to read and provide, in its entirety, as follows:

01 CONTRACTS AND PURCHASES; ADVERTISING FOR BIDS.
When an expenditure within the Village, other than the compensation of a person employed therein, exceeds fifty thousand dollars ($50,000), such expenditure shall be authorized and directed by ordinance of Council. When so authorized and directed, except where the contract is for equipment, services, materials or supplies available from a qualified nonprofit agency pursuant to Ohio R.C. 4115.31 to 4115.35, the Village Manager shall make a written contract with the lowest and the best bidder after advertising for not less than two nor more than four consecutive weeks in a newspaper of general circulation in the Village.

02 EMERGENCIES; BIDDING NOT REQUIRED.
In the case of a real and present emergency arising in connection with any municipally owned utilities or any other department, division, commission, bureau or board of the Village, Council may, by a two-thirds vote of all the members elected thereto, authorize the Village Manager to enter into a contract for work to be done or for the purchase of supplies or materials without formal bidding and advertising.

03 POLICIES OF COUNCIL; CIRCUMSTANCES JUSTIFYING WAIVER OF BIDDING.
In order to implement the requirements of Sections 01 and 02, Council hereby adopts the following policies:

(a) The concept of advertising for and soliciting bids for services and materials that are necessary to governmental operations is of paramount importance. Competitive bidding, by its very nature, tends to promote two occurrences which are essential to effective, efficient service to taxpayers, namely:

(1) The cost of goods and services is held to reasonable limits because of competition among the various suppliers.

(2) Persons who pay taxes and support governmental services are given an equal opportunity to do business with the government and to share in the expenditure of tax revenues. In some

instances, however, competitive bidding can work to the detriment of the governmental agency, and, of course, to the detriment of the taxpayers who support that agency.

(b) From the standpoint of assisting the administration for the purpose of seeking Council action with respect to procuring services and materials, the following general guidelines shall apply:

(1) The department head seeking contracting authority shall present his or her proposal, together with any documentation and information necessary for the review of the general nature and cost of the project, to the appropriate committee or committees of Council.

(2) Included within any proposal, the department head shall set forth a request that the services or materials be purchased either through the standard bidding procedure or that the bidding procedure be waived. If a request is made that the bidding procedure be waived, reasons shall be set forth which shall adequately demonstrate why the waiver is necessary.

(3) An emergency may be declared and bidding procedures may be waived in any of the following circumstances, provided that at least two-thirds of the members of Council conclude that such circumstances exist.

A. If, because time is of a critical consideration, the service or material must be provided before bidding can be effectively accomplished, then an emergency is considered to exist and the bidding procedures may be waived.

B. If an informal survey conducted by the department head discloses that it is unlikely that bids will be received as a result of an invitation for the reason that the service or material is necessary to the operation of the Village, and the service or material cannot be obtained through bidding procedures, the bidding procedures may be waived.

C. If it is determined that there is a single source for the services or materials sought, an emergency may be declared for the reasons that bidding will serve no useful purpose and will waste time and money, and the bidding procedure may be waived.

D. In those circumstances wherein past experience with the peculiar details of a particular project or item of equipment renders one supplier so uniquely capable of providing the desired service or material at a substantially lower price; an emergency may be declared for the reason that bidding will serve no useful purpose in that no other supplier could provide the service or material at a lower price, and the bidding procedure may be waived.

E. If, because of the highly technical or peculiar nature of the service or material to be acquired, the Village does not possess the requisite experience, training or expertise among its staff members to compile specifications sufficient to apprise bidders of the desired services or materials, and if appropriate specifications cannot be obtained elsewhere without the expenditure of funds for such services, an emergency exists and bidding may be waived.

F. If, because of the highly specialized or technical nature of personal services to be provided, the experience, training and expertise of prospective bidders become a critical feature, essential to the success of the project, and such experience, training and expertise cannot be adequately measured through the formal structure of the bidding process, an emergency exists and bidding may be waived.

G. By the provisions of the Ohio Revised Code, the Village Manager may participate in State contracts where the Department of Administrative Services, Office of State Purchasing, has entered into such contracts for the purchase of supplies, services, equipment or certain materials, where to do so would be in the best interests of the Village.

H. The Village Manager may also participate in Ohio Department of Transportation contracts where the Department has entered into such contracts for the purchase of machinery, materials and supplies, and where to do so would be in the best interest of the Village.

(4) In all cases wherein a department head seeks a waiver of bidding, he or she shall provide sufficient information so that Council may make a reasonable finding that the singular circumstance of the particular proposed project constitute an emergency which would permit reasonable minds to conclude that the circumstances of Section 02 exist and that formal advertising and bidding should be waived.

04 EQUAL OPPORTUNITIES FOR AWARDING OF CONTRACTS.
In securing services or materials for projects which are not anticipated to exceed fifty thousand dollars ($50,000), in cost, every effort shall be made to secure the services or materials at the lowest available price.

With respect to each purchase of services or materials so made, procedures shall be established so that each supplier of such services or materials within the local community will be given an opportunity to participate in the awarding of contracts for such services and materials whenever possible. In no event shall any supplier of services or materials be shown a preference or favoritism over other suppliers who are capable of providing the same or equal services or materials at an equal or lower price. However, the requirements of this section shall not be construed to require the award of any contract to a supplier when such an award would be less favorable to the best interests of the Village than if the contract were awarded to another supplier.

05 RULES AND REGULATIONS.
The Village Manager is hereby authorized and directed to prepare and maintain rules and regulations which shall describe procedures and other requirements designed to carry into effect the intent and purposes specified in this chapter. Such rules and regulations shall be kept on file in the office of the Village Manager and shall be available for inspection by the public at all reasonable times. All prospective bidders or other persons from whom informal proposals may be solicited shall be advised that such rules and regulations exist and that they may be examined in the office of the Village Manager. Copies of such rules and regulations shall be made available, upon request, for an administrative photocopying fee to be established by the Village Manager. Such rules and regulations may be amended by the Village Manager from time to time as he or she may determine to be appropriate in accordance with experience and practices with respect to the procurement of services and materials.

06 CONFORMITY WITH STATE LAW.
Notwithstanding any other requirement set forth in this chapter, formal bidding procedures may be waived or imposed in any circumstances wherein the Ohio Revised Code would permit or require the waiver or imposition of advertising for bids with respect to any project requiring services or materials.

07 EXPENDITURES; APPROPRIATION, WARRANT AND CERTIFICATE REQUIRED; EXCEPTIONS.
No officer or employee of the Village, or any other person, shall:

(a) Make any expenditures of money unless it has been appropriated as provided in this chapter and in the Ohio Revised Code;

(b) Make any expenditure of money except by a proper warrant drawn against an appropriate fund which shall show upon its face the appropriation pursuant to which such expenditure is made and the fund against which the warrant is drawn; or

(c) Make any contract or give any order involving an expenditure of money unless there is attached thereto a certificate of the Village Finance Director that the amount required to meet the same or, in the case of a continuing contract to be performed in whole or in part in an ensuing fiscal year, the amount required to meet the same in the fiscal year in which the contract is made, has been lawfully appropriated for such purpose and is in the Treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrance. Every such contract made without such a certificate shall be void, and no warrant shall. Be issued in payment of any amount due thereon. If no certificate is furnished as required, then upon receipt by Council of a certificate of the Village Finance Director stating that there was at the time of the making of such contract or order, and at the time of the execution of such certificate, a sufficient sum appropriated for the purpose of such contract and in the Treasury or in the process of collection to the credit of an appropriate fund free from any previous encumbrance, Council may authorize the issuance of a warrant in payment of amounts due upon such contract, provided that the resolution or ordinance authorizing such warrant is passed within thirty days from the receipt of such certificate, and provided, further, that if the amount involved is less than one hundred dollars ($100.00), the Finance Director may authorize it to be paid without such affirmation of Council if such expenditure is otherwise valid.

08 OBLIGATIONS AND EXPENDITURES MADE UNDER CERTIFICATES.
Upon certification by the Finance Director that a certain sum of money, not in excess of five thousand dollars ($5,000), has been lawfully appropriated, authorized or directed for a certain purpose and is in the Treasury or in the process of the collection to the credit of a certain fund free from previous and then outstanding obligations or certifications, then for such purpose and from such fund, over a period not exceeding three months and not extending beyond the end of the fiscal year, expenditures may be made, orders for payment may be issued, and contracts or obligations calling for or requiring the payment of money may be made and assumed, provided that the aggregate sum of money included in and called for by such expenditures, orders, contracts and obligations shall not exceed the sum so certified. An itemized statement of obligations incurred and expenditures made under such certificate shall be rendered to the Finance Director before another such certificate may be issued, and not more than one such certificate shall be outstanding at a time.

09 PER UNIT CONTRACTS.
In any case in which a contract is entered into upon a per unit basis, the head of the department, board or commission for whose benefit the contract is made shall make an estimate of the total amount to become due upon such contract, which estimate shall be certified in writing to the Finance Director. Such a contract may be entered into if the appropriation covers such estimate, or so much thereof as may be due during the current year. In such a case, the certificate of the Finance Director, based upon the estimate, shall be a sufficient compliance with the law requiring a certificate.

10 ATTACHMENT OF CERTIFICATES TO ORDERS AND CONTRACTS; EFFECT.
Any certificate of the Finance Director attached to a contract shall be binding upon the Village as to the facts set forth therein. Upon request of any person receiving an order or entering into a contract with the Village, the certificate of the Finance Director shall be attached to such order or contract. "Contract, " as used in this section, excludes current payrolls of regular employees and officers.

11 MONEYS DEEMED IN TREASURY OR IN PROCESS OF COLLECTION.

Taxes and other revenue in the process of collection, or the proceeds to be derived from authorized bonds, notes or certificates of indebtedness sold and in the process of delivery, shall, for the purpose of this chapter, be deemed in the Treasury or in the process of collection and in the appropriate fund. This section does not apply to the investment of sinking funds by the trustees of such funds, nor to investments made under authority of Ohio R. C. 731.56 to 731.59.

12 CONTRACTS AND LEASES EXTENDING BEYOND FISCAL YEAR.
When contracts or leases run beyond the termination of the fiscal year in which they are made, the Finance Director shall make a certification for the amount required to meet the obligation of such contract or lease maturing in such fiscal year. The amount of the obligation under such contract or lease remaining unfulfilled at the end of the fiscal year, and which will become payable during the next fiscal year, shall be included in the annual appropriation measure for the next year as a fixed charge.

13 CONTRACTS PAID FROM FUNDS OF DIVISION OF WATER AND SANITARY SEWAGE.
The certificate required by Section 07 and Ohio R. C. 5705.41, as to money in the Treasury, shall not be required for contracts on which payments are to be made from the earnings of the publicly owned Division of Water and Sanitary Sewage, but in the case of any such contract made without such certification, no payment shall be made on account thereof, and no claim or demand thereon shall be recoverable, except out of such earnings.

14 PROCEDURE IN EVENT OF NONCOMPLIANCE.
If any officer, or employee of the Village or other person makes any contract, either verbal or written, or gives any order involving the expenditure of Municipal moneys without first following the procedure set forth in Sections 07 et seq. , or as may be required by the Ohio Revised Code, either now or hereafter, the following requirements shall apply:

(a) The Finance Director, upon discovering that such contract has been made or that such an order has been given, shall refuse to issue a warrant for the payment of any amount due thereon, and such contract or order shall be deemed to be null and void.

(b) The Finance Director shall then notify the officer, employee or other person who has made such contract or order that no warrant shall be issued for the payment of any amount due thereon. This notice shall be made in writing, shall contain a brief statement of the understood facts constituting the basis of the alleged violation, shall identify by section numbers the provision or provisions of local and State law which have been violated, and shall direct such officer, employee or other person to the applicable provisions of Section 07 which provide for the action necessary to obtain certification and authorization for the issuance of a warrant. Copies of such notification shall be sent to the department head over such officer, employee or other person, when applicable, and to the Mayor.

(c) The officer, employee or other person shall then prepare a standard application form requesting to appear before the Finance Committee of Council at its next regular meeting. Such request shall contain the following information: (1) The identity and address of the person with whom or which the contract was made or the order placed; (2) The amount of funds which would be obligated under the contract or order; (3) The need for the goods or services which are the subject of the contract or order; (4) A brief statement of the facts or reasons which constitute the basis for the violation of Sections 07 et seq; (5) A brief statement as to whether or not the goods or services may be returned to the prospective vendor in exchange for a release from any further responsibility; and (6) Any other matter which the officer, employee or other person believes to be germane to the circumstances of the contract or order.

(d) A copy of the request of the officer, employee or other person to appear before the Finance Committee, as set forth above, shall be sent to the Finance Director who shall advise the Committee of the status of any fund out of which an expenditure for such a contract or order would and could be made, including the then current appropriated balance in such fund, as well as the appropriated balance at the time such contract or order was made.

(e) The Committee shall then make a recommendation to Council of what action should be taken with respect to such contract or order. Where appropriate, such a recommendation shall be in the form of a proposed resolution.

(f) The Finance Director shall prepare a written certification of the required availability of funds, both as of the time that the contract or order was made and as of the time of the certification, which shall be forwarded to Council to be considered in conjunction with the recommendation of the Committee.

15 LIABILITY TO VILLAGE IN EVENT OF NONCOMPLIANCE.
Any officer, employee or other person who issues an order contrary to Ohio R. C. 5705.41 or Sections 07 et seq. of this chapter, or who expends or authorizes the expenditure of any public funds, or who authorizes or executes any contract contrary to Ohio R. C. 5705.01 through 5705.47, or contrary to Sections 07 et seq. of this chapter, unless payments thereon are subsequently ordered as provided in Ohio R. C. 5705.41 and as also provided for in Sections 07 et seq. of this chapter, or expends or authorizes the expenditure of any public funds on any such void contract, obligation or order, unless subsequently approved as provided in Ohio R. C. 5705.41 or in Sections 07 et seq. of this chapter, or issues a certificate under the provisions thereof which contains any false statement, shall be liable to the Village for the full amount paid from the funds of the Village on any such order, contract or obligation. Such officer, employee or other person shall be jointly and severally liable in person and upon any official bond that he or she has given to the Village, to the extent of any payment of such void claim. The Village Director of Law shall enforce this liability by civil action brought in any court of appropriate jurisdiction in the name of and on behalf of the Village. If the Law Director fails, upon the written request of any taxpayer to institute an action for the enforcement of the liability, the taxpayer may institute suit in his or her own name on behalf of the Village.

16 PURPOSE.
The purpose of Sections 07 et seq. is to amplify the requirements of Ohio R. C. 5705.41, 5705.44 and 5705.45.

17 CONFLICT OF LAWS.
(a) If Sections 01 through 06, or any part thereof, is determined to be inconsistent with or contrary to any State or Federal law or regulation, then such sections or part thereof that is inconsistent or in conflict with such State or Federal law or regulation shall be construed in such a manner as to provide the most advantage to the Village with respect to the expenditure of public funds as is permissible under such law or regulation.

(b) In the event of a conflict between any of the provisions of Sections 07 through 16 and a provision of Ohio R. C. 5705.41, 5705.44 and/or 5705.45, either now or hereafter, the provision of State law shall prevail.

Section 2. That a new Chapter 109, Division of Purchase, Construction and Repair, of the Codified Ordinances of the Village of Johnstown, be and the same hereby is enacted to read and provide, in its entirety, as follows:

02 REQUISITIONS FOR PURCHASES.
No purchase, construction, alteration or repair shall be made except upon a requisition by the Village Manager or the officer at the head of the department for which the same is to be made or done or upon the order of Council.

The Village Manager or head of each department shall sign or approve with his signature all requisitions of his department. In departments where there are sub-departments or divisions, each requisition shall be signed by the chief of such sub-department or division and shall be approved by the Village Manager or officer at the head of such department. There shall be attached to each requisition a statement setting forth the necessity for the articles requisitioned.

03 SYSTEM OF PREFERENCES.
(a) Subject to the system of preferences set forth herein, contracts for the purchase of all equipment, materials, supplies, and/or services shall be awarded to the lowest and best bidder. Prior to awarding a contract or making a purchase of equipment, materials, supplies, and/or services, the Village shall first conditionally reject any bids or offers that have not been or that will not be produced in the United States of America only if sufficient competition can be generated within the United States to ensure that compliance with this requirement will not result in an excessive price for the product or service or in acquiring a disproportionately inferior product or service as set forth below.

(b) From among the remaining bids, the Village shall select the lowest and best offer(s) or bid(s) from among those that offer such equipment, materials, supplies and/or services that have been produced in Ohio only if sufficient competition can be generated within Ohio to ensure that compliance with this requirement will not result in an excessive price for the product or service or in acquiring a disproportionately inferior product or service.

(c) From the remaining bids, the Village shall select the lowest and best offer(s) or bid(s) from among those that offer such equipment, materials, supplies, and/or services that have been produced in Licking County only if sufficient competition can be generated within Licking County to ensure that compliance with this requirement will not result in an excessive price for the product or service or in acquiring a disproportionately inferior product or service.

(d) Under circumstances where the preliminary analysis as set forth above identifies the apparent low offer or bid to be from a Licking County provider, the Village shall proceed with utilizing standard purchase or contract award practices and procedures.

(e) Under circumstances where the preliminary analysis as set forth above identifies the apparent low offer or bid to be from a provider outside of Licking County, the Village shall consider the following factors:

(1) Whether the equipment, materials, supplies, and/or services can be procured from within Licking County in sufficient and reasonably available quantities and of a satisfactory quality;

(2) Whether bid(s) or offer(s) have been submitted from within Licking County;

(3) Whether the lowest Licking County bid or offer, if any, offers a price deemed by the Village to be "excessive." An excessive price shall be a price that exceeds the lowest non-Licking County bid or offer by more than three (3) percent;

(4) Whether the lowest Licking County bid, if any, offers a disproportionately inferior product or service.

(f) Under circumstances where the Village determines that selection of the lowest Licking County bid or offer, if any, will not result in an excessive price or disproportionately inferior product or service, the Village shall propose a contract award to the party extending the low Licking County bid or offer at the bid or offer price quoted.

(g) The Village shall indicate in all its invitations to bid that it will apply a domestic Licking County and Ohio bid preference as outlined in this ordinance in the evaluation and award of bids received.

(h) This section and the system of preferences set forth herein shall not apply to those purchases wherein the Village is taking advantage of membership benefits provided through the State of Ohio Cooperative Purchasing Program to contract for the purchase of equipment, materials, supplies, and/or services under the benefits of such program.

Section 3. This Ordinance is hereby declared to be an emergency measure, the immediate passage of which is necessary for the public health, safety and welfare; wherefore, this Ordinance shall take effect and be in force immediately upon its passage.

Section 4. It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council and that meetings of any of its committees that resulted in such formal action where meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code and the Charter for the VILLAGE OF JOHNSTOWN.

Date of Introduction / Public Hearing / Passage: October 15, 2013

BY: Joyce Evans

Effective Date: October 15, 2013

Mayor Sean Staneart

ATTEST TO:

APPROVED AS TO FORM:

Teresa Monroe
Clerk of Council

David Wigginton
Law Director